

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

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Lyle W. Cayce
Clerk

No. 23-10579

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

KENLEONE JOE NYANDORO,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:22-CR-117-1

ON REMAND FROM
THE SUPREME COURT OF THE UNITED STATES

Before STEWART, CLEMENT, and WILLETT, *Circuit Judges*.

DON R. WILLETT, *Circuit Judge*:

Kenleone Joe Nyandoro was charged with possessing a firearm as an unlawful user of a controlled substance. He then received what we previously called “an unusually generous plea deal”¹: plead guilty, complete a rehabilitation program, and the Government would dismiss the charge.

¹ *United States v. Nyandoro*, 146 F.4th 448, 452 (5th Cir. 2025).

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Nyandoro accepted the bargain—and, with it, waived his right to appeal his conviction and sentence.

Six months later, the bargain unraveled. Nyandoro fled a traffic stop at more than 100 miles per hour and was removed from the program. With dismissal off the table, Nyandoro moved to withdraw his plea, arguing that the statute under which he was charged—18 U.S.C. § 922(g)(3)—is unconstitutional. The district court denied the motion and proceeded to sentencing.

Nyandoro appealed on two grounds: (1) that the district court should have allowed him to withdraw his plea, and (2) that the court should not have accepted the plea in the first place. We rejected both.² In rejecting the second, we relied on Nyandoro’s appeal waiver.³ Most relevant here, we rejected his argument that enforcing the waiver would work a miscarriage of justice by allowing him to be convicted under an unconstitutional statute.⁴ “Whether or not we should adopt a miscarriage-of-justice exception,” we explained, “applying one in this case would run afoul of our controlling precedent.”⁵

After our decision, the Supreme Court decided *Hunter v. United States* (*Hunter I*).⁶ *Hunter I* held that “an agreement not to appeal a sentence is unenforceable when it would result in a miscarriage of justice”—that is, “when it would leave in place the kind of egregious error that would bring

² *Id.*

³ *See id.* at 457.

⁴ *Id.* at 463.

⁵ *Id.*

⁶ 146 S. Ct. 1702 (2026).

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the judicial system into disrepute.”⁷ The Court then granted Nyandoro’s petition for certiorari, vacated our decision, and remanded for reconsideration in light of *Hunter I*.

The governing law has changed, but the result does not. Assuming without deciding that the exception extends to an appeal from a conviction, Nyandoro does not clear *Hunter P*’s “high bar.”⁸ Accordingly, we once again AFFIRM the judgment of the district court.

I. BACKGROUND

Our previous opinion recounts the facts in detail,⁹ and we repeat only what matters on remand.

A. The Charged Conduct

On July 20, 2021, police officers in Saginaw, Texas, were dispatched to respond to gunshots within city limits. Before they arrived, the officers were alerted that three men had been spotted running through a field, away from the area where the shots were fired. After hearing additional gunshots, the officers entered a wooded area nearby, where they encountered three men. When the officers announced themselves, the men fled. Eventually, one of the three—Nyandoro—stopped, complied with the officers’ commands, and was detained. When the officers detained Nyandoro, they found a Smith & Wesson pistol in his jacket pocket. Later, officers also detained Brandon Carmack, one of the two men police had encountered in the woods alongside Nyandoro.

⁷ *Id.* at 1708.

⁸ *Id.* at 1713.

⁹ *Nyandoro*, 146 F.4th at 452–54.

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The next day, police interviewed Carmack. Carmack explained that he had contacted Nyandoro on the day of their arrests to ask for a ride, and that Nyandoro and the third individual picked him up and took him to Nyandoro's home. The trio entered Nyandoro's bedroom, where Carmack smelled marijuana and noticed a short-barrel rifle.

Armed with Carmack's statement, police obtained a search warrant for Nyandoro's home. During the search, they found Nyandoro's driver's license, a small amount of marijuana, drug paraphernalia, and an empty firearm box in Nyandoro's bedroom. They found a rifle under the mattress, another in the closet, and 30-round magazines. In Nyandoro's vehicle, officers found four small bags of marijuana in the center console. They found another bag on the driveway.

Police also interviewed Nyandoro, who admitted that he had been shooting in the woods with Carmack and the other individual. He also admitted to using marijuana. According to the pretrial services report, Nyandoro later admitted to using marijuana daily up to the time of his arrest.

B. The Plea Agreement and STEPS Program

Federal prosecutors charged Nyandoro with possessing a firearm while an unlawful user of a controlled substance, in violation of 18 U.S.C. § 922(g)(3). About one month later, Nyandoro was diagnosed with severe cannabis use disorder. Soon after, he accepted the Government's plea offer. He agreed to plead guilty and enter the Sentencing to Equip People for Success (STEPS) rehabilitation program. In exchange, the Government agreed to dismiss the charges if Nyandoro successfully completed the program. If, however, Nyandoro withdrew or was terminated (or otherwise did not successfully complete the program), his case would proceed to sentencing.

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As part of the plea agreement, Nyandoro explicitly waived his right to appeal or collaterally attack his conviction or sentence. However, he reserved the right to challenge a sentence exceeding the statutory maximum or an arithmetical error at sentencing and to argue that his plea was not voluntary or that he had received ineffective assistance of counsel. A magistrate judge held a plea hearing and recommended the district court accept Nyandoro's plea, which the district court did.

Nyandoro participated in the STEPS program without incident for six months. Then, during a traffic stop, officers asked Nyandoro to exit his vehicle. Nyandoro became "visibly nervous" and asked whether he was under arrest and why he had to exit the vehicle. He sped away, reaching more than 100 miles per hour. Officers later arrested him at his home and found a small bag with drug residue in his vehicle. Following Nyandoro's arrest, the magistrate judge revoked his pretrial release and removed him from the STEPS program. The district court then scheduled the case for sentencing.

Before sentencing, Nyandoro moved to withdraw his guilty plea, arguing that § 922(g)(3) is unconstitutional under the Second and Fifth Amendments. The district court denied the motion and sentenced Nyandoro to 51 months in prison and three years of supervised release.

C. Our First Decision and the Supreme Court's Remand

Nyandoro appealed to this court. He argued that the district court erred both by denying his motion to withdraw his guilty plea and by accepting the plea in the first place because § 922(g)(3) is unconstitutional. We rejected the first argument, holding that the district court had reasonably weighed the factors identified by our decision in *United States v. Carr*.¹⁰ And we declined

¹⁰ 740 F.2d 339, 343–44 (5th Cir. 1984); see *Nyandoro*, 146 F.4th at 457.

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to address the second argument, holding that it was foreclosed by the appeal waiver.¹¹

In relying on the appeal waiver, we rejected several arguments that it did not apply. First, we rejected Nyandoro’s argument that his plea lacked a sufficient factual basis, explaining that a defendant invoking the factual-insufficiency exception to appeal waivers “must assert that his conduct fails to satisfy the elements of the statute—not that the statute is unconstitutional.”¹² Second, we rejected Nyandoro’s contention that his plea was not knowing and voluntary, explaining that Nyandoro “knowingly and freely pleaded guilty after being fully advised by the magistrate judge as to the nature and essential elements of the offense.”¹³ Third, we rejected Nyandoro’s reliance on *United States v. White*,¹⁴ describing *White* as “inapposite several times over.”¹⁵ Fourth, we rejected Nyandoro’s attempt to fit his appeal within the “sentences exceeding the statutory maximum” exception, explaining that the exception “applies only when a sentence exceeds ‘the upper limit of punishment that Congress has legislatively specified for violations of a statute.’”¹⁶

Finally—and most relevant to this opinion—we rejected Nyandoro’s invitation to hold that his appeal waiver is unenforceable because enforcing it would work a “miscarriage of justice.”¹⁷ Our precedent, we explained, had

¹¹ *Nyandoro*, 146 F.4th at 457.

¹² *Id.* at 461.

¹³ *Id.* at 462.

¹⁴ 258 F.3d 374 (5th Cir. 2001).

¹⁵ *Nyandoro*, 146 F.4th at 462.

¹⁶ *Id.* at 463 (quoting *United States v. Meredith*, 52 F.4th 984, 987 (5th Cir. 2022)).

¹⁷ *Id.*

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“never adopted such an exception.”¹⁸ And even if it had, we continued, we had previously held “that Second Amendment challenges to criminal statutes . . . can be waived in a plea agreement.”¹⁹ Thus, “[w]hether or not we should adopt a miscarriage-of-justice exception”—a proposition about which we expressed some doubt—we concluded that “applying one in this case would run afoul of our controlling precedent.”²⁰

After our opinion was issued, the Supreme Court decided *Hunter I*, recognizing a miscarriage-of-justice exception to sentencing-appeal waivers.²¹ The Court then granted Nyandoro’s petition for a writ of certiorari, vacated our previous decision, and remanded for further consideration in light of *Hunter I*.²² We requested (and the parties provided) supplemental briefing. Having reviewed the parties’ original and supplemental briefs, the Supreme Court’s decision in *Hunter I*, and this court’s subsequent decision in *United States v. Hunter (Hunter II)*,²³ we reach the same conclusion: Nyandoro’s appeal waiver bars his claim that the district court erred in accepting his guilty plea.

II. DISCUSSION

A. Miscarriage of Justice

The question on remand is whether Nyandoro can invoke the “miscarriage-of-justice” exception recognized in *Hunter I*. The Government argues that (1) the miscarriage-of-justice exception applies only to sentencing

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* & n.67.

²¹ *Hunter I*, 146 S. Ct. at 1708.

²² *Nyandoro v. United States*, No. 25–6218, 2026 WL 1855074 (U.S. June 29, 2026).

²³ 183 F.4th 416 (5th Cir. 2026).

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appeals, not appeals from convictions;²⁴ and (2) in any event, Nyandoro does not satisfy its requirements. Because we agree that Nyandoro has not cleared the “high bar” set by *Hunter I* and our ensuing decision on remand in *Hunter II*,²⁵ we need not decide whether the miscarriage-of-justice exception extends beyond sentencing appeals.

1. *Hunter I* Sets a High Bar

In the sentencing context, *Hunter I* explained that the miscarriage-of-justice exception “stems from the special, and indeed pivotal, role of the judiciary in approving and implementing appeal waivers.”²⁶ Because of that special role, appeal waivers “implicate[] the interests not only of the agreement’s parties, but also of the judiciary.”²⁷ Automatic enforcement, regardless of the error, could leave egregious mistakes uncorrected and call “the judicial system’s integrity . . . into question.”²⁸

That institutional concern supplies the standard. The Court held that an otherwise-valid appeal waiver “may be set aside only if the sentence is marred by the kind of egregious error that would bring the judicial system into disrepute.”²⁹ “[S]tandard-fare errors” do not qualify.³⁰ Nor do those

²⁴ Cf. *Jones v. United States*, 146 S. Ct. 2547, 2547 (2026) (SOTOMAYOR, J., respecting the denial of certiorari) (noting that *Hunter I* “addressed the enforceability of appeal waivers specifically ‘in the sentencing context’” while “encourag[ing] lower courts to consider carefully the import of [*Hunter I*’s] reasoning when deciding whether to enforce a collateral-review or appeal waiver against a defendant who is challenging the validity of his conviction”).

²⁵ *Hunter II*, 183 F.4th at 418 (quoting *Hunter I*, 146 S. Ct. at 1713).

²⁶ *Hunter I*, 146 S. Ct. at 1712.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.* at 1713.

³⁰ *Id.*

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that are “uncertain or ordinary.”³¹ Instead, *Hunter I* explained, the error must be both “obvious” (that is, “not one a judge could reasonably make”) and “of the type that would undermine public confidence in the judiciary.”³²

Although *Hunter I* disclaimed “any attempt to list all the situations in which” a miscarriage of justice “will overcome an appeal waiver,” it offered a few illustrative examples of errors “that would bring the judiciary into disrepute.”³³ “First, a defendant may appeal a sentence exceeding what the relevant statute allows.”³⁴ “Second, a defendant may appeal a sentence that is infected with a blatant constitutional error”—for example, because the sentencing judge based the sentence on “a constitutionally impermissible factor (like race)” or imposed a supervised-release condition that is “constitutionally infirm” (such as one forbidding the defendant from becoming pregnant).³⁵ Finally, “a defendant may appeal if his sentence was imposed without ‘some minimum of civilized procedure’”—for example, if the judge “refused to hold a hearing consonant with basic principles of law” or (more colorfully) resorted to trial-by-orangutan.³⁶

2. *Hunter II* Sharpens the Obviousness Inquiry

Hunter I ultimately “decline[d] to decide in the first instance” how the miscarriage-of-justice exception applied to the facts in front of it.³⁷ Instead, it remanded so that we could decide “whether enforcing [the] appeal

³¹ *Id.* at 1714.

³² *Id.* at 1713.

³³ *Id.* at 1714.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.* at 1715.

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waiver would result in a miscarriage of justice”³⁸—a task we took up in *Hunter II*.

After reiterating *Hunter I*’s requirements,³⁹ *Hunter II* addressed the defendant’s two arguments: that the district court had committed “(1) ‘blatant’ constitutional error and (2) ‘obvious’ statutory error.”⁴⁰

Addressing the defendant’s constitutional argument, *Hunter II* noted that the defendant’s constitutional claim rested on “a blend of language from out-of-circuit case law” and “Supreme Court cases arising from two related but distinguishable contexts.”⁴¹ That gap in precedent mattered. Because “neither the Supreme Court nor this court ha[d] addressed the constitutional standard” governing the claim, *Hunter II* treated the absence of controlling law as “a substantial strike” against any claim of “blatant” constitutional error.⁴² Generally, it explained, “an error is clear or obvious only if it is apparent under controlling law and does not require an extension of precedent.”⁴³ Nevertheless, *Hunter II* extracted a general principle from the Supreme Court cases on which the defendant’s challenge relied and, after analyzing that principle, concluded that any error was not sufficiently blatant to constitute a miscarriage of justice.⁴⁴

The statutory claim met the same fate. *Hunter II* distinguished obvious statutory errors from the “standard-fare errors” *Hunter I* had

³⁸ *Id.*

³⁹ *See Hunter II*, 183 F.4th at 418–19.

⁴⁰ *Id.* at 419.

⁴¹ *Id.*

⁴² *Id.* at 420.

⁴³ *Id.*

⁴⁴ *Id.* at 419–22.

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described as “unfortunate but inevitable” and therefore insufficient to overcome an appeal waiver.⁴⁵ The claimed error fell short because it was less clear than errors we had already declined to deem clear or obvious.⁴⁶

Hunter II also looked to plain-error doctrine for guidance on *Hunter I*’s obviousness requirement. *Hunter I* said only that the error must not be “one a judge could reasonably make.”⁴⁷ To flesh out what “obvious” means, *Hunter II* borrowed from the second prong of plain-error review. It used plain-error cases in two ways. First, in explaining that a “paucity of authorities” is “a substantial strike” against the claim of blatant constitutional error, *Hunter II* cited a plain-error case.⁴⁸ Second, in deciding whether the alleged statutory error was obvious, it drew on three plain-error cases, distinguishing two and analogizing to a third.⁴⁹

Thus, although *Hunter II* did not hold that the sort of “clear or obvious” error required to establish plain error is either necessary or sufficient to establish a miscarriage of justice, it suggests that plain-error cases can provide a helpful starting point. But the analogy has limits: plain-error review applies when a defendant merely fails to raise a point in

⁴⁵ *Id.* at 423 (quoting *Hunter I*, 146 S. Ct. at 1713).

⁴⁶ *See id.*

⁴⁷ *Hunter I*, 146 S. Ct. at 1713.

⁴⁸ *See Hunter II*, 183 F.4th at 420 (citing *United States v. Evans*, 587 F.3d 667, 671 (5th Cir. 2009)); *see Evans*, 587 F.3d at 671 (“We ordinarily do not find plain error when we have not previously addressed an issue. Even where the argument requires only extending authoritative precedent, the failure of the district court to do so cannot be plain error.” (cleaned up)).

⁴⁹ *See Hunter II*, 183 F.4th at 423 (discussing *United States v. Gordon*, 838 F.3d 597 (5th Cir. 2016), *United States v. Bree*, 927 F.3d 856 (5th Cir. 2019), and *United States v. Rocha*, 732 F. App’x 291 (5th Cir. 2018) (per curiam)).

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the district court but otherwise preserves his right to appeal.⁵⁰ By contrast, the miscarriage-of-justice standard applies when the defendant affirmatively waives his right to appeal.⁵¹ The point is narrow: plain-error cases can inform the obviousness inquiry, but they do not define *Hunter I*'s distinct waiver standard.

3. None of Nyandoro's Constitutional Challenges Is Obvious

That brings us to Nyandoro. He says he can invoke the miscarriage-of-justice exception because § 922(g)(3) is unconstitutional. He presses three theories: the statute (1) infringes the Second Amendment right to keep and bear arms; (2) is unconstitutionally vague under the Fifth Amendment's Due Process Clause; and (3) exceeds Congress's enumerated powers. Relying on out-of-circuit precedent, he argues that conviction under an unconstitutional statute automatically triggers the miscarriage-of-justice exception.⁵²

We disagree. Even assuming that conviction under an unconstitutional statute is an error “of the type that would undermine public confidence in the judiciary,”⁵³ *Hunter I* still demands obviousness. The Court acknowledged that sentencing mistakes are “unfortunate but inevitable.”⁵⁴ To qualify as “the kind of egregious error that would bring the judicial system into disrepute,” the constitutional error must be “obvious—

⁵⁰ See *United States v. Morgan*, 147 F.4th 522, 526 (5th Cir. 2025) (“[I]f a defendant fails to raise an issue in the district court, we review only for plain error.”).

⁵¹ Cf. *Wood v. Milyard*, 566 U.S. 463, 471 n.5 (2012) (explaining that a federal court ordinarily “has the authority to resurrect only forfeited defenses,” not waived ones).

⁵² See, e.g., *United States v. McKinney*, 60 F.4th 188, 192–93 (4th Cir. 2023).

⁵³ *Hunter I*, 146 S. Ct. at 1713.

⁵⁴ *Id.*; cf. *Haynes v. Washington*, 373 U.S. 503, 515 (1963) (describing “the difficult appraisals inherent in determining whether constitutional rights have been violated”).

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not one a judge could reasonably make.”⁵⁵ None of Nyandoro’s three theories is obvious.

Two theories—his Commerce Clause and vagueness arguments—can be dispatched briefly. Because this court has consistently upheld other portions of § 922(g) as valid exercises of Congress’s power under the Commerce Clause,⁵⁶ a judge could reasonably conclude that § 922(g)(3) likewise falls within Congress’s power over interstate commerce.⁵⁷ Indeed, a panel of this court held just that in an unpublished decision.⁵⁸ And because we have rejected a nearly identical vagueness challenge to § 922(g)(3),⁵⁹ a judge could reasonably conclude that § 922(g)(3) is not unconstitutionally vague either on its face or as applied to Nyandoro. Neither theory therefore identifies an obvious error.

The Second Amendment challenge requires closer attention, but it still does not clear *Hunter I*’s bar. The Second Amendment protects “the right of the people to keep and bear Arms.”⁶⁰ As we have held, the conduct proscribed by § 922(g)(3)—possessing a firearm while an unlawful user of controlled substances—falls squarely within the Amendment’s “plain

⁵⁵ *Hunter I*, 146 S. Ct. at 1713.

⁵⁶ U.S. CONST. art. I, § 8, cl. 3; *see, e.g., United States v. Allred*, 182 F.4th 448, 449–50 (5th Cir. 2026) (§ 922(g)(9)); *United States v. Alcantar*, 733 F.3d 143, 145–46 (5th Cir. 2013) (§ 922(g)(1)).

⁵⁷ *Cf. Allred*, 182 F.4th at 450 (explaining that, although precedent holding that one portion of § 922(g) is a valid exercise of Congress’s commerce power “does not squarely foreclose” an enumerated-powers challenge to another portion of § 922(g), the “reasoning” of that precedent “applies equally” to other portions of § 922(g)).

⁵⁸ *See United States v. Price*, 728 F. App’x 369, 369 (5th Cir. 2018) (per curiam).

⁵⁹ *See United States v. Patterson*, 431 F.3d 832, 836 (5th Cir. 2005).

⁶⁰ U.S. CONST. amend. II.

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text.”⁶¹ “Like most rights,” however, “the right secured by the Second Amendment is not unlimited.”⁶² Even conduct covered by the Amendment’s text may be regulated if “the regulation is consistent with this Nation’s historical tradition of firearm regulation.”⁶³

In *United States v. Connelly*, we held that disarming an individual “based on habitual or occasional drug use” goes beyond what “our history and tradition of firearms regulation can support.”⁶⁴ But we also held that there are “some sets of circumstances where § 922(g)(3) would be valid, such as banning presently intoxicated persons from carrying weapons.”⁶⁵ We reiterated both holdings in *United States v. Daniels*, again explaining that, although “§ 922(g)(3) is unconstitutional where it seeks to disarm an individual solely ‘based on habitual or occasional drug use,’” it “is *not* facially unconstitutional, because our history can support gun regulations disarming the presently intoxicated.”⁶⁶ *Daniels* also suggested, in dicta, that § 922(g)(3) may have constitutional applications beyond those involving presently intoxicated individuals.⁶⁷ More broadly, it explained that the Second Amendment requires “[a] piecemeal approach to laws such as § 922(g)(3).”⁶⁸

⁶¹ See *United States v. Connelly*, 117 F.4th 269, 274 (5th Cir. 2024) (“[Section] 922(g)(3) contradicts the Second Amendment’s plain text.”).

⁶² *District of Columbia v. Heller*, 554 U.S. 570, 626 (2008).

⁶³ *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1, 17 (2022).

⁶⁴ 117 F.4th at 282.

⁶⁵ *Id.*

⁶⁶ 124 F.4th 967, 974 (5th Cir. 2025) (quoting *Connelly*, 117 F.4th at 282).

⁶⁷ See *id.* at 977–78.

⁶⁸ *Id.* at 978.

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Against that backdrop, accepting Nyandoro’s guilty plea was not an error so obvious that no reasonable judge could make it.⁶⁹ Both *Connelly* and *Daniels* recognize that history can support disarming “presently intoxicated persons.”⁷⁰ Nor is this record limited to habitual use in the abstract. Nyandoro admitted smoking marijuana daily, and Carmack—who was with him on the day of the charged possession—said he smelled marijuana in Nyandoro’s bedroom that day. We need not decide whether those facts establish present intoxication or otherwise make § 922(g)(3) constitutional as applied to Nyandoro. The point is narrower: the constitutional question is at least reasonably debatable. And debatable is not obvious.

The Supreme Court’s recent decision in *United States v. Hemani* does not make the answer obvious.⁷¹ *Hemani* stressed that its holding was “a narrow one.”⁷² The Court rejected the Government’s argument that it can disarm a defendant based solely on a showing that he “regularly uses any amount of any controlled substance.”⁷³ And it expressly left open efforts to disarm the presently intoxicated and § 922(g)(3) prosecutions supported by individualized proof that a defendant’s drug use renders him dangerous.⁷⁴

⁶⁹ See *Hunter I*, 146 S. Ct. at 1713.

⁷⁰ *Connelly*, 117 F.4th at 282; see *Daniels*, 124 F.4th at 974.

⁷¹ 146 S. Ct. 1677 (2026). Like *Connelly* and *Daniels*, *Hemani* postdates both Nyandoro’s guilty plea and the district court denial of his motion to withdraw it. In the plain-error context, we assess obviousness “at the time of appellate consideration,” not “at the time of trial.” *Henderson v. United States*, 568 U.S. 266, 279 (2013) (cleaned up). *Hunter I* does not specify the relevant temporal benchmark for its miscarriage-of-justice inquiry, and we need not decide that question here. We assume in Nyandoro’s favor that later decisions may bear on whether the alleged error is obvious.

⁷² *Hemani*, 146 S. Ct. at 1693.

⁷³ *Id.* at 1694.

⁷⁴ *Id.* at 1693.

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Hemani's reasoning may ultimately point one way. But it expressly did not answer those questions. If this case were before us on *de novo* review, we would have to. Under *Hunter I* and *II*, our task is narrower: we ask only whether the alleged error was obvious—one no reasonable judge could make. *Hemani* leaves the relevant questions open. Nyandoro therefore cannot overcome his waiver.⁷⁵

B. The Remand Does Not Reopen the Plea-Withdrawal Issue

In his supplemental brief on remand, Nyandoro also reasserts his argument that the district court abused its discretion by denying his motion to withdraw his guilty plea. Our previous opinion rejected that argument,⁷⁶ and *Hunter I*—which addressed only the consequences of an appeal waiver, not the circumstances under which a guilty plea may be withdrawn—provides no reason to question our previous conclusion.

Ordinarily, “[w]e do not reach issues unaddressed by the mandate on remand.”⁷⁷ Nyandoro, however, urges us to reconsider our previous conclusion, claiming that it conflicts with our decision in *United States v. Presley*.⁷⁸ But he did not cite *Presley* in his earlier briefing—even though the case had been on the books for half a century. We look with great disfavor on “new arguments first raised by an [appellant] in supplemental briefing on unrelated issues.”⁷⁹

⁷⁵ See *Hunter II*, 183 F.4th at 420 (“The paucity of authorities on the challenge [the defendant] makes in this case is a substantial strike against his assertion that the district court committed ‘blatant’ constitutional error.”).

⁷⁶ *Nyandoro*, 146 F.4th at 454–57.

⁷⁷ *Cole v. Carson*, 935 F.3d 444, 451 (5th Cir. 2019) (en banc).

⁷⁸ 478 F.2d 163 (5th Cir. 1973).

⁷⁹ *United States v. Bonilla-Mungia*, 422 F.3d 316, 319 (5th Cir. 2005).

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Presley would not help Nyandoro anyway.⁸⁰ He reads *Presley* as establishing a categorical rule that a district court must allow a defendant to withdraw his plea when intervening Supreme Court authority calls into question whether his conduct was criminal. *Presley* did not establish any such bright-line rule. Instead, it looked beyond the existence of intervening authority to consider factors such as the defendant’s promptness in seeking to withdraw the plea and the absence of prejudice to the Government.⁸¹ Those provisions foreshadowed the multi-factor approach we later formalized in *Carr*.⁸² As we explained in our previous decision, the district court did not abuse its discretion in weighing the *Carr* factors.⁸³ Unlike the defendants in *Presley*, Nyandoro “offer[ed] no meaningful rebuttal to the government’s assertion of prejudice” and delayed nine months before filing his motion.⁸⁴

⁸⁰ When *Presley* was decided, former Rule 32(d) governed presentence motions to withdraw guilty pleas. FED. R. CRIM. P. 32(d) (1970); see *Presley*, 478 F.2d at 166. Although the rule “offer[ed] little guidance” as to the governing standard, *United States v. Michaelson*, 552 F.2d 472, 474 (2d Cir. 1977), our cases applied the familiar “fair and just” test. See *United States v. Rodriguez-DeMaya*, 674 F.2d 1122, 1128 (5th Cir. 1982). In 1983, Rule 32(d) was amended to explicitly incorporate the “fair and just reason” standard. See *Amendments to the Federal Rules of Criminal Procedure*, 461 U.S. 1117, 1127 (1983). Today, that standard is codified in Rule 11(d)(2)(B). See FED. R. CRIM. P. 11(d)(2)(B) (allowing a defendant to withdraw a guilty plea after the court accepts it, but before sentencing, if “the defendant can show a fair and just reason for requesting the withdrawal”). We assume without deciding that the post-*Presley* amendments did not disturb *Presley*’s holding.

⁸¹ See *Presley*, 478 F.2d at 168.

⁸² 740 F.2d at 343–44 (listing “factors that should be considered” in the fair-and-just-reason analysis, including “whether or not the government would suffer prejudice if the withdrawal motion were granted” and “whether or not the defendant has delayed in filing his withdrawal motion”).

⁸³ *Nyandoro*, 146 F.4th at 457.

⁸⁴ See *id.* at 455–56.

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Presley therefore gives us no reason to disturb our earlier holding: the district court did not abuse its discretion in denying Nyandoro’s motion to withdraw his guilty plea.

III. CONCLUSION

In *Hunter I*, the Supreme Court recognized a narrow “miscarriage of justice” exception to sentencing appeal waivers.⁸⁵ *Hunter I* and our subsequent decision in *Hunter II* together set a “high bar.”⁸⁶ Assuming the exception extends to conviction appeals, Nyandoro still falls short. His constitutional arguments are debatable, not obvious, and the remand gives us no reason to disturb our earlier plea-withdrawal ruling. Accordingly, we AFFIRM the judgment of the district court.

⁸⁵ 146 S. Ct. at 1708.

⁸⁶ *Hunter II*, 183 F.4th at 418 (quoting *Hunter I*, 146 S. Ct. at 1713).