**APPENDIX TO THE PETITION FOR A WRIT OF CERTIORARI**

**APPENDIX A**

**FILED**

**United States**
**Court of Appeals**
**Tenth Circuit**

**April 29, 2026**

**Christopher M. Wolpert**
**Clerk of Court**

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

| | |
|---|---|
| UNITED STATES OF AMERICA,<br><br>Plaintiff – Appellee,<br><br>v.<br><br>JOSEPH FREDERICK JOHNSON,<br><br>Defendant – Appellant. | No. 25-5159<br>(D.C. No. 4:24-CR-00402-GKF-1)<br>(N.D. Okla.) |

**ORDER AND JUDGMENT***

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

Before **MORITZ**, **BALDOCK**, and **EID**, Circuit Judges.[**]

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A federal grand jury charged Defendant Joseph Johnson with two counts of being a felon in possession of a firearm and ammunition in violation of 18 U.S.C. § 922(g)(1). The indictment listed Defendant's 2015 Colorado state marijuana cultivation conviction as the predicate felony. Defendant filed a motion to dismiss the indictment, arguing, as pertinent here, that § 922(g)(1) violated the Second Amendment as applied to him because his predicate conviction was not a violent felony and did not render him dangerous. After the district court denied his motion to dismiss, Defendant pleaded guilty to both counts of the indictment but reserved his right to appeal the denial of his motion. The court sentenced Defendant to 366 days' imprisonment and he appealed. In his opening brief, Defendant acknowledges that Tenth Circuit precedent requires us to uphold the district court's denial of his motion to dismiss the indictment as violative of the Second Amendment. Defendant tells us he filed the present appeal to preserve his right to seek en banc review from this Court or petition the Supreme Court for certiorari. Our jurisdiction arises under 28 U.S.C. § 1291. We affirm.

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[**] After examining the briefs and appellate record, this panel has determined unanimously to honor the parties' request for a decision on the briefs without oral argument. *See* Fed. R. App. P. 34(f); 10th Cir. R. 34.1(G). The case is therefore submitted without oral argument.

Defendant is correct that our decision in *Vincent v. Bondi*, 127 F.4th 1263 (10th Cir. 2025), *cert. denied* 2026 WL 568283 (March 2, 2026), upheld the constitutionality of § 922(g)(1) over a Second Amendment objection as to any individual convicted of a prior felony, including a non-violent felony offender. That opinion sets forth the rationale for this Court's holding and we need not repeat that rationale here. *See also United States v. Warner*, 131 F.4th 1137 (10th Cir. 2025) (Despite "the shifting Second Amendment landscape," *Vincent v. Bondi* governs defendant's challenge to the constitutionality of § 922(g)(1) as applied to non-violent felony offenders.).

Because controlling Tenth Circuit precedent compels this panel to uphold the district court's denial of Defendant's motion to dismiss the indictment as violative of the Second Amendment, the judgment of the district court is affirmed. *See United States v. White*, 782 F.3d 1118, 1126-27 (10th Cir. 2015) (one Tenth Circuit panel cannot overrule the judgment of a prior Tenth Circuit panel absent a Tenth Circuit en banc or Supreme Court decision contrary to the prior panel's analysis).

AFFIRMED.

Entered for the Court

Bobby R. Baldock
Circuit Judge

## APPENDIX B

AO 245B (Rev. 10/17) Judgment in a Criminal Case
Sheet 1

UNITED STATES DISTRICT COURT

Northern District of Oklahoma

| | | |
|---|---|---|
| UNITED STATES OF AMERICA | ) | **JUDGMENT IN A CRIMINAL CASE** |
| v. | ) | Case Number: 4:24CR00402-1-GKF |
| JOSEPH FREDERICK, JOHNSON | ) | USM Number: 54649-511 |
| | ) | Carla ReNae Stinnett |
| | ) | Defendant's Attorney |

**THE DEFENDANT:**

☒ pleaded guilty to counts One and Two of the Indictment

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

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

The defendant is adjudicated guilty of these offenses:

| **Title & Section** | **Nature of Offense** | **Offense Ended** | **Count** |
|---|---|---|---|
| 18 U.S.C. §§ 922(g)(1) and 924(a)(8) | Felon in Possession of a Firearm and Ammunition | 5/1/23 | 1 |
| 18 U.S.C. §§ 922(g)(1) and 924(a)(8) | Felon in Possession of a Firearm and Ammunition | 2/13/24 | 2 |

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

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

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

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

October 16, 2025
Date of Imposition of Judgment

*/s/ Gustavo A. Gelpi, Jr.*
Signature of Judge

Gustavo A. Gelpi, Jr.,
United States District Judge
Name and Title of Judge

October 16, 2025
Date

AO 245B (Rev. 10/17) Judgment in a Criminal Case
Sheet 2—Imprisonment

DEFENDANT: Joseph Frederick Johnson
CASE NUMBER: 4:24CR00402-1

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: Twelve months and one day. Said sentence consists of twelve months and one day as to Counts One and Two, to run concurrently, each with the other.

☒ The Court makes the following recommendations to the Bureau of Prisons:
The Cour recommends that the defendant be placed at the Bureau of Prisons' camp at El Reno, Oklahoma.

☒ 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

AO 245B (Rev. 10/17) Judgment in a Criminal Case
Sheet 3—Supervised Release

DEFENDANT: Joseph Frederick Johnson
CASE NUMBER: 4:24CR00402-1

## SUPERVISED RELEASE

| | |
|---|---|
| Upon release from imprisonment, you will be on supervised release for a term of: | Three years, as to Counts One and Two. Said terms shall run concurrently, each with the other. |

## 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 the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*

7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

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

AO 245B (Rev. 10/17) Judgment in a Criminal Case
Sheet 3A—Supervised Release

DEFENDANT: Joseph Frederick Johnson
CASE NUMBER: 4:24CR00402-1

**STANDARD CONDITIONS OF SUPERVISION**

As part of your supervision, 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 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 to 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 the 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 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.

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 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, after obtaining Court approval, notify the person about the risk or 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.

AO 245B (Rev. 10/17) Judgment in a Criminal Case
Sheet 3B—Supervised Release

DEFENDANT: Joseph Frederick Johnson
CASE NUMBER: 4:24CR00402-1

## SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall submit his person, property, residence, office, vehicle, cellular telephone, computer, or any other electronic communication device, to a search conducted by the United States Probation Officer at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. The defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.

2. The defendant shall successfully participate in a program of mental health treatment and follow the rules and regulations of the program. The probation officer, in consultation with the treatment provider, will determine the treatment modality, location, and treatment schedule. The defendant shall waive any right of confidentiality in any records for mental health treatment to allow the probation officer to review the course of treatment and progress with the treatment provider. The defendant must pay the cost of the program or assist (co-payment) in payment of the costs of the program if financially able.

3. The defendant shall successfully participate in a program of testing and treatment, to include inpatient treatment, for drug and alcohol abuse, at a treatment facility and on a schedule determined by the probation officer. The defendant shall abide by the policies and procedures of the testing and treatment program to include directions that the defendant undergo urinalysis or other types of drug testing consisting of no more than eight tests per month if contemplated as part of the testing and treatment program. The defendant shall waive any right of confidentiality in any records for drug and alcohol treatment to allow the probation officer to review the course of testing and treatment and progress with the treatment provider.

4. If the defendant is unemployed after the first sixty days of supervision, or if unemployed for sixty days after termination or lay-off from employment, or not employed at a regular lawful occupation, as deemed suitable by the probation officer, the defendant shall participate in workforce development programs and services for occupational and career development, to include but not limited to assessment and testing, educational instruction, training classes, career guidance, counseling, and job search and retention services, at a program and on a schedule as determined by the probation officer. Further, as directed by the probation officer, the defendant shall provide verification of daily job search results or other employment related activities. In the event the defendant fails to secure suitable

employment, participate in workforce development programs or provide verification of daily job search results, the defendant may be required to perform up to twenty-four hours of community service per week until employed. 18 U.S.C. §§ 3563(b)(4) and (12) and 3583(d) and USSG § 5F1.3.

5. The defendant shall abstain from the use of any form of alcohol or intoxicating beverage. This condition shall include alcohol monitoring unless waived by the probation officer. If an alcohol monitoring device is utilized, defendant shall comply with the monitoring requirements and follow the Probation Officer's instructions. The costs associated with this service will be incurred by the United States Probation Office. The alcohol detection device may be utilized for up to six months. Should defendant incur a positive alcohol test, an additional monitoring period of up to six months is authorized by the Court.

**U.S. Probation Officer Use Only**

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

Defendant's Signature _______________ Date ______

AO 245B (Rev. 10/17) Judgment in a Criminal Case
Sheet 5—Criminal Monetary Penalties

DEFENDANT: Joseph Frederick Johnson
CASE NUMBER: 4:24CR00402-1

**CRIMINAL MONETARY PENALITIES**

The defendant must pay the total criminal monetary penalties under the Schedule of Payments.

| | **Assessment** | **Restitution** |
|---|---|---|
| **TOTALS** | $200 | N/A |
| **Fine** | **AVAA Assessment*** | **JVTA Assessment**** |
| N/A | N/A | N/A |

☐ The determination of restitution is deferred until An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

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

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

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

| **Name of Payee** | **Total Loss*** ** | **Restitution Ordered** | **Priority or Percentage** |
|---|---|---|---|
| **TOTALS** | $ __________ | $ __________ | |

☐ Restitution amount ordered pursuant to Plea Agreement $ _________

☐ The defendant must pay interest on any fine or restitution of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the Judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

*** 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.

☐ 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:

AO 245B (Rev. 10/17) Judgment in a Criminal Case
Sheet 6—Schedule of Payments

DEFENDANT: Joseph Frederick Johnson
CASE NUMBER: 4:24CR00402-1

## 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 ____ due immediately, balance due

☐ not later than ________, or

☐ in accordance with ☐ C, ☐, D, ☐ E, or ☐ F below; or

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

**C** ☐ Payment in equal _______ *(e.g., weekly, monthly, quarterly)* installments of $ ________ over a period of _________ *(e.g., months or years),* to commence ___________ *(e.g., 30 or 60 days)* after the date of this Judgment; or

**D** ☐ Payment in equal _______ *(e.g., weekly, monthly, quarterly)* installments of $ ________ over a period of _________ *(e.g., months or years),* to commence ___________ *(e.g., 30 or 60 days)* after release from imprisonment to a term of supervision; or

**E** ☐ Payment during the term of supervised release will commence within _________ *(e.g., 30 or 90 days)* after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

**F** ☐ Special instructions regarding the payment of criminal monetary penalties:

Any monetary payment is due in full immediately, but payable on a schedule to be determined pursuant to the policy provision of the Federal Bureau of Prisons' Inmate Financial Responsibility Program if the defendant voluntarily participates in this program. If a monetary balance remains, payment is to commence no later than 60 days following release from imprisonment to a term of supervised release in equal monthly payments of $50 or 10% of net income (take home pay), whichever is greater, over the duration of the term of supervised release and thereafter as prescribed by law for as long as some debt remains. Notwithstanding establishment of a payment schedule, nothing shall prohibit the United States from executing or levying upon property of the defendant discovered before or after the date of this Judgment.

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

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 pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☒ The defendant shall forfeit the defendant's interest in the following property to the United States:
Firearms and ammunition are forfeited as directed in the Preliminary Order of Forfeiture, Dkt. # 59.

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.

# APPENDIX C

## IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

| | | |
|---|---|---|
| UNITED STATES OF AMERICA, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| v. | ) | Case No. |
| | ) | 24-CR-00402-GKF |
| JOSEPH FREDERICK, JOHNSON, | ) | |
| | ) | |
| Defendant. | ) | |

## ORDER

This matter comes before the court on the Motion to Dismiss Indictment on Constitutional Grounds [Doc. 37] of defendant Joseph Frederick Johnson. For the reasons set forth below, the motion is denied.

On December 17, 2024, a grand jury returned an Indictment charging Mr. Johnson with Felon in Possession of a Firearm and Ammunition pursuant to 18 U.S.C. §§ 922(g)(1) and 924(a)(8).[1] [Doc. 2]. Mr.

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[1] Section 922(g)(1) provides as follows: "It shall be unlawful for any person … who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year … to … possess in or affecting commerce, any firearm or ammunition." 18 U.S.C. § 922(g)(1).

Johnson moves to dismiss the Indictment on the following constitutional grounds: (1) § 922(g)(1) constitutes an unconstitutional infringement of his Second Amendment rights pursuant to the United States Supreme Court's decisions in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022) and *District of Columbia v. Heller*, 554 U.S. 570 (2008); (2) the absence of any statutory procedure to restore the right to bear arms after a felony conviction violates his right to due process under the Fifth Amendment; (3) § 922(g)(1) exceeds Congress's power to regulate commerce under the Commerce Clause, U.S. Const. art. I, § 8, cl. 3; and (4) any interpretation of § 922(g)(1) "other than an absolute categorical prohibition for all felons" renders the statute unconstitutionally vague.

**Second Amendment**

Mr. Johnson argues that § 922(g)(1) is both facially unconstitutional and unconstitutional as applied to him under *Bruen*. In *Bruen*, the U.S. Supreme Court concluded:

> When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation. Only then may a court conclude that the individual's conduct falls outside the Second Amendment's "unqualified command."

*Bruen*, 597 U.S. at 17. Mr. Johnson contends that his conduct is presumptively protected by the Second Amendment and, further, the government cannot show that disarming him is "consistent with the Nation's historical tradition of firearm regulation." [Doc. 37, pp. 3-6].

However, the U.S. Court of Appeals for the Tenth Circuit recently issued a published decision in *Vincent v. Bondi,* 127 F.4th 1263 (10th Cir. 2025) ("*Vincent III*"). Therein, on remand from the U.S. Supreme Court, the circuit again considered whether *Bruen* had overruled its earlier precedential opinion, *United States v. McCane*, 573 F.3d 1037 (10th Cir. 2009), which upheld the constitutionality of § 922(g)(1).[2] *Vincent III,* 127 F.4th at 1264; *see also McCane*, 573 F.3d at 1047. The circuit first noted that, "[i]n *McCane*, we held that § 922(g)(1) was constitutional, relying on the Supreme Court's statement in *District of Columbia v. Heller* that it was not 'cast[ing] doubt

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[2] In *Vincent v. Garland*, 80 F.4th 1197 (10th Cir. 2023) ("*Vincent I*"), the circuit first considered whether *Bruen* had overruled *McCane.* There, the circuit concluded that *Bruen* did not overrule *McCane* and § 922(g)(1) was not facially unconstitutional. *Id.* at 1202. Further, the circuit stated that, "[u]nder *McCane*, we have no basis to draw constitutional distinctions based on the type of felony involved" and therefore § 922(g)(1) was constitutional as applied to *any* convicted felon. *Id.* at 1202. On July 2, 2024, the U.S. Supreme Court granted certiorari in *Vincent v. Garland*, vacated the judgment, and remanded the matter to the Tenth Circuit for further consideration in light of its decision in *United States v. Rahimi*, 602 U.S. 680 (2024). *See Vincent v. Garland,* 144 S. Ct. 2708 (2024) ("*Vincent II*"). For ease of reference, the court refers to the Tenth Circuit's decision on remand in *Vincent v. Bondi,* 127 F.4th 1263 (10th Cir. 2025), as "*Vincent III.*"

on longstanding prohibitions on the possession of firearms by felons.'" *Vincent III*, 127 F.4th at 1265 (quoting *Heller*, 554 U.S. at 626). The court then observed that "*Rahimi* again recognized the presumptive lawfulness of these longstanding prohibitions, 'like those on the possession of firearms by felons.'" *Vincent III*, 127 F.4th at 1265 (quoting *Rahimi,* 602 U.S. at 682).

Based on the foregoing, the circuit reasoned: "In *McCane*, we relied on *Heller*'s instruction that felon dispossession laws are presumptively valid. This presumption was reaffirmed in *Rahimi*. So *Rahimi* doesn't clearly abrogate the presumptive validity of § 922(g)(1)." *Vincent* III, 127 F.4th at 1265 (internal citations omitted). Accordingly, "*McCane* remains binding" and "§ 922(g)(1) does not violate the Second Amendment." *Vincent III*, 127 F.4th at 1264, 1266. Further, the circuit reaffirmed *McCane*'s prior holding that § 922(g)(1) is constitutional "for *all* individuals convicted of felonies," "without drawing constitutional distinctions based on the type of felony involved." *Vincent III,* 127 F.4th at 1266 (emphasis added).

This court is bound to apply *Vincent III*. *See United States v. Spedalieri*, 910 F.2d 707, 709 n.2 (10th Cir. 1990) ("A district court must follow the precedent of this circuit."). Pursuant to *Vincent III*, § 922(g)(1) is constitutional, both facially and as applied to "*all* individuals convicted of felonies." *Vincent III,* 127 F.4th at 1265-66. Thus, § 922(g)(1) is facially constitutional and constitutional as applied to Mr. Johnson, without regard to the nature of his prior conviction. Mr. Johnson's motion to dismiss must therefore be denied insofar as it is premised on *Bruen*.

Mr. Johnson, citing *Heller*, also contends that the absence of a self-defense exception renders § 922(g)(1) unconstitutional as applied to him under the Second Amendment. [Doc. 37, pp. 7-8]. *See United States v. Smoot*, 690 F.3d 215, 221-22 (4th Cir. 2012) (interpreting a similar argument as an as-applied challenge). However, as previously stated, the Tenth Circuit has held that § 922(g)(1) is constitutional as applied to *all* felons, and does not require an individualized factual inquiry. *Vincent III,* 127 F.4th at 1266; *In re United States*, 578 F.3d 1195, 1200 (10th Cir. 2009) (unpublished) ("We have already rejected the notion that *Heller* mandates an individualized inquiry concerning felons pursuant to § 922(g)(1).").[3] Thus, the court denies Mr. Johnson's motion in this regard.

**Fifth Amendment**

Mr. Johnson next argues that the absence of a procedure to restore a convicted felon's right to possess a firearm violates the due process clause of the Fifth Amendment.[4] [Doc. 37, pp. 8-9].

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[3] "Unpublished decisions are not precedential, but may be cited for their persuasive value." 10th Cir. R. 32.1(A).

[4] In its response, the government argues that 18 U.S.C. § 921(a)(20) constitutes a restoration mechanism. However, the Tenth Circuit has recognized that the section is "definitional."

However, as interpreted by the Tenth Circuit in *Vincent III*, "Section 922(g)(1) 'make[s] the deprivation turn solely on the fact of the prior conviction—not the significance of that conviction for future behavior.'" *Zherka,* 593 F. Supp. 3d at 81 (quoting *Conn. Dep't of Pub. Safety v. Doe*, 538 U.S. 1 (2003)). Thus, due process does not require an individualized hearing regarding changed circumstances or dangerousness "because the results of such a hearing would have no bearing on whether he is subject to the disability imposed by § 922(g)(1)."

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*United States v. Flower*, 29 F.3d 530, 535 (10th Cir. 1994). Further, the plain language of the section indicates that it applies where a defendant "*has had* civil rights restored," not that it operates independently to restore those rights. 18 U.S.C. § 921(a)(20) (emphasis added). Thus, § 921(a)(2) does not constitute a restoration mechanism. Further, the court notes that, pursuant to 18 U.S.C. § 925(c), "[a] person who is prohibited from possessing … firearms or ammunition may make application to the Attorney General for relief from the disabilities imposed by Federal laws with respect to the … possession of firearms, and the Attorney General may grant such relief if it is established to his satisfaction that the circumstances regarding the disability, and the applicant's record and reputation, are such that the applicant will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest." 18 U.S.C. § 925(c). However, "Congress no longer funds agency review of Section 925(c) petitions" and, as a result, "[p]ractically, then, federal courts cannot entertain Section 925(c) requests." *Fears v. Garland,* No. 23-CV-02025-TC-ADM, 2023 WL 8188630, at *2 n.2 (D. Kan. Nov. 27, 2023). Thus, courts have recognized "[s]ection 925(c) no longer affords convicted felons … an effective mechanism through which to seek relief from Section 922(g)(1)'s bar on firearms possession." *Zherka v. Garland,* 593 F. Supp. 3d 73, 80 (S.D.N.Y. 2022).

*Zherka*, 593 F. Supp. 3d at 81; *see also Black v. Snow,* 272 F. Supp. 2d 21, 33-35 (D.D.C. 2003), *aff'd sub.nom., Black v. Ashcroft*, 110 F. App'x 130 (D.C. Cir. 2004) (unpublished); *United States v. Patton*, No. 24-00053-01-CR-W-HFS, 2024 WL 4823296, at **7-8 (W.D. Mo. Oct. 29, 2024), *adopting the report and recommendation*, 2024 WL 48214434 (W.D. Mo. Nov. 18, 2024) (adopting *Zherka*'s analysis). The foregoing cases are persuasive and the court concludes that § 922(g)(1) does not violate the Fifth Amendment's due process clause.

**Commerce Clause**

Mr. Johnson also asserts that § 922(g)(1) is unconstitutional because it exceeds Congress's power to regulate commerce under the Commerce Clause as it does not require a showing that the firearm was active in the market and may be considered to effect commerce "without 'concern for when the [initial] nexus with commerce occurred.'" [Doc. 37, pp. 9-10 (quoting *Scarborough v. United States,* 431 U.S. 563, 577 (1977))]. Mr. Johnson's argument in this regard is foreclosed by precedent. *See Scarborough,* 431 U.S. at 568-69 (nexus to interstate commerce need not be contemporaneous); *McCane*, 573 F.3d at 1047 (rejecting challenge to § 922(g)(1) under the Commerce Clause); *United States v. Urbano,* 563 F.3d 1150, 1153-54 (10th Cir. 2009) (citing precedent rejecting facial challenges to § 922(g)(1) under the Commerce Clause); *United States v. Dorris,* 236 F.3d 582, 584-86 (10th Cir. 2000); *United States v. Phelps,* No. 23-3012, 2023 WL 5527951, at *1 (10th Cir. 2023) (collecting cases for the proposition that "both this court and the Supreme Court have held that a sufficient nexus to interstate commerce exists if the firearm traveled across state lines at some time"); *United States v. Goines,* No. 20-3183, 2021 WL 4544098 (10th Cir. 2021) (same).

Mr. Johnson argues that the foregoing precedent is in contravention of the U.S. Supreme Court's more recent decisions in *United States v. Lopez*, 514 U.S. 549 (1995) and *National Federation of Independent Business et al. v. Sebelius*, 567 U.S. 519 (2012). However, neither *Lopez* nor *Sebelius* explicitly overruled *Scarborough* and therefore this court is bound to apply it. *See United States v. Thomas*, No. 24-6074, 2025 WL 830474, at *1 (10th Cir. Mar. 17, 2025) (rejecting request to "abandon the *Scarborough* line of cases in favor of *Lopez*," and concluding "we adhere to *Scarborough* and our precedent holding that the 'affecting commerce' element is satisfied so long as the [firearm or] ammunition at some time moved across state lines"); *Goines,* 2021 WL 4544098, at *1; *see also Dorris,* 236 F.3d at 584-86; *United States v. Alcantar*, 733 F.3d 143, 145-46 (5th Cir. 2013) (concluding *Sebelius* did not overrule existing precent as to § 922(g)(1) and Commerce Clause). Thus, Mr. Johnson's motion to dismiss on constitutional grounds is denied insofar as it is premised on the Commerce Clause.

**Vagueness**

Finally, Mr. Johnson argues that "[a]ny interpretation of 18 U.S.C. § 922(g)(1) other than an absolute categorical prohibition for all felons would render the statute unconstitutionally vague." [Doc. 37, p. 9]. However, as previously stated, the court is bound to apply *Vincent III*, which held that § 922(g)(1) is constitutional as applied to *all* felons. *Vincent III,* 127 F.4th at 1266. Accordingly, the court interprets § 922(g)(1) as categorical ban and Mr. Johnson's argument in this respect is moot. Alternatively, the claim is not ripe for adjudication as it "rests upon 'contingent future events that may not occur as anticipated, or indeed may not occur at all.'" *Texas v. United States*, 523 U.S. 296, 300 (1998) (quoting *Thomas v. Union Carbide Agric. Prods. Co.*, 473 U.S. 568, 580-81 (1985)).

## Conclusion

WHEREFORE, the Motion to Dismiss Indictment on Constitutional Grounds [Doc. 37] of defendant Joseph Frederick Johnson is denied.

IT IS SO ORDERED this 1st day of May, 2025.

*/s/ Gregory K. Frizzell*
GREGORY K. FRIZZELL
UNITED STATES
DISTRICT JUDGE