UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 25-3175

UNITED STATES OF AMERICA

v.

IVAN NICHOLAS BAEZ,
Appellant

On Appeal from the U.S. District Court for the Middle District of Pennsylvania
Judge Julia K. Munley, No. 3:24-cr-00269-001

Before: SHWARTZ, MONTGOMERY-REEVES, and RENDELL, Circuit Judges
Submitted: Nov. 9, 2026; Filed: Nov. 17, 2026

NONPRECEDENTIAL OPINION*

SHWARTZ, Circuit Judge.

Ivan Nicholas Baez appeals his sentence. Because the District Court appropriately awarded criminal history points for Baez's Pennsylvania harassment convictions, it correctly calculated his criminal history category and resulting sentencing range and therefore we will affirm.

I

Baez pleaded guilty to one count of sexual exploitation of a minor in violation of 18 U.S.C. § 2251(a) and the District Court sentenced him to 262 months' imprisonment. It did so based on a total offense level of thirty-eight and a criminal history category of II,

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* This is not an opinion of the full Court and, under 3d Cir. IOP 5.7, is not binding precedent.

resulting in a range of 262 to 327 months' imprisonment. His criminal history category was predicated on two prior Pennsylvania harassment convictions.

Both convictions resulted from guilty pleas based on encounters with Baez's then-girlfriend. In the first incident, she reported that Baez yelled at her, got close to her face, and grabbed her hair, and that as she tried to defend herself by pushing his face, he bit her finger and injured her neck. Baez reported that his ex-girlfriend grabbed and pushed him, he grabbed her hair to defend himself, and her finger gagged him, causing him to bite her unintentionally. Officers observed injuries to both parties.

In the second incident, Baez's ex-girlfriend reported that Baez struck her nose during an argument, and Baez reported that she struck him first. Officers observed her bleeding from her nose, and Baez's four-year-old son told officers that both Baez and his ex-girlfriend were violent with each other.

Baez pleaded guilty to harassment for the first incident and to disorderly conduct and harassment for the second. Each conviction resulted in fines and costs.

Baez appeals.

II[1]

[1] The District Court had jurisdiction under 18 U.S.C. § 3231, and we have jurisdiction under 18 U.S.C. § 3742 and 28 U.S.C. § 1291. "We review de novo a district court's interpretation of the Guidelines," United States v. Hines, 628 F.3d 101, 105 (3d Cir. 2010) (citation omitted), but we review Baez's unpreserved challenge to the application of the Guidelines for plain error, United States v. Barkers-Woode, 136 F.4th 496, 500 (3d Cir. 2025). To prevail under this standard, an appellant must show (1) an error (2) that is plain and (3) that has affected his substantial rights. United States v. Dorsey, 105 F.4th 526, 528 (3d Cir. 2024) (citing United States v. Olano, 507 U.S. 725, 732-33 (1993)). We may

Under the Guidelines, misdemeanor and petty offense convictions generally count toward a defendant's criminal history score. U.S. Sent'g Guidelines Manual § 4A1.2(c) (U.S. Sent'g Comm'n 2025). Certain listed offenses, such as "[d]isorderly conduct or disturbing the peace," as well as "offenses similar to them," count for criminal history purposes only if "the sentence was a term of probation of more than one year or a term of imprisonment of at least thirty days," or if "the prior offense was similar to an instant offense." Id. § 4A1.2(c)(1). Since Baez's harassment offenses did not result in probation or jail more than thirty days, we must decide whether Pennsylvania harassment is "similar to" an offense excluded from receiving criminal history points.

The Guidelines' commentary instructs courts to consider several factors to determine whether a prior offense is "similar to" disorderly conduct, disturbing the peace, or another excluded offense, including:

> (i) a comparison of punishments imposed for the listed and unlisted offenses; (ii) the perceived seriousness of the offense as indicated by the level of punishment; (iii) the elements of the offense; (iv) the level of culpability involved; and (v) the degree to which the commission of the offense indicates a likelihood of recurring criminal conduct.

U.S. Sent'g Guidelines Manual § 4A1.2 cmt. n.12(A).[2]

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exercise our discretion to correct such an error if it seriously affects the fairness, integrity, or reputation of judicial proceedings. Id.

[2] Administrative law principles govern whether "the [G]uidelines' commentary controls our interpretation of the [G]uidelines themselves." United States v. Nasir, 17 F.4th 459, 469 (3d Cir. 2021) (en banc). Under such principles, we afford no deference to an agency's interpretation of its own regulation when the regulation is unambiguous. When the parties dispute whether consideration of the regulation is permitted, a court must exhaust the traditional tools of statutory construction to determine whether a regulation is genuinely ambiguous. Id. at 470-71 (citing Kisor v. Wilkie, 588 U.S. 558, 572-75 (2019)). We need not decide whether Application Note 12 should be afforded deference under Nasir

Contrary to Baez's arguments, his harassment convictions were not "similar to" disorderly conduct or disturbing the peace. Disorderly conduct involves intent "to cause public inconvenience, annoyance or alarm," Model Penal Code § 250.2(1), and disturbing the peace likewise involves "creating a public disturbance," Breach of the Peace, Black's Law Dictionary (12th ed. 2024).[3] By contrast, harassment under Pennsylvania law involves "intent to harass, annoy or alarm another [person]." 18 Pa. Cons. Stat. Ann. § 2709(a). The harassment statute's mens rea requirement and the fact the actus reus is directed toward a person rather than the public show that harassment and disorderly conduct have different elements, and that harassment involves a higher level of culpability. See United States v. Hines, 628 F.3d 101, 113 (3d Cir. 2010) ("Culpability is another way of describing the mens rea a statute requires of each material element of an offense."). Additionally, in committing the offenses, Baez intended to harm the same victim, not the general public, on two occasions within a ten-month period. Such conduct reflects a pattern

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because no parties challenge considering Application Note 12 and both acknowledge that deference to it does not impact the outcome here. See United States v. Wise, 134 F.4th 745, 748 (3d Cir. 2025) (concluding that we did not need to evaluate deference to the Guidelines' commentary where the appellant did not challenge such deference); United States v. Abreu, 32 F.4th 271, 277 (3d Cir. 2022) ("We need not decide . . . whether we are bound by this commentary or its significance in the wake of Kisor, for under either approach the result in this case is the same.").

[3] We apply federal law to determine the meaning of the excluded offenses under § 4A1.2(c)(1). United States v. Elmore, 108 F.3d 23, 25-26 (3d Cir. 1997) (applying the Model Penal Code and Black's Law Dictionary to determine the meaning of disorderly conduct under § 4A1.2(c)(1)). Notably, the elements for disorderly conduct under Pennsylvania law are similar to federal law. See 18 Pa. Cons. Stat. Ann. § 5503(a) (providing that a "person is guilty of disorderly conduct" when he or she engages in certain activity "with intent to cause public inconvenience, annoyance or alarm").

of criminal activity at risk to recur. Thus, multiple factors demonstrate that Baez's prior convictions were not "similar to" an excluded offense under the Guidelines, and thus they were properly awarded criminal history points.[4]

Even if Baez's prior convictions were "similar to" disorderly conduct or disturbing the peace, the District Court did not plainly err in counting his harassment offenses toward his criminal history score. "An error is 'plain' only if it is 'clear or obvious' in light of 'the state of the law while the case under review is on appeal.'" United States v. Abrams, 165 F.4th 784, 809 (3d Cir. 2026) (quoting United States v. Dorsey, 105 F.4th 526, 530 (3d Cir. 2024). We have held that harassment is not "similar to" an excluded offense under the Guidelines, such as disorderly conduct, see Elmore, 108 F.3d at 26, so it would not be clear or obvious that the District Court should have reached a different conclusion. Thus, even if the District Court erred, the error could not have been plain.

III

For the foregoing reasons, we will affirm.

[4] We have also held that harassment under Pennsylvania law was not "similar to" an excluded offense under the Guidelines before the adoption of Application Note 12. See Elmore, 108 F.3d at 26.