

## APPENDIX

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IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF IOWA  
DAVENPORT DIVISION

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UNITED STATES OF AMERICA,

Plaintiff,

v.

BRANDON ALLEN HAYNES,

Defendant.

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**No. 3:23-cr-00025-RGE-SBJ**

**ORDER DENYING  
DEFENDANT'S  
MOTION TO DISMISS  
INDICTMENT**

**I. INTRODUCTION**

A grand jury in the Southern District of Iowa returned an indictment charging Defendant Brandon Allen Haynes with possessing a firearm and ammunition as a felon in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(8). Redacted Indictment 1, ECF No. 16. Haynes moves to dismiss the indictment, arguing the Supreme Court's decision in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S.Ct. 2111 (2022), has rendered § 922(g)(1) unconstitutional. Def.'s Mot. Dismiss, ECF No. 31; *see also* Def.'s Br. Supp. Mot. Dismiss, ECF No. 31-1. The Government resists. Gov't's Resist. Def.'s Mot. Dismiss, ECF No. 39. For the reasons set forth below, the Court denies Haynes's motion.

**II. DISCUSSION**

The Second Amendment provides: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. Const. amend. II. "[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." *Bruen*, 142 S. Ct. at 2122 (citing *District of Columbia v. Heller*, 554 U.S. 570 (2008); *McDonald v. Chicago*, 561 U.S. 742, (2010)); *see also id.* at 2131 ("The Second Amendment . . . 'surely elevates above all other interests

the right of law-abiding, responsible citizens to use arms' for self -defense." (quoting *Heller*,

554 U.S. at 635)). Such a right also applies outside the home. *Id.* at 2135.

“When the Second Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation.” *Id.* at 2129–30.

Here, Haynes asserts a Second Amendment challenge to 18 U.S.C. § 922(g)(1). *See* ECF Nos. 31, 31-1. Section 922(g)(1) prohibits “any person . . . who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year” from “possess[ing] . . . any firearm . . . .” 18 U.S.C. § 922(g)(1). The Court assumes for purposes of its analysis that because § 922(g)(1) restricts the “possess[ion]” of “any firearm,” it regulates conduct protected by the Second Amendment. *But see United States v. Daniels*, 610 F. Supp. 3d 892, 894 (S.D. Miss. 2022) (recognizing there is “some doubt” that § 922(g)(3) is “textually covered by the Second Amendment, insofar as it has been interpreted to guarantee the right to keep and bear arms to ordinary, law-abiding, responsible citizens concerned with self-defense”).

Having found § 922(g)(1) implicates conduct protected by the Second Amendment, the Court turns to whether § 922(g)(1) “is consistent with this Nation’s historical tradition of firearm regulation.” *Bruen*, 142 S. Ct. at 2126. When analyzing regulations “unimaginable at the founding,” courts determine whether the regulation at issue is “relevantly similar” to a “historical regulation” that was consistent with the “historically fixed meaning” of the Second Amendment. *Id.* at 2132. “[W]hether modern and historical regulations impose a comparable burden on the right of armed self-defense and whether that burden is comparably justified are ‘central’ considerations when engaging in an analogical inquiry.” *Id.* at 2133 (quoting *McDonald*, 561 U.S. at 767).

For the reasons stated in the Government’s thorough and well-reasoned brief, the Court finds § 922(g)(1) “is consistent with this Nation’s historical tradition of firearm regulation.” *Id.* at 2126; *see also* Order Den. Def.’s Mot. Dismiss, *United States v. Doss*, No. 4:21-cr-00074-

RGE-HCA (S.D. Iowa Aug. 2, 2022), ECF No. 126; ECF No. 39 at 1–12.

Haynes also argues § 922(g)(1) “is unconstitutional as applied here.” ECF No. 31-1 at 7. He asserts “[t]he *Bruen* opinion appears to have abrogated this Circuit’s case law on as-applied challenges to § 922(g)(1).” *Id.* (referring to *United States v. Hughley*, 691 F. App’x 278 (8th Cir. 2017)). He claims that because his prior “adult felonies are nonviolent,” he should not be “grouped with those deemed ‘dangerous’ at the time of the adoption of the Second Amendment.” *Id.* at 7–8. Nothing in *Bruen* undermines the Eighth Circuit’s holding in *Hughley* that § 922(g)(1) extends to nonviolent felons. *See Bruen*, 142 S.Ct. 2111; *Hughley*, 691 F. App’x at 279.

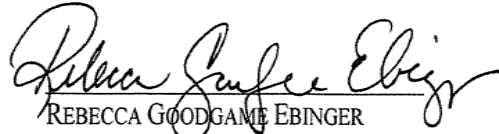
### III. CONCLUSION

Haynes is not entitled to relief.

**IT IS ORDERED** that Defendant Brandon Allen Haynes’s Motion to Dismiss, ECF No. 31, is **DENIED**.

**IT IS SO ORDERED.**

Dated this 31st day of May, 2023.

  
REBECCA GOODGAME EBINGER  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF IOWA

UNITED STATES OF AMERICA

v.

BRANDON ALLEN HAYNES

JUDGMENT IN A CRIMINAL CASE

Case Number: 3:23-cr-00025-001

USM Number: 45059-510

Terence L. McAtee  
Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) One of the Indictment filed on March 8, 2023.

☐ pleaded nolo contendere to count(s)  
which was accepted by the court.

☐ was found guilty on count(s)  
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section ?	Nature of Offense	Offense Ended	Count
18 U.S.C. §§ 922(g)(1), 924(a)(8)	Felon in Possession of a Firearm and Ammunition	12/15/2022	One

☐ See additional count(s) on page 2

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

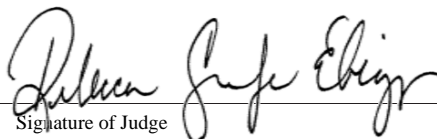
☐ The defendant has been found not guilty on count(s)

☐ Count(s) is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

January 24, 2024

Date of Imposition of Judgment



Signature of Judge

Rebecca Goodgame Ebinger, U.S. District Judge

Name of Judge

Title of Judge

January 24, 2024

Date

sent to client 01/26/24

DEFENDANT: BRANDON ALLEN HAYNES  
CASE NUMBER: 3:23-cr-00025-001

## IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

96 months as to Count One of the Indictment filed on March 8, 2023.

☒ The court makes the following recommendations to the Bureau of Prisons:

The defendant be placed a facility as close to Burlington, Iowa as possible. The Court also recommends the defendant be made eligible for the 500 hour residential drug abuse program (RDAP) or any other substance abuse program and be afforded educational opportunities in welding, finance, and/or business management.

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

☐ The defendant is remanded to the custody of the United States Marshal for surrender to the ICE detainer.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at \_\_\_\_\_ ☐ a.m. ☐ p.m. on \_\_\_\_\_

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before \_\_\_\_\_ on \_\_\_\_\_

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

## RETURN

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_

a \_\_\_\_\_, with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

By \_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL

DEFENDANT: BRANDON ALLEN HAYNES  
CASE NUMBER: 3:23-cr-00025-001

## **SUPERVISED RELEASE**

Upon release from imprisonment, you will be on supervised release for a term of :  
Three years as to Count One of the Indictment filed on March 8, 2023.

## **MANDATORY CONDITIONS**

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
  - ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: BRANDON ALLEN HAYNES  
CASE NUMBER: 3:23-cr-00025-001

Judgment Page: 4 of 7

**STANDARD CONDITIONS OF SUPERVISION**

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must 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, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must 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. You must 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 you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

**U.S. Probation Office Use Only**

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: [www.uscourts.gov](http://www.uscourts.gov).

Defendant's Signature \_\_\_\_\_

Date \_\_\_\_\_



DEFENDANT: BRANDON ALLEN HAYNES  
CASE NUMBER: 3:23-cr-00025-001

Judgment Page: 5 of 7

### **SPECIAL CONDITIONS OF SUPERVISION**

You must participate in a program of testing and/or treatment for substance abuse, as directed by the Probation Officer, until such time as the defendant is released from the program by the Probation Office. At the direction of the probation office, you must receive a substance abuse evaluation and participate in inpatient and/or outpatient treatment, as recommended. Participation may also include compliance with a medication regimen. You will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment. You must not use alcohol and/or other intoxicants during the course of supervision.

You must submit to a mental health evaluation. If treatment is recommended, you must participate in an approved treatment program and abide by all supplemental conditions of treatment. Participation may include inpatient/outpatient treatment and/or compliance with a medication regimen. You will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment.

You must participate in a cognitive behavioral treatment program, which may include journaling and other curriculum requirements, as directed by the U.S. Probation Officer.

You shall not knowingly associate or communicate with any member of the Peckerwoods criminal street gang, or any other criminal street gang.

You will submit to a search of your person, property, residence, adjacent structures, office, vehicle, papers, computers (as defined in 18 U.S.C. § 1030(e)(1)), and other electronic communications or data storage devices or media, conducted by a U.S. Probation Officer. Failure to submit to a search may be grounds for revocation. You must warn any other residents or occupants that the premises and/or vehicle may be subject to searches pursuant to this condition. An officer may conduct a search pursuant to this condition only when reasonable suspicion exists that you have violated a condition of your release and/or that the area(s) or item(s) to be searched contain evidence of this violation or contain contraband. Any search must be conducted at a reasonable time and in a reasonable manner. This condition may be invoked with or without the assistance of law enforcement, including the U.S. Marshals Service.

DEFENDANT: BRANDON ALLEN HAYNES  
CASE NUMBER: 3:23-cr-00025-001**CRIMINAL MONETARY PENALTIES**

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

- ☐ Pursuant to 18 U.S.C. § 3573, upon the motion of the government, the Court hereby remits the defendant's Special Penalty Assessment; the fee is waived and no payment is required.

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
<b>TOTALS</b>	\$ 100.00	\$0.00	\$ 0.00	\$ 0.00	\$ 0.00

- ☐ The determination of restitution is deferred until \_\_\_\_\_. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.
- ☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss***</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
<b>TOTALS</b>		\$0.00	\$0.00

- ☐ Restitution amount ordered pursuant to plea agreement \$ \_\_\_\_\_
- ☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine 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 payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- ☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:
- ☐ the interest requirement is waived for the ☐ fine ☐ restitution.
- ☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

\*Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

\*\* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

\*\*\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: BRANDON ALLEN HAYNES  
CASE NUMBER: 3:23-cr-00025-001

SCHEDULE OF PAYMENTS

Having assessed the defendant’s ability to pay, payment of the total criminal monetary penalties is due as follows:

- A

☒ Lump sum payment of \$ 100.00 due immediately, balance due

☐ not later than \_\_\_\_\_, or
☒ in accordance
☐ C,
☐ D,
☐ E, or
☒ F below; or
- B

☐ Payment to begin immediately (may be combined with
☐ C,
☐ D, or
☐ F below); or
- C

☐ Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after the date of this judgment; or
- D

☐ Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E

☐ Payment during the term of supervised release will commence within \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant’s ability to pay at that time; or
- F

☒ Special instructions regarding the payment of criminal monetary penalties:

All criminal monetary payments are to be made to:  
Clerk’s Office, United States District Court, P.O. Box 9344, Des Moines, IA 50306-9344.

While on supervised release, you shall cooperate with the United States Probation Office in developing a monthly payment plan, which shall be subject to the approval of the Court, consistent with a schedule of allowable expenses provided by the United States Probation Office.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All crimnal monetary penalties, except those payments made through the Federal Bureau of Prisons’ Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Case Number Defendant and Co-Defendant Names (including defendant number)	Total Amount	Joint and Several Amount	Corresponding Payee, if appropriate
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- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☒ The defendant shall forfeit the defendant’s interest in the following property to the United States:

all firearms, magazines, and ammunition involved in the commission of said offense, including, but not limited to, the firearm and ammunition identified in Count One of the Indictment filed on March 8, 2023, specifically the loaded, SCCY CPX-2, nine-millimeter, semiautomatic pistol (SN: 369782) and three loaded magazines identified in the preliminary order of forfeiture at docket entry 82.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTa assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

United States Court of Appeals  
For the Eighth Circuit

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No. 24-1242

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United States of America

*Plaintiff - Appellee*

v.

Brandon Allen Haynes

*Defendant - Appellant*

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Appeal from United States District Court  
for the Southern District of Iowa - Eastern

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Submitted: February 10, 2025

Filed: May 1, 2025

[Unpublished]

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Before LOKEN, BENTON, and STRAS, Circuit Judges.

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PER CURIAM.

Brandon Haynes pleaded guilty to unlawfully possessing a firearm and ammunition, *see* 18 U.S.C. §§ 922(g)(1), 924(a)(8), after the district court<sup>1</sup> denied his motion to dismiss the indictment. On appeal, he argues that the felon-in-

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<sup>1</sup>The Honorable Rebecca Goodgame Ebinger, United States District Judge for the Southern District of Iowa.

possession statute violates the Second Amendment, both facially and as applied to him. Circuit precedent forecloses both arguments, so we affirm. *See Mader v. United States*, 654 F.3d 794, 800 (8th Cir. 2011) (en banc) (“It is a cardinal rule in our circuit that one panel is bound by the decision of a prior panel.” (citation omitted)).

Under federal law, felons like Haynes cannot possess firearms. *See* 18 U.S.C. § 922(g)(1) (disarming those “who ha[ve] been convicted” of “a crime punishable by imprisonment for a term exceeding one year”). In two recent cases, we held that this prohibition is constitutional, regardless of the facts of the crime itself, the nature of the underlying felony, or the defendant’s history.<sup>2</sup> *See United States v. Cunningham*, 114 F.4th 671, 675 (8th Cir. 2024) (concluding that it is facially constitutional); *United States v. Jackson*, 110 F.4th 1120, 1125 (8th Cir. 2024) (cutting off as-applied challenges too). To the extent Haynes disagrees with either decision, his remedy lies with the en banc court, not with us. *See Liberty Mut. Ins. Co. v. Elgin Warehouse & Equip.*, 4 F.3d 567, 571 (8th Cir. 1993) (“In this circuit only an en banc court may overrule a panel decision.”). We accordingly affirm the judgment of the district court.

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<sup>2</sup>Even if Haynes could bring an as-applied challenge, *cf. United States v. Veasley*, 98 F.4th 906, 909 (8th Cir. 2024), it would not succeed. When officers stopped him, he threatened to fight them while he “aggressively” stabbed the dashboard of his car with a knife. Once in jail, he had to be forcefully put into a straitjacket after making “repeated physical advances” and telling the officers he would kill them “next time.” Add his lengthy criminal history, and it is safe to say that Haynes “pose[s] a credible threat to the physical safety of others.” *United States v. Rahimi*, 602 U.S. 680, 693 (2024); *see United States v. Jackson*, 85 F.4th 468, 470–72 (8th Cir. 2023) (Stras, J., dissenting from denial of reh’g en banc) (explaining that, based on Founding-era history, the government can strip “dangerous” individuals of their firearms).

**UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT**

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No: 24-1242

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United States of America

Plaintiff - Appellee

v.

Brandon Allen Haynes

Defendant - Appellant

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Appeal from U.S. District Court for the Southern District of Iowa - Eastern  
(3:23-cr-00025-RGE-1)

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**JUDGMENT**

Before LOKEN, BENTON, and STRAS, Circuit Judges.

This appeal from the United States District Court was submitted on the record of the district court and briefs of the parties.

After consideration, it is hereby ordered and adjudged that the judgment of the district court in this cause is affirmed in accordance with the opinion of this Court.

May 01, 2025

Order Entered in Accordance with Opinion:  
Clerk, U.S. Court of Appeals, Eighth Circuit.

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/s/ Susan E. Bindler

**Revision of Part V of the Eighth Circuit Plan to Implement the Criminal Justice Act of 1964.**

**V. Duty of Counsel as to Panel Rehearing, Rehearing En Banc, and Certiorari**

Where the decision of the court of appeals is adverse to the defendant in whole or in part, the duty of counsel on appeal extends to (1) advising the defendant of the right to file a petition for panel rehearing and a petition for rehearing en banc in the court of appeals and a petition for writ of certiorari in the Supreme Court of the United States, and (2) informing the defendant of counsel's opinion as to the merit and likelihood of the success of those petitions. If the defendant requests that counsel file any of those petitions, counsel must file the petition if counsel determines that there are reasonable grounds to believe that the petition would satisfy the standards of Federal Rule of Appellate Procedure 40, Federal Rule of Appellate Procedure 35(a) or Supreme Court Rule 10, as applicable. *See Austin v. United States*, 513 U.S. 5 (1994) (per curiam); 8th Cir. R. 35A.

If counsel declines to file a petition for panel rehearing or rehearing en banc requested by the defendant based upon counsel's determination that there are not reasonable grounds to do so, counsel must so inform the court and must file a written motion to withdraw. The motion to withdraw must be filed on or before the due date for a petition for rehearing, must certify that counsel has advised the defendant of the procedures for filing *pro se* a timely petition for rehearing, and must request an extension of time of 28 days within which to file *pro se* a petition for rehearing. The motion also must certify that counsel has advised the defendant of the procedures for filing *pro se* a timely petition for writ of certiorari.

If counsel declines to file a petition for writ of certiorari requested by the defendant based on counsel's determination that there are not reasonable grounds to do so, counsel must so inform the court and must file a written motion to withdraw. The motion must certify that counsel has advised the defendant of the procedures for filing *pro se* a timely petition for writ of certiorari.

A motion to withdraw must be accompanied by counsel's certification that a copy of the motion was furnished to the defendant and to the United States.

Where counsel is granted leave to withdraw pursuant to the procedures of *Anders v. California*, 386 U.S. 738 (1967), and *Penson v. Ohio*, 488 U.S. 75 (1988), counsel's duty of representation is completed, and the clerk's letter transmitting the decision of the court will notify the defendant of the procedures for filing *pro se* a timely petition for panel rehearing, a timely petition for rehearing en banc, and a timely petition for writ of certiorari.