

# APPENDIX

**A**

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
OCALA DIVISION**

**UNITED STATES OF AMERICA**

**v**

**Case Number: 5:21-cr-50-JA-PRL**

**BENJAMIN TYREE TOWNSEL**

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**USM Number: 74262-509**

**Christine Nan Bird, FPD  
203 E. Silver Springs Blvd.  
Suite 202  
Ocala, FL 34470**

**JUDGMENT IN A CRIMINAL CASE**

The defendant pleaded guilty to Counts One, Two, Three, and Four of the Superseding Information. The defendant is adjudicated guilty of these offenses:

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Numbers</u>
18 U.S.C. §§ 922(g)(1) & 924(a)(2)	Possession of a Firearm Affecting Commerce by a Previously Convicted Felon	August 7, 2020	One
18 U.S.C. §§ 922(k) & 924(a)(1)(B)	Possession of a Firearm with an Obliterated Serial Number	August 7, 2020	Two
18 U.S.C. §§ 922(g)(1) and 924(a)(2)	Possession of a Firearm Affecting Commerce by a Previously Convicted Felon	December 3, 2020	Three
18 U.S.C. §§ 922(g)(1) and 924(a)(2)	Possession of a Firearm Affecting Commerce by a Previously Convicted Felon	February 15, 2021	Four

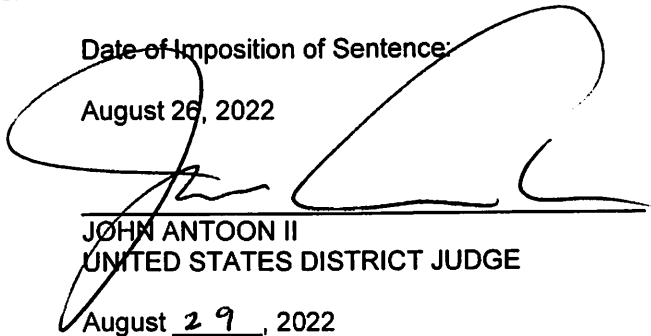
The defendant is sentenced as provided in the following pages of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

Counts One, Two, Three and Four of the Original Indictment are dismissed on the motion of the United States.

**IT IS ORDERED** that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court and United States attorney of any material change in the defendant's economic circumstances.

Date of Imposition of Sentence:

August 26, 2022



**JOHN ANTOON II  
UNITED STATES DISTRICT JUDGE**

August 29, 2022

Benjamin Tyree Townsel  
5:21-cr-50-JA-PRL

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of **144 Months**. This term consists of 120 months on Counts One, Three, and Four, each count to run concurrently, and 24 months on Count Two, to run consecutively.

The Court recommends to the Bureau of Prisons that the defendant receive psychiatric treatment, rehabilitative programs such as: The Challenge Program, Residential Drug and Alcohol Program "RDAP", Mental Health Step Down Unit, Resolve Program, and any other program available after enactment of the First Step Act. It is further recommended that the defendant be confined in a facility that specializes in people with mental health problems.

The defendant is remanded to the custody of the United States Marshal.

**RETURN**

I have executed this judgment as follows:

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The defendant delivered on \_\_\_\_\_ to \_\_\_\_\_

at \_\_\_\_\_, with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

By: \_\_\_\_\_  
Deputy U.S. Marshal

**Benjamin Tyree Townsel**  
**5:21-cr-50-JA-PRL**

## **SUPERVISED RELEASE**

Upon release from imprisonment, you will be on supervised release for a term of **3 Years**. This term consists of a 3-year term as to Counts One, Two, Three and Four, all such terms to run concurrently.

## **MANDATORY CONDITIONS**

1. You must not commit another federal, state, or local crime.
2. You must not unlawfully possess a controlled substance.
3. The mandatory drug testing requirements of the Violent Crime Control Act are imposed. The Court orders the defendant to submit to random drug testing not to exceed 104 tests per year.
4. You must cooperate in the collection of DNA as directed by the probation officer.

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below).

The defendant shall also comply with the additional conditions as follows.

Benjamin Tyree Townsel  
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## STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame. After initially reporting to the probation office, the defendant will receive instructions from the court or the probation officer about how and when the defendant must report to the probation officer, and the defendant must report to the probation officer as instructed.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within **72 hours**.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

### U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: [www.uscourts.gov](http://www.uscourts.gov).

Defendant's Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Benjamin Tyree Townsel  
5:21-cr-50-JA-PRL

### ADDITIONAL CONDITIONS OF SUPERVISED RELEASE

1. The defendant shall participate in a substance abuse program (outpatient and/or inpatient) and follow the probation officer's instructions regarding the implementation of this court directive. Further, the defendant shall contribute to the costs of these services not to exceed an amount determined reasonable by the Probation Office's Sliding Scale for Substance Abuse Treatment Services. During and upon completion of this program, the defendant is directed to submit to random drug testing.
2. The defendant shall participate in a mental health treatment program (outpatient and/or inpatient) and follow the probation officer's instructions regarding the implementation of this court directive. Further, the defendant shall contribute to the costs of these services not to exceed an amount determined reasonable by the Probation Office's Sliding Scale for Mental Health Treatment Services.
3. The defendant shall submit to a search of his or her person, residence, place of business, any storage units under the defendant's control, or vehicle, conducted by the United States Probation Officer at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. The defendant shall inform any other residents that the premises may be subject to a search pursuant to this condition.

### CRIMINAL MONETARY PENALTIES

The defendant must pay the following total criminal monetary penalties under the schedule of payments set forth in the Schedule of Payments.

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment<sup>1</sup></u>	<u>JVTA Assessment<sup>2</sup></u>
<b>TOTALS</b>	<b>\$400.00, due immediately</b>	<b>None so ordered</b>	<b>Waived</b>	<b>N/A</b>	<b>N/A</b>

### SCHEDULE OF PAYMENTS

Unless the court has expressly ordered otherwise in the special instructions above, if this judgment imposes a period of imprisonment, payment of criminal monetary penalties shall be due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the Clerk, U.S. District Court, unless otherwise directed by the court, the probation officer, or the United States attorney.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

### FORFEITURE

Defendant shall forfeit to the United States those assets previously identified in the Final Order of Forfeiture (Doc. No. 60 filed on August 3, 2022), that are subject to forfeiture.

The defendant shall pay interest on any fine or restitution of more than \$2,500, unless the fine or restitution is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on the Schedule of Payments may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

<sup>1</sup> Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

<sup>2</sup> Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

**B**



2024 WL 3596226

Only the Westlaw citation is currently available.  
United States Court of Appeals, Eleventh Circuit.

UNITED STATES of America, Plaintiff-Appellee,

v.

Benjamin Tyree TOWNSEL,  
Defendant-Appellant.

No. 22-13084

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Non-Argument Calendar

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Filed: 07/31/2024

Appeal from the United States District Court for the  
Middle District of Florida, D.C. Docket No. 5:21-  
cr-00050-JA-PRL-1

#### Attorneys and Law Firms

U.S. Attorney Service - Middle District of Florida,  
U.S. Attorney, Julia Kapusta, DOJ-USAO, Tampa, FL,  
for Plaintiff-Appellee.

Christine N. Bird, Federal Public Defender's Office,  
Ocala, FL, Laura Daines, Alec Fitzgerald Hall, Federal  
Public Defender's Office, Tampa, FL, for Defendant-  
Appellant.

Before Wilson, Jill Pryor, and Luck, Circuit Judges.

#### Opinion

PER CURIAM:

\*1 Benjamin Townsel appeals his convictions for three counts of being a felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1), and one count of possession of a firearm with an obliterated serial number, in violation of 18 U.S.C. § 922(k). Townsel argues that his convictions should be vacated because the statutory prohibitions on the possession of firearms by felons and the possession of firearms with obliterated serial numbers run afoul of the Second Amendment and because Congress lacked authority under the Commerce Clause to prohibit the possession of a firearm simply because the weapon previously moved in interstate commerce. After careful consideration, we affirm.

#### I.

On three separate occasions over several months, Townsel, who is a convicted felon, possessed a firearm. The serial number on one of these firearms was scratched and unreadable. A grand jury charged Townsel with three counts of being a felon in possession of a firearm and one count of possession of a firearm with an obliterated serial number. He pleaded guilty. The district court sentenced Townsel to a total of 144 months' imprisonment.

This is Townsel's appeal.

#### II.

Ordinarily, when a defendant enters a valid guilty plea, he waives any non-jurisdictional defects in the proceedings. *United States v. Brown*, 752 F.3d 1344, 1347 (11th Cir. 2014). But Townsel's guilty plea did not waive his constitutional challenges to the statutory prohibitions on felons possessing firearms or the possession of firearms with obliterated serial numbers. *See Class v. United States*, 583 U.S. 174, 181 (2018) (holding that a defendant who pleaded guilty did not waive his Second Amendment challenge to a statute of conviction when this claim did not “contradict the terms of the indictment or the written plea agreement”).

Although we generally review *de novo* the constitutionality of a statute, we review for plain error when a defendant raises a constitutional challenge to a statute of conviction for the first time on appeal. *United States v. Wright*, 607 F.3d 708, 715 (11th Cir. 2010). To show plain error, a defendant must establish (1) there was error, (2) that was plain, (3) that affected the defendant's substantial rights, and (4) that seriously affected the fairness, integrity, or public reputation of judicial proceedings. *Id.* An error is plain only if it is contrary to a federal statute or on-point precedent from this Court or the United States Supreme Court. *United States v. Hoffman*, 710 F.3d 1228, 1232 (11th Cir. 2013).

### III.

On appeal, Townsel challenges the constitutionality of 18 U.S.C. § 922(g)(1), which prohibits individuals with felony convictions from possessing firearms or ammunition, and 18 U.S.C. § 922(k), which prohibits anyone from possessing a firearm with a removed, altered, or obliterated serial number. He raises two types of constitutional challenges to each of these statutes. First, he argues that the statutory prohibitions run afoul of the Second Amendment. Second, he says that Congress lacked authority under the Commerce Clause to enact these restrictions. We address each issue in turn.

#### A.

\*2 We begin with the Second Amendment challenges. According to Townsel, § 922(g)(1)'s prohibition on felons possessing firearms and § 922(k)'s prohibition on the possession of firearms with obliterated serial numbers violate the Second Amendment, which states that: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. Const. amend. II. Because Townsel raises his Second Amendment challenges for the first time on appeal, we review for plain error only. We conclude that he has not established plain error.

We begin our analysis with the Supreme Court's decision in *District of Columbia v. Heller*, 554 U.S. 570 (2008). In *Heller*, the Court considered a Second Amendment challenge to a District of Columbia law that barred the private possession of handguns in homes. *Id.* at 635. After considering the text and history of the Second Amendment, the Court concluded that it conferred on an individual a right to keep and bear arms. *Id.* at 595. The Court held that the ban on handgun possession in the home violated the Second Amendment. *Id.* at 635. But the Court noted that "nothing in [its] opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill." *Id.* at 626. The Court labeled these prohibitions as "presumptively lawful." *Id.* at 627 n.26.

After *Heller*, we considered a constitutional challenge to § 922(g)(1)'s prohibition on felons possessing firearms. *See United States v. Rozier*, 598 F.3d 768, 770 (11th Cir. 2010). We rejected this challenge, holding that "statutes disqualifying felons from possessing a firearm under any and all circumstances do not offend the Second Amendment." *Id.* at 771.

Several years later, the Supreme Court considered a Second Amendment challenge to New York's gun-licensing regime that limited when a law-abiding citizen could obtain a license to carry a firearm outside the home. *See N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 11 (2022). The Court recognized that "the Second and Fourteenth Amendments protect an individual's right to carry a handgun for self-defense outside the home." *Id.* at 10. It explained that to determine whether a restriction on firearms was constitutional, courts must begin by asking whether the firearm regulation at issue governs conduct that falls within the plain text of the Second Amendment. *Id.* at 17. If the regulation covers such conduct, a court may uphold it only if the government "affirmatively prove[s] that its firearms regulation is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms." *Id.* at 19. *Bruen* emphasized that *Heller* established the correct test for determining the constitutionality of gun restrictions. *See id.* at 39. And, like *Heller*, *Bruen* described Second Amendment rights as extending only to "law-abiding, responsible citizens." *Id.* at 26 (internal quotation marks omitted).

After *Bruen*, we considered another Second Amendment challenge to § 922(g)(1). *See United States v. Dubois*, 94 F.4th 1284 (11th Cir. 2024). We held that the challenge was foreclosed by *Rozier*, which "interpreted *Heller* as limiting the [Second Amendment] right to law-abiding and qualified individuals and as clearly excluding felons from those categories by referring to felon-in-possession bans as presumptively lawful." *Id.* at 1293 (internal quotation marks omitted). We observed that in *Bruen*, the Supreme Court continued to describe the right to bear arms as extending only to "law-abiding, responsible citizens." *Id.* (internal quotation marks omitted). Accordingly, we affirmed the defendant's conviction. *Id.*

\*3 Based on *Bruen*, Townsel challenges § 922(g)(1)'s prohibition on felons possessing firearms and § 922(k)'s prohibition on the possession of firearms with obliterated serial numbers. He argues that these bans “are not consistent with this country's historical tradition of firearms regulations.” Appellant's Br. 7. But Townsel cannot show plain error because he has not identified any on-point precedent from this Court or the United States Supreme Court holding that the prohibitions set forth in § 922(g)(1) or § 922(k) violate the Second Amendment.

**B.**

We now turn to Townsel's Commerce Clause challenges to § 922(g)(1) and § 922(k). He argues that “Congress's Commerce Clause powers do not permit it to criminalize the intrastate possession of a firearm simply because it crossed state lines in the

past.” Appellant's Br. 30. Because Townsel raises the Commerce Clause challenges for the first time on appeal, we review for plain error only.

We conclude that Townsel failed to establish plain error. He has not identified any on-point precedent from this Court or the United States Supreme Court holding that Congress exceeded its authority under the Commerce Clause when it enacted the prohibitions set forth in § 922(g)(1) or § 922(k). Indeed, Townsel acknowledges that his challenges are foreclosed by precedent in which we rejected a similar Commerce Clause challenge. *See United States v. Pritchett*, 327 F.3d 1183, 1185 (11th Cir. 2003).

**AFFIRMED.**

**All Citations**

Not Reported in Fed. Rptr., 2024 WL 3596226

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