

APPENDIX

TABLE OF APPENDICES

Decision of the U.S. Court of Appeals for the Eleventh Circuit,

United States v. Telusme, 2026 WL 471911 (11th Cir. Feb. 19, 2026) A-1

Government’s Motion for Summary Affirmance,

United States v. Telusme, DE 23 (11th Cir. Nov. 10, 2025) A-2

Indictment,

United States v. Telusme, No. 24-CR-80076-AMC (DE 16)

(S.D. Fla. June 18, 2024) A-3

Motion to Dismiss Indictment,

United States v. Telusme, No. 24-CR-80067-AMC (DE 30)

(S.D. Fla. Aug. 2, 2024) A-4

Paperless Order Denying Motion to Dismiss Indictment,

United States v. Telusme, No. 24-CR-80067-AMC (DE 33)

(S.D. Fla. Aug. 26, 2024) A-5

Judgment in a Criminal Case,

United States v. Telusme, No. 24-CR-80067-AMC (DE 50)

(S.D. Fla. Jan. 9, 2025) A-6

A-1

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-10224
Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

STEVE TELUSME,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 9:24-cr-80076-AMC-1

Before JORDAN, KIDD, and ANDERSON, Circuit Judges.

PER CURIAM:

Steve Telusme appeals his conviction for possessing a fire-arm and ammunition in and affecting interstate and foreign commerce as a convicted felon, in violation of 18 U.S.C. §§ 922(g)(1),

924(e), and possessing cocaine and fentanyl with intent to distribute, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(C). He argues that 18 U.S.C. § 922(g)(1) violates the Second Amendment as applied because his criminal history does not indicate that he possessed a firearm in connection to his previous offenses or that he poses a physical danger to anyone. He also maintains that § 922(g)(1) violates the Commerce Clause facially and as applied to him.

As to his first argument, he contends that our decision in *United States v. Dubois (Dubois II)*, 139 F.4th 887 (11th Cir. 2025), *cert. denied*, No. 25-6281, 2026 WL 135685 (U.S. Jan. 20, 2026), reaffirming that, under *United States v. Rozier*, 598 F.3d 768 (11th Cir. 2010), § 922(g)(1) does not violate the Second Amendment, is inconsistent with our earlier ruling in *NRA v. Bondi*, 133 F.4th 1108 (11th Cir. 2025) (en banc), that as-applied challenges to firearm regulations must be analyzed under the framework announced in *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022), and *United States v. Rahimi*, 602 U.S. 680 (2024). Thus, he argues that, under our prior panel precedent rule, *Bondi* controls and his constitutional challenge to § 922(g)(1) must be considered under that framework. He also contends that *Dubois II* is inconsistent with our decision in *Florida Commissioner of Agriculture v. Attorney General*, 148 F.4th 1307 (11th Cir. 2025).

In response, the government moves for summary affirmance, arguing that Telusme's Second Amendment arguments are foreclosed by *Dubois II* and *Rozier* and that his Commerce Clause challenges are similarly foreclosed by binding precedent.

25-10224

Opinion of the Court

3

Summary disposition is appropriate either where time is of the essence, such as “situations where important public policy issues are involved or those where rights delayed are rights denied,” or where “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, or where . . . the appeal is frivolous.” *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969).

We review challenges to the constitutionality of a statute *de novo*. *United States v. Jimenez-Shilon*, 34 F.4th 1042, 1043 (11th Cir. 2022).

Under our prior panel precedent rule, “a prior panel’s holding is binding on all subsequent panels unless and until it is overruled or undermined to the point of abrogation by the Supreme Court or by this [C]ourt sitting *en banc*.” *United States v. Archer*, 531 F.3d 1347, 1352 (11th Cir. 2008). “To overrule or abrogate a prior panel’s decision, the subsequent Supreme Court or *en banc* decision must be clearly on point and must actually abrogate or directly conflict with, as opposed to merely weaken, the holding of the prior panel.” *United States v. Gillis*, 938 F.3d 1181, 1198 (11th Cir. 2019) (quotation marks omitted). Abrogation requires the subsequent decision to “demolish and eviscerate all the fundamental props of the prior-panel precedent.” *United States v. Lightsey*, 120 F.4th 851, 860 (11th Cir. 2024) (quotation marks omitted).

The Second Amendment provides that “[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. Section 922(g)(1) prohibits any person who has been convicted of a crime punishable by a term of imprisonment exceeding one year from “possess[ing] in or affecting commerce, any firearm or ammunition.” 18 U.S.C. § 922(g)(1).

In *District of Columbia v. Heller*, the Supreme Court held that the Second Amendment protects an individual’s right to keep and bear arms, subject to certain limitations. 554 U.S. 570, 595 (2008). The Court held that the District of Columbia’s ban on handgun possession in the home, without any exception for self-defense, was unconstitutional as applied to a police officer who sought to keep a handgun in his home for self-defense. *Id.* at 574, 628–30. The Court cautioned that “nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill.” *Id.* at 626. The Court described such prohibitions as “presumptively lawful.” *Id.* at 627 n.26.

Following *Heller*, we ruled in *Rozier* that statutory restrictions on the possession of firearms by felons under any and all circumstances, such as 18 U.S.C. § 922(g)(1), do not offend the Second Amendment. 598 F.3d at 771. In reaching this conclusion, we referenced *Heller*’s statement that “nothing in [this] opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons.” *Id.* (quotation marks omitted).

In *Bruen*, the Supreme Court rejected the “means-end scrutiny” test that several circuits had been using to apply *Heller*. 597

U.S. at 17–19. The Supreme Court clarified the proper test for Second Amendment challenges under *Heller*: (1) “[w]hen the Second Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects that conduct,” and (2) “[t]he government must then justify its regulation by demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation.” *Id.* at 24; *see id.* at 17. In doing so, the Court repeatedly referenced the Second Amendment rights of “law-abiding, responsible citizens.” *Id.* at 26, 38 n.9, 70.

Later, in *Rahimi*, the Supreme Court held that 18 U.S.C. § 922(g)(8)—which prohibits the possession of firearms by individuals subject to a domestic-violence restraining order—did not facially violate the Second Amendment because regulations prohibiting individuals who pose a credible threat of harm to others from misusing firearms are part of this country’s historical tradition. 602 U.S. at 693–700. The Court noted that lower courts had misunderstood the *Bruen* methodology and clarified that the Second Amendment allows firearm regulations “consistent with the principles that underpin our regulatory tradition” and are “relevantly similar to laws that our tradition is understood to permit.” *Id.* at 691–92 (quotation marks omitted). The Court rejected the government’s argument that a defendant may be disarmed simply because he or she is not “responsible.” *Id.* at 701–02. But it again noted *Heller*’s language that prohibitions on felons’ possession of firearms are “presumptively lawful.” *Id.* at 699 (quotation marks omitted).

After *Bruen* but before *Rahimi*, we held in *Dubois I* that *Bruen* did not abrogate *Rozier*'s holding that § 922(g)(1) was constitutional because the Supreme Court in *Bruen* made it clear that its holding was a faithful application of *Heller*, which, in turn, clarified “that [its] holding did not cast doubt on felon-in-possession prohibitions.” *United States v. Dubois (Dubois I)*, 94 F.4th 1284, 1292–93 (11th Cir. 2024) (alteration in original) (quotation marks omitted), *vacated*, 145 S. Ct. 1041 (2025), *reinstated*, 139 F.4th 887 (11th Cir. 2025) (*Dubois II*). The Supreme Court subsequently vacated *Dubois I* and remanded for reconsideration in light of *Rahimi*. *Dubois v. United States*, 145 S. Ct. 1041, 1042 (2025).

While *Dubois* was on remand, we issued an en banc decision in *Bondi*, ruling that Florida's law prohibiting the purchase of firearms by minors was not unconstitutional as applied to individuals between the ages of 18 and 21 because it was consistent with this nation's historical tradition of firearm regulation. 133 F.4th at 1111, 1117–30. In doing so, we cited *Rahimi* and *Bruen* in explaining that “when a person challenges a law regulating arms-bearing conduct, courts must examine the historical tradition of firearm regulation in our nation to delineate the contours of the right.” *Id.* at 1114 (quotation marks omitted). In our analysis, we noted a disagreement as to whether those under the age of 21 were part of “the people” protected by the Second Amendment, stating that some had “argue[d] that . . . ‘the people’ protected by the Second Amendment are the same as ‘the people’ protected by the First and Fourth Amendments.” *Id.* at 1130. But for the purposes of our analysis, we “assume[d], but [did] not decide, that individuals under the age

25-10224

Opinion of the Court

7

of 21 are part of ‘the people’ protected by the Second Amendment.” *Id.*

Then, in *Dubois II*, we again held that § 922(g)(1) did not violate the Second Amendment and reinstated *Dubois I*. *Dubois II*, 139 F.4th at 888–89, 894. In so holding, we determined that neither *Bruen* nor *Rahimi* abrogated *Rozier*, relying on our reasoning in *Dubois I* and noting that the Supreme Court in *Bruen* and *Rahimi* made clear that those decisions were in keeping with *Heller*. *Id.* at 891–94. We pointed out that *Bruen* did not concern § 922(g)(1) and that the only reference to felons in *Rahimi* was the Supreme Court’s reiteration that prohibitions on the possession of firearms by felons are “presumptively lawful,” which suggested that “*Rahimi* reinforced—not undermined—*Rozier*.” *Id.* at 893.

Later, in *Florida Commissioner*, we found that a district court erred in concluding that two medical marijuana users had failed to state a claim in their as-applied Second Amendment challenge to 18 U.S.C. § 922(d)(3) and (g)(3), which prohibit “unlawful users” of controlled substances from being sold or possessing firearms. *See* 148 F.4th at 1311, 1321. At *Bruen*’s first step, we concluded that the plaintiffs’ “conduct of attempting to purchase and possess firearms for self-defense purposes is clearly covered by the Second Amendment’s plain text” and that, “while there is a history and tradition . . . of disarming convicted felons, nothing in the [complaint] indicates that [the plaintiffs] have ever been convicted of any crime” or had committed any crime beyond a misdemeanor. *Id.* at 1317. At *Bruen*’s second step, we found that the government “ha[d] not

pointed to any historical tradition of disarming those engaged in misdemeanor conduct,” that the plaintiffs had never been convicted of a felony, and that the plaintiffs could not be considered dangerous people solely due to their use of medical marijuana. *Id.* at 1318–19. Significantly, we noted that the government “very well may prove at a later stage of litigation . . . that Appellants can fairly be considered relevantly similar to felons . . . who can categorically be disarmed.” *Id.* at 1321 n. 16.

Here, the government is clearly right as a matter of law that Telusme’s Second Amendment challenge to § 922(g)(1) fails. *See Groendyke*, 406 F.2d at 1162. Telusme’s argument that § 922(g)(1) is unconstitutional as applied to felons like himself is squarely foreclosed by *Rozier*’s holding that felons are categorically disqualified from exercising their Second Amendment rights, which this Court reaffirmed in *Dubois II*. *See Rozier*, 598 F.3d at 771; *Dubois II*, F.4th at 892–93. In doing so, this Court considered and rejected the proposition that *Bruen* and *Rahimi* abrogated *Rozier*. *See Dubois II*, F.4th at 892–93. Under the prior panel precedent rule, this Court is bound to follow these holdings. *See Archer*, 531 F.3d at 1352. As such, Telusme’s discussion of this nation’s history and traditions, as well as his arguments regarding his criminal history, are immaterial.

Telusme’s attempt to evade these precedents based on a purported conflict between *Bondi* and *Florida Commissioner* on the one hand, and *Rozier* and *Dubois II* on the other, is unavailing. *Bondi* did not involve a challenge to a felon disarmament statute or ever

suggest that *Rozier*'s analysis of § 922(g)(1) was inconsistent with *Bruen* and *Rahimi*. See generally *Bondi*, 133 F.4th 1108. While *Bondi* flagged a disagreement as to whether “the people” protected under the Second Amendment was the same as “the people” protected under the First and Fourth Amendments, it did not make any determination of who counted among “the people” for the purposes of its Second Amendment analysis, much less indicate that felons had a presumptive right to possess firearms. See 133 F.4th at 1130. Nor does *Florida Commissioner* support the purported conflict, as it expressly referenced felons as a class of people who can be categorically disarmed. See 148 F.4th at 1321, n.16. Thus, *Bondi* and *Florida Commissioner* have not abrogated *Rozier* because they are not “clearly on point,” do not “directly conflict” with *Rozier*, and do not “demolish and eviscerate [its] fundamental props.” See *Gillis*, 938 F.3d at 1198 (quotation marks omitted); *Lightsey*, 120 F.4th at 860 (quotation marks omitted).

The Commerce Clause provides that “Congress shall have power . . . [t]o regulate commerce with foreign nations, and among the several states.” U.S. Const. art. I, § 8, cl. 3. In *United States v. McAllister*, we rejected a challenge that Congress exceeded its Commerce Clause authority under § 922(g)(1) by regulating the mere possession of a gun, holding that § 922(g)(1)'s jurisdictional element—i.e., that a felon must “possess *in or affecting commerce*, any firearm or ammunition,” 18 U.S.C. § 922(g)(1) (emphasis added)—defeated the appellant's facial challenge to the statute. 77 F.3d 387, 388–90 (11th Cir. 1996). We further found that the appellant's as-applied challenge failed because the government had

demonstrated a minimal nexus to interstate commerce by showing that the firearm previously had travelled in interstate commerce. *Id.* at 390. We have repeatedly reaffirmed this holding. *See, e.g., United States v. Scott*, 263 F.3d 1270, 1272–74 (11th Cir. 2001); *United States v. Wright*, 607 F.3d 708, 715–16 (11th Cir. 2010); *see also United States v. Jordan*, 635 F.3d 1181, 1189 (11th Cir. 2011).

As Telusme concedes, his facial and as-applied challenges to § 922(g)(1) under the Commerce Clause are barred by binding precedent. *McAllister*, 77 F.3d at 388–90; *Scott*, 263 F.3d at 1272–74; *Wright*, 607 F.3d at 715–16. As this Court has held, § 922(g)(1)’s requirement that a felon possess “in or affecting commerce, any firearm or ammunition” forecloses any facial challenge to § 922(g)(1) under the Commerce Clause. *See McAllister*, 77 F.3d at 389–90. Telusme’s as-applied challenge is similarly foreclosed because the factual proffer accompanying his plea agreement established that the firearm and ammunition at issue in Count One previously had travelled in foreign or interstate commerce. *McAllister*, 77 F.3d at 390.

Accordingly, because the government’s position is clearly right as a matter of law, we **GRANT** its motion for summary affirmation. *See Groendyke*, 406 F.2d at 1162.

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

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

February 19, 2026

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 25-10224-DD
Case Style: USA v. Steve Telusme
District Court Docket No: 9:24-cr-80076-AMC-1

Opinion Issued

Enclosed is a copy of the Court's decision issued today in this case. Judgment has been entered today pursuant to FRAP 36. The Court's mandate will issue at a later date pursuant to FRAP 41(b).

Petitions for Rehearing

The time for filing a petition for panel rehearing or rehearing en banc is governed by 11th Cir. R. 40-2. Please see FRAP 40 and the accompanying circuit rules for information concerning petitions for rehearing.

Costs

No costs are taxed.

Bill of Costs

If costs are taxed, please use the most recent version of the Bill of Costs form available on the Court's website at www.ca11.uscourts.gov. For more information regarding costs, see FRAP 39 and 11th Cir. R. 39-1.

Attorney's Fees

The time to file and required documentation for an application for attorney's fees and any objection to the application are governed by 11th Cir. R. 39-2 and 39-3.

Appointed Counsel

Counsel appointed under the Criminal Justice Act (CJA) must submit a voucher claiming compensation via the eVoucher system no later than 45 days after issuance of the mandate or the filing of a petition for writ of certiorari. Please contact the CJA Team at (404) 335-6167 or cja_evoucher@ca11.uscourts.gov for questions regarding CJA vouchers or the eVoucher system.

Clerk's Office Phone Numbers

General Information:	404-335-6100	Attorney Admissions:	404-335-6122
Case Administration:	404-335-6135	Capital Cases:	404-335-6200
CM/ECF Help Desk:	404-335-6125	Cases Set for Oral Argument:	404-335-6141

OPIN-1 Ntc of Issuance of Opinion

A-2

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

CASE NO. 25-10224-DD

United States of America,
Appellee,

- versus -

Steve Telusme,
Appellant.

_____ /

**CERTIFICATE OF INTERESTED PERSONS AND GOVERNMENT'S
MOTION FOR SUMMARY AFFIRMANCE**

In compliance with Fed. R. App. P. 26.1 and 11th Cir. R. 26.1-1(a)(3) and 26.1-3, the undersigned certifies that the list set forth below is a complete list of the persons and entities previously included in the appellants' CIP, and also includes additional persons and entities (designated in bold face) who have an interest in the outcome of this case and were omitted from the government's previous CIP.

Adler, Robert E.

Cannon, Hon. Aileen M.

Colan, Jonathan D.

Davis, Michael S.

Dopico, Hector A.

Lacosta, Anthony W.

United States v. Steve Telusme, Case No. 25-10224-DD (continued)

Lapointe, Markenzy

Matthewman, Hon. William

Matzkin, Daniel

McCabe, Hon. Ryon M.

McCrae, M. Caroline

McMillan, John C.

Miranda, Annika Marie

O'Byrne, Hayden P.

Osborne, Marc

Reding Quiñones, Jason A.

Reinhart, Hon. Bruce E.

Smachetti, Emily M.

Telusme, Steve

Valiente, Juan

/s/ Juan Valiente
Juan Valiente
Assistant United States Attorney

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

CASE NO. 25-10224-DD

United States of America,
Appellee,

- versus -

Steve Telusme,
Appellant.

_____ /

GOVERNMENT’S MOTION FOR SUMMARY AFFIRMANCE

Appellee, the United States of America, respectfully requests summary affirmance of Steve Telusme’s 18 U.S.C. § 922(g)(1) conviction, rejecting his Second Amendment and Commerce Clause challenges to the statute, as this Court has done in numerous other cases.

None of the recent authorities Telusme cites as support for his Second Amendment argument have undermined this Court’s decision in *United States v. Dubois*, 139 F.4th 887 (11th Cir. 2025), reaffirming § 922(g)(1)’s constitutionality on remand from the Supreme Court for reconsideration after *United States v. Rahimi*, 144 S. Ct. 1889 (2024). This is clear from this Court’s continued rejection of Second Amendment challenges to § 922(g)(1) after *Rahimi* and *NRA v. Bondi*, 133 F.4th 1108 (11th Cir. 2025) (en banc), the cases Telusme relies upon (Br. at 14). *See, e.g., United States v. Farrier*, No. 24-11941, 2025 WL 2779326, at *3 (11th Cir. Sept.

30, 2025); *United States v. Gammage*, No. 24-11250, 2025 WL 2504533 (11th Cir. Sept. 2, 2025) (granting summary affirmance of § 922(g)(1) conviction). In fact, this Court’s *Dubois* decision on remand cites both *Rahimi* and *Bondi* and cannot have been undermined by their prior holdings. *See Dubois*, 139 F.4th at 889 (“*Rahimi* ... did not abrogate our [precedent] that section 922(g)(1) is constitutional”) & at 895 (Pryor, C.J., concurring) (citing *Bondi*).

Binding precedent likewise precludes Telusme’s Commerce Clause challenge. Indeed, he concedes (Br. at 50) that his argument is foreclosed by *United States v. McAllister*, 77 F.3d 387, 389–90 (11th Cir. 1996), rejecting Commerce Clause challenge to § 922(g), and *United States v. Scott*, 263 F.3d 1270, 1274 (11th Cir. 2001), reaffirming *McAllister*. And this Court has continued to reject such arguments. *See, e.g., United States v. Rambo*, No. 23-13772, 2025 WL 2952622, at *1 (11th Cir. Oct. 20, 2025) (citing *McAllister* and finding that “[o]ur binding precedent holds that 18 U.S.C. § 922(g) does not violate the Commerce Clause”).

Nothing has undermined to the point of abrogation this Court’s precedents upholding prohibitions on felon firearm possession in all circumstances. Summary affirmance of Telusme’s conviction is therefore appropriate.

PROCEDURAL HISTORY

In 2024, a federal grand jury in the Southern District of Florida returned an indictment against Telusme alleging that he knowingly possessed: a firearm and

ammunition after having previously been convicted of a crime punishable by more than one year in prison, in violation of 18 U.S.C. § 922(g)(1) (Counts 1 & 2); a controlled substance with intent to distribute, in violation of 21 U.S.C. § 841(a)(1) (Count 3); and a firearm in furtherance of a drug trafficking crime, in violation of 18 U.S.C. § 924(c)(1)(A) (Count 4) (DE 16).

He moved to dismiss his indictment on the grounds that § 922(g)(1) violated the Second Amendment and the Commerce Clause (DE 30). The government opposed his motion (DE 31), and the district court denied dismissal, ruling that it was bound by binding authority from this Court (DE 33).

Telusme then pled guilty to Counts 1 and 3 (DE 37) and submitted a factual proffer in which he stipulated to having at least 10 “felony convictions ... punishable [by] a term of imprisonment exceeding one year under Florida law” (DE 39 ¶ 7). He also stipulated that the firearm and ammunition traveled in interstate or foreign commerce (*id.* ¶ 12).

The district court entered judgment against Telusme, sentencing him to serve a concurrent 200-month imprisonment term as to each Count 1 and Count 3 (DE 50).

Telusme filed a timely notice of appeal (DE 51) and is incarcerated.

STIPULATED FACTS

In April 2023, the Palm Beach County Sheriff’s Office arranged an undercover buy of a rifle from a person identified as “SA” (DE 39 ¶ 1). After the

undercover officer arrived at the location of the deal, Telusme, not SA, called the undercover officer and told the officer “that he is SA’s homeboy[,] and SA told him to call the [undercover] because the [undercover] was supposed to come and get something” (*id.* ¶ 2). The undercover officer and Telusme then spoke face-to-face, after which Telusme left, picked up the rifle and its magazines, and returned to the location where the undercover officer was (*id.* ¶¶ 3–4). That’s when the deal happened—after speaking with Telusme again, the undercover officer retrieved the rifle and magazines from Telusme’s car and handed him cash (*id.* ¶ 5). Telusme had multiple felony convictions in Florida (*id.* ¶ 7) and stipulated that the government would have proved that he knew he was a previously convicted felon (*id.* at 1–2). Further, a Bureau of Alcohol, Tobacco, Firearms, and Explosives witness would have testified that the rifle and ammunition were manufactured outside the State of Florida and “of necessity, traveled in and affected interstate and/or foreign commerce” (*id.* ¶ 12).

Armed with this information, law enforcement obtained a state-court search warrant for the location where Telusme picked up the rifle (*id.* ¶ 8). There, law enforcement found, among other things, a plastic bag with crack cocaine, a plastic bag with two capsules containing fentanyl, two handguns, and a cellphone (*id.*). After obtaining another warrant, law enforcement searched the cellphone and found conversations regarding the sale of cocaine and fentanyl by Telusme (*id.* ¶¶ 9–10).

ARGUMENT

Summary disposition is appropriate in cases “in which 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).¹ See, e.g., *United States v. Solomon*, No. 23-10480, 2023 WL 6568132, at *3 (11th Cir. Oct. 10, 2023) (“Given our binding precedent, we conclude that there is no substantial question as to the outcome of this appeal; therefore, summary affirmance is appropriate.”).

I. Binding precedent holds that felons are categorically not protected by the Second Amendment’s safeguarding of the pre-existing right to bear arms.

Both before and after the cases *Telusme* relies on to challenge this Court’s precedent upholding § 922(g)(1), this Court has consistently upheld the statute’s validity against constitutional challenge. *Accord Gammage*, 2025 WL 2504533, at *1 (summarily affirming § 922(g)(1) conviction); *United States v. Reaves*, No. 23-13582, 2024 WL 4707967 (11th Cir. Nov. 7, 2024) (same). “[B]ecause [*United States v. Rozier*, 598 F.3d 768 (11th Cir. 2010)] continues to bind us, [the Appellant’s § 922(g)(1)] challenge must fail.” *Farrier*, 2025 WL 2779326, at *3.

¹ In *Bonner v. Prichard*, 661 F.2d 1206, 1207 (11th Cir. 1981), the Eleventh Circuit adopted as binding precedent the decisions of the former Fifth Circuit rendered before October 1, 1981.

No one disputes that *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S. Ct. 2111 (2022)’s two-part test, as clarified in *Rahimi*, governs Second Amendment challenges to laws such as § 922(g)(1). Telusme simply argues that this Court wrongly applied that test in upholding § 922(g)(1) on post-*Rahimi* remand from the Supreme Court in *Dubois*, 139 F.4th at 888–89. While he may preserve that argument for future purposes, his remedy would be in seeking *en banc* rehearing or Supreme Court review. For now, the district court’s application of *Rozier* was clearly right as a matter of law, and Telusme’s conviction should be summarily affirmed.

Bruen’s two-part test applies “the Second Amendment’s text, as informed by history.” *Bruen*, 597 U.S. at 19. If the “plain text” of the Amendment “covers an individual’s conduct” at the first step of the analysis, any regulation of that conduct must then be “consistent with this Nation’s historical tradition of firearm regulation” to pass the second step. *Id.* at 17. This Court applied that test in *Dubois*, 139 F.4th at 891–92, and continued in *Fla. Comm’r of Agric. v. Att’y Gen. of United States*, 148 F.4th 1307, (11th Cir. 2025), to recognize that only if the claimant can make the threshold showing that “the Constitution presumptively protects that conduct” is the government then required to “justify its regulation” by proffering historical analogues to the regulation at issue, *Bruen*, 597 U.S. at 17. *See Fla. Comm’r of Agric.*, 148 F.4th at 1315 (describing *Bruen*’s two-part test).

In *Dubois*, this Court recognized that “*Rozier* upheld section 922(g)(1) on the threshold ground that felons are categorically ‘disqualified’ from exercising their Second Amendment right under [*District of Columbia v. Heller*, 554 U.S. 570 (2008)].” 139 F.4th at 893; *see also Rozier*, 598 F.3d at 771 (“[S]tatutes disqualifying felons from possessing a firearm under any and all circumstances do not offend the Second Amendment.”). That threshold conclusion obviated any need to conduct the second-part historical analysis. It does not mean that *Dubois* failed to apply *Bruen* or *Rahimi*.

This Court recognizes that *Rozier* “continues to bind” this Circuit after *Rahimi*. *Dubois*, 139 F.4th at 894. “*Rahimi*—like [*Bruen*]—did not abrogate” *Rozier*. *Id.* at 889. “[T]he Supreme Court made it clear [that its precedents] did not cast doubt on felon-in-possession prohibitions.” *Id.* at 893 (cleaned up).

Telusme can show nothing in *Rahimi*’s clarification of *Bruen*’s historical test or this Court’s discussion of it in its *en banc Bondi* decision that *Dubois* contradicted. *Bondi* did not “make[] clear that *Rahimi* indeed abrogated *Rozier*,” as Telusme argues (Br. at 17). *Bondi* never mentioned *Rozier*, the original *Dubois* panel decision, or § 922(g)(1). And this Court specifically addressed *Rahimi*’s application, noting that “[t]he only time that the *Rahimi* majority mentioned felons was to reiterate *Heller*’s conclusion that prohibitions ‘on the possession of firearms by “felons and the mentally ill ...” are “presumptively lawful.””” *Dubois*, 139 F.3d at 893; *see also*

Farrier, 2025 WL 2779326, at *3 (“*Bruen* and *Rahimi* never discussed our precedent on section 922(g)(1) and did not otherwise comment on the precise issue before the *Rozier* court” (cleaned up)).

Dubois squarely denied “that the Supreme Court nevertheless abrogated *Rozier* when *Rahimi* rejected the argument that someone ‘may be disarmed simply because he is not “responsible.””” *Dubois*, 139 F.3d at 893–94. “Nothing in *Rozier* suggested that ‘whether one is qualified to possess a firearm’ turns on whether that person is responsible.... Indeed, the word ‘responsible’ does not appear in our opinion.” *Id.* at 893.

That felons are “people” is not in dispute. “[B]eing a member of ‘the people’ to whom the Second Amendment applies as a general matter is a *necessary* condition to enjoyment of the right to keep and bear arms, but it is not alone *sufficient*.” *United States v. Jimenez-Shilon*, 34 F.4th 1042, 1044 (11th Cir. 2022) (emphasis in original). The Second Amendment protects “a pre-existing right ... and that right’s particular history demonstrates that it extended (and thus extends) to some categories of individuals, but not others.” *Id.* (cleaned up). *Jimenez-Shilon* explained that “certain groups of people—even those who might be among ‘the people’—may be ‘disqualified from’ possessing arms without violating the Second Amendment.” 34 F.4th at 1044. Only those people with a pre-existing right to bear arms had that right

protected by the Second Amendment, and *Rozier* held that felons categorically did not enjoy that right.

Again just recently, in *Fla. Comm’r of Agric.*, this Court distinguished the Second Amendment rights of felons from those of non-felons. Acknowledging *Dubois*’s exclusion of felons, the Court noted the lack of “any authority [standing] for the proposition that misdemeanants are not among the people who enjoy the right to bear arms as protected by the Second Amendment.” 148 F.4th at 1317. Telusme’s extensive felony history distinguishes his case from the misdemeanants protected in *Fla. Comm’r of Agric.*

Rahimi’s clarification of *Bruen*’s historical inquiry could not have “demolish[ed]” or “eviscerate[d]” *Rozier*’s “fundamental props,” as Telusme has to show, because *Rozier* “never actually applied the [earlier] means-end-scrutiny step” that *Bruen* displaced. *See Dubois*, 94 F.4th at 1292–93 (citing *Jimenez-Shilon*, 34 F.4th at 1052-53 (Newsom, J., concurring)). Instead, *Rozier* ruled on the threshold matter that felons categorically were a “certain class[] of people” without firearm possession rights protected by the Second Amendment. 598 F.3d at 771. Felon firearm bans survive Second Amendment challenge “under any and all circumstances.” *Id.*

Since *Rahimi* and *Bondi*, this Court has continued to treat the constitutionality of § 922(g)(1) as settled law, rejecting both facial and as-applied challenges. *See*

United States v. Whitaker, No. 24-10693, 2025 WL 1892566, at *2 (11th Cir. July 9, 2025). This Court has “grant[ed] summary affirmance ... because it is clearly right as a matter of law that § 922(g)(1) doesn’t violate the Second Amendment.” *Id.*

II. As Telusme concedes, binding precedent precludes his argument that his § 922(g) conviction is invalid under the Commerce Clause.

Binding precedent refutes Telusme’s argument that his factual stipulation that his firearm and ammunition traveled in interstate commerce was not sufficient to satisfy the Commerce Clause. As he correctly concedes, this Court has ruled that such facts are sufficient. *See McAllister*, 77 F.3d at 389–90; *Scott*, 263 F.3d at 1274; *see also United States v. Wright*, 392 F.3d 1269, 1280 (11th Cir. 2004) (listing numerous Eleventh Circuit cases upholding the constitutional validity of § 922(g)).

In *McAllister*, this Court rejected constitutional challenges, based on *United States v. Lopez*, 514 U.S. 549 (1995), identical to those here. 77 F.3d at 389–90. This Court held that § 922(g)(1)’s jurisdictional element requiring firearm or ammunition to travel “in or affect[] interstate commerce” defeated any facial Commerce Clause challenge to the statute. *Id.* Further, because there was evidence the firearm traveled in interstate commerce, § 922(g) was not unconstitutional as applied. *Id.*; *see also Scott*, 263 F.3d at 1274 (holding that § 922(g) was constitutional as applied, because there was evidence the firearm moved in interstate commerce).

Like *Scott* and numerous other cases that followed *McCallister*, Telusme’s

facial challenges to § 922(g) are in direct conflict with this Court’s binding precedent. *See Cargill v. Turpin*, 120 F.3d 1366, 1386 (11th Cir. 1997) (“The law of this circuit is ‘emphatic’ that only the Supreme Court or this Court sitting *en banc* can judicially overrule a prior panel decision.”). Further, consistent with *McCallister* and *Scott*, § 922(g) was constitutional as applied because the parties stipulated that the firearm and ammunition traveled in interstate or foreign commerce (DE 39 ¶ 12).

CONCLUSION

Summary disposition is appropriate because binding precedent precludes Telusme’s arguments. If he believes *Dubois*, *McAllister*, and *Scott* wrongly applied this Court’s or the Supreme Court’s earlier decisions, his remedy is to seek *en banc* rehearing with this Court or review by the Supreme Court. In the meantime, the district court’s decision should be summarily affirmed.

Respectfully submitted,

Jason A. Reding Quiñones
United States Attorney

By: /s/ Juan Valiente
Juan Valiente
Assistant United States Attorney
99 N. E. 4th Street
Miami, Florida 33132-2111
Tel. (305) 961-9123
juan.valiente@usdoj.gov

Certificate of Compliance

This motion complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) because it contains 2,408 words, excluding the parts of the motion exempted by Fed. R. App. P. 27(a)(2)(B).

Certificate of Service

I HEREBY CERTIFY that on November 10, 2025, a true copy of the foregoing was filed electronically with the Eleventh Circuit Court of Appeals' Internet web at www.ca11.uscourts.gov using CM/ECF, and electronically served on Assistant Federal Public Defender M. Caroline McCrae, Counsel for Telusme.

/s/ Juan Valiente
Juan Valiente
Assistant United States Attorney

A-3

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

[24-cr-80076-Cannon/McCabe](#)

Case No. _____

18 USC § 922(g)(1)
18 USC § 924(e)
21 USC § 841(a)(1)
18 USC § 924(c)
18 USC § 924(d)(1)

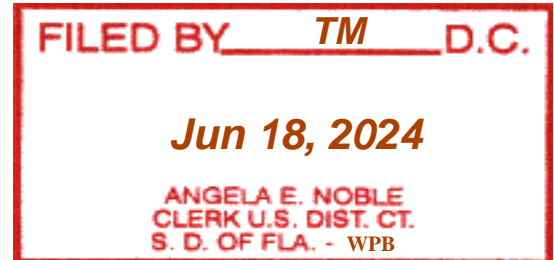
UNITED STATES OF AMERICA,

vs.

STEVE TELUSME,

Defendant.

_____ /



INDICTMENT

THE GRAND JURY CHARGES THAT:

COUNT 1

On or about April 29, 2023, in Palm Beach County, in the Southern District of Florida, the defendant,

STEVE TELUSME,

knowingly possessed a firearm and ammunition in and affecting interstate and foreign commerce, knowing he had previously been convicted of a crime punishable by imprisonment for a term exceeding one year, in violation of Title 18, United States Code, Sections 922(g)(1) and 924(e).

It is further alleged that the firearms and ammunition are:

- a.) One (1) Zastava, Model N-PAP M70, caliber 7.62 x 39 mm, AK-47 variant semi-

automatic rifle;

- b.) Thirty-nine (39) rounds of 7.62 x 39 mm caliber Tulammo ammunition; and
- c.) Two (2) rounds of 7.62 x 39 mm caliber Barnaul ammunition.

Pursuant to Title 18, United States Code, Section 924(e), it is further alleged that before defendant **STEVE TELUSME** committed the offense charged in this count, **STEVE TELUSME** had at least three previous convictions for offenses committed on occasions different from one another.

COUNT 2

On or about June 21, 2023, in Palm Beach County, in the Southern District of Florida, the defendant,

STEVE TELUSME,

knowingly possessed a firearm and ammunition in and affecting interstate and foreign commerce, knowing he had previously been convicted of a crime punishable by imprisonment for a term exceeding one year, in violation of Title 18, United States Code, Sections 922(g)(1) and 924(e).

It is further alleged that the firearms and ammunition are:

- a.) One (1) SCCY, Model DVC-1, 9 mm semi-automatic pistol;
- b.) Ten (10) rounds of Hornady 9 mm ammunition;
- c.) One (1) round of Black Rambo 9 mm ammunition;
- d.) One (1) Canik, Model TP9 Elite, 9 mm semi-automatic pistol; and
- c.) One (1) round of Federal 9 mm caliber ammunition.

Pursuant to Title 18, United States Code, Section 924(e), it is further alleged that

before defendant **STEVE TELUSME** committed the offense charged in this count, **STEVE TELUSME** had at least three previous convictions for offenses committed on occasions different from one another.

COUNT 3

On or about June 21, 2023, in Palm Beach County, in the Southern District of Florida, the defendant,

STEVE TELUSME,

did knowingly and intentionally possess with intent to distribute a controlled substance, in violation of Title 21, United States Code, Section 841(a)(1).

Pursuant to Title 21, United States Code, Section 841(b)(1)(C), it is further alleged that this violation involved a mixture and substance containing a detectable amount of cocaine and a mixture and substance containing a detectable amount of N- phenyl-N- [1- (2-phenylethyl)-4-piperidinyl] propanamide, commonly known as fentanyl.

COUNT 4

On or about June 21, 2023, in Palm Beach County, in the Southern District of Florida, the defendant,

STEVE TELUSME,

did knowingly possess a firearm in furtherance of a drug trafficking crime, a felony for which the defendant may be prosecuted in a court of the United States, that is, a violation of Title 21, United States Code, Section 841(a)(1), as charged in Count 3 of this Indictment, in violation of Title 18, United States Code, Section 924(c)(1)(A).

FORFEITURE ALLEGATIONS

1. The allegations of this Indictment are hereby re-alleged and by this reference fully incorporated herein for the purpose of alleging forfeiture to the United States of America of certain property in which the defendant, **STEVE TELUSME**, has an interest.

2. Upon conviction of a violation of Title 21, United States Code, Section 841, as alleged in this Indictment, the defendant shall forfeit to the United States any property constituting, or derived from, any proceeds obtained, directly or indirectly, as a result of such offense, and any property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, such offense, pursuant to Title 21, United States Code, Section 853.

3. Upon conviction of a violation of Title 18, United States Code, Sections 922(g) and/or 924(c), or any other criminal law of the United States, as alleged in this Indictment, the defendant shall forfeit to the United States any firearm or ammunition involved in or used in the commission of such offenses, pursuant to Title 18, United States Code, Section 924(d)(1).

All pursuant to Title 21, United States Code, Section 853, and Title 18, United

States Code, Section 924(d)(1), and the procedures set forth in Title 21, United States Code, Section 853, as incorporated by Title 28, United States Code, Section 2461(c).

A TRUE BILL:

FOREPERSON



MARKENZY LAPOINTE
UNITED STATES ATTORNEY



JOHN C. McMILLAN
ASSISTANT UNITED STATES ATTORNEY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA

CASE NO.: _____

v.

CERTIFICATE OF TRIAL ATTORNEY

STEVE TELUSME,

_____ /

Superseding Case Information:

New Defendant(s) (Yes or No) _____

Number of New Defendants _____

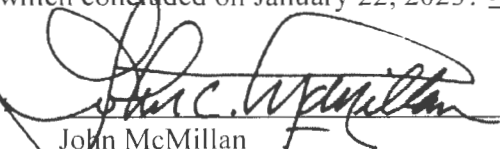
Total number of counts _____

Court Division (select one)

- Miami Key West FTP
- FTL WPB

I do hereby certify that:

1. I have carefully considered the allegations of the indictment, the number of defendants, the number of probable witnesses and the legal complexities of the Indictment/Information attached hereto.
2. I am aware that the information supplied on this statement will be relied upon by the Judges of this Court in setting their calendars and scheduling criminal trials under the mandate of the Speedy Trial Act, Title 28 U.S.C. §3161.
3. Interpreter: (Yes or No) No
List language and/or dialect: _____
4. This case will take 3-4 days for the parties to try.
5. Please check appropriate category and type of offense listed below:
(Check only one) (Check only one)
I 0 to 5 days Petty
II 6 to 10 days Minor
III 11 to 20 days Misdemeanor
IV 21 to 60 days Felony
V 61 days and over
6. Has this case been previously filed in this District Court? (Yes or No) No
If yes, Judge _____ Case No. _____
7. Has a complaint been filed in this matter? (Yes or No) Yes
If yes, Magistrate Case No. 24-mj-8234-RMM
8. Does this case relate to a previously filed matter in this District Court? (Yes or No) No
If yes, Judge _____ Case No. _____
9. Defendant(s) in federal custody as of 05/29/2024
10. Defendant(s) in state custody as of _____
11. Rule 20 from the Southern District of Florida
12. Is this a potential death penalty case? (Yes or No) No
13. Does this case originate from a matter pending in the Northern Region of the U.S. Attorney's Office prior to August 8, 2014 (Mag. Judge Shaniek Maynard? (Yes or No) No
14. Does this case originate from a matter pending in the Central Region of the U.S. Attorney's Office prior to October 3, 2019 (Mag. Judge Jared Strauss? (Yes or No) No
15. Did this matter involve the participation of or consultation with now Magistrate Judge Eduardo I. Sanchez during his tenure at the U.S. Attorney's Office, which concluded on January 22, 2023? No

By  _____
John McMillan

Assistant United States Attorney

Court ID No. A5500228

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

PENALTY SHEET

Defendant's Name: Steve TELUSME

Counts # 1-2

Possession of Firearm and Ammunition by a Convicted Felon

Title 18, United States Code, Sections 922(g)(1), 924(e)

- * **Max. Term of Imprisonment:** Life
- * **Mandatory Min. Term of Imprisonment (if applicable):** Fifteen (15) years
- * **Max. Supervised Release:** Three (3) years
- * **Max. Fine:** \$250,000.00
- * **Special Assessment:** \$100.00
- * **Immigration Consequences of Removal (Deportation) if the defendant is not a U.S. Citizen, following conviction.**

Count # 3

Possession With Intent to Distribute Controlled Substances (Cocaine and Fentanyl)

Title 21, United States Code, Sections 841(a)(1), 841(b)(1)(C)

- * **Max. Term of Imprisonment:** 20 years
- * **Mandatory Min. Term of Imprisonment (if applicable):**
- * **Max. Supervised Release:** Life
- * **Max. Fine:** \$1,000,000.00
- * **Special Assessment:** \$100.00
- * **Immigration Consequences of Removal (Deportation) if the defendant is not a U.S. Citizen, following conviction.**

Counts # 4

Possession of a Firearm in Furtherance of a Federal Drug Trafficking Crime

Title 18, United States Code, Section 924(c)(1)(A)

- * **Max. Term of Imprisonment:** Life
- * **Mandatory Min. Term of Imprisonment (if applicable):** 5 years' imprisonment consecutive to any other term of imprisonment imposed.
- * **Max. Supervised Release:** Five (5) years
- * **Max. Fine:** \$250,000.00
- * **Special Assessment:** \$100.00
- * **Immigration Consequences of Removal (Deportation) if the defendant is not a U.S. Citizen, following conviction.**

*Refers only to possible term of incarceration, supervised release and fines. It does not include restitution, special assessments, parole terms, or forfeitures that may be applicable.

A-4

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 24-CR-80076-CANNON

UNITED STATES OF AMERICA,

Plaintiff,

vs.

STEVE TELUSME,

Defendant.

MOTION TO DISMISS INDICTMENT

The defendant, Steve Telusme, through undersigned counsel, hereby moves to dismiss the indictment pursuant to Rule 12(b)(3) of the Federal Rules of Criminal Procedure, and in support thereof, states:

First, Title 18, United States Code Section 922(g)(1), either on its face or as applied to Mr. Telusme's specific case, violates the Second Amendment. *See New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022) (upholding the constitutional right to carry a handgun in public, and ruling that restrictions on protected conduct must be consistent with America's historical tradition of firearm regulation.); *Range v. Att'y Gen. United States of Am.*, 69 F.4th 96 (3d Cir. 2023) (*en banc*) (vacating a § 922(g)(1) conviction because, as applied, there was no showing of a historical tradition of regulation); *United States v. Bullock*, Case No. 3:18-CR-165-CWR-FKB, 2023 WL 4232309 (S.D. Miss. June 28, 2023) (dismissing a § 922(g)(1) charge for the same reason).

Second, because § 922(g)(1) regulates purely intrastate conduct, its enactment exceeded Congress's Commerce Clause authority, and it is thus unconstitutional.

FACTUAL BACKGROUND

On April 29, 2023, law enforcement officers conducted an undercover buy of a firearm in West Palm Beach, Florida. (DE 1: 4). Law enforcement had arranged the transaction with another individual, but Mr. Telusme is alleged to have delivered the firearm and ammunition to the undercover officer. (DE 1: 4-5). Mr. Telusme is charged in Count One with possessing this firearm and ammunition as a convicted felon. (DE 16: 1-2).

On June 21, 2023, law enforcement executed a state search warrant at an apartment in West Palm Beach, Florida. (DE 1: 9). During the search, law enforcement allegedly recovered two firearms, ammunition, crack cocaine, and fentanyl. (DE 1: 9-10). Mr. Telusme is charged in Court Two with possessing these firearms and ammunition as a convicted felon. (DE 16: 2-3).

There is no allegation that the firearms or ammunition were purchased in interstate commerce.

The government has alleged that at the time of the incidents in this case, Mr. Telusme had been convicted of possession of cocaine, oxycodone, and heroin, robbery, fleeing or attempting to elude law enforcement, battery on a police officer, resisting an officer with violence, dealing in stolen property, false verification of ownership, sale of cocaine, oxycodone, and heroin.

ARGUMENT

**I. BOTH ON ITS FACE OR AS APPLIED TO MR. TELUSME,
SECTION 922(g)(1) VIOLATES THE SECOND AMENDMENT**

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. Two years ago, in *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, the Supreme Court for the first time set forth a general test for assessing the constitutionality of firearm restrictions in which it rejected means-ends scrutiny and adopted a two-step “test rooted in the Second Amendment’s text, as informed by history.” 142 S. Ct. at 2127. Two principles underlie the test. *First*, where “the Second Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects that conduct.” *Id.* at 2126. *Second*, regulations on protected conduct may then only stand if the Government can “demonstrate that the regulation is consistent with this Nation’s historical tradition of firearm regulation.” *Id.* Here, because Mr. Telusme’s alleged conduct is covered by the plain text of the Second Amendment, and because the Government cannot demonstrate that § 922(g)(1) is— either facially, or alternatively, as applied to Mr. Telusme— consistent with America’s historical tradition of firearm regulation, the indictment must be dismissed.

**A. The Second Amendment’s plain text covers Mr. Telusme’s
alleged conduct. (Step One of the *Bruen* Analysis)**

The plain text of the Second Amendment guarantees the right (1) “of the people,” (2) “to keep and bear,” (3) “arms.” *Heller*, 554 U.S. at 579–95. Mr. Telusme’s conduct falls squarely into each category, so it is presumptively protected.

1. *Mr. Telusme is among “the people” protected under the Second Amendment*

As a preliminary matter, Mr. Telusme—a lifelong citizen and resident of the United States—is unambiguously part of “the people.” In *District of Columbia v. Heller*, the Supreme Court stated that “the people” in the Second Amendment “unambiguously refers” to “all Americans” and “all members of the political community”—“not an unspecified subset.” 554 U.S. 570, 579–81 (2008) (emphasis added). In fact, aside from in the Second Amendment, “[t]he unamended Constitution and the Bill of Rights use the phrase ‘right of the people’ two other times:” once “in the First Amendment’s Assembly–and–Petition Clause” and again “in the Fourth Amendment’s Search–and–Seizure Clause.” *Heller, id.* at 579. Per *Heller*, the phrase has the same meaning each time, and “refers to a class of persons who are part of the national community or who have otherwise developed sufficient connections with this country to be considered part of that community.” *Id.* at 580 (quoting *United States v. Verdugo–Urquidez*, 494 U.S. 259, 265 (1990)); (“[T]he people’ in the Second Amendment has the same meaning as it carries in other parts of the Bill of Rights”).

This interpretation accords with the plain meaning of the word “people” at the time the Bill of Rights was adopted: “[t]he body of persons who compose a community, town, city or nation” – a term “comprehend[ing] all classes of inhabitants.” II Noah Webster, *An American Dictionary of the English Language* (1828).

Moreover, just as the Second Amendment does not “draw ... a home/public distinction with respect to the right to keep and bear arms,” *Bruen*, 142 S.Ct. at 2134,

it also does not draw a felon/non-felon distinction. *United States v. Jimenez-Shilon*, 34 F.4th 1042, 1046 (11th Cir. 2022) (describing felons as “indisputably part of ‘the people’” under the Second Amendment); *see also United States v. Meza-Rodriguez*, 798 F.3d 664, 671 (7th Cir. 2015) (holding that a person’s criminal record is irrelevant in determining whether the person is among “the people” protected under the Second Amendment; noting that the amendment “is not limited to such on-again, off-again protections”); *Folajtar v. Attorney Gen. of the United States*, 980 F.3d 897, 912 (3d Cir. 2020) (Bibas, J., dissenting) (“Felons are more than the wrongs they have done. They are people and citizens who are part of ‘We the People of the United States.’”).

In view of these considerations, judges in this district and others have found that convicted felons are, in fact, part of “the people.” *See, e.g., United States v. Pierre*, Case No. 1:22-CR-20321-JEM/Becerra, Report and Recommendations by Judge Becerra, DE 53:17-20 (S.D. Fla. Nov. 28, 2022) (concluding that a felon “is included in the Second Amendment’s ‘of the people’”); *United States v. Hester*, Case No. 22-20333-CR-Scola, DE 39:1-10, 27:2-12 (S.D. Fla. Jan. 27, 2023) (the same); *see also Range*, 69 F.4th at 103 (“*Heller* and its progeny lead us to conclude that Bryan Range remains among “the people” despite his 1995 false statement conviction.”).

2. The right to “keep” and “bear” arms includes the right to possess a firearm outside the home

With regards to the Second Amendment’s guarantee of a right to “keep” and “bear” arms, the Court recognized in *Heller* that the word “keep” means “[t]o have in custody” or to “retain in one’s power of possession,” and the word “bear” means to

“carry.” 554 U.S. at 582; 584. And *Bruen* in turn established that the right to “bear” arms includes carrying arms in public outside the home. 142 S. Ct. at 2134-35 (“To confine the right to ‘bear’ arms to the home would nullify half of the Second Amendment’s operative protections.”) Thus, it is indisputable that Mr. Telusme’s alleged possession of a firearm in a car is covered by the right to “bear” arms.

3. The right to keep and bear “arms” includes the right to possess both a handgun and ammunition

Finally, the term “arms” refers to “[w]eapons of offense, or armour of defense.” *Heller*, 554 U.S. at 581. The Supreme Court has construed the term as “extend[ing]...to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding.” *Id.* at 582. And the Court has specifically held that the term protects the right to possess “handguns,” *id.* at 629, which *were* in “common use” at the founding. *Id.* at 627. Ammunition is likewise part of the “arms” protected by the Second Amendment because “ammunition is necessary for [] a gun to function as intended.” *Ass’n of N.J. Rifle & Pistol Clubs, Inc. v. Attorney Gen. of N.J.*, 910 F.3d 106, 116 (3d Cir. 2018); *Jackson v. City of San Francisco*, 746 F.3d 953, 967 (9th Cir. 2014) (“without bullets, the right to bear arms would be meaningless”).

Because Mr. Telusme’s alleged conduct is squarely covered by a right of “the people” to “bear” “arms,” it is presumptively protected by the Second Amendment.

B. There is no historical tradition of firearm regulation to justify Mr. Telusme’s disarmament under § 922(g)(1) in this case. (Step Two of the *Bruen* Analysis)

Where, as here, an individual's conduct is shown to be presumptively protected by the plain text of the Second Amendment, a restriction can only stand where the Government shows that such a restriction "is consistent with the Nation's historical tradition of firearm regulation," that is, the tradition in existence "when the Bill of Rights was adopted in 1791." *Bruen*, 142 S. Ct. at 2126. Here, the Government cannot meet that burden as to § 922(g)(1) generally, nor could it meet that burden as to Mr. Telusme. *See Bullock*, 2023 WL 4232309, at *2 (finding no historical tradition to justify applying § 922(g)(1), which "was enacted in 1938, not 1791 or 1868," to a person with aggravated assault and manslaughter convictions).

1. *The Government bears the burden of showing a tradition*

As a preliminary matter, *Bruen* prescribed two ways of conducting the required historical inquiry for regulations of presumptively protected conduct. *First*, where a statute is directed at a "longstanding" problem that "has persisted since the 18th century," *Bruen* directs a "straightforward" inquiry: if there is no historical tradition of "distinctly similar" regulation, the regulation at issue is unconstitutional. *Bruen*, 142 S. Ct. at 2131 (conducting this straightforward" inquiry to strike down New York's restriction on public carry of guns). *Second*, where a statute is directed at "unprecedented societal concerns or dramatic technological changes," or problems that "were unimaginable at the founding," then and only then are courts empowered to reason "by analogy." *Id.* at 2132. Both guns and felons were indisputably prevalent at the time the Bill of Rights was passed, rendering the problem addressed by § 922(g)(1) clearly "longstanding." In fact, prior to the American Revolution, many of

the colonies were heavily populated with convicts that were sent there from England. *See, e.g.*, Encyclopedia Virginia, “Convict Labor during the Colonial Period,” *available at* encyclopediavirginia.org/entries/convict-labor-during-the-colonial-period/ (last visited Aug. 2, 2024) (noting that as of 1776, Virginia alone housed at least 20,000 British convicts). Notably, in 1751, Ben Franklin even wrote a satirical article entitled “Rattle-Snakes for Felons,” criticizing the way England had been ridding itself of its felons by sending them to the colonies to grow their population, and suggesting that rattlesnakes be sent back to England as “suitable returns for the human serpents sent us by our Mother Country.” Bob Ruppert, “The Rattlesnake Tells the Story,” *JOURNAL OF THE AMERICAN REVOLUTION* (Jan. 2015). And courts, recognizing this history, have analyzed the federal felon-in-possession law under the “straightforward” analysis directed by *Bruen*. *See, e.g. Range*, 69 F.4th at 106 (conducting the historical analysis and concluding that “the Government has not shown that the Nation's historical tradition of firearms regulation supports depriving Range of his Second Amendment right to possess a firearm.”).

In assessing, by this straightforward analysis, whether the Government has met its burden to “establish the relevant tradition of regulation,” this Court must apply the following three principles. *Bruen*, 142 S. Ct. at 2135, 2149 n.25. *First*, where, as here, a challenged regulation addresses a general societal problem that has persisted since the 18th century that regulation is unconstitutional unless the Government shows a tradition of “distinctly similar historical regulation” since that time. *Id.* at 2126. *Second*, if there is “distinctly similar historical regulation,” the

Government must show that such regulation is prevalent, such that it “is consistent with the Nation’s historical tradition of firearm regulation.” *Id.* “[A] single law in a single State” is not enough; instead, a “widespread” historical practice “broadly prohibiting” the conduct in question is required. *Id.* at 2137-38; 2142-45 (expressing doubt that regulations in even three of the thirteen colonies “could suffice.”). *Third*, a “longstanding” tradition is one that accounts for time. Per *Bruen*, “when it comes to interpreting the Constitution, not all history is created equal” because “Constitutional rights are enshrined with the scope they were understood to have when the people adopted them,” which in the case of the Second Amendment, was in 1791. *Id.* at 2136.

In short, to meet the *Bruen* Step Two inquiry, there must be historical regulation “distinctly similar” to § 922(g)(1) that was prevalent and “longstanding,” and that applied generally or specifically to those like Mr. Telusme. As is further described below, courts have been looking, but no such longstanding tradition exists.

2. The Government cannot meet its burden because there is no longstanding tradition of permanently depriving a felon—let alone one like Mr. Telusme—from possessing a firearm

The Third Circuit (sitting *en banc*) and the Southern District of Mississippi (Judge Carlton W. Reeves, Chair of the U.S. Sentencing Commission, presiding), in *Range* and *Bullock*, recently undertook analyses of the historical traditions relevant to § 922(g)(1) in light of *Bruen*, and both courts came to the same conclusion: that the federal felon-in-possession statute was unconstitutional as applied to the defendants

in those cases. *Range*, 69 F.4th at 448 (invalidating § 922(g)(1) as applied to a person convicted of making false statements on a foodstamps application); *Bullock*, 2023 WL 4232309, at *1 (invalidating § 922(g)(1) as applied to a person convicted of aggravated assault and murder). Consistent with these cases, this Court should find that § 922(g)(1) is unconstitutional on its face, or unconstitutional as applied to Mr. Telusme.

First, federal law has only included a general prohibition on firearm possession for individuals convicted of crimes punishable by over a year beginning in 1961. *Range*, 69 F. 4th at 104 (citing An Act To Strengthen The Federal Firearms Act, Pub. L. No. 87-342, 75 Stat. 757 (1961)). Even the earliest version of that statute, which applied exclusively to certain violent criminals, was only enacted in 1938, well after the Bill of Rights was adopted (1791) and also, to the extent it is relevant, well after the Fourteenth Amendment was enacted (1868). *Id.* (citing The Federal Firearms Act of 1938, Pub. L. No. 75-785, §§ 1(6), 2(f), 52 Stat. 1250, 1250–51 (1938)).

Second, looking beyond federal law, scholars and historians maintain that in fact, “no colonial or state law in eighteenth century America formally restricted”—much less prohibited, permanently and under pain of criminal punishment—“the ability of felons to own firearms.” Carlton F.W. Larson, *Four Exceptions in Search of a Theory: District of Columbia v. Heller and Judicial Ipse Dixit*, 60 Hastings L.J. 1371, 1374 (2009); accord C. Kevin Marshall, *Why Can't Martha Stewart Have A Gun?*, 32 Harv. J.L. & Pub. Pol'y 695, 708 (2009) (“Though recognizing the hazard of trying to prove a negative, one can with a good degree of confidence say that bans on

convicts possessing firearms were unknown before World War I.”); Royce de R. Barondes, *The Odious Intellectual Company of Authority Restricting Second Amendment Rights to the “Virtuous”*, 25 Tex. Rev. L. & Pol. 245, 291 (2021) (noting the lack of “any direct authority whatsoever” for the view that felons were, “in the Founding Era, deprived of firearm rights”); Lawrence Rosenthal, *The Limits of Second Amendment Originalism and the Constitutional Case for Gun Control*, 92 Wash. U.L. Rev. 1187, 1217 (2015) (describing claims that felon-in-possession statutes are consistent with the Second Amendment’s original meaning as “speculation,” noting “advocates of this view have not identified framing-era precedents to support their” claims); Adam Winkler, *Heller’s Catch-22*, 56 UCLA L. Rev. 1551, 1563 (2009) (“The Founding generation had no laws ... denying the right [to possess firearms] to people convicted of crimes. Bans on ex-felons possessing firearms were first adopted in the 1920s and 1930s, almost a century and a half after the Founding.”).

Third, judges too have recognized that there is no historical tradition of permanent felon disarmament:

- The Third Circuit, sitting *en banc*, see *Range*, 69 F.4th at 104 (reversing a § 922(g)(1) conviction after (i) noting that even the earliest 1938 version of the law covered only those convicted of serious violent crimes like “murder, rape, kidnapping, and burglary,” (ii) rejecting the Government’s attempt to justify modern felony-status-based disarmament based on older laws disarming groups based on race, religion or political status, and (iii) rejecting the Government’s argument that Founding Era traditions of punishing certain nonviolent offenders with death—which would, to be sure, be more serious than disarmament—did not mean there was a tradition of disarmament).

- Judge Reeves, in *Bullock*, 2023 WL 4232309 (dismissing a § 922(g)(1) charge against a 57-year-old who had been convicted of aggravated assault and manslaughter after a bar fight when he was 31, after undertaking an exceptionally detailed review of the rationales on which courts had been upholding § 922(g)(1) charges after *Bruen* and ultimately finding that “[m]issing from [the Government’s brief], in sum, is any example of how American history supports § 922(g)(1), much less the number of examples *Bruen* requires to constitute a well-established tradition.”).
- Judge (now Justice) Barrett of the Seventh Circuit, *see Kanter*, 919 F.3d at 458 (canvassing the historical record of founding-era firearm regulations and concluding, “no[] historical practice supports a legislative power to categorically disarm felons because of their status as felons”); *id.* at 451 (“Founding-era legislatures did not strip felons of the right to bear arms simply because of their status as felons”); *id.* at 464 (“History does not support the proposition that felons lose their Second Amendment rights solely because of their status as felons.”).
- Judge Tymkovich of the Tenth Circuit, *see United States v. McCane*, 573 F.3d 1037, 1047–49 (10th Cir. 2009) (Tymkovich, J., concurring) (questioning whether felon dispossession laws have a “‘longstanding’ historical basis,” noting “recent authorities have *not* found evidence of longstanding dispossession laws” but instead show such laws “are creatures of the twentieth – rather than the eighteenth – century”).
- Judge Traxler of the Fourth Circuit, *see United States v. Chester*, 628 F.3d 673, 679 (4th Cir. 2010) (“Federal felon dispossession laws ... were not on the books until the twentieth century”).

Evidently, courts have looked extensively and found no support for a “longstanding” historical tradition of gun bans on felons, and that is because no such tradition exists in this country. Thus, pursuant to *Bruen*, § 922(g)(1) is facially unconstitutional. But this Court need not reach so far—the issue in this case would be disposed with a ruling that there is no historical tradition to support application of § 922(g)(1) as to Mr. Telusme. Even assuming a portion of those prior convictions were based on constitutionally-appropriate restrictions on Mr. Telusme’s Second

Amendment rights, there is no tradition in this country that would suggest that those prior convictions support a permanent ban on his possession of a firearm now. Section § 922(g)(1) is thus unconstitutional as applied.

II. TITLE 18, UNITED STATES CODE SECTION 922(g) EXCEEDS CONGRESS' POWER UNDER THE COMMERCE CLAUSE BY ALLOWING THE FEDERAL GOVERNMENT TO REGULATE PURELY INTRASTATE CONDUCT THAT DOES NOT SUBSTANTIALLY EFFECT INTERSTATE COMMERCE

Mr. Telusme respectfully moves this Honorable Court to dismiss the indictment against him, because 18 U.S.C. § 922(g) exceeds Congress' limited powers under the Commerce Clause, both on its face and as applied to Mr. Telusme's alleged conduct in this case. Mr. Telusme recognizes that the Eleventh Circuit has rejected this claim. *United States v. McAllister*, 77 F.3d 387 (11th Cir. 1996) and *United States v. Scott*, 263 F.3d 1270 (11th Cir. 2001). Mr. Telusme therefore respectfully raises the following arguments in order to preserve this claim for further review.

A. The Federal Government is one of limited and enumerated powers; the general police power resides in the States.

“[T]he principle that ‘the Constitution created a Federal Government of limited powers,’ while reserving a generalized police power to the States, is deeply ingrained in our constitutional history.” *United States v. Morrison*, 529 U.S. 598, 607, 618 n.8 (2000) (citations and internal quotation marks omitted). By the Framers' intentional design, “[t]he regulation and punishment of intrastate violence that is not directed at the instrumentalities, channels, or goods involved in interstate commerce has always

been the province of the States.” *Morrison*, 529 U.S. at 617 (citation omitted). Hence, the federal government may enact and enforce criminal laws only insofar as they fall within one of Congress’ specifically enumerated powers under Article I. *See Bond v. United States*, 572 U.S. 844, 876-77 (2014) (“The Constitution confers upon Congress . . . not all governmental powers, but only discrete, enumerated ones.”) (alteration and citation omitted).

B. Congress may not regulate noneconomic, intrastate criminal activity unless that activity “substantially affects” interstate commerce.

This case involves Congress’ power “[t]o regulate Commerce . . . among the several States,” under U.S. CONST. art. I, § 8, cl. 3. In *Lopez*, the Court surveyed the history of the Court’s Commerce Clause jurisprudence and identified three broad categories of activities which Congress may regulate pursuant to the Clause: First, “Congress may regulate the use of the channels of interstate commerce.” *Id.* Second, Congress may “regulate and protect the instrumentalities of interstate commerce, or persons and things in interstate commerce.” *Id.* Third, and relevant here, Congress may regulate “those activities having a substantial relation to interstate commerce, . . . *i.e.*, those activities that substantially affect interstate commerce.” *Id.* at 558-559.

With respect to the third category, the Court acknowledged that its case law “has not been clear whether an activity must ‘affect’ or ‘substantially affect’ interstate commerce in order to be within Congress’ power to regulate it under the Commerce Clause.” *Id.* at 559 (citations omitted). The Court concluded that the proper analysis is whether the targeted activity “substantially affects” interstate commerce. *Id.*

In *Lopez*, the Court invalidated the Gun-Free School Zones Act, formerly codified at 18 U.S.C. § 922(q). The Court found that the Act was “a criminal statute that by its terms has nothing to do with ‘commerce’ or any sort of economic enterprise, however broadly one might define those terms.” *Lopez*, 515 U.S. at 561. It was “not an essential part of a larger regulation of economic activity, in which the regulatory scheme could be undercut unless the intrastate activity were regulated.” *Id.* at 561. It contained “no jurisdictional element which would ensure, through case-by-case inquiry, that the firearm possession in question affects interstate commerce.” *Id.* And the Court found no congressional findings regarding the impact of intrastate firearms possession on interstate commerce. *Id.* at 562.

***C. United States v. McAllister*, 77 F.3d 387 (11th Cir. 1996)
and United States v. Scott, 263 F.3d 1270 (11th Cir. 2001),
were wrongly decided.**

Shortly after *Lopez* was decided, the Eleventh Circuit faced the question of whether 18 U.S.C. § 922(g) similarly exceeded Congress’ authority under the Commerce Clause, and held that it did not. *United States v. McAllister*, 77 F.3d 387, 389 (11th Cir. 1996). The Eleventh Circuit found that § 922(g) was distinguishable from the section invalidated in *Lopez* (§ 922(q)), based on the presence of the statutory jurisdictional element:

The [*Lopez*] Court relied on the fact that [§ 922(q)] “by its terms has nothing to do with ‘commerce’ or any sort of economic enterprise, however broadly one might define those terms.” 514 U.S. at ---, 115 S. Ct. at 113. In contrast, § 922(g) makes it unlawful for a felon to possess ‘in or affecting commerce,’ any firearm or ammunition. 18 U.S.C. § 922(g) (emphasis added). This jurisdictional element defeats McAllister’s facial challenge to the constitutionality of § 922(g)(1).

McAllister, 77 F.3d at 389-90 (footnote omitted). The court also denied McAllister's as-applied challenge to the statute. Specifically, the Court rejected McAllister's argument "that *Lopez* marks a significant change, rendering suspect the 'minimal nexus' requirement established by the Court in *Scarborough*." 77 F.3d at 390.

In *Scarborough v. United States*, 431 U.S. 563 (1977), the Court held that proof that a firearm had previously traveled in interstate commerce was sufficient to satisfy the requirement, under the predecessor statute to § 922(g), that a defendant had possessed a firearm "in commerce or affecting commerce." The Court found that, in drafting the statute, "Congress intended no more than a minimal nexus requirement." *Id.* at 577. The case was decided, however, purely an issue of statutory construction: "The issue [was] whether proof that the possessed firearm previously traveled in interstate commerce is sufficient to satisfy the statutorily required nexus between the possession of a firearm by a convicted felon and commerce." *Id.* at 564 (emphasis added).

Five years later, the appellant in *United States v. Scott*, 263 F.3d 1270, 1271 (11th Cir. 2001), argued that *McAllister*'s holding had been abrogated by the intervening decisions in *United States v. Morrison*, 263 F.3d 1270 (2000), and *Jones v. United States*, 529 U.S. 848 (2000). In *Morrison*, the Court held that part of Violence Against Women Act, which prohibited intrastate gender-related violence, exceeded Congress' power under the Commerce Clause. 529 U.S. at 617-18. The Court reaffirmed that "[t]he Constitution requires a distinction between what is truly national and what is truly local," and that the regulation of violent crime is

traditionally a matter for the States. *See id.* at 619. The Court also “reject[ed] the argument that Congress may regulate noneconomic, violent criminal conduct based solely on that conduct’s aggregate effect on interstate commerce.” *Id.* at 618.

In *Jones*, the Court held that a private dwelling, not used for any commercial purpose, did not fall within the ambit of the federal arson statute, 18 U.S.C. § 844(i). *Jones*, 529 U.S. at 855. The Court rejected the government’s argument that the building was “used” in commerce because the owner “used” the residence as collateral to obtain a loan, and “used” the residence to obtain a casualty insurance policy. The qualification that the building is “used” in an activity affecting commerce, the Court held, “is most sensibly read to mean active employment for commercial purposes, and not merely a passive, passing, or past connection to commerce.” *Id.* at 855.

The Court again expressed concern that adopting the government’s argument would eliminate the distinction between state and federal activities. *Id.* at 857. Although the case was ultimately decided as a matter of statutory construction, the Court found its interpretation was appropriate, “[g]iven the concerns brought to the fore in *Lopez*,” and the constitutional questions that would arise if the “‘traditionally local criminal conduct,’ in which petitioner Jones engaged,” were rendered “a matter for federal enforcement.” *Jones*, 529 U.S. at 858 (citation omitted).

In *Scott*, the Eleventh Circuit held that “nothing in *Morrison* or *Jones* alters the reasoning upon which *McAllister* is moored;” that *McAllister* “relied on the jurisdictional element of § 922(g) to sustain the statute under *Lopez*;” and that *Morrison* did not compel a different result. *Scott*, 263 F.3d at 1274. The opinion did

not address *Morrison*'s repudiation of the 'aggregate effects' theory, on which the *McAllister* opinion also relied. See *McAllister*, 77 F.3d at 390 ("When viewed in the aggregate, a law prohibiting the possession of a gun by a felon stems the flow of guns in interstate commerce to criminals."). The court held that "*Jones*¹ purely statutory holding likewise does not alter *McAllister*." *Scott*, 263 F.3d at 1274.

Hence, despite the facts that (1) *Scarborough* similarly approved of a "minimal nexus" test solely as a matter of statutory construction; (2) *Lopez* held, as a matter of constitutional law, that noneconomic intrastate activity may only be federally regulated if it substantially affects interstate commerce; and (3) *Morrison* expressly rejected of the aggregate "costs of crime" rationale invoked in *McAllister*, the Eleventh Circuit continues to hold that a conviction under § 922(g) may rest on a minimal nexus to interstate commerce. These holdings simply cannot be squared with the holdings of *Lopez* and *Morrison*, or the analysis in *Jones*. The Supreme Court has clearly held that Congress may not regulate noneconomic, intrastate criminal activity unless that activity "substantially affects" interstate commerce. A statutory element requiring a minimal nexus to commerce is insufficient to overcome these constitutional rulings. The Eleventh Circuit's precedents holding otherwise are contrary to Supreme Court authority, and should be overruled.

D. Numerous circuit judges (and two Supreme Court Justices) have called for a reexamination of the issue herein.

Although the Circuit Courts of Appeals have generally agreed that *Lopez* left *Scarborough* intact, there has long been a chorus of dissenting voices from judges

around the country, expressing doubt as to the constitutionality of § 922(g). *See, e.g., United States v. Rawls*, 85 F.3d 240 (Garwood, J., joined by Weiner, and E. Garza, J.J., specially concurring) (5th Cir. 1996) (three members of the Rawl panel joined in a specially concurring opinion expressing significant doubt as to the constitutionality of the statute); *United States v. Kuban*, 94 F.3d 971, 976, 977-78 (5th Cir. 1996) (DeMoss, J., dissenting in part) (finding that “[t]he ‘minimal nexus’ of *Scarborough* can no longer be deemed sufficient under the *Lopez* requirement of substantially affecting interstate commerce”); *United States v. Alderman*, 593 F.3d 1141 (9th Cir. 2010) (O’Scannlain, J., dissenting from the order denying rehearing en banc, joined by Paez, Bybee, and Bea, Circuit Judges) (four judge dissent from denial of rehearing involving a similarly-worded statute, 18 U.S.C. § 931, prohibiting the possession of body armor). This includes a two justice dissent from denial of certiorari to review a similar statute. *See Alderman v. United States*, 562 U.S. 1163 (Thomas, J., joined by Scalia, J., dissenting from the denial of certiorari). More recently, seven judges of the Fifth Circuit voted in favor of rehearing *en banc* the same constitutional challenge to § 922(g) presented herein. *See United States v. Seekins*, 52 F.4th 988 (5th Cir. 2022) (noting that seven judges voted in favor of rehearing *en banc* and nine voted against), *cert. denied*, No. 22-6853 (U.S., June 23, 2023).

These dissenting and specially concurring judges are correct. The Eleventh Circuit’s precedents affirming § 922(g) are out of line with Supreme Court authority, and should not be followed. Mr. Telusme’s alleged possession of the firearm had no effect on interstate commerce whatsoever, let alone the “substantial” effect that the

Supreme Court's Commerce Clause precedents require. Title 18 U.S.C. § 922(g) is unconstitutional both on its face and as applied to Mr. Telusme's alleged conduct, and the indictment should be dismissed.

* * *

The undersigned has conferred with United States Assistant Attorney John McMillan who has advised the Government opposes this motion.

For the foregoing reasons, because § 922(g)(1) violates the Second Amendment and Commerce Clause, or alternatively, because the statute at the very least cannot be applied to Mr. Telusme's conduct without running afoul of his Second Amendment rights, this Court should dismiss the indictment.

Respectfully submitted,

HECTOR A. DOPICO
INTERIM FEDERAL PUBLIC DEFENDER

By: s/M. Caroline McCrae
M. Caroline McCrae
Assistant Federal Public Defender
Attorney for Defendant
Florida Bar No. 72164
250 S Australian Avenue, Suite 400
West Palm Beach, Florida 33401
Phone: (561) 833-6288
Email: caroline_mccrae@fd.org

CERTIFICATE OF SERVICE

I HEREBY certify that on August 2, 2024, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record via transmission of Notices

of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

s/M. Caroline McCrae
M. Caroline McCrae

From: cmecfautosender@flsd.uscourts.gov
To: flsd_cmecf_notice@flsd.uscourts.gov
Subject: Activity in Case 9:24-cr-80076-AMC USA v. Telusme Order on Motion to Dismiss
Date: Monday, August 26, 2024 4:20:12 PM

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.

*****NOTE TO PUBLIC ACCESS USERS***** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.

U.S. District Court

Southern District of Florida

Notice of Electronic Filing

The following transaction was entered on 8/26/2024 at 4:18 PM EDT and filed on 8/26/2024

Case Name: USA v. Telusme

Case Number: [9:24-cr-80076-AMC](#)

Filer:

Document Number: 33(No document attached)

Docket Text:

PAPERLESS ORDER DENYING Defendant's Motion to Dismiss Count 1 and Count 2 of the Indictment [30] as to Defendant Steve Telusme. The Court has reviewed the Motion [30], the Government's Opposition [31], and the full record. Upon review, the Motion is denied under the binding Eleventh Circuit authorities of *United States v. Dubois*, 94 F.4th 1284, 1293 (11th Cir. 2024), *United States v. Rozier*, 598 F.3d 768, 771 (11th Cir. 2010), and *United States v. Jordan*, 635 F.3d 1181, 1189 (11th Cir. 2011). Signed by Judge Aileen M. Cannon on 8/26/2024. (tci)

9:24-cr-80076-AMC-1 Notice has been electronically mailed to:

Annika Marie Miranda annika.miranda@usdoj.gov, carolina.gonzalez@usdoj.gov,
CaseView.ECF@usdoj.gov, jasmine.wong@usdoj.gov, maria.pasquier@usdoj.gov, usafls-hqdkdt@usdoj.gov

John C. McMillan john.mcmillan@usdoj.gov, CaseView.ECF@usdoj.gov,
SGeer@usa.doj.gov, usafls-brdkt@usdoj.gov

M Caroline McCrae Caroline_McCrae@fd.org, rosalind_bennett@fd.org

9:24-cr-80076-AMC-1 Notice has not been delivered electronically to those listed below

and will be provided by other means. For further assistance, please contact our Help Desk at 1-888-318-2260.:

A-6

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

UNITED STATES OF AMERICA

v.

STEVE TELUSME

§ **JUDGMENT IN A CRIMINAL CASE**
 §
 §
 § Case Number: **9:24-CR-80076-AMC(1)**
 § USM Number: **17633-511**
 §
 § Counsel for Defendant: **M Caroline McCrae**
 § Counsel for United States: **John C. McMillan**

THE DEFENDANT:

<input checked="" type="checkbox"/>	pleaded guilty to count(s)	Count 1 and 3 of the Indictment
<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:

<u>Title & Section / Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18:922(g)(1) and 924(e) – Possession of a Firearm and Ammunition by a Convicted Felon	04/29/2023	1
21:841(a)(1) and (b)(1)(C) – Possession with Intent to Distribute Cocaine and Fentanyl	06/21/2023	3

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.

- The defendant has been found not guilty on count(s)
- Count(s) 2 and 4 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 9, 2025

Date of Imposition of Judgment

Signature of Judge



AILEEN M. CANNON
UNITED STATES DISTRICT JUDGE

Name and Title of Judge

January 9, 2025

Date

DEFENDANT: STEVE TELUSME
CASE NUMBER: 9:24-CR-80076-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:

200 months as to Count 1; 200 months as to Count 3. Terms to run concurrent.

The court makes the following recommendations to the Bureau of Prisons:
Defendant be designated to a facility as close to South Florida as possible.

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: STEVE TELUSME
CASE NUMBER: 9:24-CR-80076-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: STEVE TELUSME
CASE NUMBER: 9:24-CR-80076-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.

Defendant's Signature _____

Date _____

DEFENDANT: STEVE TELUSME
CASE NUMBER: 9:24-CR-80076-AMC(1)

SPECIAL CONDITIONS OF SUPERVISION

Mental Health Treatment: The defendant shall participate in an approved inpatient/outpatient mental health treatment program. The defendant will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third-party payment.

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.

Substance Abuse Treatment: The defendant shall participate in an approved treatment program for drug and/or alcohol abuse and abide by all supplemental conditions of treatment. Participation may include inpatient/outpatient treatment. The defendant will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third-party payment.

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: STEVE TELUSME
CASE NUMBER: 9:24-CR-80076-AMC(1)

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>
TOTALS	\$200.00	\$.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:
 - the interest requirement is waived for the fine restitution
 - the interest requirement for the fine 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: STEVE TELUSME
CASE NUMBER: 9:24-CR-80076-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 \$200.00 due immediately, balance due

It is ordered that the Defendant shall pay to the United States a special assessment of \$200.00 for Counts 1 and 3 , 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. 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) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

DEFENDANT: STEVE TELUSME
CASE NUMBER: 9:24-CR-80076-AMC(1)

DENIAL OF FEDERAL BENEFITS
(For Offenses Committed On or After November 18, 1988)

FOR DRUG TRAFFICKERS PURSUANT TO 21 U.S.C. § 862

IT IS ORDERED that the defendant shall be:

- ineligible for all federal benefits for a period of
- ineligible for the following federal benefits for a period of
(specify benefit(s))

OR

- Having determined that this is the defendant's third or subsequent conviction for distribution of controlled substances, IT IS ORDERED that the defendant shall be permanently ineligible for all federal benefits.

FOR DRUG POSSESSORS PURSUANT TO 21 U.S.C. § 862(b)

IT IS ORDERED that the defendant shall:

- be ineligible for all federal benefits for a period of 5 years
- be ineligible for the following federal benefits for a period of
(specify benefit(s))
- successfully complete a drug testing and treatment program.
- perform community service, as specified in the probation and supervised release portion of this judgment.

IS FURTHER ORDERED that the defendant shall complete any drug treatment program and community service specified in this judgment as a requirement for the reinstatement of eligibility for federal benefits.

Pursuant to 21 U.S.C. § 862(d), this denial of federal benefits does not include any retirement, welfare, Social Security, health, disability, veterans benefit, public housing, or other similar benefit, or any other benefit for which payments or services are required for eligibility. The clerk is responsible for sending a copy of this page and the first page of this judgment to:

U.S. Department of Justice, Office of Justice Programs, Washington, DC 20531