

# **A P P E N D I X**

## APPENDIX

Decision of the Court of Appeals for the Eleventh Circuit, <i>United States v. Terry Lee Gammage</i> , 24-11250 (September 2, 2025) .....	A-1
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NOT FOR PUBLICATION

In the  
United States Court of Appeals  
For the Eleventh Circuit

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No. 24-11250  
Non-Argument Calendar

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UNITED STATES OF AMERICA,

*Plaintiff-Appellee,*

*versus*

TERRY LEE GAMMAGE,

*Defendant-Appellant.*

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Appeal from the United States District Court  
for the Southern District of Florida  
D.C. Docket No. 9:23-cr-80120-AMC-1

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Before JILL PRYOR, LUCK, and BRASHER, Circuit Judges.

PER CURIAM:

Terry Gammage appeals his conviction for possessing a fire-arm and ammunition as a convicted felon, in violation of 18 U.S.C. section 922(g)(1). He argues that section 922(g)(1) is

unconstitutional under the Commerce Clause and the Second Amendment. The government, in turn, moves for summary affirmation, arguing that our precedent forecloses both of Gammage’s constitutional challenges to section 922(g)(1). Because the government’s position is clearly right as a matter of law, we grant its motion and affirm.<sup>1</sup>

In *United States v. McAllister*, we held that section “922(g)(1) is not an unconstitutional exercise of Congress’s power under the Commerce Clause.” 77 F.3d 387, 389–90, 391 (11th Cir. 1996). Section 922(g)(1)’s requirement of a connection to interstate commerce, we explained, was sufficient to satisfy the Commerce Clause’s “minimal nexus” requirement. *Id.*

In *District of Columbia v. Heller*, the Supreme Court held that the Second Amendment right to bear arms presumptively “belong[ed] to all Americans” but the right was not unlimited. 554 U.S. 570, 581, 626 (2008). The Court noted that, while it “[did] not undertake an exhaustive historical analysis . . . of the full scope of the Second Amendment, nothing in [its] opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons[.]” *Id.* at 626.

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<sup>1</sup> We review de novo the constitutionality of a statute. *United States v. Wright*, 607 F.3d 708, 715 (11th Cir. 2010). Summary disposition is appropriate when “the position of one of the parties is clearly right as a matter of law so that there can be no substantial question as to the outcome of the case[.]” *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969).

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In *United States v. Rozier*, we considered a constitutional challenge to section 922(g)(1)’s prohibition on felons possessing firearms. 598 F.3d 768, 770–71 (11th Cir. 2010). We held that “statutory restrictions of firearm possession, such as [section] 922(g)(1), are a constitutional avenue to restrict the Second Amendment right of certain classes of people,” observing that *Heller* “suggest[ed] that statutes disqualifying felons from possessing a firearm under any and all circumstances do not offend the Second Amendment.” *Id.* at 771. *Heller*, we explained, recognized that prohibiting felons from possessing firearms was a “presumptively lawful longstanding prohibition.” *Id.* (citing *United States v. White*, 593 F.3d 1199, 1205–06 (11th Cir. 2010)).

Over a decade later, in *N.Y. State Rifle & Pistol Ass’n v. Bruen*, the Supreme Court considered a Second Amendment challenge to New York’s gun-licensing regime that limited when a law-abiding citizen could obtain a license to carry a firearm outside the home. *See* 597 U.S. 1, 10–11 (2022). In *Bruen*, the Supreme Court recognized that “the Second and Fourteenth Amendments protect an individual’s right to carry a handgun for self-defense outside the home.” *Id.* at 10. The Supreme Court further explained that, in determining whether a restriction on the possession of firearms is constitutional, courts must begin by asking whether the firearm law or regulation at issue governs conduct that falls within the plain text of the Second Amendment right. *Id.* at 17. If the regulation covers such conduct, it survives constitutional scrutiny only if the government “affirmatively prove[s] that its firearms regulation is part of the historical tradition that delimits the outer bounds of the

right to keep and bear arms.” *Id.* at 19. *Bruen* also emphasized that *Heller* established the correct test for determining the constitutionality of gun restrictions. *See id.* at 19, 39. As in *Heller*, *Bruen* again confirmed that the Second Amendment protects the right of “law-abiding citizens” to possess handguns for self-defense. *See, e.g., id.* at 9–10, 71.

After *Bruen* came *United States v. Rahimi*, in which the Supreme Court considered a challenge to the federal law prohibiting individuals subject to domestic violence restraining orders from possessing firearms. 602 U.S. 680, 684–86 (2024); *see also* 18 U.S.C. § 922(g)(8). In applying the *Bruen* history-and-tradition test, the Supreme Court warned that “some courts have misunderstood the methodology of our recent Second Amendment cases,” which “were not meant to suggest a law trapped in amber.” *Rahimi*, 602 U.S. at 691. *Rahimi* reiterated that a historical analogue “need not be a ‘dead ringer’ or a ‘historical twin’” to establish that a modern regulation “comport[s] with the principles underlying the Second Amendment.” *Id.* at 692. (alteration adopted) (quoting *Bruen*, 597 U.S. at 30). And after analogizing to surety and going armed laws from the Founding era, the Court “ha[d] no trouble concluding that [s]ection 922(g)(8) survive[d] *Rahimi*’s facial challenge.” *Id.* at 693–99.

Finally, in *United States v. Dubois*, we explained that neither *Bruen* nor *Rahimi* abrogated our decision in *Rozier*, which upheld the constitutionality of section 922(g)(1) under the Second Amendment. 139 F.4th 887, 890–94 (11th Cir. 2025). Applying our prior-

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panel-precedent rule in considering the defendant's Second Amendment challenge to his conviction and sentence under section 922(g)(1), we affirmed, holding that *Rozier* continued to bar Second Amendment challenges to section 922(g)(1) unless and until the Supreme Court offered clearer instruction. *Id.* at 893. *Rozier*, we made clear, remained binding precedent in this Circuit. *Id.*

The government is clearly right that Gammage's Commerce Clause challenge fails under our binding precedent in *McAllister*. See 77 F.3d at 389–91. Gammage stipulated that the firearm and ammunition underlying his conviction traveled in interstate commerce and conceded that binding precedent foreclosed his Commerce Clause challenge, both facially and as applied. So, under *McAllister*, Gammage's conviction under section 922(g)(1) does not run afoul of the Commerce Clause. See *id.*

The government is also clearly right that Gammage's Second Amendment challenge fails under *Rozier*, which as *Dubois* confirmed, remains binding in this Circuit. See *Dubois*, 139 F.4th at 890–94. Gammage admitted his culpability as to the underlying elements qualifying him as a felon as well as his unlawful possession of a firearm and ammunition in violation of section 922(g)(1). As we held in *Dubois*, our reasoning in *Rozier* rejecting Second Amendment challenges to section 922(g)(1) remains consistent with *Heller*, *Bruen*, and *Rahimi*. See *id.* Because *Rozier* continues to bind us, and there has been no “intervening Supreme Court decision” that is both “clearly on point and clearly contrary to our earlier decision[s],” *id.* at 893 (internal quotation marks omitted), Gammage's



Second Amendment challenge to section 922(g)(1) fails, *see id.* at 890–94.

The government’s position as to Gammage’s Commerce Clause and Second Amendment challenges to section 922(g)(1) “is clearly right as a matter of law so that there can be no substantial question as to the outcome of the case.” *See Groendyke Transp.*, 406 F.2d at 1162. Thus, we grant the government’s motion for summary affirmance.

**AFFIRMED.**

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**UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF FLORIDA**  
**WEST PALM BEACH DIVISION**

UNITED STATES OF AMERICA

v.

TERRY LEE GAMMAGE

§ **JUDGMENT IN A CRIMINAL CASE**

§

§

§ Case Number: **9:23-CR-80120-AMC(1)**§ USM Number: **70354-510**

§

§ Counsel for Defendant: **Peter Vincent Birch**

§

§ Counsel for United States: **Shannon O'Shea Darsch****THE DEFENDANT:**

<input checked="" type="checkbox"/>	pleaded guilty to count(s)	<b>1 of the Indictment</b>
<input type="checkbox"/>	pleaded guilty to count(s) before a U.S. Magistrate Judge, which was accepted by the court.	
<input type="checkbox"/>	pleaded nolo contendere to count(s) which was accepted by the court	
<input type="checkbox"/>	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**

18:922(g) and 924(e) – Poss. of a Firearm and Ammunition by Convicted Felon  
 (Armed Career Criminal Act)

**Offense Ended**

12/09/2022

**Count**

1

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.

**April 4, 2024**

Date of Imposition of Judgment

Signature of Judge

**AILEEN M. CANNON****UNITED STATES DISTRICT JUDGE**

Name and Title of Judge

**April 4, 2024**

Date

DEFENDANT: TERRY LEE GAMMAGE  
CASE NUMBER: 9:23-CR-80120-AMC(1)

## IMPRISONMENT

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

**180 months as to Count 1.**

- ☒ The court makes the following recommendations to the Bureau of Prisons:  
Defendant be designated to a facility as close to South Florida as possible.  
Defendant participate in RDAP if deemed eligible. Defendant seeks this request not on the basis of his own addiction issues but rather to aid him in providing education and context for the dangers of drug use and drug trafficking.
- ☒ The defendant is remanded to the custody of the United States Marshal.
- ☐ 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 2 p.m. 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

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

UNITED STATES MARSHAL

By  
DEPUTY UNITED STATES MARSHAL

DEFENDANT: TERRY LEE GAMMAGE  
CASE NUMBER: 9:23-CR-80120-AMC(1)

## SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: **three (3) years.**

## 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 additional conditions on the attached page.

DEFENDANT: TERRY LEE GAMMAGE  
CASE NUMBER: 9:23-CR-80120-AMC(1)

## 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. I understand additional information regarding these conditions is available at [www.flsp.uscourts.gov](http://www.flsp.uscourts.gov).

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

Date \_\_\_\_\_

DEFENDANT: TERRY LEE GAMMAGE  
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### **SPECIAL CONDITIONS OF SUPERVISION**

**Permissible Search:** The defendant shall submit to a search of his/her person or property conducted in a reasonable manner and at a reasonable time by the U.S. Probation Officer.

**Unpaid Restitution, Fines, or Special Assessments:** If the defendant has any unpaid amount of restitution, fines, or special assessments, the defendant shall notify the probation officer of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay.

DEFENDANT: TERRY LEE GAMMAGE  
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## CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments page.

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
<b>TOTALS</b>	\$100.00	\$ .00	\$ .00		

- ☐ The determination of restitution is deferred until *An Amended Judgment in a Criminal Case (AO245C)* 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. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

- ☐ 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 the schedule of payments page 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:
- |   |                               |  |
|---|-------------------------------|--|
| <input type="checkbox"/> the interest requirement is waived for the | <input type="checkbox"/> fine | <input type="checkbox"/> restitution                         |
| <input type="checkbox"/> the interest requirement for the           | <input type="checkbox"/> fine | <input type="checkbox"/> restitution is modified as follows: |

**Restitution with Imprisonment** - It is further ordered that the defendant shall pay restitution in the amount of **\$ .00**. During the period of incarceration, payment shall be made as follows: (1) if the defendant earns wages in a Federal Prison Industries (UNICOR) job, then the defendant must pay 50% of wages earned toward the financial obligations imposed by this Judgment in a Criminal Case; (2) if the defendant does not work in a UNICOR job, then the defendant must pay a minimum of \$25.00 per quarter toward the financial obligations imposed in this order. Upon release of incarceration, the defendant shall pay restitution at the rate of 10% of monthly gross earnings, until such time as the court may alter that payment schedule in the interests of justice. The U.S. Bureau of Prisons, U.S. Probation Office and U.S. Attorney's Office shall monitor the payment of restitution and report to the court any material change in the defendant's ability to pay. These payments do not preclude the government from using other assets or income of the defendant to satisfy the restitution obligations.

\* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, 18 U.S.C. §2259.

\*\* Justice for Victims of Trafficking Act of 2015, 18 U.S.C. §3014.

\*\*\* 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: TERRY LEE GAMMAGE  
CASE NUMBER: 9:23-CR-80120-AMC(1)

## 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

**It is ordered that the Defendant shall pay to the United States a special assessment of \$100.00 for Count 1, which shall be due immediately. Said special assessment shall be paid to the Clerk, U.S. District Court. Payment is to be addressed to:**

**U.S. CLERK'S OFFICE  
ATTN: FINANCIAL SECTION  
400 NORTH MIAMI AVENUE, ROOM 8N09  
MIAMI, FLORIDA 33128-7716**

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal 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  
See above for Defendant and Co-Defendant Names and Case Numbers (*including defendant number*), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☒ The defendant shall forfeit the defendant's interest in the following property to the United States:  
**FORFEITURE of the defendant's right, title and interest in certain property is hereby ordered consistent with the plea agreement [ECF No. 36 ¶ 10]. The United States shall submit a proposed Order of Forfeiture within three days of this proceeding.**

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) JVT A assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.