

No. _____

IN THE
Supreme Court of the United States

OWEN ZACHARY SIMONSON,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

**On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Eighth Circuit**

APPENDIX

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United States Court of Appeals
For the Eighth Circuit

No. 24-2051

United States of America

Plaintiff - Appellee

v.

Owen Zachary Simonson

Defendant - Appellant

Appeal from United States District Court
for the District of South Dakota - Southern

Submitted: September 15, 2025

Filed: October 8, 2025

[Unpublished]

Before BENTON, GRASZ, and KOBES, Circuit Judges.

PER CURIAM.

Owen Zachary Simonson pled guilty to being a felon in possession of a firearm in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(8). The district court¹

¹The Honorable Karen E. Schreier, United States District Judge for the District of South Dakota.

sentenced him to time served. He appeals the denial of his motion to dismiss the indictment. Having jurisdiction under 28 U.S.C. § 1291, this court affirms.

Owen argues the district court should have dismissed his indictment because the felon-in-possession statute violates the Second Amendment both on its face and as applied to him. This court reviews de novo. *United States v. Seay*, 620 F.3d 919, 923 (8th Cir. 2010). As he concedes, this argument is foreclosed by binding Eighth Circuit precedent. *United States v. Cunningham*, 114 F.4th 671, 675 (8th Cir. 2024) (“The longstanding prohibition on possession of firearms by felons is constitutional, and the district court properly denied the motion to dismiss.”); *United States v. Jackson*, 110 F.4th 1120, 1124–25 (8th Cir. 2024) (holding there is “no need for felony-by-felony litigation regarding the constitutionality of § 922(g)(1)”).

* * * * *

The judgment is affirmed.

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. OWEN ZACHARY SIMONSON, Defendant.	4:23-CR-40087-KES ORDER DENYING MOTION TO DISMISS
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Defendant, Owen Zachary Simonson, moves to dismiss the indictment in the above-entitled case that charges him with possession of a firearm by a prohibited person, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(8). Dockets 1, 19. Simonson contends that § 922(g)(1) is unconstitutional under the standard articulated by the Supreme Court in its recent decision *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 142 S.Ct. 2111 (2022). Docket 20 at 1. The government objects, arguing that the Eighth Circuit has already upheld the constitutionality of § 922(g)(1) under *Bruen* in *United States v. Jackson*, 69 F.4th 495, 501-506 (8th Cir. 2023).

LEGAL BACKGROUND

The Second Amendment of the United States Constitution was construed during the twentieth-century as a right held by individuals in the militia and not an everyday individual. See *United States v. Miller*, 307 U.S. 174, 178-79 (1939). In *District of Columbia v. Heller*, 554 U.S. 570 (2008), however, the

Supreme Court held that the Second Amendment of the United States Constitution “conferred an *individual* right to keep and bear arms.” *Heller*, 554 U.S. at 595 (emphasis added). *McDonald v. City of Chicago, Ill.* then incorporated that holding to the states via the Fourteenth Amendment. *See* 561 U.S. 742, 750 (2010).

Following the Supreme Court’s decisions in *Heller* and *McDonald*, the Courts of Appeals developed a two-step test to evaluate Second Amendment claims. *Bruen*, 142 S.Ct. at 2125-26 (2022). “At the first step, the government may justify its regulation by establishing that the challenged law regulates activity falling outside the scope of the right as originally understood[.]” *Id.* at 2126 (citations omitted). Activity that falls beyond the original scope of the amendment was “categorically unprotected[.]” and the analysis could thus end. *Id.* If the activity was protected, the court proceeded to the second step, where “courts often analyze[d] how close the law comes to the core of the Second Amendment right and the severity of the law’s burden on that right.” *Id.* (citations omitted). Most courts considered the right to possess arms for self-protection in the home to be the core of the right. *See Gould v. Morgan*, 907 F.3d 659, 671 (1st Cir. 2018).

In *Bruen*, the Supreme Court examined the test developed after *Heller* and found that it had “one step too many.” 142 S.Ct. at 2127. According to the test articulated in *Bruen*,

[w]hen 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. Only then may a court conclude that the individual's conduct falls outside the Second Amendments 'unqualified command.'

Id. at 2129-30 (quoting *Konigsberg v. State Bar of Cal.*, 366 U.S. 36, 49, n. 10 (1961)).

The decision in *Bruen* has prompted significant litigation concerning existing gun laws, including numerous challenges to 18 U.S.C. § 922(g). *See, e.g., United States v. Rahimi*, 61 F.4th 443, 448 (5th Cir. 2023) (finding 18 U.S.C. § 922(g)(8) unconstitutional); *United States v. Ryno*, --- F. Supp. 3d ---, 2023 WL 3736420, at *7 (D. Alaska May 31, 2023) (upholding constitutionality of 18 U.S.C. § 922(g)(9)). The Eighth Circuit recently addressed a constitutional challenge to § 922(g)(1) in *United States v. Jackson* and, applying the *Bruen* framework, found that the section was constitutional. *See Jackson*, 69 F.4th at 501-506. The *Jackson* court analyzed the language in both *Heller* and *Bruen*, highlighting the ways in which the Supreme Court upheld the validity of felon in possession bans. *Id.* at 501-502. *Jackson* affirmed that “[g]iven these assurances by the Supreme Court, and the history that supports them, [the Eighth Circuit] conclude[s] that there is no need for felony-by-felony litigation regarding the constitutionality of § 922(g)(1).” *Id.* at 502.

DISCUSSION

As Simonson acknowledges, “the Eighth Circuit has recently ruled that 18 U.S.C. § 922(g)(1) is constitutional and not subject to either facial or ‘as applied’ challenges.” Docket 20 at 1. Though other circuit courts have ruled differently, *see Range v. Att’y Gen. of United States*, 69 F.4th 96, 106 (3d Cir.

2023) (finding 18 U.S.C. § 922(g)(1) unconstitutional as applied to petitioner), this court remains bound by the precedent of the Eighth Circuit. *See M.M. ex rel. L.R. v. Special Sch. Dist. No. 1*, 512 F.3d 455, 459 (8th Cir. 2008) (noting an Eighth Circuit decision “is controlling until overruled by [the] court en banc, by the Supreme Court, or by Congress.”) Thus, this court must deny Simonson’s constitutional challenge.

CONCLUSION

Because the Eighth Circuit has already held that 18 U.S.C. § 922(g)(1) is constitutional under the standard articulated in *Bruen* and because Simonson’s argument rests entirely on a contrary interpretation of law, it is

ORDERED that Simonson’s motion to dismiss the Indictment (Docket 19) is denied.

Dated November 14, 2023.

BY THE COURT:

/s/ *Karen E. Schreier*

KAREN E. SCHREIER

UNITED STATES DISTRICT JUDGE

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

No: 24-2051

United States of America

Plaintiff - Appellee

v.

Owen Zachary Simonson

Defendant - Appellant

Appeal from U.S. District Court for the District of South Dakota - Southern
(4:23-cr-40087-KES-1)

JUDGMENT

Before BENTON, GRASZ, and KOBES, 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.

October 08, 2025

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

/s/ Susan E. Bindler