

IN THE
SUPREME COURT OF THE UNITED STATES

Borne v. United States of America

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Tenth Circuit

ATTACHMENT A

2025 WL 687030

Only the Westlaw citation is currently available.

United States Court of Appeals, Tenth Circuit.

UNITED STATES of America, Plaintiff - Appellee,

v.

Shawn Thomas BORNE, Defendant - Appellant.

No. 23-8008

I

FILED March 4, 2025

(D.C. No. 1:22-CR-00083-SWS-1) (D. Wyoming)

Attorneys and Law Firms

Jonathan C. Coppom Assistant U.S. Attorney, Bruno, Colin, Goddard & Lowe, Denver, CO, William A. Glaser, U.S. Department of Justice, Appellate Section, Criminal Division, Washington, DC, David A. Kubichek, Esq., DOJ-United States Attorney's Office, Casper, WY, for Plaintiff - Appellee.

Leah Deborah Yaffe, Office of the Federal Public Defender, Denver, CO, for Defendant - Appellant.

Before CARSON, BALDOCK, and EBEL, Circuit Judges. *

ORDER AND JUDGMENT **

Joel M. Carson III, Circuit Judge

*1 A grand jury indicted Defendant on one count of possession of a firearm in violation of 18 U.S.C. § 922(g)(1) which prohibits felons from possessing firearms. Defendant moved to dismiss the indictment against him under New York State Rifle & Pistol Association, Inc. v. Bruen, 142 S. Ct. 2111 (2022). The district court denied his motion. He pleaded guilty to the charge but preserved his right to appeal the motion to dismiss. The district court sentenced Defendant to thirty-two months' imprisonment and three years' supervised release.

In his 2023 appeal, Defendant brought both a facial and an as-applied challenge to the constitutionality of 18 U.S.C.

§ 922(g)(1). While Defendant's appeal was pending, we decided Vincent v. Garland, 80 F.4th 1197 (10th Cir. 2023) (hereinafter Vincent I), in which we held that the Supreme Court's decision in Bruen does not expressly overrule United States v. McCane, 573 F.3d 1037 (10th Cir. 2009)—which upheld § 922(g)(1)'s constitutionality. After we issued Vincent I, Defendant filed an unopposed motion to expedite decision. In that motion, he acknowledged that Vincent I forecloses Second Amendment challenges to § 922(g)(1) but contended that an expedited decision would allow him to promptly petition for rehearing so that he may receive timely relief from his sentence if he succeeded. Exercising jurisdiction under 28 U.S.C. § 1291, we granted Defendant's motion to expedite decision and affirmed the district court's decision upholding the constitutionality of § 922(g)(1). United States v. Borne, 2023 WL 6383732 (10th Cir. Oct. 2, 2023).

On July 2, 2024, the Supreme Court vacated our dismissal in Vincent I and remanded for reconsideration in light of its recent United States v. Rahimi, 602 U.S. 680 (2024) decision. See Vincent v. Garland, 144 S. Ct. 2708 (2024) (mem.) (hereinafter Vincent II). The Supreme Court likewise vacated our judgment in this case and remanded for reconsideration in light of Rahimi on October 7, 2024. Borne v. United States, 145 S. Ct. 123 (2024) (mem.).

On remand in Vincent I, we concluded that Rahimi did not undermine our earlier reasoning or result, and reiterated that under McCane and Rahimi, the Second Amendment does not render § 922(g)(1) unconstitutional. Vincent v. Bondi, 127 F.4th 1263 (10th Cir. 2025) (hereinafter Vincent III).

We are now in the same position as when we resolved Defendant's appeal in 2023: Supreme Court and Tenth Circuit precedent (now Vincent III) forecloses Defendant's facial and as-applied challenges to § 922(g)(1).

AFFIRMED.

All Citations

Not Reported in Fed. Rptr., 2025 WL 687030

Footnotes

- * After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. See Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.
- ** This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

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