

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

SHAWN THOMAS BORNE,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

**APPENDIX
TO
PETITION FOR WRIT OF CERTIORARI**

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF WYOMING

FILED
U.S. DISTRICT COURT
DISTRICT OF WYOMING

2023 FEB -1 PM 12:59

MARGARET BOTKINS, CLERK
CASPER

UNITED STATES OF AMERICA

vs

SHAWN THOMAS BORNE

Case Number: 22-CR-83-SWS

Defendant's Attorney(s):
Jordan Deckenbach

JUDGMENT IN A CRIMINAL CASE

THE DEFENDANT pled guilty to count 1.

ACCORDINGLY, the court has adjudicated that the defendant is guilty of the following offense(s):

<u>Title and Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 U.S.C. §§ 922(g)(1) and 924(a)(2)	Felon in Possession of a Firearm	April 12, 2022	1

The defendant is sentenced as provided in pages 2 through 8 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

IT IS FURTHER ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of residence or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Defendant's USM No: 14515-510

January 31, 2023

Date of Imposition of Sentence


Scott W. Skavdahl

Chief United States District Judge

1/31/23
Date

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 32 months.

The Court recommends to the Bureau of Prisons that the defendant be placed at FCI Englewood, or in the alternative FCI Sheridan, to be close to family. The Court also strongly and emphatically recommends the defendant participate in the Residential Drug Abuse Program or any dual-diagnosis-type program given his mental health issues, as well as his addiction issues.

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

RETURN

I have executed this Judgment as follows:

Defendant delivered on _____ to _____ at _____, with a certified copy of this Judgment.

United States Marshal/Bureau of Prisons

By: _____
Authorized Agent

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 3 years.

The defendant shall not commit another federal, state or local crime.

The defendant shall not illegally possess a controlled substance.

The defendant shall refrain from any unlawful use of a controlled substance and must submit to one drug test within 15 days of release from imprisonment and at least at least two periodic drug tests thereafter, not to exceed ten (10) drug tests per month, for use of controlled substance, but the condition stated in this paragraph may be ameliorated or suspended by the court for any individual defendant if the defendant's presentence report or other reliable information indicates a low risk of future substance abuse by the defendant.

If a fine is imposed and has not been paid upon release to supervised release, the defendant shall adhere to an installment schedule to pay that fine.

The defendant shall (A) make restitution in accordance with 18 U.S.C. §§ 2248, 2259, 2264, 2327, 3663, 3663A, and 3664; and (B) pay the assessment imposed in accordance with 18 U.S.C. § 3013. If there is a court-established payment schedule for making restitution or paying the assessment (see 18 U.S.C. § 3572(d)), the defendant shall adhere to the schedule.

The defendant shall submit to the collection of a DNA sample at the direction of the United States Probation Office if the collection of such a sample is authorized pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. § 14135a).

The defendant shall comply with the standard conditions that have been adopted by this Court as defined in the contents of the Standard Conditions page (if included in this judgment). If this judgment imposes a restitution obligation, it shall be a condition of supervised release that the defendant pay any such restitution that remains unpaid at the commencement of the term of supervised release. The defendant shall comply with the following additional conditions:

The defendant shall participate in and successfully complete substance abuse treatment in a program approved by the U.S. Probation Officer, and abide by the rules, requirements and conditions of the treatment program. The defendant shall not discontinue treatment without the permission of the probation officer.

The defendant must submit to substance abuse testing to determine if he/she has used a prohibited substance. Testing may include urine testing, the wearing of a sweat patch, breathalyzer, a remote alcohol testing system, an alcohol monitoring technology program, and/or any form of prohibited substance screening or testing. The defendant shall not attempt to obstruct or tamper with the testing methods nor possess any device or item used to evade or

impede testing. Furthermore, the defendant may be required to pay all, or a portion, of the costs of the testing.

The defendant shall submit his or her person, property, storage facility, house, residence, office, vehicle, papers, computers (as defined in 18 U.S.C. § 1030(e)(1)), or other electronic communications or data storage devices or media, to a search conducted by a United States probation officer at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition. Failure to submit to a search may be grounds for revocation of release. The defendant shall warn any other occupants that the premises may be subject to searches pursuant to this condition.

The defendant shall participate in a cognitive-behavioral treatment regimen that may include, but is not limited to, Moral Reconciliation Therapy, Cognitive Thinking, Thinking for a Change, or Interactive Journaling. The defendant shall actively participate in treatment until successfully discharged or until the U.S. Probation Officer has excused the defendant from the treatment regimen.

The defendant shall participate in and successfully complete mental health treatment in a program approved by the U.S. Probation Officer, and abide by the rules, requirements and conditions of the treatment program. The defendant shall not discontinue treatment without the permission of the probation officer.

The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act in any federal, state, local or tribal jurisdiction where the defendant resides, is employed, carries on a vocation, or is a student, as directed by law.

The defendant shall participate in programming for a high school equivalency or GED and shall complete the program to the best of his ability.

STANDARD CONDITIONS OF SUPERVISION

1. The defendant shall report to the probation office in the federal judicial district where he or she is authorized to reside within 72 hours of the time the defendant was sentenced or released from imprisonment, unless the probation officer instructs the defendant to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, the defendant will receive instructions from the court or the probation officer about how and when to report to the probation officer, and the defendant shall report to the probation officer as instructed.
3. The defendant shall not knowingly leave the federal judicial district where he or she is authorized to reside without first getting permission from the court or the probation officer.
4. The defendant shall answer truthfully the questions asked by the probation officer.
5. The defendant shall live at a place approved by the probation officer. If the defendant plans to change where he or she lives or anything about his or her living arrangements (such as the people the defendant lives with), the defendant shall notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, the defendant shall notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. The defendant shall allow the probation officer to visit the defendant at any time at his or her home or elsewhere, and the defendant shall permit the probation officer to take any items prohibited by the conditions of the defendant's supervision that he or she observes in plain view.
7. The defendant shall work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses the defendant from doing so. If the defendant does not have full-time employment he or she shall try to find full-time employment, unless the probation officer excuses the defendant from doing so. If the defendant plans to change where the defendant works or anything about his or her work (such as the position or the job responsibilities), the defendant shall notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, the defendant shall notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. The defendant shall not communicate or interact with someone the defendant knows is engaged in criminal activity. If the defendant knows someone has been convicted of a felony, the defendant shall not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If the defendant is arrested or questioned by a law enforcement officer, the defendant shall notify the probation officer within 72 hours.

10. The defendant shall not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person, such as nunchakus or tasers).
11. The defendant shall not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that the defendant poses a risk to another person (including an organization), the probation officer may, after obtaining Court approval, require the defendant to notify the person about the risk and the defendant shall comply with that instruction. The probation officer may contact the person and confirm that the defendant has notified the person about the risk.
13. The defendant shall follow the instructions of the probation officer related to the conditions of supervision.

FINANCIAL PENALTIES

The defendant shall pay the following total financial penalties in accordance with the schedule of payments set out below.

Count	Assessment	Community Restitution	Fine	
1	\$100.00			
Notes:				
Totals:	\$100.00			

The fine and/or restitution includes any costs of incarceration and/or supervision. The fine and/or restitution, which is due immediately, is inclusive of all penalties and interest, if applicable.

The defendant shall pay interest on any fine and/or restitution of more than Two Thousand Five Hundred Dollars (\$2,500.00), unless the fine and/or restitution is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the below payment options are subject to penalties for default and delinquency pursuant to 18 U.S.C. § 3612(g).

The court has determined that the defendant does not have the ability to pay interest or penalties and it is ordered that:

The interest and penalties not be applied to fine and/or restitution.

SCHEDULE OF PAYMENTS

Payments shall be applied in the following order: (1) assessment; (2) community restitution; (3) fine principal; (4) cost of prosecution; (5) interest; (6) penalties.

The total fine and other monetary penalties shall be due in full immediately.

IT IS ORDERED the defendant shall pay a special assessment fee in the amount of \$100.00, which shall be due immediately. Payments for monetary obligations shall be made payable by cashier's check or money order to the Clerk of the U.S. District Court, 2120 Capitol Avenue, Room 2131, Cheyenne, Wyoming 82001 and shall reference the defendant's case number, 22-CR-83-SWS. The defendant shall participate in the Inmate Financial Responsibility Program to pay his/her monetary obligations. The defendant shall pay all financial obligations immediately. While incarcerated, the defendant shall make payments of at least \$25 per quarter. Any amount not paid immediately or through the Inmate Financial Responsibility Program shall be paid commencing 60 days after his/her release from confinement in monthly payments of not less than 10% of the defendant's gross monthly income. All monetary payments shall be satisfied not less than 60 days prior to the expiration of the term of supervised release.

2023 WL 6383732

Only the Westlaw citation is currently available.

United States Court of Appeals, Tenth Circuit.

UNITED STATES of America, Plaintiff - Appellee,

v.

Shawn Thomas BORNE, Defendant - Appellant.

No. 23-8008

|

FILED October 2, 2023

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

Attorneys and Law Firms

Jonathan C. Coppom, Assistant U.S. Attorney, U.S. Department of Justice, Cheyenne, WY, William A. Glaser, U.S. Department of Justice, Washington, DC, for Plaintiff-Appellee.

[Leah Deborah Yaffe](#), Office of the Federal Public Defender, Denver, CO, for Defendant-Appellant.

Before [CARSON](#), [BALDOCK](#), and [EBEL](#), Circuit Judges. *

ORDER AND JUDGMENT **

[Joel M. Carson III](#), Circuit Judge

*1 A grand jury indicted Defendant on one count of possession of a firearm in violation of [18 U.S.C. § 922\(g\)\(1\)](#). Defendant possessed a .380 pistol and a LAR-15 rifle. He has two prior felony convictions—one for attempted possession of a stolen vehicle under Nevada state law, arising from an incident involving a “bait moped” that would not start, and another for possession of methamphetamine under Wyoming state law.

Congress long ago prohibited felons—even non-violent felons—from possessing firearms. [18 U.S.C. § 922\(g\)\(1\)](#). Defendant moved to dismiss the indictment against him considering the Supreme Court's recent decision in [New York State Rifle & Pistol Association, Inc. v. Bruen](#), [142 S. Ct. 2111 \(2022\)](#), which created a new test for the scope of the right to possess firearms. Defendant brings both a facial and an as-applied challenge to the constitutionality of the ban.¹ The district court issued an oral ruling denying Defendant's motion to dismiss. Defendant pleaded guilty but preserved his right to appeal the motion to dismiss. The district court sentenced Defendant to thirty-two months' imprisonment and three years' supervised release.

While Defendant's appeal was pending, we decided [Vincent v. Garland](#), [2023 WL 5988299 \(10th Cir. Sept. 15, 2023\)](#), in which we held that the Supreme Court's new test in [Bruen](#) does not expressly overrule our precedent from [United States v. McCane](#), [573 F.3d 1037 \(10th Cir. 2009\)](#), upholding the constitutionality of the ban. After we issued [Vincent](#), Defendant filed an unopposed motion to expedite decision. In that motion, he acknowledges that [Vincent](#) forecloses Second Amendment challenges to [§ 922\(g\)\(1\)](#). Defendant contends that an expedited decision will allow him to promptly petition for rehearing so that he may receive timely relief from his sentence if he succeeds. The government does not oppose the motion.

Exercising jurisdiction under [28 U.S.C. § 1291](#), we grant Defendant's motion to expedite decision and affirm the district court's decision upholding the constitutionality of [18 U.S.C. § 922\(g\)\(1\)](#).

A9

AFFIRMED.

All Citations

Not Reported in Fed. Rptr., 2023 WL 6383732

Footnotes

- * After examining the briefs and appellate record, this panel previously determined unanimously to grant the government's unopposed motion for a decision on the briefs without oral argument. See [Fed. R. App. P. 34\(f\)](#); [10th Cir. R. 34.1\(G\)](#). The case is therefore submitted without oral argument.
- ** This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with [Fed. R. App. P. 32.1](#) and [10th Cir. R. 32.1](#).
- 1 Defendant also asserts that Congress exceeded its Commerce Clause authority in enacting the relevant portion of [§ 922\(g\)\(1\)](#). Defendant recognizes that this claim is foreclosed and must fail but brings it anyway for preservation purposes only.

End of Document

© 2025 Thomson Reuters. No claim to original U.S. Government Works.

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

FILED
United States Court of Appeals
Tenth Circuit

December 21, 2023

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

SHAWN THOMAS BORNE,

Defendant - Appellant.

No. 23-8008
(D.C. No. 1:22-CR-00083-SWS-1)
(D. Wyo.)

ORDER

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

Appellant's petition for rehearing is denied.

The petition for rehearing en banc was transmitted to all of the judges of the court who are in regular active service. As no member of the panel and no judge in regular active service on the court requested that the court be polled, that petition is also denied.

Entered for the Court



CHRISTOPHER M. WOLPERT, Clerk

**Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001**

Scott S. Harris
Clerk of the Court
(202) 479-3011

November 8, 2024

Clerk
United States Court of Appeals
for the Tenth Circuit
Byron White United States Courthouse
1823 Stout Street
Denver, Colorado 80257-2505

**Re: Shawn T. Borne
v. United States
No. 23-7293 (Your docket No. 23-8008)**

Dear Clerk:

Attached please find a certified copy of the judgment of this Court in the above-entitled case.

Sincerely,

SCOTT S. HARRIS, Clerk

By



M. Altner
Assistant Clerk – Judgments

Enc.
cc: All counsel of record

**Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001**

Scott S. Harris
Clerk of the Court
(202) 479-3011

November 8, 2024

Ms. Leah D. Yaffe, Esq.
Office of the Federal Public Defender
633 17th Street, Suite 1000
Denver, CO 80202

Mrs. Elizabeth B. Prelogar, Esq.
Solicitor General
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001

**Re: Shawn T. Borne
v. United States
No. 23-7293**

Dear Counsel:

Today, a certified copy of the judgment of this Court in the above-entitled case was emailed to the Clerk of the United States Court of Appeals for the Tenth Circuit.

Sincerely,

SCOTT S. HARRIS, Clerk

By



M. Altner
Assistant Clerk – Judgments

cc: Clerk, 10th Cir.
(Your docket No. 23-8008)

A13

Supreme Court of the United States

No. 23-7293

SHAWN THOMAS BORNE,

Petitioner

v.

UNITED STATES

ON PETITION FOR WRIT OF CERTIORARI to the United States Court of Appeals for the Tenth Circuit.

THIS CAUSE having been submitted on the petition for writ of certiorari and the response thereto.

ON CONSIDERATION WHEREOF, it is ordered and adjudged by this Court that the motion for leave to proceed *in forma pauperis* and the petition for writ of certiorari are granted. The judgment of the above court is vacated, and the case is remanded to the United States Court of Appeals for the Tenth Circuit for further consideration in light of *United States v. Rahimi*, 602 U. S. ____ (2024).

October 7, 2024



FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

October 7, 2024

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

SHAWN THOMAS BORNE,

Defendant - Appellant.

No. 23-8008
(D.C. No. 1:22-CR-00083-SWS-1)
(D. Wyo.)

ORDER

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

The Supreme Court of the United States entered a judgment on October 7, 2024, vacating the judgment of this court and remanding the cause for further proceedings.

Upon further consideration, the mandate issued to the United States District Court for the District of Wyoming on December 29, 2023, is recalled effective immediately and the judgment of this court filed October 2, 2023, is vacated.

Counsel will be notified if this court desires further briefing prior to disposition of this appeal upon remand.

Entered for the Court



CHRISTOPHER M. WOLPERT, Clerk

2025 WL 687030

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

UNITED STATES of America, Plaintiff - Appellee,

v.

Shawn Thomas BORNE, Defendant - Appellant.

No. 23-8008

|

FILED March 4, 2025

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

Attorneys and Law Firms

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

[Leah Deborah Yaffe](#), Office of the Federal Public Defender, Denver, CO, for Defendant - Appellant.

Before CARSON, [BALDOCK](#), and EBEL, Circuit Judges. *

ORDER AND JUDGMENT **

[Joel M. Carson III](#), Circuit Judge

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

In his 2023 appeal, Defendant brought both a facial and an as-applied challenge to the constitutionality of 18 U.S.C. § 922(g)(1). While Defendant's appeal was pending, we decided [Vincent v. Garland](#), 80 F.4th 1197 (10th Cir. 2023) (hereinafter [Vincent I](#)), in which we held that the Supreme Court's decision in [Bruen](#) does not expressly overrule [United States v. McCane](#), 573 F.3d 1037 (10th Cir. 2009)—which upheld § 922(g)(1)'s constitutionality. After we issued [Vincent I](#), Defendant filed an unopposed motion to expedite decision. In that motion, he acknowledged that [Vincent I](#) forecloses Second Amendment challenges to § 922(g)(1) but contended that an expedited decision would allow him to promptly petition for rehearing so that he may receive timely relief from his sentence if he succeeded. Exercising jurisdiction under 28 U.S.C. § 1291, we granted Defendant's motion to expedite decision and affirmed the district court's decision upholding the constitutionality of § 922(g)(1). [United States v. Borne](#), 2023 WL 6383732 (10th Cir. Oct. 2, 2023).

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

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

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

AFFIRMED.

All Citations

Not Reported in Fed. Rptr., 2025 WL 687030

Footnotes

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

Supreme Court of the United States

Office of the Clerk

Washington, DC 20543-0001

Scott S. Harris
Clerk of the Court
(202) 479-3011

May 28, 2025

Clerk
United States Court of Appeals for the Tenth
Circuit
Byron White Courthouse
1823 Stout Street
Denver, CO 80257

RECEIVED
U.S. COURT OF APPEALS
10TH CIRCUIT
2025 JUN -2 10:10:02

Re: Shawn Thomas Borne
v. United States
Application No. 24A1156
(Your No. 23-8008)

Dear Clerk:


The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to Justice Gorsuch, who on May 28, 2025, extended the time to and including July 2, 2025.

This letter has been sent to those designated on the attached notification list.

Sincerely,

Scott S. Harris, Clerk

by


Lisa Nesbitt
Case Analyst

**Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001**

Scott S. Harris
Clerk of the Court
(202) 479-3011

NOTIFICATION LIST

Ms. Leah D. Yaffe
Office of the Federal Public Defender
633 17th Street, Suite 1000
Denver, CO 80202

Mr. D. John Sauer
Solicitor General
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Clerk
United States Court of Appeals for the Tenth Circuit
Byron White Courthouse
1823 Stout Street
Denver, CO 80257