No. 25-

IN THE
Supreme Court of the United States

TYRONE WOODSON,
Petitioner,

v.

STATE OF FLORIDA,
Respondent.

On Petition for a Writ of Certiorari
to the Florida District Court of Appeal,
Fourth District

APPENDIX

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APPENDIX A —

Judgment of the District Court of Appeal of the State of Florida, Fourth District

(Oct. 2, 2024)

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

TYRONE WOODSON,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D2023-2481

[October 2, 2024]

Appeal from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Frank Ledee, Judge; L.T. Case No. 20-004993 CF10A.

Joseph A. DiRuzzo, III and Daniel M. Lader of Margulis Gelfand DiRuzzo & Lambson, Fort Lauderdale, for appellant.

Ashley Moody, Attorney General, Tallahassee, and Paul Patti, III, Senior Assistant Attorney General, West Palm Beach, for appellee.

PER CURIAM.

Affirmed.

GROSS, CIKLIN and KUNTZ, JJ., concur.

* * *

Not final until disposition of timely filed motion for rehearing.

APPENDIX B —

Order of the District Court of Appeal of the State of Florida, Fourth District denying rehearing (Dec. 23, 2024)

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT, 110 SOUTH TAMARIND AVENUE, WEST PALM BEACH, FL 33401

December 23, 2024

TYRONE WOODSON, Appellant(s) v. STATE OF FLORIDA, Appellee(s).	**CASE NO. - 4D2023-2481** L.T. No. - 20-004993-CF10A

BY ORDER OF THE COURT:

ORDERED that Appellant's October 15, 2024 motion for rehearing en banc, written opinion, and certification is denied.

Served:
Crim App WPB Attorney General
Heidi Lynn Bettendorf
Joseph Andrew DiRuzzo, III
Daniel Lader
Paul Patti, III

KR

I HEREBY CERTIFY that the foregoing is a true copy of the court's order.

4D2023-2481 December 23, 2024
LONN WEISSBLUM, Clerk
Fourth District Court of Appeal
4D2023-2481 December 23, 2024

APPENDIX C —

Order of the Supreme Court of Florida denying review
(Jan. 6, 2025)

Supreme Court of Florida

MONDAY, JANUARY 6, 2025

Tyrone Woodson,
Petitioner(s)
v.

State of Florida,
Respondent(s)

SC2025-0023
Lower Tribunal No(s).:
4D2023-2481;
062020CF000499A88810

Petitioner's Notice to Invoke Discretionary Jurisdiction, seeking review of the order or opinion issued by the 4th District Court of Appeal on October 2, 2024, is hereby dismissed. This Court lacks jurisdiction to review an unelaborated decision from a district court of appeal that is issued without opinion or explanation or that merely cites to an authority that is not a case pending review in, or reversed or quashed by, this Court. *See Wheeler v. State*, 296 So. 3d 895 (Fla. 2020); *Wells v. State*, 132 So. 3d 1110 (Fla. 2014); *Jackson v. State*, 926 So. 2d 1262 (Fla. 2006); *Gandy v. State*, 846 So. 2d 1141 (Fla. 2003); *Stallworth v. Moore*, 827 So. 2d 974 (Fla. 2002); *Harrison v. Hyster Co.*, 515 So. 2d 1279 (Fla. 1987); *Dodi Publ'g Co. v. Editorial Am. S.A.*, 385 So. 2d 1369 (Fla. 1980); *Jenkins v. State*, 385 So. 2d 1356 (Fla. 1980).

No motion for rehearing or reinstatement will be entertained by the Court.

A True Copy
Test:

SC2025-0023 1/6/2025

John A. Tomasino
Clerk, Supreme Court

SC2025-0023 1/6/2025

TD

Served:

CRIM APP WPB ATTORNEY GENERAL
4DCA CLERK
BROWARD CLERK
JOSEPH ANDREW DIRUZZO, III
DANIEL LADER
HON. FRANK DAVID LEDEE
PAUL PATTI, III

APPENDIX D —

Judgment/disposition of the 17th Judicial Circuit (Broward County), Florida

(Oct. 13, 2023)

CIRCUIT COURT DISPOSITION ORDER IN AND FOR BROWARD COUNTY, FLORIDA

Case Number 20-4993CF10A Arrest Number PB20-1016 BCCN # 0890449

State of Florida VS Tyrone Woodson AKA _____

Judge Dale Feuer Cash bond / Return to depositor / Surety bond / IC

Cash bond number(s) _____

Charges 2 POS of FA/DW by conviction
& Aggravated Assault w/ Dead Weap
2J

( ) REMANDED ( ) REMAIN IC ( ) UNTIL PICKED UP BY ( ) UNTIL AFTER POST ADJUDICATORY HEARING OR BED AVAILABLE AT

( ) Arraignment (✓) Change of Plea ( ) Guilty (✓) No Contest ( ) PSI/PDR ( ) Sentencing / Re-Sentencing
( ) Trial by Jury ( ) Trial by Court ( ) First VOP/VOCC ( ) Final VOP/VOCC ( )Admits Allegations
( ) Convicted by Jury/Court _____ ( ) Acquitted by Jury/Court _____ ( ) Dismissed _____ ( ) Speedy
( ) Discharged _____ (✓) Nolle Prosequi 1 ( ) Found Incompetent/Placement Pending/ Committed to Child/Family Services
(✓) Adj. Guilty 2 ( ) Adj. Withheld _____ ( ) Adj. Delinquent _____
( ) Committed to DJJ/Level _____ ( ) Sentence Withheld _____ ( ) Previous Sentence Vacated
( ) PSI Ordered
Adj. and Sentence deferred to

Type of probation / Community Control:
( ) Youthful Offender ( ) Drug Offender ( ) Sexual Offender ( ) Habitual Offender ( ) Mental Health ( ) County
PROBATION/COMM. CONTROL: ( ) Revoked ( ) Reinstated ( ) Modified ( ) Terminated
Extended _____ ( ) All previous special conditions apply
WARRANT: ( ) Dismissed ( ) Withdrawn ( ) Served in open court

SENTENCE: *(PROBATION / COMM. CONTROL)*

COUNT(S): _____
_____ ( ) Years ( ) Months ( ) Days ( ) Probation ( ) Community Control ( ) Followed by
_____ ( ) Years ( ) Months ( ) Days ( ) Probation ( ) Community Control
_____ ( ) each count concurrent/consecutive ( ) Concurrent ( ) Consecutive to case number _____

COUNT(S): _____
_____ ( ) Years ( ) Months ( ) Days ( ) Probation ( ) Community Control ( ) Followed by
_____ ( ) Years ( ) Months ( ) Days ( ) Probation ( ) Community Control
_____ ( ) each count concurrent/consecutive ( ) Concurrent ( ) Consecutive to case number _____

SENTENCE: *(INCARCERATION)*

COUNT(S): 2 ( ) One year plus one day ( ) 20 ( ) Years (✓) Months ( ) Days
( ) BCJ (✓) FSP, w/credit for 127 days T/S
( ) Followed by _____ ( ) Years ( ) Months ( ) Days ( ) Probation ( ) Community Control
( ) Each count concurrent/consecutive ( ) Concurrent/consecutive ( ) To case number _____
( ) Any other sentence ( ) Work release ( ) Prison sentence suspended

COUNT(S): _____ ( ) One year plus one day ( ) _____ ( )Years ( ) Months ( ) Days
( ) BCJ ( ) FSP, w/credit for _____ days T/S
( ) Followed by _____ ( ) Years ( ) Months ( ) Days ( ) Probation ( ) Community Control
( ) Each count concurrent/consecutive ( ) Concurrent/consecutive ( ) To case number _____
( ) Any other sentence ( ) Work release ( ) Prison sentence suspended

JUDGE _____

DEPUTY CLERK _____ **DATE** 10/31/2023

FILE COPY-WHITE DEFENDANT'SCOPY-BLUE SHERIFF'SCOPY-YELLOW PROBATION'SCOPY-PINK DEFENSE ATTORNEY'SCOPY-GOLD REVISED 09/25/13

State of Florida VS Woodson, Tyrone Case Number 20004993CF10A

ORDER ASSESSING CHARGES/COSTS/FEES

The defendant is hereby ordered to pay the following sums if checked:

		FINES		
( )	(Count)	Fine Assessed	$_____	775.083(1)
( )	(Count)	Surcharge Assessed	$_____	817.568(12)
( )	(Count)	5% Surcharge (if fine assessed)	$_____	938.04
		MANDATORY COSTS		
(✓)	($225/Case)	Local Criminal Justice (Trust Fund)	_____	938.05(1)(a)
(✓)	($50/Case)	Crimes Compensation Trust Fund (VC)	_____	938.03(1)
(✓)	($2/Count)	Local Law Enforcement EDU ($5 Assessment)	_____	938.15
(✓)	($3/Count)	Add l Court Cost Clearing Trust ($5 Assessment)	_____	938.01(1)
(✓)	($50/Count)	Crime Prevention (if fine assessed)(SN1)	_____	775.083(2)
(✓)	($100/Case)	Cost of Prosecution	_____	938.27(8)
(✓)	($20/Count)	Crime Stoppers Trust Fund (if fine assessed)(CSTF)	_____	938.06(1)
(✓)	($2/Count)	Teen Court (T.C.)	_____	938.19(2)
(✓)	($65/Count)	Add l Costs (BOCC) Programs (AC)	_____	939.185(1)(a)
		SPECIFIC OFFENSE/REQUIRED COSTS		
( )	($50/Case)	Public Defender Application Fee	_____	27.52(1)(b)
( )	($100/Case)	Public Defender Assistance (PD fee imposed)	_____	938.29(1)(a)
( )	Pay $_____	(additional Public Defender Fee as ordered by the court)	_____	938.29(1)(a)
( )	_____	PD Fee Converted to Civil Lien		938.29(2)(b)
			_____	
( )	($100/Count)	FDLE Operating Trust Fund (OTF)	_____	938.055
( )	($201/Count)	Domestic Violence Surcharge (DVC)	_____	938.08
( )	($151/Count)	Rape Crisis Trust Fund (RCP)	_____	938.085
( )	($151/Count)	Crimes Against Minor (CAM)	_____	938.10(1)
( )	($____/Count)	Alcohol & Other Drug Abuse Programs	_____	938.21/938.23
( )	($5000/Count)	Commit Prostitution (Cir Crt Adm)		796.07(6)
		MISDEMEANORS	_____	
( )	($60/Case)	Add l Court Costs/Misd/Crim Traf	_____	938.05(1)(b)
( )	($10/Case)	Article V Assessment	_____	318.18(19)
( )	($30/Count)	Court Facilities Fund (CFF)	_____	318.18(13)(a)
( )	($20/Count)	Crime Prevention (if fine assessed) (SN1)	_____	775.083(2)
( )	($65/Count)	DOH Admin. Trust Fund	_____	318.18(20)
( )	($26/Count)	Court Costs (CC)		AOVI-02-D-3
		DUI	_____	
( )	(Count)	Fine Assessed	$_____	Varies
( )	(Count)	5% Surcharge (if fine assessed)	$_____	938.04
( )	($65/Count)	Add l Costs (BOCC) Programs (AC)	_____	939.185(1)(a)
( )	($60/Case)	Add l Court Costs/Misd/Crim Traf(CJC)	_____	938.05(1)(b)
( )	($26/Count)	Court Costs (CC)	_____	AOVI-02-D-3
( )	($15/Count)	County Alcohol & Other Drug Abuse Trust Fund (CDC)	_____	938.13(1)(a)
( )	($20/Count)	Crime Prevention (if fine assessed) (SN1)	_____	775.083(2)
( )	($50/Case)	Crimes Compensation Trust Fund (VC)	_____	938.03(1)
( )	($135/Count)	Emergency Medical Services Trust Fund (EMTF)		938.07
		OTHER	_____	
( )		Waive All Court Costs	_____	
( )		Pay Balance of Previously Imposed Costs	_____	
( )		Balance of Court Costs/Fees Converted to Civil Lien	_____	
( )		Extradition Costs		_____
( )		Defendant may do community service hours@ $10/hour in lieu of court costs		
( )		Other		

JUDGE _____

DEPUTY CLERK _____ **DATE** 10/12/2023

APPENDIX E —

Order denying motion to dismiss (Oct. 6, 2023)

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

STATE OF FLORIDA,
Petitioner,

CASE NO.: 2004993CF10A
JUDGE: FRANK LEDEE

v.

TYRONE WOODSON,
Defendant.
_____/

ORDER DENYING DEFENDANT'S MOTION TO DISMISS

THIS MATTER having come before the Court for consideration of Defendant's Motion To Dismiss[1], and the Court having read the Motion, carefully considered the legal issues raised by the Defendant in the aforementioned Motion, reviewed the relevant legal authority on the issues raised in the Motion, reviewed the contents of the Court file, considered the arguments of Counsel, and being otherwise advised in the premises, makes the following findings of fact and conclusions of law:

1. The defendant, TYRONE WOODSON, was charged by felony information[2] on August 7, 2020 with one count of Aggravated Assault with a Deadly Weapon in violation of Florida Statutes § 784.011, 784.021(1)(a) and 784.021(2) and one count of Possession of a Firearm by a Convicted Felon in violation of Florida Statutes § 790.23(1) and 775.087(2)(a)1.
2. The State of Florida maintains that the defendant is a convicted felon in the State of Florida and thereby prohibited from possessing any firearm, ammunition, or electric device or other device as defined under Florida Statutes § 790.23(1) and 775.087(2)(a)1.

[1] Filing Number 165133380 E-Filed 01/20/2023 at 01:04:01 PM.
[2] Filing Number 111437829 E-Filed 08/07/2020 at 10:11:48 AM.

3. The State of Florida alleges that June 5, 2020, Broward County Sheriff Deputies responded to the incident location in reference to a disturbance with a weapon. Upon arrival at the location specified by the dispatcher, the Deputies located a black Infinity bearing tag number PEJA11 parked in front of the address referenced by the 911 caller. The caller reported seeing two black males later identified as the defendant, TYRONE WOODSON, and his co-defendant in the vehicle armed with a firearm. The Deputies approached and saw two black males sitting in the front seats of the vehicle. The defendant, TYRONE WOODSON, was sitting in the front passenger seat and the co-defendant was sitting in the driver's seat. Both individuals were observed smoking marijuana inside the vehicle when the deputies approached. A search of the vehicle revealed a black in color Taurus handgun, serial number SCY00708 underneath the front passenger seat. The firearm was loaded with seven rounds of .40 caliber ammunition, one round in the chamber and six rounds in the magazine. The victim alleges that the Defendant, TYRONE WOODSON, asked the co-defendant for the firearm and threatened to kill him with the firearm in his hand. A criminal records check revealed that both the defendant and co-defendant were convicted felons. The defendant, having been convicted in Leon County on felony counts of Possession of Marijuana with Intent to Sell/Manufacture/Deliver Within a 1000 Feet of a Place of Worship/Business in violation of Florida Statute § 893.13(1)(e)(2) and Tampering With or Fabricating Physical Evidence in violation of Florida Statute § 918.13, was charged in the instant case.
4. The Defendant filed the instant Motion to Dismiss Count two of the information alleging that Florida Statutes § 790.23(1)(a) is facially unconstitutional as a

violation of the Second Amendment in that it permanently deprives any person previously convicted of a felony in the State of Florida from ever exercising the core, fundamental right to possess a firearm. The Defendant further alleges that Florida Statute § 790.23 is unconstitutional as applied to the facts of this case.

5. The State of Florida filed a Response to Defendant's Motion To Dismiss and Motion To Declare F.S. 790.23 Unconstitutional[3] on May 22, 2023.
6. The State of Florida filed a Notice of Supplemental Legal Authority re: Defendant's Motion To Declare F.S. 790.23 Unconstitutional[4] on June 2, 2023.
7. The Defendant filed an Answer To The State's Sur-Reply[5] on June 13, 2023.
8. The Defendant filed a Notice of Supplemental Authority[6] on June 30, 2023.
9. The Defendant filed a Notice of Supplemental Authority[7] on August 19, 2023.
10. The State of Florida filed a Notice of Supplemental Legal Authority Re: Defendant's Motion To Declare F.S. 790.23 Unconstitutional[8] on September 14, 2023.
11. Most recently, the First District Court of Appeal declined to follow the limited holding in *Range v. Attorney General United States of America*, 69 F.4th 96 (3d Cir. 2023) (en banc) and upheld Florida's prohibition of possession of firearms by convicted felons in *Edenfield v. State*, --- So.3d ----, 2023 WL 4924150, 48 Fla. L. Weekly D1533 (Fla 1st DCA 2023).

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[3] Filing Number 173658187 E-Filed 05/22/2023 at 11:11:10 AM.
[4] Filing Number 174526315 E-Filed 06/02/2023 at 05:01:00 PM.
[5] Filing Number 175249123 E-Filed 06/13/2023 at 05:47:45 PM.
[6] Filing Number 176524105 E-Filed 06/30/2023 at 11:15:32 AM.
[7] Filing Number 180045649 E-Filed 08/19/2023 at 03:40:13 PM.
[8] Filing Number 181804317 E-Filed 09/14/2023 at 11:30:18 AM.

12. The First District Court of Appeal declined to apply the reasoning expressed by the Third Circuit Court of Appeals in *Range*, which sustained an as-applied challenge to federal law prohibiting possession of firearm by a convicted felon.

13. *Range* brought a challenge to section 922(g)(1) in federal court claiming that the law "violates the Second Amendment as applied to him." *Range*, 69 F.4th at 99. The Third Circuit agreed with Range. It held that the "law-abiding, responsible citizens" language from *District of Columbia v. Heller*, 554 U.S. 570, 626, 128 S.Ct. 2783, 171 L.Ed.2d 637 (2008), was dicta. *Range*, 69 F.4th at 101. It also held that the Government failed in its burden to "show that § 922(g)(1), as applied to him, 'is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms.' " *Range*, 69 F.4th at 103 (quoting *New York State Rifle & Pistol Ass'n v. Bruen*, 142 S.Ct. 2111, 2127, 213 L.Ed.2d 387 (2022)).

14. *Range* did not invalidate section 922(g)(1). It specifically noted, "Our decision today is a narrow one."

15. The First District Court of Appeal held that the limited scope of the Federal Appeals Court Decision did not warrant rehearing, rehearing en banc, and certification of great public importance of the defendant's facial challenge, under the Second Amendment.

16. The First District Court of Appeal noted that *Range* was not a felon; instead, he committed a nonviolent misdemeanor offense. He was convicted of "one count of making a false statement to obtain food stamps in violation of Pennsylvania law." *Id.* at 98 (citations omitted). This offense was a misdemeanor, but because *Range* faced a potential term of imprisonment exceeding one year, he was

prohibited from possessing a firearm under federal law. *Id.* (citing 18 U.S.C. § 922(g)(1)).

17. The defendant, TYRONE WOODSON, having been adjudicated in Leon County on felony counts of Possession of Marijuana with Intent to Sell/Manufacture/Deliver Within a 1000 Feet of a Place of Worship/Business in violation of Florida Statute § 893.13(1)(e)(2) and Tampering With or Fabricating Physical Evidence in violation of Florida Statute § 918.13 is subject to the prohibitions of Florida Statutes § 790.23(1) and 775.087(2)(a)1.

It is hereby ORDERED and ADJUDGED:

1. The Defendant's Motion To Dismiss is DENIED consistent with the holding in in Edenfield v. State, --- So.3d ----, 2023 WL 4924150, 48 Fla. L. Weekly D1533 (Fla 1st DCA 2023).

ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 6 day of October, 2023.

HONORABLE FRANK LEDEE
Circuit Court Judge

Copies furnished to:
Paul R. Valcore, Esq
Assistant State Attorney.
Joseph A. DiRuzzo Esq.
Counsel for the Defendant.

APPENDIX F —

State's response to motion to dismiss (May 22, 2023)

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

CASE NO: 20-4993CF10A
JUDGE: LEDEE

STATE OF FLORIDA,

vs.

TYRONE WOODSON,

Defendant.
_____/

STATE'S RESPONSE TO DEFENDANT'S MOTION TO DISMISS AND MOTION TO DECLARE F.S. 790.23 UNCONSTITUTIONAL.

COMES NOW the State of Florida, by and through the undersigned Assistant State Attorney, hereby submits this response to Defendant's Motion to Dismiss Count Two pursuant to Fla. R. Crim. P. 3.190(b):

The Defendant is charged with Count I, Aggravated Assault (Deadly Weapon) and Count II, Possession of a Firearm in violation of F.S. 790.23 for threatening an individual with a firearm that he possessed in his hand, based on 2012 Florida conviction for feloniously possessing marijuana with intent to sell or deliver.

The Florida Supreme Court has long held that as a "fundamental rule of statutory construction," statutes should be construed as constitutional, "if at all possible." *Caple v. Tuttle's Design-Build, Inc.*, 753 So.2d 49, 51 (Fla. 2000). A court is bound "to resolve all doubts as to the validity of [the] statute in favor of its constitutionality, provided the statute may be given a fair construction that is consistent with the federal and state constitutions as well as with the legislative intent." *State v. Stalder,* 630 So.2d 1072, 1076 (Fla.1994).

Second Amendment Regulations Are Constitutional

The Florida Supreme Court has previously found that such regulations are not a violation of the Second Amendment and that laws placing limits on the Second Amendment have been a long-standing tradition and rule for the State of Florida and the United States of America. A statutory prohibition of possession of a firearm by a convicted felon whose civil rights have not been restored was a "reasonable public safeguard" and that prohibitory

statute was not unconstitutional. *See Nelson v. State*, 195 So.2d 853 (Fla. 1967). The Supreme Court has declared that the Second Amendment "is neither a regulatory straightjacket nor a regulatory blank check" and that "properly interpreted, the Second Amendment allows a 'variety' of gun regulations." *District of Columbia v. Heller*, 554 U.S. 128 (2008). Furthermore, such laws have been found to be appropriate and not an infringement upon a fundamental right. Supreme Court decisions striking down laws that broadly restrict firearm possession by the general public as violative of the Second Amendment do not undermine any State precedent upholding the constitutionality of statutes making possession of the firearm by a convicted felon unlawful. *See Epps v. State*, 55 So.3d 710, (Fla. 1st DCA, 2011) (decided post-*Heller* and *McDonald*).

While the *Bruen* decision did create a new framework for determining a constitutional challenge under the 2nd Amendment as applied to the States by the 14th Amendment, there are two reasons why defendant Gibbons' challenge fails. First, as a felon, he is not among "the people" who have the right to keep and bear arms. Second, there is a historical basis for "status based" restrictions on the right to keep and bear firearms.

The Federal Third Circuit Court of Appeals has provided this Court with an exhaustive analysis of why the defendant's motion fails post-*Bruen* in *Range v. Attorney General United States*, 53 F.4th 262 (3rd Cir. 2022). The State of Florida relies on the Third Circuit's analysis and encourages this Court to adopt its reasoning and findings. *See attached.* "We believe the Supreme Court's repeated characterization of Second Amendment rights as belonging to "law-abiding" citizens supports our conclusion that individuals convicted of felony-equivalent crimes, like [the defendant], fall outside "the people" entitled to keep and bear arms." *Range*, at 284. "[O]ur Nation's tradition of firearm regulation permits the disarmament of those who committed felony or equivalent offenses." *Range*, at 285.

F.S. 790.23 has the intent of insuring a safeguard for the community by disallowing certain persons, convicted of offenses sufficiently serious to deem them to lack respect for the rule of law, from possessing a firearm. The federal government passed a similar law in the 1920's and the State of Florida passed this law in 1955. The Defendant is a convicted felon, which puts the Defendant within a class of citizens that has previously been subject to additional levels of scrutiny and restriction. Prior court rulings have held that prohibiting

convicted felons from possessing firearms due to a potential danger to the community is a rational goal. *See Lewis v. US*, 445 U.S. 55 (1980). This classification is not a violation of the Second Amendment or the Constitution. The Courts have long permitted laws that classify and prohibit convicted felons from using a variety of rights, including the right to vote. *Heller*, *McDonald*, and *Bruen* have not invalidated any of these prior rulings.

New York State Rifle & Pistol Association, Inc. v. Bruen Analysis

The Defendant's argument misapplies the limited holding of *New York State Rifle & Pistol Association, Inc. v. Bruen* where the majority specifically held only that "New York's proper-cause requirement (that a citizen prove to the state a need to openly carry a firearm in self-defense) violates the Fourteenth Amendment in that it prevents law-abiding citizens with ordinary self-defense needs from exercising their right to keep and bear arms." *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S. Ct 2111, 2156 (2022). The *Bruen* decision continues a recent line of case law where the Supreme Court has struck down local laws that violate the 2nd Amendment's right to "keep and bear arms" by making it nearly impossible for a law-abiding citizen to lawfully possess a firearm for self-defense. In *Heller*, the Court struck down a D.C. ban on unlicensed handgun possession in a citizen's home as well as a requirement of a trigger lock or disassembly of the firearm while in the home. In *McDonald v. City of Chicago,* 561 U.S. 742 (2010), the Court struck down a similar Chicago ban on possessing an unregistered firearm coupled with a regulation prohibiting registering most firearms.

Judge Alito's concurring opinion clarified the decision, stating that "a State may not enforce a law, like New York's Sullivan Law, that effectively prevents its law-abiding citizens from carrying a gun for [lawful self-defense.] That is all we decide. Our holding decides nothing about who may lawfully possess a firearm or the requirements that must be met to buy a gun. Nor have we disturbed anything we said in *Heller* or *McDonald* about restrictions that may be imposed on the possession or carrying of guns." 142 S. Ct. 2111, 2157 (2022).

Judge Kavanaugh also wrote a concurring opinion to clarify that the Court's majority decision "does not prohibit States from imposing licensing requirements for carrying a handgun in self-defense" in "shall issue regimes." The holding only addresses "may-issue regimes" used within six States, including New York. *See Bruen*, at 2161. "Like most rights,

the right secured by the Second Amendment is not unlimited. From Blackstone through the 19th century cases, commentators and courts routinely explained that the right was not a right to keep and carry any weapon whatsoever in any manner whatsoever ... [N]othing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as a school and government buildings, or laws imposing conditions or qualifications on the commercial sale of arms." *See Bruen,* at 2162, *citing to and quoting Heller* and *McDonald.*

As noted in *Bruen*, regulations of firearms have existed since the dawn of the Republic. The Supreme Court discussed three types of restrictions that existed at the time of Ratification of the 2nd Amendment: common law offenses, statutory prohibitions, and "surety" statutes. *Bruen,* at 2120. Florida Statute 790.23 is a statutory prohibition. Felons are not "law-abiding citizens" and therefore *Bruen* does not apply to them. Furthermore, the Court in its majority opinion notes that "analogical reasoning requires only that the government identify a well-established and representative historical analogue, not a historical twin. So even if a modern-day regulation is not a dead ringer for historical precursors, it still may be analogous enough to pass constitutional muster." *Bruen,* at 2133. Numerous historical laws from the Colonial period and throughout this Nation's history evince an intent to restrict firearm possession from certain persons. *See Range*, 53 F.4th 262, 274-284 (3rd Cir. 2022).

The correct analysis of the Supreme Court's holding in *Bruen* is limited to the issue presented, a New York state law that required a law-abiding citizen to prove to the state that they had a need to carry a firearm in self-defense, which added a requirement to the Second Amendment that is not in the text nor historical legislation and is therefore unconstitutional.

In an attempt to justify its analysis, the defendant cites a handful of law review articles and dissents or concurring opinions in Federal District Court decisions questioning whether laws banning possession of a firearm by a felon could survive a constitutional challenge but fails to cite any case law or rulings that actually support that argument.

This argument has now been raised – and rejected - in numerous federal courts. The State of Florida is unaware of any jurisdiction that has ruled that *Bruen* invalidates statutes prohibiting possession of a firearm by a convicted felon. As an example, in *United*

States v. Coombes, 2022 WL 4367056 (N.D. Okla. Sept. 21, 2022), the Court ruled that a statute prohibiting felons from possessing firearms was facially constitutional under the 2nd Amendment even in light of *Bruen*. Quoting another Federal District Court Judge:

> This court is not alone in finding that felon-in-possession regulations survive *Bruen*. Federal courts inside and outside the Tenth Circuit have assessed the facial constitutionality of Section 922(g)(1) under *Bruen*'s framework. As far as this court can find, every federal court that has assessed the facial constitutionality of Section 922(g)(1) in the wake of the *Bruen* decision has held that Section 922(g)(1) is constitutional on its face. See *United States v. Price*, 2022 WL 6968457, at *6–9 (S.D. W. Va. Oct. 12, 2022) (same); *United States v. King*, 2022 WL 5240928, at *4–5 (S.D.N.Y. Oct. 6, 2022) (same); *United States v. Charles*, 2022 WL 4913900, at *1–12 (W.D. Tex. Oct. 3, 2022) (same); *United States v. Siddoway*, 2022 WL 4482739, at *1–2 (D. Idaho Sept. 27, 2022) (same); *United States v. Hill*, 2022 WL 4361917, at *1–3 (S.D. Cal. Sept. 20, 2022) (same); *United States v. Jackson*, 2022 WL 4226229, at *1–2 (D. Minn. Sept. 13, 2022) (same); *United States v. Cockerham*, 2022 WL 4229314, at *1–2 (S.D. Miss. Sept. 13, 2022) (same); *United States v. Burrell*, 2022 WL 4096865, at *2 (E.D. Mich. Sept. 7, 2022) (same); *United States v. Ingram*, 2022 WL 3691350, at *1–3 (D.S.C. Aug. 25, 2022) (same); *United States v. Daniels*, 2022 WL 5027574, at *4 (W.D.N.C. Oct. 4, 2022) (citing *Heller* and *McDonald* in observing ... that "Nothing in the *Bruen* decision ... casts doubt on 'the longstanding prohibitions on the possession of firearms by felons.'"); *United States v. Harper*, 2022 WL 4595060, at *2 (N.D. Iowa Sept. 30, 2022) (affirming that "*Bruen* did not overrule established precedent upholding bans on drug users and violent felons from possessing firearms"); *United States v. Nutter*, 2022 WL 3718518, at *8 (S.D. W. Va. Aug. 29, 2022) (observing in context of a § 922(g)(9) challenge that the court "has not identified any district court that has granted a similar motion to dismiss any criminal charge under Section 922(g), to date").

United States v. Carrero, No. 2:22-CR-00030, 2022 WL 9348792 at *3 (D. Utah Oct. 14, 2022). See also *United States v. Kays*, 2022WL3718519 at *5 (W.D. Okla. Aug 29, 2022), *United States v. Jackson*, 2022WL2242873 at *18 (D. Maryland, Feb. 27, 2023) (approving a pre-conviction, post-indictment prohibition on firearm possession) and *United States v. Perez-Garcia*, 2022WL4351967 at *7 (S.D. Cal. Sept. 18, 2022).

As stated by U.S. District Judge Counts, denying a similar motion, "[f]elons are those who have abused the rights of the people ... this Nation has a "longstanding" tradition of exercising its right—as a free society—to exclude from "the people" those who

squander their rights for crimes and violence. Consistent with *Heller* and *Bruen*, the Second Amendment should be no different here. As a result, the Court holds that § 922(g)(1) is constitutional on its face and as applied to this Defendant." *United States v. Collette*, MO:22-CR-00141-DC, 2022 WL 4476790, at *8 (W.D. Tex. Sept. 25, 2022).

These federal district court rulings have been upheld by at least two federal circuit courts of appeal. See *United States v. Avila*, 2022WL17832287 (5th Cir. 2022) and *Range v. Attorney General United States,* 53 F.4th 262 (3rd Cir. 2022), emphasizing that the majority opinions in *Heller, McDonald, Bruen* and *Bruen*'s concurring opinions all stated that those decisions did not cast doubt on the constitutionality of "longstanding" and "presumptively lawful" regulations prohibiting the possession of firearms by felons.

Florida Statute 790.23 Is Constitutional

Florida Statute 790.23, which prevents convicted felons from possessing firearms, is constitutional and does not violate the principles espoused in *Bruen*, *Heller* or *McDonald*. The State has legitimate, justified reasons to regulate firearms for those convicted of a felony, excluding the Defendant from "the people" as defined in the Second Amendment, and that regulation is based upon long standing historical tradition, custom and laws.

WHEREFORE, the State Attorney respectfully requests this Honorable Court to deny the Defendant's Motion.

I HEREBY CERTIFY that a true copy hereof has been furnished by electronic mail delivery this 22nd day of May, 2023, to Joseph A. DiRuzzo III and Daniel Lader, 401 East Las Olas Blvd. Suite 1400, Fort Lauderdale, FL, 33301, Attorneys for Defendant.

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EXHIBIT A

53 F.4th 262
United States Court of Appeals, Third Circuit.

Bryan David RANGE, Appellant
v.
ATTORNEY GENERAL UNITED STATES of America; Regina Lombardo, Acting Director, Bureau of Alcohol, Tobacco, Firearms and Explosives

No. 21-2835
Argued on September 19, 2022
(Opinion filed November 16, 2022)

Synopsis

Background: Putative gun purchaser filed declaratory action against government, alleging that federal statute prohibiting him from owning a weapon because of his felony-equivalent Pennsylvania conviction for making a false statement to obtain food stamp assistance violated his Second Amendment rights. The United States District Court for the Eastern District of Pennsylvania, Gene E. K. Pratter, J., 557 F.Supp.3d 609, granted summary judgment in favor of government. Putative gun purchaser appealed.

Holdings: The Court of Appeals, in matters of apparent first impression, held that:

[1] federal statute criminalizing the possession of firearm by a person convicted of a "crime punishable by imprisonment for a term exceeding one year" comported with legislatures' longstanding authority, and

[2] statute criminalizing possession of firearm by person convicted of "crime punishable by imprisonment for a term exceeding one year" did not violate Second Amendment as-applied to putative gun purchaser.

Affirmed.

Procedural Posture(s): On Appeal; Motion for Summary Judgment.

West Headnotes (23)

[1] **Federal Courts** Questions of Law in General

170B Federal Courts
170BXVII Courts of Appeals
170BXVII(K) Scope and Extent of Review
170BXVII(K)2 Standard of Review
170Bk3566 Questions of Law in General
170Bk3567 In general

When an appeal raises purely legal questions, an appellate court exercises plenary review.

[2] **Federal Courts** 🔑 Summary judgment

Federal Courts 🔑 Summary judgment

170B Federal Courts
170BXVII Courts of Appeals
170BXVII(K) Scope and Extent of Review
170BXVII(K)2 Standard of Review
170Bk3576 Procedural Matters
170Bk3604 Judgment
170Bk3604(4) Summary judgment
170B Federal Courts
170BXVII Courts of Appeals
170BXVII(K) Scope and Extent of Review
170BXVII(K)3 Presumptions
170Bk3675 Summary judgment

The Court of Appeals reviews the district court's order granting summary judgment de novo, viewing the facts and making all reasonable inferences in the non-movant's favor. Fed. R. Civ. P. 56(a).

[3] **Federal Civil Procedure** 🔑 Lack of cause of action or defense

170A Federal Civil Procedure
170AXVII Judgment
170AXVII(C) Summary Judgment
170AXVII(C)1 In General
170Ak2465 Matters Affecting Right to Judgment
170Ak2466 Lack of cause of action or defense

The moving party is entitled to summary judgment when the non-moving party fails to make a sufficient showing on an essential element of her case with respect to which she has the burden of proof. Fed. R. Civ. P. 56(a).

[4] **Federal Civil Procedure** 🔑 In general; injury or interest

170A Federal Civil Procedure
170AII Parties
170AII(A) In General
170Ak103.1 Standing in General
170Ak103.2 In general; injury or interest

When an individual is subject to threatened enforcement of a law, an actual arrest, prosecution, or other enforcement action is not a prerequisite for standing to challenge the law. U.S. Const. art. 3, § 2, cl. 1.

[5] **Federal Courts** 🔑 Necessity of Objection; Power and Duty of Court

170B Federal Courts
170BII Jurisdiction, Powers, and Authority in General
170BII(C) Objections, Proceedings, and Determination in General
170Bk2072 Necessity of Objection; Power and Duty of Court
170Bk2073 In general

A federal court has an independent duty to satisfy itself of its jurisdiction to decide a case. U.S. Const. art. 3, § 2, cl. 1.

[6] **Federal Civil Procedure** 🔑 In general; injury or interest

Federal Civil Procedure 🔑 Causation; redressability

170A Federal Civil Procedure
170AII Parties
170AII(A) In General
170Ak103.1 Standing in General
170Ak103.2 In general; injury or interest
170A Federal Civil Procedure
170AII Parties
170AII(A) In General
170Ak103.1 Standing in General
170Ak103.3 Causation; redressability

The party invoking federal jurisdiction must establish the three elements forming the irreducible constitutional minimum of standing: injury in fact, causation, and redressability. U.S. Const. art. 3, § 2, cl. 1.

[7] **Weapons** 🔑 Violation of right to bear arms

Weapons 🔑 Possession After Conviction of Crime

406 Weapons
406I In General
406k102 Constitutional, Statutory, and Regulatory Provisions
406k106 Validity
406k106(3) Violation of right to bear arms
406 Weapons
406IV Offenses
406IV(C) Possession, Use, Carrying, or Personal Transport
406k173 Possession After Conviction of Crime
406k174 In general

Putative gun purchaser demonstrated cognizable injury sufficient to establish Article III standing to bring as-applied Second Amendment challenge to federal statute criminalizing the possession of firearm by a person convicted of a "crime punishable by imprisonment for a term exceeding one year"; putative gun purchaser was allegedly twice thwarted from purchasing a firearm because of his felony-equivalent Pennsylvania conviction for making a false statement to obtain food stamp assistance and he allegedly would purchase a hunting rifle but for that prior conviction. U.S. Const. art. 3, § 2, cl. 1; U.S. Const. Amend. 2; 18 U.S.C.A. § 922(g)(1); 62 Pa. Stat. Ann. § 481(a).

[8] **Weapons** 🔑 Violation of right to bear arms

Weapons 🔑 Possession After Conviction of Crime

406 Weapons
406I In General
406k102 Constitutional, Statutory, and Regulatory Provisions
406k106 Validity
406k106(3) Violation of right to bear arms
406 Weapons
406IV Offenses
406IV(C) Possession, Use, Carrying, or Personal Transport
406k173 Possession After Conviction of Crime
406k174 In general

For purpose of analyzing as-applied Second Amendment challenge by putative gun purchaser previously convicted of felony-equivalent Pennsylvania conviction for making a false statement to obtain food stamp assistance, federal statute criminalizing the possession of firearm by a person convicted of a "crime punishable by imprisonment for a term

exceeding one year" comported with legislatures' longstanding authority and discretion to disarm citizens unwilling to obey the government and its laws, whether or not such citizens had demonstrated a propensity for violence. U.S. Const. Amend. 2; 18 U.S.C.A. § 922(g)(1); 62 Pa. Stat. Ann. § 481(a).

[9] **Weapons** Violation of right to bear arms

406 Weapons
406I In General
406k102 Constitutional, Statutory, and Regulatory Provisions
406k106 Validity
406k106(3) Violation of right to bear arms

A federal court analyzing a challenge to a restriction on the possession or use of a firearm looks to the Second Amendment's text and the nation's historical tradition of firearm regulation. U.S. Const. Amend. 2.

7 Cases that cite this headnote

[10] **Weapons** Violation of right to bear arms

406 Weapons
406I In General
406k102 Constitutional, Statutory, and Regulatory Provisions
406k106 Validity
406k106(3) Violation of right to bear arms

Only if firearm regulation is consistent with United States' historical tradition may a court conclude that an individual's conduct in violating the regulation falls outside Second Amendment's unqualified command. U.S. Const. Amend. 2.

2 Cases that cite this headnote

[11] **Weapons** Violation of right to bear arms

406 Weapons
406I In General
406k102 Constitutional, Statutory, and Regulatory Provisions
406k106 Validity
406k106(3) Violation of right to bear arms

Because the Constitution presumptively protects conduct covered by the Second Amendment's plain text, the government has the burden of justifying its regulation of that conduct by demonstrating not simply that the regulation promotes an important interest, but that the regulation is consistent with the nation's historical tradition of firearm regulation. U.S. Const. Amend. 2.

7 Cases that cite this headnote

[12] **Weapons** Violation of right to bear arms

406 Weapons
406I In General
406k102 Constitutional, Statutory, and Regulatory Provisions
406k106 Validity
406k106(3) Violation of right to bear arms

A Second Amendment challenge to a firearm regulation required consideration of whether there is a historical foundation for governmental restrictions on firearms possession based on the challenger's specific status; if that status changes, then the law would no longer apply to that person. U.S. Const. Amend. 2.

1 Case that cites this headnote

[13] **Weapons** Violation of right to bear arms

406 Weapons
406I In General
406k102 Constitutional, Statutory, and Regulatory Provisions
406k106 Validity
406k106(3) Violation of right to bear arms

A federal court analyzing a Second Amendment challenge to a firearm regulation must employ analogical reasoning and compare how and why the regulation burdens a law-abiding citizen's right to armed self-defense. U.S. Const. Amend. 2.

1 Case that cites this headnote

[14] **Weapons** Violation of right to bear arms

406 Weapons
406I In General
406k102 Constitutional, Statutory, and Regulatory Provisions
406k106 Validity
406k106(3) Violation of right to bear arms

For purpose of a Second Amendment challenge to a firearm regulation, the government must identify a well-established and representative historical analogue to the regulation, not a historical twin. U.S. Const. Amend. 2.

1 Case that cites this headnote

[15] **Weapons** Violation of right to bear arms

406 Weapons
406I In General
406k102 Constitutional, Statutory, and Regulatory Provisions
406k106 Validity
406k106(3) Violation of right to bear arms

Even if a modern-day firearm regulation is not a dead ringer for historical precursors, it still may be analogous enough to pass muster under the Second Amendment. U.S. Const. Amend. 2.

[16] **Weapons** Power to regulate

406 Weapons
406I In General
406k102 Constitutional, Statutory, and Regulatory Provisions
406k104 Power to regulate

The executive branch, in addition to the legislative branch, has authority under the Second Amendment to impose firearms-related directives and regulations consistent with the history and tradition of past firearms restrictions, in the form of executive orders or through federal agencies or local executive agencies. U.S. Const. Amend. 2.

[17] **Weapons** Right to bear arms in general

406 Weapons
406I In General

406k102 Constitutional, Statutory, and Regulatory Provisions
406k107 Construction
406k107(2) Right to bear arms in general
Those whose criminal records evince disrespect for the law are outside the community of law-abiding citizens entitled to keep and bear arms under the Second Amendment. U.S. Const. Amend. 2.

7 Cases that cite this headnote

[18] **Weapons** ⇐ Violation of right to bear arms

406 Weapons
406I In General
406k102 Constitutional, Statutory, and Regulatory Provisions
406k106 Validity
406k106(3) Violation of right to bear arms
When assessing founding-era precedents, for purpose of analyzing a Second Amendment challenge to a firearm regulation, a court must assume they derive from a coherent understanding of the right to keep and bear arms shared among the American populace. U.S. Const. Amend. 2.

2 Cases that cite this headnote

[19] **Weapons** ⇐ Violation of right to bear arms

406 Weapons
406I In General
406k102 Constitutional, Statutory, and Regulatory Provisions
406k106 Validity
406k106(3) Violation of right to bear arms
For purpose of analyzing whether laws barring persons convicted of certain crimes from possessing firearms is consistent with the history and tradition of past firearms restrictions, as required for the laws to comply with the Second Amendment, legislatures traditionally used status-based restrictions to disqualify categories of persons from possessing firearms. U.S. Const. Amend. 2.

1 Case that cites this headnote

[20] **Weapons** ⇐ Violation of right to bear arms

406 Weapons
406I In General
406k102 Constitutional, Statutory, and Regulatory Provisions
406k106 Validity
406k106(3) Violation of right to bear arms
For purpose of analyzing whether laws barring persons convicted of certain crimes from possessing firearms is consistent with the history and tradition of past firearms restrictions, as required for the laws to comply with the Second Amendment, legislatures traditionally used status-based restrictions on firearms possession, not merely based on an individual's demonstrated propensity for violence, but rather to address threats purportedly posed by entire categories of people to an orderly society and compliance with its legal norms. U.S. Const. Amend. 2.

2 Cases that cite this headnote

[21] **Weapons** ⇐ Violation of right to bear arms

406 Weapons

406I In General
406k102 Constitutional, Statutory, and Regulatory Provisions
406k106 Validity
406k106(3) Violation of right to bear arms
For purpose of analyzing whether laws barring persons convicted of certain crimes from possessing firearms is consistent with the history and tradition of past firearms restrictions, as required for the laws to comply with the Second Amendment, legislatures traditionally had, as a matter of separated powers, both authority and broad discretion to determine when individuals' status or conduct evinced threat sufficient to warrant disarmament. U.S. Const. Amend. 2.

2 Cases that cite this headnote

[22] **Weapons** ⊶ Violation of right to bear arms

Weapons ⊶ Possession After Conviction of Crime

406 Weapons
406I In General
406k102 Constitutional, Statutory, and Regulatory Provisions
406k106 Validity
406k106(3) Violation of right to bear arms
406 Weapons
406IV Offenses
406IV(C) Possession, Use, Carrying, or Personal Transport
406k173 Possession After Conviction of Crime
406k174 In general
Federal statute criminalizing the possession of firearm by person convicted of "crime punishable by imprisonment for a term exceeding one year" did not violate Second Amendment as-applied to putative gun purchaser previously convicted of felony-equivalent Pennsylvania conviction for making false statement to obtain food stamp assistance; although Pennsylvania offense was classified as misdemeanor, it was punishable by more than two years' imprisonment, so that it was deemed by Congress to be sufficiently serious to exclude persons convicted of that offense from body of law-abiding, responsible citizens entitled to keep and bear arms, which fit within nation's history and tradition of disarming individuals whose actions evinced disrespect for the law, even though offense was non-violent. U.S. Const. Amend. 2; 18 U.S.C.A. §§ 921(a)(20) 922(g)(1); 62 Pa. Stat. Ann. § 481(a).

[23] **Weapons** ⊶ Right to bear arms in general

406 Weapons
406I In General
406k102 Constitutional, Statutory, and Regulatory Provisions
406k107 Construction
406k107(2) Right to bear arms in general
Individuals convicted of felony-equivalent crimes fall outside "the people" entitled to keep and bear arms under the Second Amendment. U.S. Const. Amend. 2.

5 Cases that cite this headnote

*265 Appeal from the United States District Court for the Eastern District of Pennsylvania, (D. C. No. 5-20-cv-03488), District Judge: Honorable Gene E.K. Pratter

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Before: SHWARTZ, KRAUSE and ROTH, Circuit Judges

OPINION

Per Curiam *

*266 In *District of Columbia v. Heller*, the Supreme Court held that "the right of the people to keep and bear Arms," enshrined in the Second Amendment, is an individual right. 554 U.S. 570, 595, 128 S.Ct. 2783, 171 L.Ed.2d 637 (2008). While the precise contours of that individual right are still being defined, the Court has repeatedly stated that it did not question the "longstanding prohibition[ ] on the possession of firearms by felons." *Id.* at 626, 128 S.Ct. 2783.

Appellant Bryan Range falls in that category, having pleaded guilty to the felony-equivalent charge of welfare fraud under 62 Pa. Cons. Stat. § 481(a). He now brings an as-applied challenge to 18 U.S.C. § 922(g)(1), contending that his disarmament is inconsistent with the text and history of the Second Amendment and is therefore unconstitutional under *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, — U.S. ——, 142 S. Ct. 2111, 213 L.Ed.2d 387 (2022). We disagree. Based on history and tradition, we conclude that "the people" constitutionally entitled to bear arms are the "law-abiding, responsible citizens" of the polity, *id.* at 2131, a category that properly excludes those who have demonstrated disregard for the rule of law through the commission of felony and felony-equivalent offenses, whether or not those crimes are violent. Additionally, we conclude that even if Range falls within "the people," the Government has met its burden to demonstrate that its prohibition is consistent with historical tradition. Accordingly, because Range's felony-equivalent conviction places him outside the class of people traditionally entitled to Second Amendment rights, and because the Government has shown the at-issue prohibition is consistent with historical tradition, we will affirm the District Court's summary judgment in favor of the Government.

I. Factual and Procedural Background

In 1995, Range pleaded guilty to making false statements about his income to obtain $2,458 of food stamp assistance in violation of 62 Pa. Cons. Stat. § 481(a), a conviction that was then classified as a misdemeanor punishable by up to five years' imprisonment. [1] Range was sentenced to three years' probation, $2,458 in restitution, $288.29 in costs, and a $100 fine. He has paid the fine, costs, and restitution.

Congress has deemed it "unlawful for any person ... who has been convicted in any court, of a crime punishable by imprisonment for a term exceeding one year"—the definition of a felony under both federal law, 18 U.S.C. § 3156(a)(3), and traditional legal principles, *see Felony*, Black's Law Dictionary (11th ed. 2019)—to "possess in or affecting commerce, any firearm or ammunition." [2] 18 U.S.C. § 922(g)(1). In deference to state legislatures, Congress also raised the bar for "any State offense classified by the laws of the State as a *267 misdemeanor" by excluding from the prohibition those misdemeanors "punishable by a term of imprisonment of two years or less." *Id.* § 921(a)(20)(B). [3] Put differently, it treated state misdemeanors punishable

by more than two years' imprisonment as felony-equivalent offenses. As the maximum punishment for Range's offense was five years' imprisonment, his conviction subjected him to § 922(g)(1).

Three years after his conviction, Range attempted to purchase a firearm but was "rejected by the instant background check system." App. 46, 68, 203. Range's wife subsequently bought him a deer-hunting rifle, and when that rifle was destroyed in a house fire, she bought him another.[4] Sometime in 2010 or 2011, believing his first rejection was an error, Range again attempted to purchase a firearm. Again, he was rejected by the instant background check system. Several years after this rejection, Range "researched the matter" and learned that he was barred from purchasing and possessing firearms because of his welfare fraud conviction. App. 46, 205–06. Having "realize[d] that [he] was not allowed to possess a firearm," he sold his deer hunting rifle to a firearms dealer. App. 201.

Range has hunted regularly for at least twenty years, most frequently using a bow or a muzzleloader. During the years that he possessed a deer hunting rifle, he routinely hunted with it on the first morning and the two Saturdays of each two-week season. He maintained a Pennsylvania hunting license at the time he filed his lawsuit and averred in deposition testimony that if not barred by § 922(g)(1), he would "for sure" purchase another hunting rifle and "maybe a shotgun" for self-defense in his own home. App. 46, 184, 197, 198, 200–02, 210.

In 2020, Range filed suit in the Eastern District of Pennsylvania, seeking a declaratory judgment that § 922(g) violates the Second Amendment as applied to him, as well as an injunction to bar its enforcement against him. Both Range and the Government moved for summary judgment. The District Court applied the two-step test that this Court adopted in *United States v. Marzzarella*, 614 F.3d 85 (3d Cir. 2010) and amplified in *Binderup v. Attorney General*, 836 F.3d 336 (3d Cir. 2016) (en banc), which asks whether (1) a regulation burdens conduct protected by the right to keep and bear arms, and (2) if so, whether that regulation survives means-end scrutiny, *id.* at 346 (quoting *Marzzarella*, 614 F.3d at 89). Applying *Binderup*, the District Court concluded that Range's challenge failed at step one because the Second Amendment does not protect "unvirtuous citizens," including any person convicted of "a serious offense," *id.* at 349, and Range's offense qualified as serious under the factors we had identified. The District Court therefore granted the Government's motion for summary judgment, and this appeal followed.

[1] While Range's appeal was pending, the Supreme Court issued *Bruen*, rejecting the means-end component of the second step of *Marzzarella* and *Binderup* and holding the first step was "broadly consistent with *Heller*" to the extent it focused on "the Second Amendment's text, as informed by history." 142 S. Ct. at 2127. The *268 Government filed a letter pursuant to Federal Rule of Appellate Procedure 28(j), contending that Range's Second Amendment challenge still must fail under *Bruen*'s framework. Range responded with his own Rule 28(j) letter, underscoring *Bruen*'s emphasis on history and asserting "there is no history in 1791 that given the facts of Mr. Range's case that he would be disarmed and prevented from owning and possessing firearms." Dkt. No. 41 at 2. The panel ordered supplemental briefing on (1) *Bruen*'s impact, if any, on the multifactor analysis developed in *Binderup* and *Holloway v. Attorney General*, 948 F.3d 164 (3d Cir. 2020); (2) whether *Bruen* shifts the burden to the Government to prove that the challenger is outside the scope of those entitled to Second Amendment rights, and whether the Government has met that burden here; and (3) whether we should remand this matter to the District Court.[5]

In supplemental briefing on the effect of *Bruen*, Range argues that the history and tradition of the Second Amendment demonstrates that only individuals with a dangerous propensity for violence, as opposed to peaceful citizens like him, can be

disarmed. *Amici* filed a brief on Range's behalf, echoing his contention that "[t]he historical tradition of disarming dangerous persons provides no justification for disarming Range." Amicus Br. 26. The Government urges us to reject a narrow focus on dangerousness, reaffirm our holdings in *Binderup* and subsequent cases that the Second Amendment extends only to people considered "virtuous citizens," and therefore hold that there is a longstanding tradition of disarming citizens who are not law-abiding.

With the benefit of *Bruen*, cases applying *Bruen*,[6] and the parties' briefing and ***269** arguments, we turn to the merits of Range's appeal.

II. Jurisdiction and Standard of Review

[2] [3] [4] [5] [6] [7] The District Court had jurisdiction under 28 U.S.C. § 1331. We have appellate jurisdiction under 28 U.S.C. § 1291. We review the District Court's order granting summary judgment *de novo*, *see Mylan Inc. v. SmithKline Beecham Corp.*, 723 F.3d 413, 418 (3d Cir. 2013), viewing the facts and making all reasonable inferences in the non-movant's favor, *see Hugh v. Butler Cty. Family YMCA*, 418 F.3d 265, 266–67 (3d Cir. 2005). Summary judgment is appropriate where "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The moving party is entitled to judgment as a matter of law when the non-moving party fails to make "a sufficient showing on an essential element of her case with respect to which she has the burden of proof."[7] *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986).

III. *Bruen*'s Doctrinal Impact

[8] Applying *Bruen*'s historical focus, we conclude § 922(g)(1) comports with legislatures' longstanding authority and discretion to disarm citizens unwilling to obey the government and its laws, whether or not they had demonstrated a propensity for violence. We proceed in two parts. We begin by explaining how the Supreme Court replaced our two-step framework with a distinct test focused on the text and history of the Second Amendment. Next, we examine disarmament laws from the seventeenth to the nineteenth centuries to determine whether Range's disarmament fits within the nation's history and tradition of the right to keep and bear arms.

A. Post-*Bruen* Standard for Second Amendment Challenges

The Supreme Court's decision in *Bruen* modifies our prior test for analyzing Second Amendment challenges to 18 U.S.C. § 922(g)(1).

Before *Bruen*, we analyzed Second Amendment challenges under a two-part test that was eventually adopted by most of our sister Circuits. *Marzzarella*, 614 F.3d at 89; *see also Binderup*, 836 F.3d at 346 ("Nearly every court of appeals has cited *Marzzarella* favorably."). At the first step, we considered whether the challenged law burdened conduct within the ***270** scope of the Second Amendment. *Marzzarella*, 614 F.3d at 89. In examining this subject, we observed that "the right to bear arms was tied to the concept of a virtuous citizenry and that accordingly, the government could disarm 'unvirtuous citizens[,]" including "any person who has committed a serious criminal offense, violent or nonviolent."[8] *Binderup*, 836 F.3d at 348 (quoting *United States v. Yancey*, 621 F.3d 681, 684–85 (7th Cir. 2010)); *see also Heller*, 554 U.S. at 626–27 & n.26, 128 S.Ct. 2783. If the first step was met, we proceeded to the second step and assessed whether the regulation withstood means-end scrutiny. *Marzzarella*, 614 F.3d at 89.

[9] [10] [11] [12] *Bruen*, however, abrogated *Binderup*'s two-step inquiry and directed the federal courts, in a single step, to look to the Second Amendment's text and "the Nation's historical tradition of firearm regulation." 142 S. Ct. at 2126, 2130; *see also Frein v. Pa. State Police*, 47 F.4th 247, 254, 256 (3d Cir. 2022) (recognizing *Bruen* abrogated our two-step framework).[9] "Only if a firearm regulation is consistent with this Nation's historical tradition may a court conclude that the individual's conduct falls outside the Second Amendment's 'unqualified command.' " *Bruen*, 142 S. Ct. at 2126 (quoting *Konigsberg v. State Bar of Cal.*, 366 U.S. 36, 50 n.10, 81 S.Ct. 997, 6 L.Ed.2d 105 (1961)). Additionally, because "the Constitution presumptively protects [individual] conduct" covered by "the Second Amendment's plain text," the Court explained, the government has the burden of justifying its regulation of that conduct by demonstrating "not simply [ ] that the regulation promotes an important interest," but that "the regulation is consistent with this Nation's historical tradition of firearm regulation." *Id.*[10]

[13] [14] [15] Under *Bruen*, the question is whether the regulation at issue is "relevantly similar" to regulations at the Founding. *Id.* at 2132 (quoting Cass R. Sunstein, *On Analogical Reasoning*, 106 Harv. L. Rev. 741, 773 (1993)). To make that determination, we must employ "analogical reasoning" and compare "how and ***271** why the regulations burden a law-abiding citizen's right to armed self-defense." *Id.* at 2132–33. Specifically, the government must "identify a well-established and representative historical *analogue*, not a historical *twin*." *Id.* at 2133. "So even if a modern-day regulation is not a dead ringer for historical precursors, it still may be analogous enough to pass constitutional muster." *Id.*

Bruen does not preclude our review of Range's appeal on the record before us. *Bruen* did not address the substantive issues that we must now determine. Unlike the open-carry licensing regime in *Bruen* that created a conduct-based constraint on public carry, § 922(g)(1) imposes a status-based restriction—namely, a possession ban on those convicted of crimes punishable by more than one year in prison or by more than two years in prison in the case of state law misdemeanors. *See* Eugene Volokh, *Implementing the Right to Keep and Bear Arms for Self-Defense: An Analytical Framework and a Research Agenda*, 56 UCLA L. Rev. 1443, 1443 (2009) (distinguishing between "what," "who," "where," "how," and "when" firearm restrictions). Despite that difference, *Bruen* still requires us to assess whether the Government has demonstrated through relevant historical analogues that § 922(g)(1) "is consistent with this Nation's historical tradition of firearm regulation." 142 S. Ct. at 2134. As set forth below, the historical record shows that legislatures had broad discretion to prohibit those who did not respect the law from having firearms. Our assessment confirms that individuals like Range, who commit felonies and felony-equivalent offenses, are not part of "the people" whom the Second Amendment protects. Therefore, § 922(g)(1) as applied to Range is constitutional under the Second Amendment.

B. Scope of Second Amendment Rights in Historical Perspective

As instructed by *Bruen*, we begin our analysis with the text of the Second Amendment, which protects "the right of the people to keep and bear Arms," U.S. Const. amend. II, and consider if Range, as a felon equivalent under 18 U.S.C. § 921(a)(20)(B), is among those protected by the Amendment. *Cf.* *Binderup*, 836 F.3d at 357 (Hardiman, J., concurring in part) ("[T]he Founders understood that not everyone possessed Second Amendment rights. These appeals require us to decide who count among 'the people' entitled to keep and bear arms."); *United States v. Quiroz*, No. 22-CR-00104, —— F.Supp.3d ——, ——, 2022 WL 4352482, at *10 (W.D. Tex. Sept. 19, 2022) (explaining "this Nation does have a historical tradition of excluding specific groups from the rights and powers reserved to 'the people' ").

The language of *Bruen* provides three insights into pertinent limits on "the people" whom the Second Amendment protects. First, the majority characterized the holders of Second Amendment rights as "law-abiding" citizens no fewer than fourteen times. *Bruen*, 142 S. Ct. at 2122, 2125, 2131, 2133–34, 2135 n.8, 2138 & n.9, 2150, 2156; *accord* *Heller*, 554 U.S. at 625, 635, 128 S.Ct. 2783. These included its holding that the New York statute "violates the Fourteenth Amendment in that it prevents law-abiding citizens with ordinary self-defense needs from exercising their right to keep and bear arms," *Bruen*, 142 S. Ct. at 2156, its explanation that the Second Amendment " 'elevates above all other interests the right of law-abiding, responsible citizens to use arms' for self-defense," *id.* at 2131 (quoting *Heller*, 554 U.S. at 635, 128 S.Ct. 2783), and its instruction to identify historical analogues to modern firearm regulations by assessing "how and why the regulations burden a law-abiding citizen's *272 right to armed self-defense," *id.* at 2133. [11] The Court also quoted nineteenth-century sources extending the right to keep and bear arms to "all loyal and well-disposed inhabitants," and disarming any person who made "an improper *or* dangerous use of weapons." *Id.* at 2152 (emphasis added) (quoting Cong. Globe, 39th Cong., 1st Sess., at 908–909; and Circular No. 5, Freedmen's Bureau, Dec. 22, 1865).

Second, the Court clarified that, despite the infirmity of New York's discretionary may-issue permitting regime, "nothing in our analysis should be interpreted to suggest the unconstitutionality of the 43 States' 'shall-issue' licensing regimes ... [,] which often require applicants to undergo a [criminal] background check" and "are designed to ensure only that those bearing arms in the jurisdiction are, in fact 'law-abiding, responsible citizens.' " *Id.* at 2138 n.9 (quoting *Heller*, 554 U.S. at 635, 128 S.Ct. 2783). These criminal background checks that the Court indicated are constitutional are not limited to violent offenses; shall-issue statutes typically disqualify any person "prohibited from possessing a firearm under federal law." Wash. Rev. Code Ann. § 9.41.070(1)(a) (2021); *accord* Colo. Rev. Stat. Ann. § 18-12-203(1)(c) (2021); Kan. Stat. Ann. § 75-7c04(a)(2) (2021); Miss. Code. Ann. § 45-9-101(2)(d) (2022); N.H. Rev. Stat. Ann. § 159:6(I)(a) (2021); N.C. Gen. Stat. Ann. § 14-415.12(b)(1) (2022).

Third, neither *Bruen* nor either of the Court's earlier explanations of the individual right to keep and bear arms casts doubt on § 922(g)(1). To the contrary, Justice Scalia's majority opinion in *Heller* twice described "prohibitions on the possession of firearms by felons" as both "longstanding" and "presumptively lawful[.]" 554 U.S. at 626–27 & n.26, 128 S.Ct. 2783. [12] Writing for the *McDonald* plurality, *273 Justice Alito "repeat[ed] those assurances." 561 U.S. at 786, 130 S.Ct. 3020. In *Bruen*, Justice Thomas's majority opinion acknowledged that the right to keep and bear arms is "subject to certain reasonable, well-defined restrictions," *Bruen*, 142 S. Ct. at 2156 (citing *Heller*, 554 U.S. at 581, 128 S.Ct. 2783), and the concurrences by Justices Alito and Kavanaugh, the latter joined by the Chief Justice, echoed the Court's assertions in *Heller* and *McDonald*. *Id.* at 2162 (Kavanaugh, J., concurring) (quoting *Heller*, 554 U.S. at 626–27 & n.26, 128 S.Ct. 2783); *id.* at 2157 (Alito, J., concurring); *see also United States v. Coombes*, No. 22-CR-00189, —— F.Supp.3d ——, ——, 2022 WL 4367056, at *9 (N.D. Okla. Sept. 21, 2022) ("[T]he *Bruen* majority did not abrogate its prior statements in *Heller* and *McDonald*.").

[16] Thus, although the Supreme Court has not provided an "exhaustive historical analysis ... of the full scope of the Second Amendment," *Bruen*, 142 S. Ct. at 2128; *Heller*, 554 U.S. at 626, 128 S.Ct. 2783, *Heller*, *McDonald*, and *Bruen* provide a window into the Court's view of the status-based disarmament of criminals: that this group falls outside "the people"—

whether or not their crimes involved violence—and that § 922(g)(1) is well-rooted in the nation's history and tradition of firearm regulation. [13]

[17] Our Court's own review of the historical record supports the Supreme Court's understanding: Those whose criminal records evince disrespect for the law are outside the community of law-abiding citizens entitled to keep and bear arms. [14] Our previous decisions, endorsed by several sister courts of appeals, have expressed a related view in terms of the theory of "civic virtue." [15] *See, e.g.*, *Folajtar v. Att'y Gen.*, 980 F.3d 897, 902 (3d Cir. 2020); *Binderup*, 836 F.3d at 348; *United States v. Carpio-Leon*, 701 F.3d 974, 979–80 (4th Cir. 2012); *United States v. Yancey*, 621 F.3d 681, 684–85 (7th Cir. 2010); *United States v. Vongxay*, 594 F.3d 1111, 1118 (9th Cir. 2010). Moreover, as detailed below, *274 the pertinent historical periods were replete with laws "relevantly similar" to the modern prohibition on felon firearm possession because they categorically disqualified people from possessing firearms based on a judgment that certain individuals were untrustworthy parties to the nation's social compact. [16]

[18] The *Bruen* Court warned that "not all history is created equal" and catalogued the sources that are most probative of the right's original meaning. 142 S. Ct. at 2136. Emphasizing that the right codified in the Second Amendment was a "*pre-existing right*," the Court saw particular relevance in "English history dating from the late 1600s, along with American colonial views leading up to the founding." *Id.* at 2127 (citing *Heller*, 554 U.S. at 595, 128 S.Ct. 2783). [17] The Court made this same point in *Heller*. 554 U.S. at 592, 128 S.Ct. 2783. The *Bruen* Court also found highly relevant post-ratification practices from the late eighteenth and early nineteenth centuries. *See Bruen*, 142 S. Ct. at 2136. In contrast, although the Court considered history from Reconstruction to the late nineteenth century, it underscored that it did so merely to confirm its conclusions and that evidence from this period is less informative. *See id.* at 2137.

1. England's Restoration and Glorious Revolution

We begin with the late seventeenth century, when the English government repeatedly disarmed individuals whose conduct indicated a disrespect for the sovereign and its dictates. Also, the advent of the English Bill of Rights during this period confirmed Parliament's authority to delineate which members of the community could "have arms ... by Law." 1 W. & M., Sess. 2, ch. 2, § 7 (Eng. 1689).

In the contentious period following the English Civil War, the restored Stuart monarchs disarmed nonconformist (*i.e.*, non-Anglican) Protestants. *See* Joyce Lee Malcolm, *To Keep and Bear Arms: The Origins of an Anglo-American Right* 45 (1994) (describing how Charles II "totally disarmed ... religious dissenters"); Amicus Br. 6 ("Leading up to the Glorious Revolution of 1688, ... nonAnglican [sic] Protestants were often disarmed."). The reason the Crown seized nonconformists' weapons, according to *Amici*, is that non-Anglican Protestants were dangerous. But the notion that *every* disarmed nonconformist was dangerous defies common sense. Moreover, *Amici*'s resort to dangerousness as the sole explanation for this measure ignores Anglicans' well-documented concern that nonconformists would not obey the King and abide by the law.

By definition, nonconformists refused to participate in the Church of England, an institution headed by the King as a matter of English law. *See Church of England*, BBC (June 30, 2011), https://www.bbc.co.uk/religion/religions/christianity/cofe/cofe_1.shtml (describing "the Act of Supremacy" enacted during the reign of Henry VIII). Indeed, many refused to take mandatory oaths recognizing the King's sovereign authority over matters of religion. *See* Frederick B. Jonassen, *275 "*So Help Me?": Religious Expression and Artifacts in the Oath of Office and the Courtroom Oath*, 12 Cardozo Pub. L., Pol'y & Ethics J. 303, 322 (2014) (describing Charles II's reinstation of the Oath of Supremacy); Caroline Robbins, *Selden's Pills: State*

Oaths in England, 1558–1714, 35 Huntington Lib. Q. 303, 314–15 (1972) (discussing nonconformists' refusal to take such oaths). Anglicans, in turn, accused nonconformists of believing that their faith exempted them from obedience to the law. *See* Christopher Haigh, *'Theological Wars': 'Socinians' v. 'Antinomians' in Restoration England*, 67 J. Ecclesiastical Hist. 325, 326, 334 (2016). In short, the historical record suggests nonconformists as a group were disarmed because their religious status was viewed as a proxy for disobedience to the Crown's sovereign authority and disrespect for the law, placing them outside the civic community of law-abiding citizens.

Even when Protestants' right to keep arms was restored, it was expressly made subject to the discretion of Parliament. One year after the Glorious Revolution of 1688 replaced the Catholic King James II with William of Orange and Mary, James's Protestant daughter, *see* Alice Ristroph, *The Second Amendment in a Carceral State*, 116 Nw. U. L. Rev. 203, 228 (2021), Parliament enacted the English Bill of Rights, which declared: "Subjects which are Protestants, may have Arms for their Defence suitable to their Conditions, and *as allowed by Law*," 1 W. & M., Sess. 2, ch. 2, § 7 (Eng. 1689) (emphasis added). Thus, this declaration, which the Supreme Court has described as the "predecessor to our Second Amendment," *Bruen*, 142 S. Ct. at 2141 (quoting *Heller*, 554 U.S. at 593, 128 S.Ct. 2783), reveals the "historical understanding," *id.* at 2131, that the legislature—Parliament—had the power and discretion to determine who was sufficiently loyal and law-abiding to exercise the right to bear arms. *Cf.* Lois G. Schwoerer, *To Hold and Bear Arms: The English Perspective*, 76 Chi.-Kent L. Rev. 27, 47–48 (2000) (explaining how the English Bill of Rights preserved Parliament's authority to limit who could bear arms).

In 1689, Parliament enacted a status-based restriction forbidding Catholics who refused to take an oath renouncing their faith from owning firearms, except as necessary for self-defense. An Act for the Better Securing the Government by Disarming Papists and Reputed Papists, 1 W. & M., Sess. I, ch. 15 (Eng. 1688); *see* Malcolm, *supra*, at 123. Proponents of the view that disarmament depended exclusively on dangerousness have argued that Catholics categorically posed a threat of violence at this time. *See* *Kanter v. Barr*, 919 F.3d 437, 457 (7th Cir. 2019) (Barrett, J., dissenting); C. Kevin Marshall, *Why Can't Martha Stewart Have a Gun?*, 32 Harv. J.L. & Pub. Pol'y 695, 723 (2009). Again, however, this interpretation not only rests on the implausible premise that all Catholics were violent, but also ignores the more likely historical reason for disarming this entire group: their perceived disrespect for and disobedience to the Crown and English law. That is manifest in the statute's oath requirement. When individuals swore that they rejected the tenets of Catholicism, their right to own weapons was restored. An Act for the Better Securing the Government by Disarming Papists and Reputed Papists, 1 W. & M., Sess. I, ch. 15 (Eng. 1688).

Disavowal of religious tenets hardly demonstrated that the swearing individual no longer had the capacity to commit violence; rather, the oath was a gesture of allegiance to the English government and an assurance of conformity to its laws. Likewise, contemporaneous arguments against tolerating Catholicism contended that Catholics' faith subverted the rule of law by placing the dictates of a "foreign *276 power," *i.e.*, the Pope, before English legal commands. *See* Diego Lucci, *John Locke on Atheism, Catholicism, Antinomianism, and Deism*, 20 Etica & Politica/Ethics & Pol. 201, 228–29 (2018). The disarmament of Catholics in 1689 thus provides another example of the seizure of weapons from individuals whose status demonstrated, not a proclivity for violence, but rather a disregard for the legally binding decrees of the sovereign.

2. Colonial America

The earliest firearm legislation in colonial America prohibited Native Americans, Black people, and indentured servants from owning firearms.[18] *See* Michael A. Bellesiles, *Gun Laws in Early America: The Regulation of Firearms Ownership, 1607–1794*, 16 Law & Hist. Rev. 567, 578–79 (1998). *Amici* contend that these restrictions affected individuals outside the political community and so cannot serve as analogues to contemporary restraints on citizens like Range. Amicus Br. 30–31; *see also* *Carpio-Leon*, 701 F.3d at 978 n.1 (concluding such individuals may not have been part of "the people" at the Founding). But even accepting *Amici*'s argument, colonial history furnishes numerous examples in which full-fledged members of the political

community as it then existed—*i.e.*, free, Christian, white men—were disarmed due to conduct evincing inadequate faithfulness to the sovereign and its laws.

During the late 1630s, for example, an outspoken preacher in Boston named Anne Hutchinson challenged the Massachusetts Bay government's authority over spiritual matters and instead advocated personal relationships with the divine. *See* Edmund S. Morgan, *The Case Against Anne Hutchinson*, 10 New Eng. Q. 635, 637–38, 644 (1937). Governor John Winthrop accused Hutchinson and her followers of being Antinomians, those who viewed their salvation as exempting them from the law, and banished her. *Id.* at 648; Ann Fairfax Withington & Jack Schwartz, *The Political Trial of Anne Hutchinson*, 51 New Eng. Q. 226, 226 (1978). The colonial government also disarmed at least fifty-eight of Hutchinson's supporters, not because those supporters had demonstrated a propensity for violence, but "to embarrass the offenders," as they were forced to personally deliver their arms to the authorities in an act of public submission. James F. Cooper, Jr., *Anne Hutchinson and the "Lay Rebellion" Against the Clergy*, 61 New Eng. Q. 381, 391 (1988). Disarming Hutchinson's supporters, in other words, served to shame colonists whose disavowal of the rule of law placed them outside the Puritan's civic community and obedience to the commands of the government. *Cf.* John Felipe Acevedo, *Dignity Takings in the Criminal Law of Seventeenth-Century England and the Massachusetts Bay Colony*, 92 Chi.-Kent L. Rev. 743, 761 (2017) (describing other shaming punishments used at the time, including scarlet letters).

Likewise, Catholics in the American colonies (as in Britain) were subject to disarmament without demonstrating a proclivity for violence. It is telling that, notwithstanding Maryland's genesis as a haven for persecuted English Catholics, *see* Michael W. McConnell, *277 *The Origins and Historical Understanding of Free Exercise of Religion*, 103 Harv. L. Rev. 1409, 1424 (1990), Maryland—as well as Virginia and Pennsylvania—confiscated firearms from their Catholic residents during the Seven Years' War, *see* Bellesiles, *supra*, at 574; Joseph G.S. Greenlee, *The Historical Justification for Prohibiting Dangerous Persons from Possessing Arms*, 20 Wyo. L. Rev. 249, 263 (2020). That decision was not in response to violence; to the contrary, Catholics had remained peaceable even when the colony's Anglican Protestants took control of its government and required Catholics to take oaths recognizing the legal authority of the Crown, rather than the Pope, over matters of religion. *See* Michael Graham, S.J., *Popish Plots: Protestant Fears in Early Colonial Maryland, 1676–1689*, 79 Cath. Hist. Rev. 197, 197 (1993) ("[L]ittle sustained opposition to [the Anglican leadership] crystallized within the colony. What the Protestant Associators had done ... was widely accepted."); Denis M. Moran, *Anti-Catholicism in Early Maryland Politics: The Protestant Revolution*, 61 Am. Cath. Hist. Soc'y 213, 235 (1950) (explaining how the oaths "asserted the king's supremacy in spiritual as well as in temporal matters"). In sum, Protestants in the colonies—as in England—disarmed Catholics not because they uniformly posed a threat of armed resistance, but rather because the Protestant majorities in those colonies viewed Catholics as defying sovereign authority and communal values.

3. Revolutionary War

Revolutionary-era history furnishes other examples of legislatures disarming non-violent individuals because their actions evinced an unwillingness to comply with the legal norms of the nascent social compact. [19]

John Locke—whose views profoundly influenced the American revolutionaries [20]—argued that the replacement of individual judgments of what behavior is transgressive with communal norms is an essential characteristic of the social contract. *See* John Locke, *Two Treatises of Government* § 163 (Thomas I. Cook, ed., Hafner Press 1947) (reasoning "there only is political society where every one of the members hath quitted his natural power [to judge transgressions and] resigned it up into the hands of the community"). Members of a social compact, he explained, have a civic obligation to comply with communal judgments regarding proper behavior. [21]

*278 In the newly proclaimed states, compliance with that civic obligation translated to entitlement to keep and bear arms, with many of the newly independent states enacting statutes that required individuals, as a condition of keeping their arms,

to commit to the incipient social compact by swearing fidelity to the revolutionary regime.[22] *See* Robert H. Churchill, *Gun Regulation, the Police Power, and the Right to Keep Arms in Early America: The Legal Context of the Second Amendment*, 25 Law & Hist. Rev. 139, 158 (2007).

In Connecticut, for example, as hostilities with Britain worsened, colonists denounced loyalists' dereliction of their duties to the civic community. The people of Coventry passed a resolution in 1774 stating loyalists were "unworthy of that friendship and esteem which constitutes the bond of social happiness, and ought to be treated with contempt and total neglect." G.A. Gilbert, *The Connecticut Loyalists*, 4 Am. Hist. Rev. 273, 280 (1899) (describing this resolution as "a fair sample of most of the others passed at this time"). "Committees of Inspection" publicized the names and addresses of suspected loyalists in local newspapers, describing them as "persons held up to public view as enemies to their country," *id.* at 280–81, and in 1775, this stigmatization of individuals suspected of infidelity to the inchoate United States culminated in a statute prohibiting anyone who defamed resolutions of the Continental Congress from keeping arms, voting, or serving as a civil official, *see id.* at 282.

Pennsylvania likewise disarmed non-violent individuals who were unwilling to abide by the newly sovereign state's legal norms. The legislature enacted a statute in 1777 requiring all white male inhabitants above the age of eighteen to swear to "be faithful and bear true allegiance to the commonwealth of Pennsylvania as a free and independent state," Act of June 13, 1777, § 1 (1777), 9 The Statutes at Large of Pennsylvania from 1652–1801 110, 111 (William Stanley Ray ed., 1903), and providing that those who failed to take the oath—without regard to dangerousness or propensity for physical violence—"shall be disarmed" by the local authorities, *id.* at 112–13, § 3.

This statute is particularly instructive because Pennsylvania's 1776 state constitution protected the people's right to bear arms. *See* Cornell, *Don't Know Much About History, supra*, at 670–71; Marshall, *supra*, at 724. Yet Pennsylvania's loyalty oath law deprived sizable numbers of pacifists of that right because oath-taking violated the religious convictions of Quakers, Mennonites, Moravians, and other groups. Jim Wedeking, *Quaker State: Pennsylvania's Guide to Reducing the Friction for Religious Outsiders Under the Establishment Clause*, 2 N.Y.U. J.L. & Liberty 28, 51 (2006); *see also* Thomas C. McHugh, Moravian Opposition to the Pennsylvania Test Acts, 1777 to 1789, at 49–50 (Sept. 7, 1965) (M.A. thesis, Lehigh University) (on file with the Leigh Preserve Institutional Repository). So while *Amici* contend that individuals disarmed under loyalty oath statutes "posed a grave danger and were often violent," Amicus Br. 12, Pennsylvania's disarmament of this sizable portion of *279 the state's populace cannot be explained on that ground. *See* *Heller*, 554 U.S. at 590, 128 S.Ct. 2783 ("Quakers opposed the use of arms not just for militia service, but for any violent purpose whatsoever...."); *cf.* *Folajtar*, 980 F.3d at 908 n.11 (explaining "[r]efusing to swear an oath" does not "qualify as dangerous").

Instead, the Pennsylvania legislature forbade Quakers and other religious minorities from keeping arms because their refusal to swear allegiance demonstrated that they would not submit to communal judgments embodied in law when it conflicted with personal conviction. *See* Wedeking, *supra*, at 51–52 (describing how Quakers were "penal[ized] for allegiance to their religious scruples over the new government"). The act, in other words, was "an effort by Pennsylvania's Constitutionalist party to restrictively define citizenship"—*i.e.*, what eventually became "the people"—"to those capable of displaying the requisite virtue." Cornell, *Don't Know Much About History, supra*, at 671.

Exercising its broad authority to disarm individuals who disrespected the rule of law, Virginia's General Assembly also passed a loyalty oath statute in 1777. An Act to Oblige the Free Male Inhabitants of this State Above a Certain Age to Give Assurance of Allegiances to the Same, and for Other Purposes ch. III (1777), 9 Statutes at Large; Being a Collection of All the Laws of Virginia, from the First Session of the Legislature in the Year 1619 281, 281 (William W. Hening ed., 1821). That law disarmed "all free born male inhabitants of this state, above the age of sixteen years, except imported servants during the time of their service" who refused to swear their "allegiance and fidelity" to the state. *Id.* But these individuals could not have been considered dangerous spies or threats of violence: the statute still required disarmed individuals to attend militia trainings and run drills without weapons, *id.* at 282—an indignity previously inflicted upon free Black men, Churchill, *supra*, at 160. Instead, this use

of disarmament as a method of public humiliation reveals the statute's true social function: distinguishing those unwilling to follow the dictates of the new government from law-abiding members of the civic community.

In sum, the "how and why," *Bruen*, 142 S. Ct. at 2133, of these oath statutes' burden on the right to bear arms teaches us two things about the historical understanding of status-based prohibitions. First, in keeping with Locke's view that compliance with communal judgment is an inextricable feature of political society, these laws "defined membership of the body politic" by disarming individuals whose refusal to take these oaths evinced not necessarily a propensity for violence, but rather a disrespect for the rule of law and the norms of the civic community. Churchill, *supra*, at 158. Second, legislatures were understood to have the authority and broad discretion to decide when disobedience with the law was sufficiently grave to exclude even a non-violent offender from the people entitled to keep and bear arms. *Cf.* Dru Stevenson, *In Defense of Felon-in-Possession Laws*, 43 Cardozo L. Rev. 1573, 1586 (2022) ("[T]he founders thought the legislature should decide which groups pose a threat to the social order or the community.").

4. Ratification Debates

The ensuing deliberations over whether to ratify the Constitution similarly illustrate the Founding generation's understanding of legislatures' power and discretion over disarmament of those not considered law-abiding.

In Pennsylvania, debates between the Federalists and Anti-Federalists "were among the most influential and widely distributed ***280** of any essays published during ratification." Saul Cornell, *Commonplace or Anachronism: The Standard Model, the Second Amendment, and the Problem of History in Contemporary Constitutional Theory*, 16 Const. Comment. 221, 227 (1999). Those essays included "The Dissent of the Minority," which was published by the state's Anti-Federalist delegates, *id.* at 232–33, and which the Supreme Court has viewed as "highly influential" to the adoption of the Second Amendment, *Heller*, 554 U.S. at 604, 128 S.Ct. 2783. The amendment proposed by the Dissent of the Minority stated:

> [T]he people have a right to bear arms for the defence of themselves and their own State or the United States, or for the purpose of killing game; and no law shall be passed for disarming the people or any of them *unless for crimes committed*, or real danger of public injury from individuals.

2 Bernard Schwartz, *The Bill of Rights: A Documentary History* 665 (1971) (emphasis added).

As the Dissent of the Minority's proposal makes clear, members of the Founding generation viewed "[c]rimes committed—violent or not—[as] ... an independent ground for exclusion from the right to keep and bear arms." *Binderup*, 836 F.3d at 349 (quotation omitted); *see also* *Folajtar*, 980 F.3d at 908–09. *Amici* insist that the proposal's crime and danger clauses must be read together as authorizing the disarmament of dangerous criminals only. *See* Amicus Br. 16; *see also* Greenlee, *supra* at 267; *Binderup*, 836 F.3d at 367 (Hardiman, J., concurring in part). But the Dissent of the Minority's use of the disjunctive "or" refutes this counterargument: The dissenters distinguished between criminal convictions and dangerousness, and provided that *either* could support disarmament. *See, e.g.*, *United States v. Woods*, 571 U.S. 31, 45–46, 134 S.Ct. 557, 187 L.Ed.2d 472 (2013) (explaining the "ordinary use" of "or" "is almost always disjunctive"—*i.e.*, "the words that it connects are to 'be given separate meanings' ") (quoting *Reiter v. Sonotone Corp.*, 442 U.S. 330, 339, 99 S.Ct. 2326, 60 L.Ed.2d 931 (1979)).

The Dissent of the Minority therefore comports with the longstanding tradition in English and American law of disarming even non-violent individuals whose actions demonstrated a disrespect for the rule of law as embodied in the sovereign's binding norms.

5. Other Non-Violent Offenses

Punishments meted out for a variety of non-violent offenses between the seventeenth and nineteenth centuries provide additional support for legislatures' authority to disarm even non-violent offenders.

Historically, several non-violent felonies were punishable by death and forfeiture of the perpetrator's entire estate. *See* *Folajtar*, 980 F.3d at 904–05. As the Government observes, those offenses included larceny, repeated forgery, and false pretenses—all of which involve deceit or the wrongful deprivation of another's property and closely resemble Range's welfare fraud offense. Appellees' Supp. Br. 7–8.[23] *A fortiori*, given the draconian punishments that traditionally could be imposed for these types of non-violent felonies, the comparatively lenient consequence of disarmament ***281** under 18 U.S.C. § 922(g)(1) is permissible.[24]

Additionally, legislatures in the American colonies and United States authorized the seizure of firearms from individuals who committed non-violent, misdemeanor hunting offenses.[25] In 1652, New Netherlands passed an ordinance that forbid "firing within the jurisdiction of this city [of New Amsterdam] or about the Fort, with any guns at Partridges or other Game that may by chance fly within the city, on pain of forfeiting the Gun ...." 1652 N.Y. Laws 138. A 1745 North Carolina law prohibited nonresidents from hunting deer in "the King's Wast" and stated that any violator "shall forfeit his gun" to the authorities. Act of Apr. 20, ch. III (1745), 23 Acts of the North Carolina General Assembly 218, 219 (1805). New Jersey enacted a statute "for the preservation of deer, and other game" in 1771 that punished non-residents caught trespassing with a firearm by seizing the individuals' guns. 1771 N.J. Laws 19–20.

State legislatures continued to enact such laws after the Revolution. To protect the sheep of Naushon Island, Massachusetts passed a statute requiring armed trespassers on the island to forfeit their guns.[26] An Act for the Protection and Security of the Sheep and Other Stock on Tarpaulin Cove Island, Otherwise Called Naushon Island, and on Nennemessett Island, and Several Small Islands Contiguous, Situated in the County of Dukes County § 2 (1790), 1 Private and Special Statutes of the Commonwealth of Massachusetts 258, 259 (Manning & Loring ed., 1805). Virginia and Maryland punished individuals who hunted wild fowl on rivers at night by seizing their guns. 1832 Va. Acts 70; 1838 Md. Laws 291–92. And Delaware law required non-residents who hunted wild geese on the state's waterways to forfeit their guns, even though the statute specified that this hunting offense was a misdemeanor. 12 Del. Laws 365 (1863).

As these centuries of hunting statutes show, legislatures repeatedly exercised their authority to decide when non-violent offenses were sufficiently grave transgressions to justify limiting violators' ability to keep and bear arms.[27]

* * * * *

[19] **[20]** **[21]** We draw three critical lessons from the historical record examined above. ***282** First, legislatures traditionally used status-based restrictions to disqualify categories of persons from possessing firearms. Second, they did so not merely based on an individual's demonstrated propensity for violence, but rather to address the threat purportedly posed by entire categories of people to an orderly society and compliance with its legal norms. Third, legislatures had, as a matter of separated powers, both authority and broad discretion to determine when individuals' status or conduct evinced such a threat sufficient to warrant disarmament.[28]

IV. Range's Claims

Having identified the appropriate test and reviewed the historical evidence in this area, we now turn to Range's claims.

[22] Range committed an offense that Pennsylvania has classified as a misdemeanor punishable by more than two years' imprisonment, 62 Pa. Cons. Stat. § 481(a), and Congress has concluded is sufficiently serious to exclude Range from the body of law-abiding, responsible citizens entitled to keep and bear arms, *see* 18 U.S.C. §§ 921(a)(20)(B), 922(g)(1).[29] That determination fits comfortably within the longstanding tradition of legislation disarming individuals whose actions evince a disrespect for the rule of law. Interpreting the text of the Second Amendment in light of the right's "historical background," *Bruen*, 142 S. Ct. at 2127 (quoting *Heller*, 554 U.S. at 592, 128 S.Ct. 2783), we conclude that Range's criminal conviction placed him beyond the ambit of "the people" protected by the Second Amendment.

*283 Range asserts that "[t]he Government has failed to meet its burden of proving that the plaintiff's conviction places him outside the scope of those entitled to Second Amendment rights based on the historical analysis of those who can be disarmed."[30] Appellant's Supp. Br. 1. Notwithstanding the historical evidence surveyed above, Range contends that his disarmament is inconsistent with the nation's tradition of firearm regulation "because he is not dangerous." Opening Br. 28. Echoing positions expressed by some judges, *Amici* agree, arguing "English and American tradition support firearm prohibitions on dangerous persons" but "[t]here is no tradition of disarming peaceable citizens." Amicus Br. 2; *see* *Folajtar*, 980 F.3d at 912 (Bibas, J., dissenting); *Kanter*, 919 F.3d at 451 (Barrett, J., dissenting); *Binderup*, 836 F.3d at 369 (Hardiman, J., concurring in part). Our review of the historical record convinces us otherwise. Non-violent individuals were repeatedly disarmed between the seventeenth and nineteenth centuries because legislatures determined that those individuals lacked respect for the rule of law and thus fell outside the community of law-abiding citizens. That longstanding tradition refutes Range's constrictive account of Anglo-American history as prohibiting the government from disarming non-violent individuals.

Amici offer a few statutes that purportedly prove legislatures' inability to disarm non-violent offenders, but these laws confirm our view. Specifically, *Amici* cite a 1785 Massachusetts law that forbid tax collectors and sheriffs from embezzling tax revenue. Amicus Br. 32 (citing 1785 Mass. Laws 516).[31] Although the statute permitted estate sales to recover embezzled funds, "the necessities of life—including firearms—could not be sold." *Id.* Likewise, *Amici* discuss a 1650 Connecticut law exempting weapons from execution in civil actions and four statutes providing similar protections for militia arms. *Id.* at 33 (citing *The Public Records of the Colony of Connecticut, Prior to the Union with New Haven Colony, May 1665*, at 537 (J. Hammond Trumbull ed., 1850); 1 Stat. 271, § 1 (1792); *Archives of Maryland Proceedings and Acts of the General Assembly of Maryland*, at 557 (William Hand Browne ed., 1894); An Act for Settling the Militia ch. XXIV (1705), 3 Statutes at Large: Being a Collection of all the Laws of Virginia from the First Session of the Legislature, in the Year 1619 335, 339 (William W. Hening ed., 1823); An Act for the Settling and Better Regulation of the Militia ch. II *284 (1723), 4 Statutes at Large: Being a Collection of all the Laws of Virginia from the First Session of the Legislature, in the Year 1619 118, 121 (William W. Hening ed., 1820). But *Amici* place more weight on those laws than they can rightly bear. The fact that legislatures did not *always* exercise their authority to seize the arms of individuals who violated the law does not show that legislatures *never* could do so. Rather, these laws underscore legislatures' power and discretion to determine when disarmament is warranted. And, as detailed above, Range and *Amici*'s contention that legislatures lacked the *authority* to disarm non-violent individuals "flatly misreads the historical record." *Heller*, 554 U.S. at 603, 128 S.Ct. 2783.

[23] We believe the Supreme Court's repeated characterization of Second Amendment rights as belonging to "law-abiding" citizens supports our conclusion that individuals convicted of felony-equivalent crimes, like Range, fall outside "the people" entitled to keep and bear arms.[32] *See, e.g.*, *Bruen*, 142 S. Ct. at 2122; *Heller*, 554 U.S. at 635, 128 S.Ct. 2783. As Judge Hardiman explained in his *Binderup* concurrence, Second Amendment challenges to § 922(g)(1) "require us to decide who count among 'the people' entitled to keep and bear arms" because "the Founders understood that not everyone possessed

Second Amendment rights." 836 F.3d at 357 (Hardiman, J., concurring in part); *see also* Oral Arg. at 49:54 (*Amici* discussing which individuals fall outside "the people"). Focusing our inquiry on the meaning of "the people" also comports with the Lockean principles that animated Founding-era disarmaments of individuals whose unwillingness to abide by communal norms placed them outside political society. *Cf.* *Heller*, 554 U.S. at 580, 128 S.Ct. 2783 (suggesting "the people" refers to "all members of the *political community*" (emphasis added)); Cornell, *Don't Know Much About History, supra*, at 671 (contending the right to keep and bear arms was historically "limited to those members of the polity who were deemed capable of exercising it in a virtuous manner").

But even if we were to adopt the contrary view, treating Range as covered by "the Second Amendment's plain text[,]" *Bruen*, 142 S. Ct. at 2126, would "yield the same result," *Kanter*, 919 F.3d at 452 (Barrett, J., dissenting). *Bruen* requires the Government to (1) provide relevant historical analogues demonstrating a traditional basis for disarming those who commit felonies and felony-equivalent crimes, and (2) show that the challenger was convicted of a felony or felony-equivalent offense. *Cf.* *285 *Charles*, No. 22-CR-154, —— F.Supp.3d at ——, 2022 WL 4913900, at *9 ("[R]eading *Bruen* robotically would require the Government in an as-applied challenge[ ] to find an analogy specific to the crime charged.... That's absurd.").

The Government has satisfied its burden on both prongs. First, as discussed above, our Nation's tradition of firearm regulation permits the disarmament of those who committed felony or felony-equivalent offenses. *See* *Holloway*, 948 F.3d at 172 ("We 'presume the judgment of the legislature is correct and treat any crime subject to § 922(g)(1) as disqualifying unless there is a strong reason to do otherwise.' " (quoting *Binderup*, 836 F.3d at 351)). The Government has established as much through its detailed discussion of our pre-*Bruen* jurisprudence concerning the "the historical justification for stripping felons [of Second Amendment rights], including those convicted of offenses meeting the traditional definition of a felony." Appellees' Supp. Br. 2–3, 7 (quoting *Binderup*, 836 F. 3d at 348); *see also* Answering Br. 11–12.

The Government has also shown that Range was convicted of a felony or felony-equivalent offense. Range pleaded guilty to welfare fraud in violation of 62 Pa. Cons. Stat. § 481(a), a misdemeanor punishable by up to five years' imprisonment. Range's conviction therefore qualifies as a felony-equivalent offense under both federal law, 18 U.S.C. § 921(a)(20)(B), and traditional legal principles, *see Felony*, Black's Law Dictionary (11th ed. 2019). Accordingly, Range may be disarmed consistent with the Second Amendment. *See* Answering Br. at 16 (citing *Hamilton v. Pallozzi*, 848 F.3d 614, 627 (4th Cir. 2017))

V. Conclusion

We have conducted a historical review as required by *Bruen* and we conclude that Range, by illicitly taking welfare money through fraudulent misrepresentation of his income, has demonstrated a rejection of the interests of the state and of the community. He has committed an offense evincing disrespect for the rule of law. As such, his disarmament under 18 U.S.C. § 922(g)(1) is consistent with the Nation's history and tradition of firearm regulation.

For the above reasons, we will affirm the judgment of the District Court.

All Citations

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Footnotes

* We issue this precedential opinion per curiam to reflect both its unanimity and the highly collaborative nature of its preparation.

1 In 2018, Pennsylvania amended § 481(b) so that welfare fraud involving "$1,000 or more" in fraudulently obtained assistance became a "[f]elony of the third degree." 62 Pa. Cons. Stat. § 481(b) (2018). However, the parties agree that the offense's categorization at the time of Range's guilty plea controls for purposes of our analysis.

2 Congress exercised its discretion to exclude certain categories of offenses from this ban, such as "antitrust violations, unfair trade practices, restraints of trade, or other similar offenses[.]" 18 U.S.C. § 921(a)(20)(A).

3 For ease of reference, we use the term "felony-equivalent" to refer to these misdemeanors. We do not address whether individuals convicted of misdemeanors carrying lesser punishments can be disarmed consistent with the Second Amendment.

4 A shotgun that Range's father had given him as a teenager was also destroyed in the fire. After his father died in 2008, Range came into possession of his father's pistol, but gave it away within a month.

5 The relevant factual record has been fully developed, and the appeal raises "purely legal questions upon which an appellate court exercises plenary review," *Comite' De Apoyo A Los Trabajadores Agricolas v. Perez*, 774 F.3d 173, 187 (3d Cir. 2014) (quoting *Hudson United Bank v. LiTenda Mortg. Corp.*, 142 F.3d 151, 159 (3d Cir. 1998)), so we can apply *Bruen* and resolve this matter without remand, *see* *Hudson*, 142 F.3d at 159.

6 Although we appear to be the first Court of Appeals to address the constitutionality of 18 U.S.C. § 922(g)(1) since the Supreme Court decided *Bruen*, a number of district courts have done so. *See United States v. Young*, No. 22-CR-54, 2022 WL 16829260, at *11 (W.D. Pa. Nov. 7, 2022); *United States v. Minter*, No. 22-CR-135, 2022 WL 10662252, at *6–7 (M.D. Pa. Oct. 18, 2022); *United States v. Trinidad*, No. 21-CR-398, 2022 WL 10067519, at *3 (D.P.R. Oct. 17, 2022); *United States v. Raheem*, No. 20-CR-61, 2022 WL 10177684, at *3 (W.D. Ky. Oct. 17, 2022); *United States v. Carrero*, No. 22-CR-30, —— F.Supp.3d ——, ——, 2022 WL 9348792, at *3 (D. Utah Oct. 14, 2022); *United States v. Riley*, No. 22-CR-163, —— F.Supp.3d ——, ——, ——, 2022 WL 7610264, at *10, *13 (E.D. Va. Oct. 13, 2022); *United States v. Price*, No. 22-CR-97, —— F.Supp.3d ——, ——, 2022 WL 6968457, at *9 (S.D.W. Va. Oct. 12, 2022); *United States v. Daniels*, No. 3-CR-83, 2022 WL 5027574, at *4 (W.D.N.C. Oct. 4, 2022); *United States v. Charles*, No. 22-CR-154, —— F.Supp.3d ——, ——, 2022 WL 4913900, at *11 (W.D. Tex. Oct. 3, 2022); *United States v. Siddoway*, No. 21-CR-205, 2022 WL 4482739, at *2 (D. Idaho Sept. 27, 2022); *United States v. Collette*, No. 22-CR-141, —— F.Supp.3d ——, ——, 2022 WL 4476790, at *8 (W.D. Tex. Sept. 25, 2022); *United States v. Coombes*, No. 22-CR-189, —— F.Supp.3d ——, ——, ——, 2022 WL 4367056, at *8, *11 (N.D. Okla. Sept. 21, 2022); *United States v. Hill*, No. 21-CR-107, —— F.Supp.3d ——, ——, 2022 WL 4361917, at *3 (S.D. Cal. Sept. 20, 2022); *see also United States v. Ridgeway*, No. 22-CR-175, 2022 WL 10198823, *2 (S.D. Cal. Oct. 17, 2022); *United States v. Cockerham*, No. 21-CR-6, 2022 WL 4229314, at *2 (S.D. Miss. Sept. 13, 2022); *United States v. Jackson*, No. CR 21-51, 2022 WL 4226229, at *3 (D. Minn. Sept. 13, 2022); *United States v. Burrell*, No. 21-20395, 2022 WL 4096865, at *3 (E.D. Mich. Sept. 7, 2022); *United States v. Ingram*, No. 18-CR-557, —— F.Supp.3d ——, ——, 2022 WL 3691350, at *3 (D.S.C. Aug. 25, 2022).

7 While Range's standing to bring this claim was not challenged by Government nor discussed by the District Court, "we have 'an independent duty to satisfy ourselves of our jurisdiction ....' " *Bedrosian v. IRS*, 912 F.3d 144, 149 (3d Cir. 2018) (quoting *Papotto v. Hartford Life & Acc. Ins. Co.*, 731 F.3d 265, 269 (3d Cir. 2013)). The party invoking federal jurisdiction must establish the three elements forming "the irreducible constitutional minimum of standing": injury in fact, causation, and redressability. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992). "When an individual is subject to [threatened enforcement of a law], an actual arrest, prosecution, or other enforcement action is not a prerequisite to challenging the law." *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158, 134 S.Ct. 2334, 189 L.Ed.2d 246 (2014). Here, Range met his burden by showing that the Government's prohibition twice thwarted him from purchasing a firearm and by averring that he would purchase a hunting rifle but for § 922(g)(1). *See Parker v. District of Columbia*, 478 F.3d 370, 376 (D.C. Cir. 2007) ("The formal process of application and denial, however routine, makes the injury to [the petitioner's] alleged constitutional interest concrete and particular."), *aff'd sub nom. District of Columbia v. Heller*, 554 U.S. 570, 128 S.Ct. 2783, 171 L.Ed.2d 637 (2008); *Dearth v. Holder*, 641 F.3d 499, 503 (D.C. Cir. 2011) (affirming that the petitioner suffered a cognizable injury where "the federal regulatory scheme thwarts his continuing desire to purchase a firearm").

8 On that point, Judge Ambro's three-judge plurality in *Binderup* was joined by the seven judges who signed onto Judge Fuentes's partial concurrence and partial dissent. *See Binderup*, 836 F.3d at 348–49; *id.* at 387, 389–90 (Fuentes, J., concurring in part). Judge Hardiman, joined by four other judges, concurred in part and concurred in the judgment. *Id.* at 357 (Hardiman, J., concurring in part). Judge Hardiman reasoned that under "traditional limitations on the right to keep and bear arms" legislatures could disarm only individuals with a "demonstrated proclivity for violence." *Id.*; *see also Folajtar v. Att'y Gen.*, 980 F.3d 897, 912 (3d Cir. 2020) (Bibas, J., dissenting) (stating that "the historical limits on the Second Amendment" permitted legislatures to disarm felons "only if they are dangerous"), *cert. denied sub nom. Folajtar v. Garland*, —— U.S. ——, 141 S. Ct. 2511, 209 L.Ed.2d 546 (2021).

9 Given *Bruen*'s focus on history and tradition, *Binderup*'s multifactored seriousness inquiry no longer applies. In the context of a challenge based upon the challenger's status post-*Binderup*, *Bruen* requires consideration of whether there is a historical foundation for governmental restrictions on firearms possession based on the challenger's specific status. If that status changes, then the law would no longer apply to that person. Thus, there is still room for "as-applied" challenges even after *Bruen*.

10 In *Binderup*, we had imposed the burden at step one on the challenger, rather than on the government, 836 F.3d at 347, but after *Bruen*, we note that the government must now meet this burden in the district court, *see* 142 S. Ct. at 2126 (citing *United States v. Boyd*, 999 F.3d 171, 185 (3d Cir. 2021)). Because *Bruen* came down after the Government made its case in the District Court, we look to its filings in the District Court as well as its supplemental briefs on *Bruen*'s impact to find that it has met its burden.

11 *See also Bruen* 142 S. Ct. at 2122 ("[T]he Second and Fourteenth Amendments protect the right of an ordinary, law-abiding citizen to possess a handgun in the home for self-defense."); *id.* ("[O]rdinary, law-abiding citizens have a similar right to carry handguns publicly for their self-defense."); *id.* at 2125 (explaining petitioners were "law-abiding, adult citizens"); *id.* at 2133 (describing New York's argument that "sensitive places where the government may lawfully disarm law-abiding citizens include all places where people typically congregate" (quotations omitted));

id. at 2134 (reiterating that petitioners are "two ordinary, law-abiding, adult citizens"); *id.* at 2135 n.8 ("[I]n light of the text of the Second Amendment, along with the Nation's history of firearm regulation, we conclude below that a State may not prevent law-abiding citizens from publicly carrying handguns because they have not demonstrated a special need for self-defense."); *id.* at 2138 ("Nor is there any such historical tradition limiting public carry only to those law-abiding citizens who demonstrate a special need for self-defense."); *id.* at 2138 n.9 (noting shall-issue public carry licensing laws "do not necessarily prevent 'law-abiding, responsible citizens' from exercising their Second Amendment right to public carry" but rather "are designed to ensure only that those bearing arms in the jurisdiction are, in fact, law-abiding, responsible citizens" (quotation omitted)); *id.* at 2150 (observing "none [of the historical regulations surveyed] operated to prevent law-abiding citizens with ordinary self-defense needs from carrying arms in public for that purpose"); *id.* at 2156 ("Nor, subject to a few late-in-time outliers, have American governments required law-abiding, responsible citizens to demonstrate a special need for self-protection distinguishable from that of the general community in order to carry arms in public." (quotations omitted)).

12 We note that Congress enacted the federal felon-in-possession statute in 1938 and extended it to non-violent offenses in 1961. *See United States v. Booker*, 644 F.3d 12, 24 (1st Cir. 2011); *cf. Freedom from Religion Found., Inc. v. County of Lehigh*, 933 F.3d 275, 283 (3d Cir. 2019) (describing a 75-year-old religious symbol as part of "our Nation's public tradition" and therefore "entitled ... to a 'strong presumption of constitutionality' " under the First Amendment (quoting *Am. Legion v. Am. Humanist Ass'n*, —— U.S. ——, 139 S. Ct. 2067, 2085, 204 L.Ed.2d 452 (2019))). As explained below, however, the history and tradition of disarming those who have committed offenses demonstrating disrespect for the rule of law dates back to at least the seventeenth century.

13 It remains the case, of course, that the executive branch also has authority to impose firearms-related directives and regulations consistent with the history and tradition, *e.g.*, in the form of executive orders or through ATF or local executive agencies.

14 By no means do we suggest that legislatures have carte blanche to disarm anyone who commits any crime. Rather, we decide only that the disarmament of individuals convicted of felony and felony-equivalent offenses comports with the Second Amendment.

15 Numerous works of legal scholarship have espoused the civic virtue theory of the Second Amendment. *See, e.g.*, Don B. Kates & Clayton E. Cramer, *Second Amendment Limitations and Criminological Considerations*, 60 Hastings L.J. 1339, 1360 (2008); Saul Cornell & Nathan DeDino, *A Well Regulated Right: The Early American Origins of Gun Control*, 73 Fordham L. Rev. 487, 492 (2004); Saul Cornell, *"Don't Know Much About History": The Current Crisis in Second Amendment Scholarship*, 29 N. Ky. L. Rev. 657, 672 (2002) [hereinafter Cornell, *Don't Know Much About History*]; David Yassky, *The Second Amendment: Structure, History, and Constitutional Change*, 99 Mich. L. Rev. 588, 626 (2000); Glenn Harlan Reynolds, *A Critical Guide to the Second Amendment*, 62 Tenn. L. Rev. 461, 480 (1995); Don B. Kates, Jr., *The Second Amendment: A Dialogue*, 49 L. & Contemp. Probs. 143, 146 (1986); Anthony J. Zarillo III, Comment, *Going off Half-Cocked: Opposing as-Applied Challenges to the "Felon-in-Possession" Prohibition of 18 U.S.C. § 922(g)(1)*, 126 Penn St. L. Rev. 211, 238 (2021). We concur with the civic virtue theory inasmuch as a person's lack of virtue in the eyes of the community served as a proxy for willingness to disobey the law.

16 *See Folajtar*, 980 F.3d at 911 ("Legislatures have always regulated the right to bear arms.").

17 When assessing Founding-era precedents, we must assume they derive from a coherent understanding of the right to keep and bear arms shared among the American populace. *See Heller*, 554 U.S. at 604–05, 128 S.Ct. 2783 ("[T]hat

different people of the founding period had vastly different conceptions of the right to keep and bear arms ... simply does not comport with our longstanding view that the Bill of Rights codified venerable, widely understood liberties.").

18 The status-based regulations of this period are repugnant (not to mention unconstitutional), and we categorically reject the notion that distinctions based on race, class, and religion correlate with disrespect for the law or dangerousness. We cite these statutes only to demonstrate legislatures had the power and discretion to use status as a basis for disarmament, and to show that status-based bans did not historically distinguish between violent and non-violent members of disarmed groups.

19 Again, we cite the repugnant, status-based regulations of an earlier period—disarming individuals on the basis of political affiliation or non-affiliation—merely to demonstrate the Nation's tradition of imposing categorical, status-based bans on firearm possession.

20 *See* Thad W. Tate, *The Social Contract in America, 1774–1787: Revolutionary Theory as a Conservative Instrument*, 22 Wm. & Mary Q. 375, 376 (1965); *see also* *Gundy v. United States*, — U.S. ——, 139 S. Ct. 2116, 2133, 204 L.Ed.2d 522 (2019) (Gorsuch, J., dissenting) (observing "John Locke [was] one of the thinkers who most influenced the framers[ ]").

21 Locke based this duty on the consent of those within the political society; however, he contended that mere presence in a territory constituted tacit consent to the laws of the reigning sovereign. *See* Locke, *supra*, § 119 ("[I]t is to be considered what shall be understood to be a sufficient declaration of a man's consent to make him subject to the laws of any government. There is a common distinction of an express and a tacit consent which will concern our present case.... [E]very man that hath any possessions or enjoyment of any part of the dominions of any government doth thereby give his tacit consent and is as far forth obliged to obedience to the laws of that government, during such enjoyment, as any one under it; whether this his possession be of land to him and his heirs for ever, or a lodging only for a week, or whether it be barely travelling freely on the highway; and, in effect, it reaches as far as the very being of anyone within the territories of that government.").

22 We cite these laws as evidence of the original understanding of the Second Amendment and the traditions concerning firearms regulation in historical context. Of course, our social and political awareness has obviously evolved significantly since that time, and by today's standards, the concept of restricting fundamental rights based on political affiliation would be repugnant to the Constitution, including the First Amendment.

23 *See* Answering Br. 15 (citing 1 Wayne R. LaFave, *Substantive Criminal Law* § 2.1(b) (3d ed. 2017); Francis Bacon, *Preparation for the Union of Laws of England and Scotland, in* 2 *The Works of Francis Bacon* 160, 163–64 (Basil Montagu ed., Cary & Hart 1844); and 2 Jens David Olin, *Wharton's Criminal Law* § 28:2 (16th ed. 2021)).

24 The *Kanter* dissent takes issue with this analysis in part because the death penalty was not always imposed. 919 F.3d at 458–62 (Barrett, J., dissenting). How punishments were meted out is beside the point. What matters is the exposure. *See* *id.* at 459 ("[M]any crimes remained eligible for the death penalty ....").

25 We appreciate that these laws involved the isolated disarmament of the firearm involved in the offense, not a ban on possession as in the other laws we discuss above. Nevertheless, they support the notion that legislatures' power to strip citizens of their arms was not limited to cases involving violent persons or offenses.

26 A plaintiff suing the trespasser could alternatively seek the value of the trespasser's firearms. An Act for the Protection and Security of the Sheep and Other Stock on Tarpaulin Cove Island, Otherwise Called Naushon Island, and on Nennemessett Island, and Several Small Islands Contiguous, Situated in the County of Dukes County § 2 (1790), 1 Private and Special Statutes of the Commonwealth of Massachusetts 258, 259 (Manning & Loring ed., 1805).

27 We note that history and tradition may indicate that pretextual disarmament is inconsistent with the Second Amendment. *Cf.* 1 William Blackstone, *Commentaries* app. *300 (St. George Tucker ed., Birch & Small 1803) (decrying how "[i]n England, the people have been disarmed, generally, under the specious pretext of preserving the game"); *Drummond v. Robinson Twp.*, 9 F.4th 217, 227–29 (3d Cir. 2021). Range does not claim his conviction was pretextual, however, so we leave the issue for another day.

28 Deference to state legislatures not only accords with longstanding national tradition, but also respects state legislatures' unique ability to channel local concerns and values into criminal law. *See* Joshua M. Divine, *Statutory Federalism and Criminal Law*, 106 Va. L. Rev. 127, 188 (2020) ("[F]ederal reliance on state law disturbs uniformity by baking into federal law variations in state law. But far from being a downside, regional disparity is an asset."); *see also* Paul H. Robinson & Tyler Scot Williams, *Mapping American Criminal Law: Variations Across the 50 States* 4 (2018) (surveying state variation in the incorporation of desert, deterrence, and incapacitation norms into their criminal laws). There is good reason that the criminal codes of arid states like Nevada and Colorado include offenses like diverting irrigation water, Nev. Rev. Stat. § 207.225 (2021), and causing prairie fires, Colo. Rev. Stat. § 18-13-109 (2022), which the code of a state like Maryland does not.

In addition to preserving federalism and the separation of powers, upholding legislative determinations of when crimes are sufficiently serious to warrant disarmament avoids forcing "judges to 'make difficult empirical judgments' about 'the costs and benefits of firearms restrictions,' especially given their 'lack [of] experience' in the field." *Bruen*, 142 S. Ct. at 2130 (quoting *McDonald*, 561 U.S. at 790–91, 130 S.Ct. 3020). And as explained above, judicial determinations of when a crime is sufficiently violent have proven infeasible to apply in other contexts. *See Binderup*, 836 F.3d at 410 (Fuentes, J., concurring in part).

29 Some of our esteemed colleagues have expressed concerns about the breadth of state offenses that trigger disarmament under 18 U.S.C. § 922(g)(1). *Binderup*, 836 F.3d at 372 n.20 (Hardiman, J., concurring in part); *Folajtar*, 980 F.3d at 921 (Bibas, J., dissenting). But we do not perceive any inherent absurdity in a state's interest in punishing drug offenders, *see* Ariz. Rev. Stat. Ann. § 13–3405, or individuals who abuse public services like recycling programs, *see* Mich. Comp. Laws Ann. § 445.574a(1)(d), or libraries, *see* 18 Pa. Cons. Stat. Ann. § 3929.1. Indeed, enforcement of the laws cited by our colleagues illustrates why legislatures have chosen to designate them as felonies. *Cf. United States v. Bocook*, 59 F.3d 167, 167 (4th Cir. 1995) (describing a prosecution for uttering obscene language by means of radio communication when a defendant "broadcast[s] unauthorized radio messages to aircraft and air traffic controllers" in which he "used obscene language, harassed a female air traffic controller, made threats to shoot down aircraft, and transmitted recorded music, weather reports, and warnings about his own activities").

30 Moreover, in his supplemental brief, Range appears to raise the issue that a permanent ban on firearm possession lacks a historical basis. *See* Appellant's Supp. Br. 3–4. As to arguments concerning the duration of a ban, Congress has addressed it in two ways. First, Congress has exempted any person whose conviction "has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored" from disarmament. § 921(a)(20). Second, Congress also permitted the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) to restore individuals' ability to possess firearms upon consideration of their personal circumstances, criminal record, and the public interest. 18 U.S.C. § 925(c). But these assessments proved so resource intensive for ATF that Congress has refused to fund the program since 1992. *See Logan v. United States*, 552 U.S. 23, 28 n.1, 128 S.Ct. 475, 169 L.Ed.2d 432 (2007); S. Rep. No. 102-353 (1992). As we previously noted, "[i]f [the petitioner] and others in his position wish to seek recourse, it is to the legislature, and not to the judiciary, that efforts should be directed." *Folajtar*, 980 F.3d at 911; *Binderup*, 836 F.3d at 402-03 (Fuentes, J., concurring in part and dissenting in part).

31 We note that *Amici* cited to a 1786 Massachusetts law, but the language *Amici* references comes from Chapter 46 of the 1785 Act of Massachusetts.

32 A concern with which district courts have wrestled when assessing the constitutionality of 18 U.S.C. § 922(g)(1) after *Bruen* is that interpreting "the people" in the Second Amendment to exclude individuals convicted of offenses would deviate from that phrase's meaning in the First and Fourth Amendments. *Cf. Collette*, 22-CR-141, —— F.Supp.3d at ——, 2022 WL 4476790, at *8 ("[T]his Nation has a longstanding tradition of exercising its right—as a free society —to exclude from 'the people' those who squander their rights for crimes and violence."), *with Coombes*, No. 22-CR-189, —— F.Supp.3d at ——, 2022 WL 4367056, at *4 ("[T]he court declines to carve out felons from the scope of the Second Amendment's protection of 'the people.' "). But Justice Stevens's dissent leveled that very criticism against the *Heller* majority: "[T]he Court limits the protected class to 'law-abiding, responsible citizens.' But the class of persons protected by the First and Fourth Amendments is *not* so limited; for even felons (and presumably irresponsible citizens as well) may invoke the protections of those constitutional provisions." 554 U.S. at 644, 128 S.Ct. 2783 (Stevens, J., dissenting). However, our reasoning applies solely to the Second Amendment and does not imply any limitation on the rights of individuals convicted of felony and felony-equivalent offenses under other provisions of the Constitution.

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APPENDIX G —

Transcript of oral argument (July 19, 2023)

IN THE CIRCUIT COURT, SEVENTEENTH JUDICIAL CIRCUIT,
IN AND FOR BROWARD COUNTY, FLORIDA

CASE NO.: 20-4993CF10A
JUDGE FRANK LEEDEE
JULY 19, 2023

STATE OF FLORIDA,
Plaintiff,
v.
TYRONE WOODSON,
Defendant.
_____/

MOTION TO DISMISS

The above-entitled and foregoing cause having come on to be heard before HONORABLE Frank Leedee, at the Broward County Central Courthouse, 201 Southeast 6th Street, Courtroom 4750, Fort Lauderdale, State of Florida 33301, on July 19, 2023.

APPEARANCES:

Paul R. Valcore, Assistant State Attorney
State Attorney’s Office
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Attorney on Behalf of the State of Florida

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Attorney on behalf of the Defendant

SESSIONS

P R O C E E D I N G S

BE IT REMEMBERED that the following proceedings were had in the above-entitled cause before the HONORABLE FRANK LEEDEE, Judge in the Circuit Court, in Broward, Florida, with appearances as hereinabove noted, to-wit:

(Thereupon, the following proceedings were had at 10:08 a.m.)

THE COURT: All right. State of Florida versus Tyrone Woodson, case number 2004993CF10A. Joe, would you be kind enough to put your appearances on the record?

MR. DIRUZZO: Good morning, Your Honor. Joseph Diruzzo on behalf of Mr. Tyrone Woodson, who's present in court, seated in the front row directly to my left.

THE COURT: Mr. Woodson, good morning.

THE DEFENDANT: Good morning.

MR. VALCORE: Paul Valcore on behalf of the State of Florida.

THE COURT: Mr. Valcore, there was a decision that was rendered by Third Circuit that was -- potentially could impact the Court's decision in this matter. Have you had an opportunity to review it?

MR. VALCORE: When did that happen? I was on vacation the last two weeks.

THE COURT: Oh.

MR. VALCORE: So, I'm not aware of it, no.

MR. DIRUZZO: June -- June 6th, lit -- literally the -- the -- the day that we were -- we were in here.

THE COURT: Yes.

MR. VALCORE: Are you talking about the Florida -- or the Federal Circuit?

THE COURT: Yes, yes, yes.

MR. VALCORE: Oh. Yes, yes. Yes, I'm aware of it.

THE COURT: Okay. I just wanted to make sure that you had. Okay. You've had the opportunity to review it. I have seen no other case law that’s been generated as of last night on this issue. Okay? However, there were -- apparently this motion has been filed in several other divisions in Broward County.

MR. DIRUZZO: This motion as by my motion or as a substantially similar motion?

THE COURT: Let's put it this way. You are absolutely right. Let me be specific. A substantially similar motion has been filed in

other divisions in this county. Okay? One of the issues that has come up -- this is the constitutional issue -- the statute is being challenged, okay? I'm going to put this on the record for you all, give you the opportunity to -- to discuss if you wish to do so. Based on the fact that I know of at least three other divisions where these have been -- these motions -- a similar motion has been filed. Do the parties wish to have legal arguments being made before -- and I use my words incredibly carefully -- a panel on mass -- hold on -- not as to the facts of the case -- of the cases but as to the legal arguments? And so that my appellate record is absolutely clear, I am not suggesting an unbunk (phonetic) hearing. I'm suggesting an un-mass (phonetic) hearing. And from there, then each of the Judges can retreat back, have factual argument made in all -- each of the cases and from that perspective, make their independent decisions. That is an option that I extend to you if you wish me to reach out to my colleagues.

MR. DIRUZZO: I got a couple of questions, Judge. On those cases -- and if you -- and if you don't know -- if you haven't reviewed the moving

papers, I understand. I would like to know if those challenges are both as applied and facial and I would like to know if those challenges are under both the Second Amendment and the Florida Constitution because I -- because --

THE COURT: I do not know.

MR. DIRUZZO: -- Okay.

THE COURT: But those -- those are those questions that I had to solve.

MR. DIRUZZO: Because initially I don't have a problem with the Court's offer. I personally don't think that the Court of the un-mass -- and I'll use your term -- given that my as applied challenge in this case -- and I'm going to assume -- assuming that the other motions brought an as applied challenge, that the factual issues in the respective cases are not going to be in dispute. And so, in this case, the -- the State, in its initial response and opposition, detailed the charges that my client was convicted on -- the felony charges. So, I don't believe there's -- there's going to be any dispute. So, I don't think -- or I would prefer if we're going to -- if we're going to do it that we do it both facially and as -- as -- as applied and -- and so that the other

Defense Counsel on the other cases -- assuming they've brought an as applied challenge -- could argue that the facts are they're an as applied challenge, they're free to do so. But what I'm not going to do on behalf of my client is I'm not going to waive an as applied challenge underneath the -- under either the Federal Constitution or the Florida Constitution.

THE COURT: I -- I -- I understand completely where you're going. I just made you the offer and I take it -- it was just -- I looked at it from that perspective and I saw that there are certain -- certain motions have been filed. I don't know the answers to those questions. I'm happy to follow up on them, but I think it's as you all have literally briefed the issue in -- in detail and you've provided me with all the case law I would like to have. Let's -- let's move on this case and it'll be out there. If the other Judges wishes -- wish to afterwards you all do an un-mass hearing, they can do that, and -- but they will have my opinion out there or they'll have my -- my order out there and they can go -- and they can follow up on that. Mr. Valcore, are you in the Court?

MR. VALCORE: Yes. I don't have an opinion

either way. I -- I am not aware of all of these other motions. One was in front of Judge Holden, but they abandoned it.

THE COURT: Oh, okay.

MR. VALCORE: And the other two haven't been set as far as I know of.

THE COURT: No, I do not believe -- one of them is in front of Judge -- the Honorable Judge Lynch.

MR. VALCORE: Oh, okay. Yeah. So, they haven’t -- they haven't informed me of it, so I've never responded to it.

THE COURT: And gentlemen, I would like to have argument on this --

MR. VALCORE: Sure, Judge.

THE COURT: -- based on this. I'd definitely like to have your arguments on this. I -- As I've said, I have read all of the case law that's been submitted. I've read all of the pleadings that have been submitted and I find the -- the issue fascinating, so I’m -- I'm all ears. It is your motion, Sir.

DEFENSE’S CLOSING ARGUMENT

MR. DIRUZZO: Yes. Thank you, Your Honor. Given the Court's representation that it -- that it

is fully familiar with the -- the motion paper that has been filed in this case, I'm not going to reiterate those in -- in detail, but I would like to highlight certain -- certain points for the Court's consideration.

THE COURT: Please.

MR. DIRUZZO: First is that my initial motion made it very clear that I was bringing a two-pronged attack, both under the Federal Constitution and the -- the Florida Constitution. Conspicuously absent from the State's initial response and opposition and from the State's sur-reply is any mention whatsoever of the Florida Constitution, given that this Court gave the State an opportunity to file the sur-reply, it's my position, Your Honor, that the State has waived any arguments to the contrary. It's been -- I put it out there. I detailed it with the appropriate citations to authority and no response -- no relevant response from the State. Given that this Court effectively gave the State a mulligan to file the -- the sur-reply, I think it -- it -- this Court would be well in its discretion to consider that -- that argument waived, but more appropriately, at least for today's purposes, given that the State hasn't

articulated a response as to why my motion or the -- the felon in possession statute does not comply with the Florida Constitution, the State should be prohibited and stopped -- whatever your phraseology -- for making that argument today for the very first time. So, now turning -- turning to the facts of this case, Judge, Heller established a personal Second Amendment right. McDonald applied that right to the states and Bruin (phonetic) set the test to apply the Second Amendment right. The State in its sur-reply was very clear that it asked this Court to adopt the outcome in the Third Circuit in Range. That Range one decision was issued on November 16th of 2022. That decision was vacated on June 1st-- I'm sorry -- January 6th of ‘23. It was argued unbunk on February 15th of ‘23 and the State’s sur-reply was filed on May 22nd of ‘23. So, at the date of the State’s sur-reply, the State was either on knowledge or had constructive knowledge if it had performed a separation of -- that Range one had been vacated and that was pending before the unbunk court. Notwithstanding those facts, the State proceeds to double down and ask this Court to apply the decision in the Third Circuit in Range. I submit, Your Honor, that the

Court should take the -- the State up on this offer and apply the unbunk decision in Range -- the Third Circuit's controlling decision in Range to the facts of this case. And in that case it was perfectly clear, the lead opinion by Judge Hardiman that the federal felon in possession statute was unconstitutional and it applied the analytical framework from -- from Bruin, which is very simple.

1) Does the Texas Second Amendment apply? And I don't believe there's any argument that the right to keep and bear arms -- you know -- directly impacts a possession statute. In this case, a felon in possession statute. Once that initial hurdle has been cleared and it has been cleared as articulated in the Third Circuit in -- in Range, then the government bears the burden of affirmatively proving that the regulation of the law at issue is part of our historical tradition. That's not a burden that the defendant has in this case, nor am I willing to accept that burden and I'm asking the Court to hold the -- the government to its burden as articulated by the U.S. Supreme Court. Consequently, the State hasn't put anything into the record that would even come close to justifying a historical -- history in this country

circa 1776, or 1787 or even if you want to go to -- was it 1864, 1865 when the Second Amendment would --

THE COURT: I do believe that they -- they relied on law from England in a Range decision.

MR. DIRUZZO: Right, but -- but the point being -- and there is a bit of an academic debate as to purposes for incorporation. Whether the incorporation debate -- you know -- stems at the time of the amendment being argued in this case -- the Second Amendment -- or does one look to the due process clause of the 14th amendment in order -- for purposes of incorporation. Regardless, it's a bit of -- of an academic exercise because the his -- there is no historical tradition in this country until the 20th century of disarming felons and I believe as articulated the Third Circuit in Range, the first one was the federal felon in possession statute that initially only disarmed dangerous or violent felons and then the wholesale disarmament of felons at the federal level was in 1961. I've seen nothing in the State moving papers that details the historical history un-mass or in particular the historical history in Florida. But my review of the Florida felon in possession

statute -- and some iteration started in the 1950s. So, regardless, you -- you know -- if you're looking at the 1960's for the -- for the federal felon in possession statute or the 1930 for the initial one that only disarmed violent felons or even the 1950's for the earliest citation I saw for the Florida felon in possession statute, all of that is 20 -- 20th century vintage, which does not come close to establishing that our nation had a historical history of disarming felons. So, the State makes a couple arguments that -- that the Range Court and others have dispensed with --

THE COURT: I -- I need you -- when you address the Range Court decisions, the first decision was vacated or the second that's currently in place?

MR. DIRUZZO: Oh, okay.

THE COURT: Okay. I want my record to be absolute -- because the -- the logic used by the Third Circuit in the second decision seems to have been very particular as to that specific set of facts and almost limited to that particular incident, but the analysis was much broader.

MR. DIRUZZO: Yes. Yes, Judge. So, for -- for purposes of today's discussion, I'm -- when I

refer to Range, I'll be referring to the unbunk decision, unless otherwise --

THE COURT: Thank you.

MR. DIRUZZO: -- and -- and at that point, Judge -- you know -- for the benefit of the Court and I -- and -- and Counsel for the State, who I don't believe to be practicing in -- in Federal Court very often, that was an -- that was an as applied challenge in the context of a civil case. Now, we also have -- have to remember that in the context of civil cases, Federal Courts are -- are constrained by Article 3 considerations. So, in order to appropriately plead your case in the con -- especially in the context of -- of a civil case, you have to plead enough facts for standing and for Article 3 jurisdiction, which then almost always allows a Court -- a Federal Court that's considering the matter to have enough facts before it to adjudicate the issue as an -- on an as applied challenge, which to do it the other way there would be issues of -- of standing. So, you're going to see -- from the most part, I believe Courts are going to -- given the opportunity, they're going to review it as an -- on an as applied basis based upon Article 3

limitations. Now, this Court does not have Article 3 limit -- limitations at all.

THE COURT: At all.

MR. DIRUZZO: At -- at -- at all, but --

THE COURT: However, you have asked, as part of this challenge, that I follow Supreme Court precedent on this matter and independently consider Florida precedent as applied in this -- in this matter.

MR. DIRUZZO: Florida precedent both as applied and facially.

THE COURT: As applied and facially.

MR. DIRUZZO: Yes.

THE COURT: Absolutely. So, I want to make sure, are you of the position that the analysis used by Third Circuit is not the analysis that I should consider?

MR. DIRUZZO: No, I -- I -- I -- because -- because the analytical rubric un -- under Bruin is going to be applied both to a facial challenge as to -- and to an as applied challenge.

THE COURT: Okay.

MR. DIRUZZO: So, now turning to the -- a couple of the salient points that the State makes, the first is that -- that my client -- you know --

a criminal defendant is -- is not part of the people. That was expressly rejected by the Third Circuit un-bunk in Range. It was al -- also rejected by the Eleventh Circuit in the Jimenez Shilon case, S-H-I-L-O-N. It was also rejected by Seventh Circuit in the -- in I believe the Mendez-Rodriguez case and the Fifth Circuit in the Rahimmi, R-A-H-I-M-M-I case. And moreover, Judge, the term “the people” is found in -- also in the First Amendment and the Fourth Amendment, taking the State to its natural lo -- logic.

If -- if one could be excised from the definition of the people by operation of having a felony conviction, then they -- they would lose -- that person purportedly would lose their right on the First Amendment to assemble a petition and would also lose the right for -- to be free of unreasonable searches and seizures. And for those reasons, that's just not a tenable position, Your -- Your Honor. Now, as to the argument that my client is not a law abiding citizen and therefore that -- you know -- excises him from the definition of the people as well, Your Honor, at best, that is an -- a textual argument untethered to the language of the Second Amendment or the Fourth or the First

for that matter. There is no qualification in the text of the Constitution that says only law abiding citizens are part of the people or are -- are protected under the Fourth, First or -- or Second amendment. As to the -- the argument that has been made that the -- Heller addressed -- or Heller -- I'm going to use this term in scare quote -- in scare quotes -- “held” that there is a presumption that felons can be disarmed. The Court should reject that -- that argument, just as the Third Circuit did in Range. First, the -- that statement Heller was dipped up. Reviewing again this morning, Judge -- turning to the Heller decision -- the simple question presented in the Heller decision was “We considered whether a District of Columbia prohibition on possession of usable handguns in the home violates the Second Amendment to the Constitution. The presumption language in Heller is dicta, which the Third Circuit in Range acknowledges dicta, which the Bullock Court -- which I provided in the notice of supplemental authority, acknowledges dicta that the District Court in the Qinorz, Q-I-N-O-R-Z -- I believe that it's mentioned in my moving papers -- also acknowledged as -- as dicta. And so, the -- the

Court should ignore that. More importantly, Judge, the -- turning to the actual language of Bruin itself, and I'm quoting again from Bruin -- “Today, we declined to adopt that two-part approach. In keeping with Heller, we hold that when the Second Amendment's plain text covers an individual's conduct, the constitution presumptively protects that -- that conduct. To justify its regulation, the government may not simply posit that the regulation promotes an important interest, rather the government must demonstrate that the regulation is consistent with this nation's historical tradition of firearm regulation. Only if a firearm regulation is consistent with this nation's historical tradition may a Court conclude that an individual -- individual's conduct falls outside Second Amendment's unqualified command.” Your Honor, so at best, the -- the presumption that was mentioned in Heller runs in direct conflict with presumption that is stated in Bruin, but I think -- you know -- from a more fundamental level, as articulated in Range two by Judge Ambrose's concurring opinion, which I stated before the Range decision came out -- presumptions are just that, they’re presumptions. No presumption is

irrebuttable. If it -- a presumption was irrebuttable, it wouldn't be a presumption. And Judge, Judge Ambrose makes that clear on -- in his -- in his concurring opinion where he says, “Presumptions aren't rules,” and that they can be rebutted. And so, in -- in this case, how does one -- you know -- pre -- you know -- attack that presumption? Well, Your Honor, I believe the Supreme Court laid that out in Bruin itself when they laid out the two-part analytical test that -- that I ar -- articulated. And you -- simply put, does the Second Amendment apply facially to the conduct at -- at issue? And if so, then the -- the government has the burden of showing its consistent with our historic tradition. You know, Counsel for -- for the government and other Judges have made some articulation that the concurring opinions in Heller, the concurring opinions in Bruin, are -- are -- are controlling and the Courts should look at those as a matter of appellate practice. Judge, that's just wrong. A decision of -- the majority decision -- the controlling decision is the decision of the Court.

THE COURT: It’s the law of the case.

MR. DIRUZZO: It’s -- it’s -- while -- while -

- law of the case typically is a defined term that they refer --

THE COURT: I will agree with you.

MR. DIRUZZO: Mm-hmm.

THE COURT: I should not -- I -- I should not use law of the case. It is a decision in the matter.

MR. DIRUZZO: Right, and -- and --

THE COURT: The governing decision.

MR. DIRUZZO: -- Right. And -- and I think logically we all know that because you can't have a single Judge or Justice in a concurring opinion -- a single concurring opinion for that matter, seek to limit the holding of the opinion that was issued by the majority of the Justices. That would allow a single Justice to have some type of constitutional super veto. But also there -- there is no -- there is no logic to that because if a single Judge in a concurring opinion could limit the holding, why couldn't a single Judge in a concurring opinion expand the holding? The --

THE COURT: Let -- let -- let me simplify this. Let me -- let me simplify this. This is a criminal matter. You are challenging the statute in this matter, possession of a firearm by a

convict statute, both as applied to your client and as a facial challenge to -- to constitutionality of the statute. You are relying on the federal law or federal law argument provided by the series of cases that you've highlighted by the Supreme Court. You are relying on Range 3 un-bunk decision, correct?

MR. DIRUZZO: Correct.

THE COURT: Okay. Now, as to any of those cases, how many of them were criminal cases?

MR. DIRUZZO: The Fifth Circuit case in -- in Rodney -- Rodney, that was a federal criminal case that was a conviction for an individual who was subject to a domestic violence type restraining order.

THE COURT: And the holding in that case?

MR. DIRUZZO: Was that that -- that federal statute was unconstitutional. I don't have it with me, so I can't tell you if that was an as applied or a facial.

THE COURT: If I understood it correctly, it was as applied, but I -- I will review that before I write my order. But I do believe it was as applied.

MR. DIRUZZO: Okay.

THE COURT: All right. I do not believe that they challenged the facial validity of the statute under the circumstances.

MR. DIRUZZO: I understood, Judge, and -- and from a perspective as a federal practitioner -- you know -- I can understand why Courts will tend to use the rule of constitutional avoidance by ruling as an applied challenge instead of a facial in order to dispose of the case and then effectively move out, right?

THE COURT: And -- and I -- I have not made any decisions. I just want to make sure that I set the scope of the analysis based on the facts of this case and if I understand exactly the arguments are being made as to the facial validity of the Florida statute because what you are challenging is the Florida statute.

MR. DIRUZZO: Yes.

THE COURT: Okay.

MR. DIRUZZO: Correct.

THE COURT: So, I -- I don't want any -- any issue if this is going to be something that is going to morph into another -- that I'm in any way commenting on the validity of the statute -- the federal statute.

MR. DIRUZZO: Okay. I'm very well aware.

THE COURT: Okay. Now, here's the issue on that. In many situations, we have two sovereigns with similar statutes. Your client could have been charged in either.

MR. DIRUZZO: Sure.

THE COURT: I'm putting it on the record. Okay? Now, walk me through your challenge as to the Florida Constitution.

MR. DIRUZZO: Very well, Your Honor. The Florida Constitution provides, with certain -- certain limited exceptions, greater constitutional rights than the Federal Constitution. Hornbrook law from law school, the Federal -- Federal Constitution sets the floor. States are allowed to provide greater -- greater rights under their State Constitution,

THE COURT: Greater protections.

MR. DIRUZZO: Yes.

THE COURT: Right.

MR. DIRUZZO: The Florida Constitution is -- is consistent with the Fourth Amendment to the U.S. Constitution. It has to be interpreted in the same way. And I believe also the Florida Constitution, its -- its analog to the Eighth Amendment needs to

be interpreted the same way. Those are -- that -- those are it. All the other provisions, including Article 1, Section 8, needs to be interpreted in a manner that's greater than the Federal Constitution. So, consequently -- you know -- starting with -- with Heller, then McDonald, then Bruin, that raised the constitutional floor for -- for federal purposes and consequently, it raised the constitutional floor for Florida purposes.

THE COURT: Is there any case in Florida -- has any Court in Florida addressed this particular issue as applied to your client?

MR. DIRUZZO: No, because the -- the N-Feld (phonetic) decision was a facial challenge that was brought at the appellate level in the first instance, that was only an assertion of the violation of the Second Amendment. There was no mention under Article 1, Section 8 of the Florida Constitution in -- in that decision because I -- I only assume because the litigant in that -- that case did not raise it and therefore the Court was -- was -- you know -- didn't have to address it. So, there has been nothing in my research that addresses the Florida Constitution and it -- its floor being raised in a post -- post-Bruin world.

So -- so, con -- con -- consequently, Your Honor, if this Court were determine that the Florida statute is not in violation of the Federal Constitution, the Court would then have to engage in a robust analysis under the Florida Constitution. So -- and given the stakes at issue in -- in this case, I would encourage the Court to -- because this is obviously going up on de-novo (phonetic) review -- for the Court to engage in both an analysis under the Florida Constitution and the Federal Con -- Constitution. So, that being said, Your Honor, between what I've said right now or today --

THE COURT: There's one question I have. For purposes of this analysis as applied, are you stipulating to facts in this case?

MR. DIRUZZO: For -- for purposes of this motion?

THE COURT: Correct.

MR. DIRUZZO: I -- I -- I -- I will stipulate and not contest paragraph 10 of the -- the State's response and opposition where it laid out the -- that my client was convicted of a felony count of possession of marijuana with intent to sell, manufacture, deliver within a thousand feet of a

place of worship/business and tampering with or fabricating physical evidence. So, for purp -- for purposes of -- of this motion on an as applied basis both federally and under the Florida Constitution, I will stipulate to those facts.

THE COURT: Addressing the issue of “the people.”

MR. DIRUZZO: As to my client's felony conviction, and then I -- I think -- you know -- the Court can then look at them and make the not very far legal logic to recognize that those are not dangerous felonies. It's not a murder. It's not a manslaughter. It's not terrorism. It's not rape, you know? It's not agg by a deadly weapon. And so --

THE COURT: Thank you very much for that clarification. What else would you like to add?

MR. DIRUZZO: -- I think at the -- at this point, Judge, I -- I would see no additional -- additional questions from the bench, I’ll -- I'll -- I’ll defer to -- to my colleague.

THE COURT: Thank you very much. Mr. Valcore, I’d very much appreciate your input.

STATE’S CLOSING ARGUMENT

MR. VALCORE: So, just to address the last

thing the Court raised, as applied, I believe the Court should also consider the charges the defendant is charged with, which includes aggravated assault with a deadly weapon. The said firearm that he supposedly possessed in this case as a convicted felon. So, I think if you're going to talk about it as applied, you're to talk about all the facts, including current facts, the -- the fact of what the prior is -- that is what it is. We're not alleging the prior itself was a violent crime. It is what it is. It's a felony in the State of Florida. Both of the charges were. So, I'm going to trust -- try to go in order with what I -- I heard him arguing. First of all, the State did address in both of its filings summarily the issue of whether the Florida statute is constitutional under Florida law because that's already been decided by the Florida Appellate Courts twice that I -- we cited. First was the Supreme Court in 1967 in Nelson 195, So. 2d. 853, in which they said it's constitutional. And then, in S. v. State in 2011 -- I believe it was an Appellate Court, not the Supreme Court, but 55 So. 3d 710 -- after Heller and I think after McDonald, but certainly after Heller -- and based on that

decision, this issue was reargued, and that is -- as far as I know from the research I did, the last appellate case that I'm specifically aware of that addressed this issue is the one we cited, in which an Appellate Court in Florida said the statute is still constitutional despite this new analysis that started in Heller, continued through McDonald, and now into Bruin. So, we're relying on Florida appellate decisions that exist. These are the only ones that exist and they say the statute's uncon -- the statute is constitutional. So, they're just saying, “Well, the Florida Constitution guarantees people the right to bear arms.” Okay. But they’re not -- there's no real explanation. I'm not understanding the argument as to why it's now unconstitutional in the State of Florida.

THE COURT: I do believe that they're extrapolating from the Bruin decision.

MR. VALCORE: Right. So, if that's the only argument --

THE COURT: And then, by doing that --

MR. VALCORE: -- then I can address that.

THE COURT: -- Actually, there's one more argument that's been highlighted.

MR. VALCORE: Okay.

THE COURT: It is the Range unbunk decision, which I'll give you an opportunity to address that particular case, but they're on the line on both Bruin and the Range decision.

MR. VALCORE: Right. That's my understanding.

THE COURT: The Range decision has not made it to the Supreme Court and I'm not going to presume what the Supreme Court would do with their decision.

MR. VALCORE: I don't know if they're even going to attempt to appeal it because of its very specific and unique facts.

THE COURT: Exactly.

MR. VALCORE: It was an as applied challenge and based on what I understood of those facts -- you know -- but I -- I don't work for the federal government, they can do what they want.

THE COURT: Of course.

MR. VALCORE: So anyway, the Court is required to find statutes constitutional if that's at all possible. So, let's talk about -- a facial challenge would require that the Florida statute is unconstitutional as it's applied to everyone -- all felons, including former murderers -- everybody. So, that is one of the problems with that argument

is it suggests that not just Mr. Woodson here, but every single felon in Florida should now be allowed to just a firearm, even the ones that have been convicted of committing crimes with firearms.

THE COURT: To challenge the issues that they are carving out -- or the Defense arguments is carving out --

MR. VALCORE: Mm-hmm.

THE COURT: -- an exception to that val -- to the o validity of the statute by -- by emphasizing nonviolent crimes as the basis for inclusion under the statute.

MR. VALCORE: But that's an as applied challenge because --

THE COURT: Oh, I understand exactly what it’s for.

MR. VALCORE: who's going to find what a -- the problem with that argument was discussed in Range 2 by the dissent, where they talked about the chaos that will result if individual Judges all across the land get to just decide, “I don't think that particular defendant is a violent felon. Based on what? That's my opinion.” So, where are we going to get the definition of -- if that were in fact to become the law, where's that definition

coming from, you know? Is the -- is the Court going to apply it? Is an Appellate Court going to apply it? Are we going to then make the legislatures all come up with new definitions? I mean, those are the -- that would be the ultimate outcome. So, it's an interesting theoretical issue, but I think it's a legitimate argument being made by the dissent in the Range 2 decision where they're pointing out the potential for the chaos that could ensue if you started applying that decision to all other cases.

THE COURT: The dissent seems to be highlighted arbitrary application of the statute and --

MR. VALCORE: Right.

THE COURT: -- or a judicial philosophy.

MR. VALCORE: Right. But it’s --

THE COURT: I understand that. However, based on statutory and precedence, I am bound --

MR. VALCORE: Well, you're not bound by the Fl --

THE COURT: -- I’m not -- I’m not bound by it --

MR. VALCORE: -- federal circuit.

THE COURT: -- but --

MR. VALCORE: Yeah.

THE COURT: -- the issue is that if there is no case law in Florida -- remember, they've actually challenged it on the federal -- based on the Federal Constitution as well.

MR. VALCORE: Right.

THE COURT: So, I am going to address that -- that particular concern in my order. However, the Range decision, if we looked at the dissent, your argument being made by the -- in the dissent is that the majority literally applied an arbitrary decision-making process based on judicial philosophy and ignored the reality of how this statute could be applied in the impact of basically deleting the statute from the books.

MR. VALCORE: Right.

THE COURT: So, I got it. My concern is more as to this particular case, as applied and facially, what is the State's argument to overcome what the Defense has provided as far as precedent?

MR. VALCORE: Right. So, when I cited the Range decision, I was citing the historical analysis in the decision --

THE COURT: Mm-hmm.

MR. VALCORE: -- not the holding itself

because it's a federal circuit case.

THE COURT: Mm-hmm.

MR. VALCORE: Even the current final ruling by that Federal Circuit unbunk doesn't change the historical analysis because that was what I was citing to. I -- We weren't going to come in here with a bunch of treatises from somewhere to give to the Court. So, it had a very good historical analysis because Bruin suggests you may have to get to that point.

THE COURT: You're talking about the original Range decision?

MR. VALCORE: Right. And it discusses how there were status based restrictions on a category of people owning firearms back in England, back in Colonial America when the constitution was passed and up until the Civil War. We're not arguing that the firearm by felon statutes are historically old because they're not, unless you think 50 or 60 years is historically old. But that's not required. Bruin was very clear about that. It's an analog, not an identical. So, we do not have to find anything from 2 or 300 years ago in which they specifically weren't allowing felons or criminals to possess firearms.

THE COURT: I was actually a little --

MR. VALCORE: It's not required.

THE COURT: -- I was actually a little at a loss when I read the opinion as to the lack of historical accuracy as to this country's taking weapons away from folks that engaged in behavior that is now prescribed in our statutes -- in our violent statutes as well as nonviolent. I was a little concerned about the level of historical inaccuracy. Hence, folks have engaged in civil war. What was the action that was taken for an enemy combatant? They were deprived of their lib -- liberty to carry a firearm.

MR. VALCORE: Yeah.

THE COURT: However, when you look at the actions that were being taken, the crimes that were being committed, looting, burning, all the other things that were associated, raping -- If the acts involved now have in modern history statutes as to prohibit those from being committed, please --

MR. VALCORE: Well, no, and that's -- that’s -- that’s the problem with the historical analysis, but the -- the status issue did -- does exist. There are laws, if you go back to those times, where there were people who were not allowed. So,

despite the Second Amendment, there were still people who were not allowed to possess a firearm, including things that we would find abhorrent now, like just because you're Catholic, you know? These kinds of things, but those were laws that existed back then and what the Supreme Court seemed to be saying in Bruin is you've got to find some historical analysis that they understood back then that people could have this right restricted, otherwise it would just -- there -- there be no restrictions.

THE COURT: I -- I do believe that Scotland, in your earlier application of depriving thumbs -- in our modern terminology, they would apply the Iron Maiden to deprive them of their life.

MR. VALCORE: Mm-hmm.

THE COURT: The Iron Maiden was then applied and modified into the guillotine in France for similar offenses. It was interesting that those types of arguments were not raised by the Third Circuit.

MR. VALCORE: Yeah. Historical analysis gets foggy because it’s a different world than we live in and I think --

THE COURT: So, you're suggesting that the

application of the statute and a potential chaos as described in the dissent is something that this Court should consider regardless of the fact of what the holding is in Range? And I will say Range unbunk.

MR. VALCORE: -- No, that's actually not -- I'm just raising it as something that I think the Court should be concerned about. The Range 2 decision has to be viewed as you've already said in light of what it is.

THE COURT: Mm-hmm.

MR. VALCORE: So, Counsel for the defendant referenced a litany of some cases, without discussing the facts of them. The federal law is different from the Florida statute. The federal law 922 -- some subsection -- has in it a variety of different prohibitions, not just felons. So, misdemeanors, misdemeanors that can for some reason get a longer sentence than one year, indicted defendants who have not yet been convicted of any crime, much less a felony, and some of those are the cases that they're referencing. The -- the indicted defendants in at least two federal cases at the trial Court level have been struck down as -- based on Bruin because they haven't even been

convicted of a crime yet and it -- it wasn't a bond issue. It's literally a crime for you to -- if you're under federal indictment -- to possess a firearm.

THE COURT: Mm-hmm.

MR. VALCORE: It is a separate crime and they've said, “Well, I don't know about that, you know?” It's based in light of these three decisions. That sounds like that's not acceptable and so they've started to strike those down.

THE COURT: The analysis of those cases --

MR. VALCORE: Right.

THE COURT: -- were based on the fact that he's presumed -- the defendant is presumed innocent.

MR. VALCORE: Right. And so, that's a very different analysis. That's not what we're talking about here. We're talking about actually convicted people. So -- and felons. The Range decision was a misdemeanor in the State of Pennsylvania. We're not talking about misdemeanors here. The Florida statute doesn't address misdemeanors.

THE COURT: However, it is considered punishable by greater than 364.

MR. VALCORE: Yeah, but it's still a

misdemeanor.

THE COURT: The term misdemeanor is -- in the State of Florida, if you look at the -- the constitution, the only anomaly that we have is this DUI statute that's been modified, but misdemeanor 364 days or less, felony year or more. State of Florida is -- is abundantly clear as to what that is. That -- that statute in Pennsylvania crosses the line into what could be considered in the State of Florida a felony.

MR. VALCORE: Right. The problem is you can't start grabbing other people's statutes and talking about them. We're talking about our statute.

THE COURT: This is the State of Florida.

MR. VALCORE: So, misdemeanors in the State of Florida, don't qualify. That's not a crime. The DV case he's talking about in the federal system, that's also a misdemeanor case. So, they haven't cited a single case that I'm aware of, nor am I actually aware of one -- although it could have happened sometime in the two weeks I was on vacation. But I'm not aware, and no one cited one, anywhere in the United States that I'm aware of, in any State or the federal system, where anyone has held that a firearm by felon statute is

unconstitutional. They have struck down portions of the federal statute that related to indicted people and misdemeanors.

THE COURT: As applied, but --

MR. VALCORE: As applied to those specific defendants.

THE COURT: I -- I -- Is there anyone that's -- that you've seen that is facially unconstitutional across the board that applies “the people” test?

MR. VALCORE: No.

MR. DIRUZZO: Judge, this is -- is an expanding and evolving area of law, and so the fact that it hasn't happened yet doesn't mean that this Court shouldn't be the first to do it.

THE COURT: I -- I -- I don't disagree with you from that perspective. I just want to make sure that I'm aware of any case law that would imply -- that would be applicable out there. And I have not found a single case out there that declares a possession of firearm by convicted felon statute -- talking about the statute for a convicted felon having committed a crime, okay? -- that has been declared unconstitutional in the United States. I haven't seen one. If I -- if I'm

wrong -- and I've spent hours looking at this issue.

MR. VALCORE: I haven't seen one. And so, I cited a lot of cases in one of -- in -- in my response and that was just -- I actually cut it down. There was a lot more.

THE COURT: Mm-hmm.

MR. VALCORE: So -- but we're not doing a numbers comparison. The issue for Your Honor, as they correctly stated, is you're going to make this decision independently. We don't have binding Florida law yet. No one else in this Circuit has made this decision. I'm aware there's some other trial Courts in Florida that have, but again, that's not --

THE COURT: But not binding --

MR. VALCORE: -- that’s not binding on this Court, so I don't like to discuss those --

THE COURT: -- not -- right.

MR. VALCORE: -- because they could have ruled the other way and then I'd be asking you to ignore them then. So, I want to focus on what the Court could theoretically rely on as persuasive authority. They're asking you to consider the Range 2 decision out of the Federal Circuit, and

I'm asking you to consider the not yet -- still not yet final -- I checked again yesterday -- Edenfield decision that I've cited. Now, although it's still technically not yet final in Westlaw, the First DCA cited that decision in Stafford v. State case on July 12th where they again said, the firearm by felon statute is constitutional. So, I don't know what the delay is in finalizing the Edenfield decision, but at this point, it's just persuasive.

THE COURT: Potentially a Third Circuit decision.

MR. VALCORE: But at this point, it's persuasive authority for the Court and I think it's very persuasive because it's Florida and it's the Florida Appellate Court.

THE COURT: Of course.

MR. VALCORE: And it also makes the State's primary argument. I want to be crystal clear, our primary argument is the argument they make in Edenfield. That's the argument I made in the written response that I filed. And that is that we don't even get to the historical analysis and all that other stuff because this is not what the -- the Supreme Court of the United States has held in Heller, McDonald, and now Bruin. It is not. They

made it crystal clear in all three cases that this does not apply to firearm by felon statutes. They said it in the majority opinions in both Heller and McDonald and it was referenced in -- sort of vaguely referenced in the majority opinion in Bruin and then the concurring opinions -- two separate ones -- Alito and Kavanaugh, who voted for the majority opinion and they clarified -- and I think that's what a concurring opinion is, is it's a clarification of the discussions they had -- and I don't think it should be ignored. That -- that part I -- I fundamentally disagree with because if the Defense argument that all dicta, if you will, in all appellate decisions should be ignored, then why aren't all appellate decisions literally one sentence or one paragraph long? “The holding.” Well, they're not because they're explaining to us why they got to that and how they got to that and how we or you as a trial Judge should make your decision in your particular case, which is not going to be factually identical or we wouldn't be here having an argument. And -- and -- and so, this prevails throughout all appellate cases, all throughout the land, and certainly here in Florida.

We -- people come before you every day to

argue a motion to suppress. If there was an identical factual scenario in the State of Florida, presumably somebody would've found it and they just hand it to you and say, “We win. Let's go home.” But we don't. And we have an argument because there's some nuance to this particular factual situation that we somehow argue is different from that Appellate Court. And so, you don't have to follow that one or you should follow that one, and these are the arguments that get made. So, suggesting that we should just ignore what the Supreme Court justices themselves, who ruled and voted for all of these opinions, I -- I think that's -- that would be ignorant of us to just ignore what they said and suggest that it doesn't apply. They didn't mean it. Of course they mean it.

THE COURT: I’m not sure that their -- their -- that the suggestion is that I should ignore it. The suggestion is that I should take it in consideration in all of the argument that's being done, however, give it the weight that it merits based on the law of precedent. I think that that's the argument that's been made and --

MR. VALCORE: It sounded a little stronger to

me than that.

THE COURT: Well, I'm just giving you how I'm going to interpret it.

MR. VALCORE: Okay.

THE COURT: Okay.

MR. VALCORE: Fair enough. So, anyway -- so, Heller -- let's talk about the facts because the facts of appellate decisions matter. It's the basis upon which those decisions are made. As the Court pointed out, all three of these decisions, Heller, McDonald and Bruin, are based on civil cases. They're not -- they're not felonies. They're not -- they don't deal with that statute. So, in Heller, the City of Washington DC passed laws that prevented you from even possessing a firearm in your own home unless you dismantled it so that you couldn't even use it for self-defense.

And that started the ball rolling with the Supreme Court saying, "Hold on. You're all going way too far with your local restrictions. You've essentially made it impossible for a "law abiding citizen" to defend themselves in their own home. That's too far. We're striking that one down." It was very specific to that kind of issue. They didn't go further than that. That was what the

Heller decision was. Then, in McDonald, here, it's somewhat similar but not quite so onerous. Local restriction on the Second Amendment in which the City of Chicago basically said in order to have a firearm, you got to get a permit, but you can't get a permit to own all these different types of firearms, which they don't really describe what they are, but it sounds like they were your ordinary handguns and whatnot. They weren't -- you know -- machine guns and things. So, they struck that down because, again, too broad. "You're making it almost impossible or way too difficult for a "law abiding citizen" to purchase and possess a firearm for self-defense." And then, finally, in Bruin, they referenced the New York State law, as well as apparently there were four or five other states -- total of six that -- and it's specific, and I think this is an important fact to -- to discuss -- to carry concealed firearms. And -- because in Bruin they specifically said that you can have carrying concealed firearms laws. What you can't have is this "may" issue. It has to be a "shall" issue, that if the person otherwise qualifies you shall issue them the license. And in New York State, as well as these other states, they

have a “may,” where the government gets to decide.

THE COURT: Arbitrary decision making.

MR. VALCORE: Right. That you -- well, you had to actually go to them and prove to them that somehow you specially need self-defense.

THE COURT: Mm-hmm.

MR. VALCORE: And -- and only then are we going to let you do this thing that is otherwise granted to you by the Second Amendment. And the Supreme Court said, “We're not going to let you do that either.” Simultaneously saying, “But you can have shall issue laws.” So, our carrying concealed firearm law in Florida is still constitutional, but the argument is the firearm by felon law is not. That doesn't make logical sense that you can carry a concealed firearm but you -- that we’re going to -- we're going to somehow allow us to restrict that, but we can't restrict it from felons -- just from a logical safety of the community standard, which is presumably the theory behind carrying concealed firearm laws, is safety of the community -- So, we know who's just walking around carrying one that we can't see. So, if that's the -- the -- the genesis of those laws, then that's certainly the genesis of a firearm by felon law, is safety of

the community. So, it -- it doesn't just sort of logically make sense that you have one and not the other. But anyway -- so, that's the actual holdings of those three cases and the Supreme Court very clearly, we believe, stated in all three of those decisions, “We're not addressing firearm by felon laws and other types of laws that restrict” -- I -- I think they also address the mentally ill. Again, the way that we read those three decisions is that they're carving out in each of those decisions and saying repeatedly, “We're not saying you can't have laws that restrict possession of firearms to certain people who may be a danger to the community.”

They didn't say it exactly that way, but that's the -- the -- the inference you get from reading those decisions is that they're making it very clear repeatedly as they strike down these local laws, they're repeatedly saying, “Don't overreact to this. This -- We're not saying everybody gets to have one whenever they want, wherever they want. That's not what we're saying. We're just saying you can't pass such restrictive laws that “law abiding citizens” cannot lawfully possess and carry around a firearm.” The Second

Amendment guarantees that, and that's all they're saying. So, a felon, as the Edenfield decision said -- and that's the State's argument -- is not a "law abiding citizen." And we believe that is why the Supreme Court, in all three of those decisions, referenced that issue. "They have violated the law in a serious manner, not a misdemeanor -- a felony for which you could go to prison and we restrict other rights." Counsel for the defendant argued that if -- if our analysis of the Second Amendment is correct, then we would also necessarily have to agree to other laws that would restrict rights of other persons -- I guess felons -- to things like the First Amendment and the Fourth Amendment, but no one's passed any of those laws, not that I'm aware of, and we have it here in Florida and that's not what we're here to discuss. However, I did make this point in my written response. And so, I have for the Court and Counsel a case that I discovered recently, in which -- this is United States versus Riley, 2022 Westlaw 7610264 -- and the District Court in that decision references -- and I'm -- I'm only providing it for the point that this District Court in Virginia references the fact that we do in fact prevent felons from voting and

that is a constitutional right. So, in fact, we do prevent felons from doing more things than just not possessing firearms and there's been no suggestion that that's improper. So, the argument that this sort of applies to then all of their rights I think is a -- it's taken their argument too far. There are in fact other restrictions that are constitutional, that do apply to the Bill of Rights and other rights guaranteed to us in the Constitution and we do take these things away from people and there's been no suggestion that that's improper.

Now, maybe there will be someday, but as of right now, there’s not. So, that's mainly our argument is that their entire argument for the Court we believe extends past the actual rulings and holdings and intent of the Supreme Court in Heller, McDonald and Bruin, which is a line of cases. And if you look at the line of cases consistently and you read the decisions consistently, they're very clearly saying, “We're talking about very specific local restrictions on “law abiding citizens.” And they repeated in all three of those decisions -- wherever you want to find it in the decisions, it's repeated in them.

"We're not talking about firearm by felon laws." So, that's our -- our main argument. To the extent that there's a "historical analog," I cited to the original Range decision just for an analysis of that, however incomplete it may be or whatever. They did address a number of laws that did prevent an entire status category of people from possessing a firearm. And the -- those laws were historical and they did exist back then. And so, if the Supreme Court were requiring that analysis in Bruin, there is something. It's analogous. It's not identical, but it is analogous. And so, there was status restrictions in the past. This is a status restriction for a particular variety of people. It's been held constitutional in the State of Florida previously. There's nothing so far that says it's not. These -- the Bruin decision doesn't extend that far. It -- it -- it doesn't strike down the Florida law. And as applied to Mr. Woodson in particular, he was convicted of two separate felonies, not misdemeanors, for which he could have gone to prison and in the current case as applied, the actions are alleged to be violent. And so, therefore as applied, it seems that this is the type of person and is the person who should not

be allowed to possess a firearm under the Florida Constitution, under Florida law and under the Federal Constitution.

THE COURT: Let's say you were to -- in Range 2 -- in Range unbunk?

MR. VALCORE: As I said, to me, that is a very restricted as applied analysis to that specific defendant and his specific previous offense. They referenced that it was 25 some years before, that it was a misdemeanor, that it was not even a theft related -- sort of a -- sounds like a -- kind of a welfare fraud kind of thing and that he had no other history, you know? Mr. Woodson's prior is more recent, within the last 10 years. It's felony convictions in the State of Florida. It's two of them. The State of Florida, as we also mentioned in -- in one of -- or both of our responses, does have for -- an as applied type of challenge, it does have other options for defendants. If you are convicted of a felony in the State of Florida, you can seek pardon, number one, and then your rights are restored. And you can also seek partial clemency, in which you can ask the governor to give you back the right to possess a firearm despite your conviction. They do it all the time. I --

They cross my desk all the time, where I'm asked my opinion on it as to whether it should be granted or not. They're usually really old cases, you know? Things from the 80's and 90's, where people are now asking for it, but there's nothing that says he couldn't have asked for it. He didn't. So, there are other ways for a felon in the State of Florida to get that right restored if they choose to pursue them. So, as you address an as applied challenge, if you haven't bothered to take advantage of or even attempt to get that right restored, then we're going to what?

Wait until you get -- you know, that -- this goes to my point of the logical analysis of if we adopt this decision, then we're going to be in every courtroom in this courthouse and all throughout Florida with each individual defendant saying, "But not me. My -- my priors aren't serious enough. I have seven, but they're all thefts. I have one, but it's -- it's "not violent." And now we're going to argue about what's violent. Well, it's a burglary. That's kind of in the forcible felony statute in Florida, but it was a third degree burglary, so maybe," -- like it is going to be endless. I don't believe

that that was the intent of Bruin.

THE COURT: Florida Statute 775084 --

MR. VALCORE: Mm-hmm.

THE COURT: -- criminal statute --

MR. VALCORE: Mm-hmm.

THE COURT: -- addresses specifically the argument that you just made, in that it's not only how it's enhanced penalties if a person qualifies based on violent felonies and as to habitual felony offender statute, it also considers non-violent felonies for purpose of enhancement.

MR. VALCORE: Okay.

THE COURT: It also highlights that there is a specific possession of firearm by violent career criminal --

MR. VALCORE: Right.

THE COURT: -- based on those issues. Is there any case law that there’s ever been -- that -- that you're aware of that challenges constitutionality of that statute?

MR. VALCORE: The violent career criminal?

THE COURT: Mm-hmm.

MR. VALCORE: I would have to get back to you because I don't want to misstate anything. I believe I read something when I was doing all this

research because I was looking at all of those things and I thought there was a case where somebody challenged that, but I -- I'd have to find it. I -- I don't want to say something that's inaccurate.

THE COURT: All right. Is there anything else you have to say?

MR. VALCORE: No.

THE COURT: Rebuttal?

DEFENSE'S REBUTTAL ARGUMENT

MR. DIRUZZO: Yes, Your Honor. The government notes that my client could have sought clemency or something of that nature. Your Honor, constitutional rights are not at the largess of the government official or agent. Just like I don't have to ask for government permission to exercise my right to free speech or to be free from unreasonable searches or seizures, my client doesn't have to ask permission to exercise his constitutional right. The Counsel for the Government makes much to do with the fact that my client's priors were recent and that Range was 25 years in -- in the past, but the statute makes -- makes no distinction on the temporal aspect. So, to the extent that Counsel for the State is

implying that there is some temporal aspect, he's asking to effectively rewrite the statute and add text, which isn't there, which is not the purview of this Court. He also mentions that my client has been arrested and charged with what he considers to be a violent offense, but his argument clearly would run afoul of the expo fact of laws. My client has not been convicted of that -- that charge yet. And so, the question is not whether he will be convicted in the future, it's as of the day of his arrest.

THE COURT: I -- I don't think there's anything in the possession of firearm by convicted felon statute that addresses the nature of the crime charged or the underlying. The issue is whether your client is in possession of a firearm and whether he was convicted felon. Those are the only issues.

MR. DIRUZZO: Yes. Yes, but the argument for Counsel for the -- for the Government was that when -- when looking at an as applied challenge, you need to consider all the facts and the fact that he was arrested for what -- what Counsel for the Government considers to be -- you know -- a violent offense -- like the fact that he may or may not be

convicted in this case on Count 1, speaks nothing to whe -- whether on the date of his arrest --

THE COURT: He's presumed innocent.

MR. DIRUZZO: Exactly.

THE COURT: He's presumed innocent. There's no -- I didn't take Mr. Valcore's argument to suggest that great weight be given to the fact that he's charged in addition to the possession of firearm by convicted felon -- that he has an additional charge. If I understand this correctly, I didn't even consider it. I'm focusing on the charge that you have charged and he's presumed innocent under those circumstances. The issue as to violent felony, non-violent felony, or misdemeanor was raised as to the applicability of the statute, whether a misdemeanor is 364 or more in the Pennsylvania case whereby that statute addressed what a misdemeanor could be, but yet be punishable for more than 364. That's the only argument that I - that I understood.

MR. DIRUZZO: And -- and -- and there -- there is a problem in that argument. It's let's play that out to laws of a conclusion. The -- I don't think anyone can -- would be able to argue that the Florida legislature is free to define subject to

the Eighth Amendment in -- in the Florida Constitution, to define crimes and establish punishments. So, from my perspective, I don't think there -- there's anything that would prevent the Florida legislature from statutory abolishing misdemeanors and making everything a felony. And that -- that was the -- the point that I believe was made in the lead opinion in Range 2 and I also believe in the concurring opinions, but it's been stated in other Court decisions is the Second Amendment -- you know -- is not subject to the bigravities of the legislature's wins and prerogatives. Because it -- you know, going back to that -- that -- that misdemeanor -- you know -- felony distinction -- and -- and it shows why the Range Court was consider -- considering a case for an individual that was convicted of a “misdemeanor” under Pennsylvania law, but the crime was punishable by more than a year, therefore it met the federal definition of -- of -- of a felony. So, you have all these -- these -- or potentially have these -- these competing definitions that -- that are running through, and that just shows the -- - at -- at a certain level, the somewhat arbitrary nature of the -- of -- of the misdemeanor felon

distinction. So, I just raised that for -- for the Court's consideration.

THE COURT: And let -- let me just make sure that I'm clear. The State of Florida does not have that issue. We are about as clear as the state can be. Misdemeanors, 364 or less, felonies 365 and up.

MR. DIRUZZO: But -- but -- but -- but the point is I don't believe that's enshrined in Florida Constitution. That -- that --

THE COURT: It may not be enshrined in Constitution, but it is a past constitution muster at the time that each offense is raised and the sentencing provision is applied.

MR. DIRUZZO: Right, but -- but -- but that's -- that’s the point, Judge. If it's not defined the Florida Constitution, then in theory the Florida legislature is able to statutorily change it. So, in theory -- in theory, the -- the -- the -- the Florida legislature could say, “Yeah, misdemeanor is punishable by 366,” and then it'd be similar to the Pennsylvania scheme and then we're down to that proverbial rabbit hole, but I digress.

THE COURT: I get it.

MR. DIRUZZO: Counsel for the -- the State

mentions that -- that there's a constitutional right to voting. That is true, but I don't actually believe that the portions of the Constitution that reference “the people” talk about voting. And so, when -- when you -- when you talk about “the people” as the Second Amendment, the -- the First Amendment and the Fourth, that's the appropriate analysis. The fact that -- that voting can be restricted by operation of having a felony under the First Amendment or the -- the Florida Constitution analog, that says nothing to whether that provision or the -- that -- putting aside whether it is constitutional, that doesn't speak to the definition of “the people,” whether my client fits -- fits into the definition of -- of -- of “the people.”

THE COURT: The only -- the only right is both in the Constitution and Bill of Rights is the right to serve as a juror and right to a jury trial. And under those circumstances, there are laws that prohibit a convicted felon from serving as a jury unless their civil rights have been restored. That is the one constitutional right that appears in both the -- the Bill of Rights and the Constitution.

MR. DIRUZZO: And -- and the text of the Constitution.

THE COURT: And the text of the Constitution and addresses specifically --

MR. DIRUZZO: Mm-hmm.

THE COURT: -- “the people.”

MR. DIRUZZO: Counsel for -- for the Government also talks about his view reading Heller, McDonald and Bruin is talking about -- you know -- inferences and -- and infers that based upon the statements that those cases did not impact a -- you know -- the -- the longstanding prohibitions of -- of -- of felons. The problem that we have, Your Honor, is that inferences do not equal holdings and the holding of Bruin, which this Court must -- must apply, which I -- which I read in -- into the record, is -- is -- is clear. And so, the fact that there may be inferences or dicta in the lead opinion or in the concurring opinion of the Supreme Court -- you know -- just can't overrule the -- the holding in -- in --

THE COURT: It's about as simple as this. Does Buin it, address the constitutionality of a possession of a firearm by convicted felon statute?

MR. DIRUZZO: And as I stated, Your Honor, I

believe it does. A couple of other things --

THE COURT: How -- How so? How so? That was the -- that's the one question because Bruin is a civil case as well. How does it specifically address the constitutionality of a possession of a firearm by convicted felon statute?

MR. DIRUZZO: The Second Amendment addresses the right to keep and bear arms.

THE COURT: So far so good.

MR. DIRUZZO: A possession statute impacts the right to keep and bear arms. So, a felon in possession statute -- statutes that might disarm Quakers, Catholics, African-Americans or -- or -- or those -- those others would impact and would be -- fall under the clear text in the ambit of the Second Amendment. Once we -- we clear that hurdle, Your Honor -- and I submit that all the cases out there are -- are clear -- that I've mentioned do, then it is -- we're on step 2 of Bruin. The State has to put into the record -- which I submit it hasn't done, but assuming for the State of argument that -- that it’s -- that mere passing references to other -- other decisions is sufficient -- which I don't believe it is, because this Court would need to look at the references mentioned by the

State and then determine at the founding -- you know -- whether there was a consensus. But putting that part aside -- whether there is a historical analog. Now, it does not need to be an incredibly close fit, but it does need to be a rational and a reason fit. The -- the fact that one might be able to disarm Quakers at the founding speaks nothing as to whether the State or the federal government can disarm felons writ large. It says nothing where specific subsets of undesirable groups that were able to be disarmed at the founding are now be able to apply writ large to felons in this country.

THE COURT: You bring up an interesting argument and I highlighted that a little earlier. I'm not concerned about the issues of disarming Quakers or Catholics or those kinds of things because the reality is our historical challenges in many ways have torn great, great void in our society. But let's focus in on the actions that are actually -- that have been criminalized, not only federally but -- but by the states. For instance, someone who commits -- and I'm not going to use murder because of the distinct -- the federal distinctions, but I will use armed robbery, okay? An armed robbery violation in -- during the

Civil War. Somebody walking in with an arm, going in, taking somebody's possession from somebody's house. Opponent of if that person was caught by both -- either the -- either one of the sovereigns at the time, they would be subject to being disarmed and potentially punished, including death. So, when you look at the -- the types of crimes that were codified subsequently, those crimes were occurring in those days.

MR. DIRUZZO: Those days being when?

THE COURT: Being civil war. I'll take you back to the Civil War. I'm not going to take you back to the 17th century, but I'll take you back to the Civil War. Clearly, they were disarmed. Those offenses were recognized both from a military standpoint and a criminal standpoint and they were -- the person would be disarmed. So, there is a long time history of our pre -- our predecessors disarming folks that have committed these types of crimes. Whether they were codified at the time or not, whether there was a statutory prohibition or not, the actions themselves were prohibited or sanctioned. And when I say prohibited, if there was a statute in place. If there was, they were sanctioned. Those were offenses that were, for

whatever purpose, if there was no statute permitting them, but still considered to be against societal needs, society norms, and they were disarmed for having committed those -- those -- those offenses.

MR. DIRUZZO: And I'm going to have to push back on -- on -- on that, Your Honor.

THE COURT: Please, that's exactly what I -- I'm asking you to do.

MR. DIRUZZO: Be -- because 1) If I can quote Justice Gor -- Gorsuch (phonetic) in the McGirt (phonetic) v. Oklahoma case, the fact that something was done in the past in an unconstitutional manner does not mean that that is constitutional today. 2) The Supreme Court in Bruin talks about historical analogs and -- and problems. So, the problem addressed by the regulation or the law, you have to look at it as does -- does it address a problem that is unique to 22nd -- I mean, 21st cen -- century America? Is it of recent vintage addressing a recent problem or is -- is the law something addressing a longstanding problem? And so, to -- to your point, violence, robbery -- I mean, we have a common law for rob -- rob -- robbery. We've got a ton of --

THE COURT: Of course. That's exactly what I'm highlighting.

MR. DIRUZZO: Right. And -- and so, the point -- the point being is -- is that these problems are societal, that were -- were not only in -- when the Fourteenth Amendment was ratified, but when the Second Amendment was ratified in 17 -- 1789 I believe. But the point being is -- is that a recent vintage statute like the Florida felon in possession and -- and the federal felon in possession statute are addressing longstanding -- some would say, that go back to time memorial -- problems that -- that -- that we have had as a human race. So, that you have to then look to the historical record which Counsel for -- for the State -- you know -- admitted there -- there is no historical record of disarming felons.

And another point that was made in the -- in the Range decision is there is no statute that says that -- and it hasn't been -- nor there's a historical analog for saying, "You've been convicted of a crime and therefore, you are categorically not allowed to possess the item that was used to facilitate the crime." For example, if you're convicted of a DUI vehicular manslaughter

and you complete -- complete your term, you complete your sentence and -- and you're done, I know nothing that prevents you from -- from buying a car. If you do an agg/bat deadly weapon and you use a kitchen knife, once you've completed your sentence and -- and you're off, I know of nothing that says you can never own a kitchen knife again, but that highlights the point. It's like my client was convicted of -- of -- of -- of -- of two felonies that I've stipulated to for purposes of -- of this motion, but why is it that he has been dis -- disarmed with an item that he actually didn't even use?

I could understand there might be an argument -- which I'm not conceding, but I understand the emotional appeal to the argument that if you use a gun to commit a crime, you should not be able to have a gun -- you know -- moving forward, whether that's constitutional -- but I understand at an emotional level why people make that argument. My client wasn't convicted of that. He -- he wasn't convicted of firearm offenses. I mean, he -- And so, as a result, it’s like -- why is it that he's been disarmed of a Second Amendment right for offenses that -- that don’t even -- that weren't

violent and that had nothing to do -- you know -- with -- with firearms? And so, I -- I think that -- that just -- you know -- your focus is on the point of the lack of historical analogs to disarming felons writ large based upon -- based upon acts that -- we're putting aside violent offenses for -- for the moment because my client didn't commit violent offenses -- that -- that are mere felonies. So, I think to -- to summarize, Judge, I think the Range decision, the unbunk decision -- you know -- authored by Judge Hardman lays it out. It's also supported by the concurrent opinion by Judge Ambrose.

It’s also supported by the decision of Bullock, which I attached to my notice of supplemental authority, that those cases really laid out the analytical framework as -- as to why the federal felon in possession statute was -- was unconstitutional. And for all intents and purposes, there is no textual distinction between the Florida felon in possession statute and the federal one that makes any significance as to the analytical analysis that the Court needs -- needs to endeavor. As to -- to N-Feld, Your Honor, as -- as I addressed in -- in my sur-reply, I don't

believe N-Feld was -- was well-reasoned. I don't think it really delved in and grappled with -- with the problem. I don't think it held the State to its obligation to advance a historical record.

THE COURT: But it is precedent.

MR. DIRUZZO: It -- it -- it is precedent. Although, I -- I would submit it -- it does not bind -- does not bind this Court because at -- at a minimum, it never addressed the Florida Constitution, never even mentions it. And 2, Your Honor, I am -- I understand for purposes of State law -- I'm being very precise here. For purposes of State law, when there is not a conflicting decision out -- out of a DCA that a Circuit Court would have to look -- look to the only decision from the DCA that has spoken on the matter. However, I don't believe that rule applies as a matter of federal law and no matter what, I don't think there'll be any argument that looking to Bruin under the supremacy clause, Bruin analysis controls. So, if this Court concludes that N-Feld got it wrong and that the analysis needs to be different faithfully applying the Supreme Court's decision in Bruin, this Court needs to be faithful to -- to Bruin.

THE COURT: Anything else?

MR. VALCORE: No. Thank you, Judge.

MR. DIRUZZO: No, Judge.

THE COURT: Gentlemen, thank you very much. I appreciate your time and I appreciate your arguments. I'll have a decision for you shortly.

MR. VALCORE: Thank you.

MR. DIRUZZO: Thank you, Judge. All right.

THE COURT: Thank you very much gentlemen. Do we have future hearing dates for Mr. Woodson?

THE CLERK: No, Judge.

THE COURT: All right. Let's do this. This is a second degree felony.

THE CLERK: I think the case is probably assigned to Ms. Bartos.

THE COURT: I'm going to set this for October 5th for calendar call and October 16th for trial.

MR. VALCORE: Okay. Thank you.

MR. DIRUZZO: There's a slim possibility I'm going to be in trial in October, but my -- my associate can cover it and we'll -- we'll deal with -- with the trial based upon how this plays out, Judge. I just wanted to give you a heads up.

THE COURT: Not a problem. 10/5 and 10/16. I'll have an opinion for you shortly on this and --

MR. DIRUZZO: We'll take it from there.

THE COURT: -- we'll take it from there. Thank you very much, gentlemen. I truly appreciate your insights --

MR. DIRUZZO: Tyrone, how long have you been employed?

THE DEFENDANT: 17 months.

MR. DIRUZZO: Okay -- . And then, I'll reserve and then if he rules -- if he rules for you, then I'll reserve the right to take it up -- you know -- on appeal --

MR. VALCORE: Okay.

MR. DIRUZZO: Sound good?

MR. VALCORE: Cool.

THE COURT: Mr. Valcore, how long do you think that your office would need to get realistically ready on what I proposed while reviewing the HC's -- the Habitus capias?

MR. VALCORE: Well, we're going to do 50 a week, right?

THE COURT: I was going to -- no, I was going to do 100 a month.

MR. VALCORE: Oh, okay.

THE COURT: There -- These folks have quite a bit of responsibilities already.

MR. VALCORE: Well, as you pull them up, we'll look at them, you know? I'll take the opportunity to determine if some of them are even viable.

THE COURT: Okay.

MR. VALCORE: I may get rid of some. I don't think we're going to have a whole lot of people walking through the door, but there's -- I'm all for looking at -- especially some of the really old stuff --

THE COURT: I -- that's exactly --

MR. VALCORE: -- because occasionally people get arrested for something from 1991 and typically, we don't proceed. And so, I'm happy to address however many of those cases exist in your courtroom and everyone else's. So, this is an opportunity to do it cause I -- Otherwise, I have to pull thousands and thousands of cases and start reading them myself and I'm not going to do that. So, this gives us the opportunity.

THE COURT: No, absolutely. And I'll -- I'll break it up so that it's in 50 case increments and we'll go from there and I'll start with the oldest first.

MR. VALCORE: As long as there's at least -- you know -- a few weeks to a month notice so that

we have time to pull them and read them.

THE COURT: Oh, absolutely.

MR. VALCORE: Well, you got a notice of Defense anyway, right?

THE COURT: Absolutely. Absolutely.

MR. VALCORE: That's usually about a month out.

THE COURT: Thank you very much.

MR. VALCORE: No problem. Thank you, Judge.

THE COURT: See you all tomorrow. Thank you. You are welcome.

(Thereupon, the proceedings were concluded at 11:35 a.m.)

CERTIFICATE OF TRANSCRIPTION

The above and foregoing transcript is a true and correct typed copy of the contents of the file, which was digitally recorded in the proceeding identified at the beginning of the transcript, to the best of my ability, knowledge, and belief.

Audrey Chiquito

AUDREY CHIQUITO, Transcriber

October 15, 2023

REPORTER'S CERTIFICATE

THE STATE OF FLORIDA
COUNTY OF BROWARD:

I, Dalia Solomon, Court Reporter and Notary Public, certify that this transcript is a true and complete record of my notes.

I further certify that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel with the action, nor am I financially in the action.

DATED on this 19th day of July 2023.

Dalia Solomon

Dalia Solomon, Court Reporter