

No.

In the Supreme Court of the United States

TAMEEK WHITE,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeal for the
Second Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Is 18 U.S.C. § 922(g)(1) susceptible to an as-applied challenge under the Second Amendment where it results in disarming an American citizen acting in self-defense due to a years-old predicate conviction?

PARTIES TO THE PROCEEDING

All parties to the proceeding are listed in the caption. The petitioner, Tameek White, was the defendant before the district court and the defendant-appellant in the court of appeals. The respondent, the United States of America, was the plaintiff before the district court and the appellee in the court of appeals.

RELATED PROCEEDINGS

United States v. White, No. 24-1952-cr (2d Cir. March 31, 2026).

United States v. White, No. 23-CR-140 (NSR) (S.D.N.Y. Sept. 18, 2023).

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Tameek White respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit.

OPINIONS BELOW

The ruling of the United States Court of Appeals for the Second Circuit is a summary order available at 2026 WL 878640, and reproduced in the Petition Appendix (“Pet. App.”) at 1a–5a. The ruling of the United States District Court for the Southern District of New York is an unpublished opinion and order available at 2023 WL 6066201, and reproduced at Pet. App. at 13a–24a.

STATEMENT OF JURISDICTION

The Court of Appeals for the Second Circuit entered final judgment on March 31, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1). Petitioner’s deadline to file this writ of certiorari is June 29, 2026.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Second Amendment to the United States Constitution 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.”

Section 922(g)(1) of Title 18 of the U.S. Code provides:

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 ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

INTRODUCTION

Following this Court’s decisions clarifying Second Amendment jurisprudence in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022), and *United States v. Rahimi*, 602 U.S. 680 (2024), the courts of appeal have been intractably split by the following question: is a federal statute permanently disarming Americans convicted of felony offenses susceptible to an as-applied challenge under the Second Amendment?

Five circuit courts have answered in the affirmative. The Third, Fifth, Sixth, Seventh and D.C. Circuits have recognized that § 922(g)(1) cannot be constitutionally applied to individuals with certain prior felony convictions. *See Range v. Att’y Gen. United States*, 124 F.4th 218 (3d Cir. 2024) (*en banc*); *United States v. Diaz*, 116 F.4th 458 (5th Cir. 2024); *United States v. Williams*, 113 F.4th 637 (6th Cir. 2024); *United States v. Gay*, 98 F.4th 843 (7th Cir. 2024); *United States v. Johnson*, 158 F.4th 200 (D.C. Cir. 2025).

But six circuits disagree, including the Second Circuit, from which Mr. White petitions this Court for a writ of certiorari. The Second, Fourth, Eighth, Ninth, Tenth, and Eleventh Circuits have rejected challenges to § 922(g)(1)’s perpetual denial of the fundamental right to bear arms, even where individualized considerations raised serious doubts about the constitutionality of the statute as applied in those cases. *See Zherka v. Bondi*, 140 F.4th 68 (2d Cir. 2025); *United States v. Hunt*, 123 F.4th 697 (4th Cir. 2024); *United States v. Jackson*, 110 F.4th 1120 (8th Cir. 2024); *United States v. Duarte*, 137 F.4th 743 (9th Cir. 2025); *Vincent v. Bondi*, 127 F.4th 1263 (10th Cir. 2025); *United States v. Dubois*, 139 F.4th 887 (11th Cir. 2025).

Mr. White’s case squarely presents the issue at the core of this circuit split, namely, whether 18 U.S.C. § 922(g)(1) is susceptible to an as-applied challenge under the Second Amendment where it results in disarming an American citizen acting in self-defense due to a years-old predicate conviction. This Court should grant his petition for a writ of certiorari and resolve this circuit split by holding § 922(g)(1) permits as-applied challenges.

STATEMENT OF THE CASE

A. Factual Background

In 2015, when Mr. White was 21 years old, he was involved in a burglary. Mr. White pleaded guilty to second-degree burglary in violation of New York Penal Law § 140.25(2) in 2019, which criminalizes knowingly entering or remaining unlawfully in a dwelling with intent to commit a crime therein. (Pet. App. 31a.) Mr. White was sentenced principally to 42 months’ imprisonment for this offense. (*Id.*)

Years later, and well after serving his time for the earlier offense, Mr. White carried a firearm because he was afraid for his life, as someone had opened fire on him in a neighborhood he had lived in for two years. (*See United States v. White*, No. 24-1952-cr, Dkt. 35.1 at A-76–78.) On July 24, 2022, officers from the Mount Vernon Police Department (“MVPD”) responded to a report of shots fired at or near the corner of East Third Street and Union Avenue in Mount Vernon, New York. (Pet. App. 27a.) MVPD recovered a single .45 auto caliber PMC shell casing near the incident site. (*Id.* 30a.) MVPD also recovered surveillance footage of the incident, which they showed to Mr. White’s former New York State Parole Officer. (*Id.* 31a.) The Parole Officer identified one of the men in the video as Mr. White. (*Id.*) Mr. White maintains

that he possessed the firearm for self-defense. The government has not adduced record evidence to the contrary.

B. Procedural History

On October 14, 2022, Mr. White was charged with one count of being a felon in possession of ammunition in violation of § 922(g)(1) in the United States District Court for the Southern District of New York. Specifically, the indictment charged that Mr. White knowingly possessed one .45 auto caliber PMC round, which was in and affecting commerce. (Pet. App. 25a.) On March 16, 2023, Mr. White waived indictment and a one-count Information was filed. (*Id.*) On June 30, 2023, Mr. White filed a motion to dismiss challenging the constitutionality of § 922(g)(1). (*Id.* 15a.) On September 18, 2023, the court denied Mr. White’s motion to dismiss. (*Id.* 13a–24a.) Mr. White pleaded guilty on December 4, 2023, and on July 17, 2024 he was sentenced to 66 months’ imprisonment.¹ (*Id.* 6a–12a.)

On March 31, 2026, the United States Court of Appeals for the Second Circuit affirmed the district court’s decision, holding that Mr. White’s argument was foreclosed by the Second Circuit’s decision in *Zherka*, 140 F.4th 68. (Pet. App. 2a–3a.) In *Zherka*, the Second Circuit specifically rejected the contention that a defendant is entitled to an individualized determination of whether the government may strip him of his constitutional right to keep and bear arms on an as-applied challenge. *See id.*

¹ Mr. White pleaded guilty without a plea agreement to preserve his right to challenge the constitutionality of his conviction on appeal. *See United States v. White*, No. 24-1952-cr, Doc. 35.1 at A-58–59.

at 94–95. The Second Circuit relied on that same reasoning in denying Mr. White’s appeal.

REASONS FOR GRANTING THE PETITION

I. The Circuits Are Split on Whether 18 U.S.C. § 922(g)(1) Permits As-Applied Challenges.

This Court should grant Mr. White’s petition for a writ of certiorari to resolve the intractable split between the courts of appeal as to whether § 922(g)(1) permits as-applied challenges. It should adopt the approach taken by the Third, Fifth, Sixth, Seventh, and D.C. Circuits, which have permitted such constitutional challenges and conducted an individualized review of whether the government may strip a defendant of his Second Amendment rights.

In *Range*, the Third Circuit held that § 922(g)(1) is unconstitutional as applied to an individual previously convicted of a nonviolent felony. *Range*, 124 F.4th at 232. In that case, the appellant’s predicate offense involved making a false statement to obtain food stamps, which is a nonviolent misdemeanor punishable by up to five years’ imprisonment. *Id.* at 222–23. The Third Circuit reasoned that the plaintiff-appellant was not the sort of dangerous felon that Congress designed § 922(g)(1) to disarm. *Id.* at 230. In holding that § 922(g)(1) violated his Second Amendment right to “keep and bear arms,” the Third Circuit determined that the “[g]overnment did not carry its burden of showing that the principles underlying our Nation’s history and tradition of firearm regulation support disarming” a person who “poses [no] physical danger to others.” *Id.* at 222, 232.

While the Sixth Circuit in *Williams* rejected the defendant’s challenge to § 922(g)(1), it left open the possibility that certain “individuals could demonstrate that their particular possession of a weapon posed no danger to peace.” *Williams*, 113 F.4th at 657. The court reasoned that failing to permit as-applied challenges “would abridge non-dangerous felons’ Second Amendment rights.” *Id.* at 661. The Fifth, Seventh, and D.C. Circuits have similarly recognized that individuals with certain prior non-violent felony convictions can mount a successful as-applied challenge to Section 922(g)(1). *See Diaz*, 116 F.4th at 469–71 (“Simply classifying a crime as a felony does not meet the level of historical rigor required by *Bruen* and its progeny,” and the definition of felony is “a shifting benchmark [that] should not define the limits of the Second Amendment, without further consideration of how that right was understood when it was first recognized.”); *Gay*, 98 F.4th at 846–47 (considering whether § 922(g)(1) is constitutional as applied to individual convicted of 22 felonies and released on parole); *Johnson*, 158 F.4th at 209–10 (considering whether “crime was so minor or regulatory that [defendant] did not forfeit his right to bear arms by committing it”).

Yet the Second, Fourth, Eighth, Ninth, Tenth, and Eleventh Circuits prohibit any individualized challenge to the constitutionality of § 922(g)(1). *See Zherka*, 140 F.4th at 95 (holding that case-by-case assessment of constitutionality would be “unworkable”); *Hunt*, 123 F.4th at 703–04 (“*Bruen* and *Rahimi* thus provide no basis for a panel to depart from this Court’s previous rejection of the need for any case-by-case inquiry about whether a felon may be barred from possessing firearms.”);

Jackson, 110 F.4th at 1125 (“[T]here is no need for felony-by-felony litigation regarding the constitutionality of § 922(g)(1).”); *Duarte*, 137 F.4th at 748 (holding that “§ 922(g)(1) is not unconstitutional as applied to non-violent felons”); *Vincent*, 127 F.4th at 1266 (upholding § 922(g)(1) “without drawing constitutional distinctions based on the type of felony involved”); *Dubois*, 139 F.4th at 893–94 (“We require clearer instruction from the Supreme Court before we may reconsider the constitutionality of section 922(g)(1).”). These courts maintain that § 922(g)(1) is constitutional even where the underlying offense giving rise to the disarmament is a nonviolent felony.

This Court must intervene to prevent the Second Amendment from becoming denigrated to a “second-class right.” *Bruen*, 597 U.S. at 70. Indeed, it has already permitted and upheld an as-applied challenge to § 922(g)(3), and it should adopt the same approach here. *See United States v. Hemani*, No. 24-1234, 2026 WL 1751710, at *11, *18 (U.S. June 18, 2026) (“[A]ffording the government that kind of ‘broad power to designate any group as dangerous and thereby disqualify its members from having a gun’ would risk allowing it to ‘quickly swallow’ the Second Amendment.”) (citation omitted).

II. 18 U.S.C. § 922(g)(1) Is Unconstitutional As Applied To Mr. White.

This Court should resolve the circuit split and vacate Mr. White’s conviction. Section 922(g)(1) is unconstitutional as applied to Mr. White. An individualized assessment of his case shows that he does not pose a danger to others. Thus, disarming him is unconstitutional.

Mr. White possessed a firearm to defend himself from the scourge of gun violence he experienced. In January 2020, he found his brother shot in the head in Bronx, New York, and stayed with him as he fought for his life. (*See United States v. White*, No. 24-1952-cr, Doc. 35.1 at A-78.) Not long thereafter, an unknown assailant opened fire on him as he walked near his home. (*Id.* at A-76.) Mr. White’s partner was pregnant at the time, and he needed to protect her, their unborn child, and himself. So, when he saw someone reach for a weapon in July 2022, Mr. White produced his firearm to protect everything—and everyone—he held dear.

As this Court has repeatedly recognized, the Second Amendment protects Mr. White’s right to self-defense. In *Heller*, this Court explained that “the inherent right of self-defense has been central to the Second Amendment right.” *District of Columbia v. Heller*, 554 U.S. 570, 628 (2008). In *McDonald*, the Supreme Court explained that, “[s]elf-defense is a basic right, recognized by many legal systems from ancient times to the present,” and it noted that, “in *Heller*, we held that individual self-defense is the *central component* of the Second Amendment right.” *McDonald v. City of Chicago*, 561 U.S. 742, 767 (2010) (citations and internal quotation marks omitted); *see also Wolford v. Lopez*, No. 24-1046, 609 U.S. ___, 2026 WL 1825723, at *4 (June 25, 2026) (“the Second Amendment protects[] the right of Americans to carry arms for self-defense as they go about their daily lives”). In *Bruen*, the Supreme Court explained, “[i]n *Heller* and *McDonald*, we held that the Second and Fourteenth Amendments protect an individual right to keep and bear arms for self-defense,” *Bruen*, 597 U.S. at 17, and, “consistent with *Heller* and *McDonald*, . . . the Second and Fourteenth

Amendments protect an individual’s right to carry a handgun for self-defense outside the home.” *Id.* at 10. And recently, in *Hemani*, this Court upheld the defendant’s as-applied challenge to § 922(g)(3) because, in part, that provision does not consider if the defendant “keeps a firearm only in his home for self-defense[.]” *Hemani*, 2026 WL 1751710, at *11.

Disarming Mr. White pursuant to § 922(g)(1) violates this core precept of the Second Amendment. “The constitutional right to bear arms in public for self-defense is not a second-class right.” *Bruen*, 597 U.S. at 70 (citation and internal quotation marks omitted). Accordingly, allowing Mr. White’s conviction to stand would deprive him of a “protected right” under the Constitution. *Field Day, LLC v. County of Suffolk*, 463 F.3d 167, 174 (2d Cir. 2006).

Section 922(g)(1) is unconstitutional as applied to Mr. White for the additional reason that it disarms him in perpetuity without regard for whether he has matured or continues to pose the same theoretical threat to public safety as when he committed a burglary. The Court, social scientists, and the U.S. Sentencing Commission have all acknowledged an important connection between age and a defendant’s conduct. *See, e.g., Gall v. United States*, 552 U.S. 38, 58 (2007). (“Immaturity at the time of the offense conduct is not an inconsequential consideration. Recent studies on the development of the human brain conclude that human brain development may not become complete until the age of twenty-five.”); U.S.S.G. § 5H1.1 (eff. Oct. 31, 2025) (allowing for consideration of defendant’s youth in determining the appropriateness of a downward departure). More than ten years have passed since Mr. White’s

predicate offense. His growth and maturity during that time should be relevant to the applicability of § 922(g)(1). Because Mr. White does not pose a physical danger to others, this Court should reverse the decision below and vacate Mr. White's conviction.

III. This Case Provides an Ideal Vehicle to Resolve This Circuit Split.

This case provides a clear opportunity to resolve this circuit split. Mr. White's petition presents a purely legal issue with a straightforward factual record. Furthermore, Mr. White preserved his constitutional challenge to § 922(g)(1) before the district court and the Second Circuit. And although Mr. White's case was decided by summary order, the Second Circuit explicitly relied on its recent (post-*Bruen* and *Rahimi*) precedential decision in *Zherka*. Accordingly, this Court should resolve this question.

CONCLUSION

For the foregoing reasons, this Court should grant the petition for a writ of certiorari.

Dated: June 29, 2026

Respectfully submitted,

EVERSHEDS SUTHERLAND (US) LLP

By: /s/ Michael P. Robotti

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APPENDIX

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24-1952-cr
United States v. White

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 31st day of March, two thousand twenty-six.

PRESENT: DENNY CHIN,
RAYMOND J. LOHIER, JR.,
STEVEN J. MENASHI,
Circuit Judges.

UNITED STATES OF AMERICA,

Appellee,

v.

No. 24-1952-cr

TAMEEK WHITE,

Defendant-Appellant.

FOR DEFENDANT-APPELLANT:	Michael P. Robotti, Ballard Spahr LLP, New York, NY
FOR APPELLEE:	Ryan W. Allison, Jacob R. Fiddelman, Assistant United States Attorneys, <i>for</i> Jay Clayton, United States Attorney for the Southern District of New York, New York, NY

Appeal from a judgment of the United States District Court for the Southern District of New York (Nelson S. Román, *Judge*).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the District Court is AFFIRMED.

Defendant Tameek White appeals from a judgment entered in the United States District Court for the Southern District of New York (Román, *J.*) convicting him, following his plea of guilty, of one count of unlawful possession of ammunition by a convicted felon, in violation of 18 U.S.C. § 922(g)(1), and sentencing him principally to 66 months' imprisonment. We assume the parties' familiarity with the underlying facts and the record of prior proceedings, to which we refer only as necessary to explain our decision to affirm.

White argues that § 922(g)(1) is unconstitutional in light of *New York State Rifle & Pistol Association v. Bruen*, 597 U.S. 1 (2022). But White concedes that his

argument is foreclosed by *Zherka v. Bondi*, 140 F.4th 68 (2d Cir. 2025), in which this Court held that § 922(g)(1) is constitutional both on its face and as applied to felons convicted of nonviolent predicate crimes. He is therefore entitled to no relief on this basis. We have since applied *Zherka* to reject a constitutional challenge to § 922(g)(1) made by a defendant who, like White, pleaded guilty to unlawful possession of ammunition. See *United States v. Delgado*, 149 F.4th 244, 248–49 (2d Cir. 2025).

We have considered White’s remaining arguments and conclude that they are without merit. For the foregoing reasons, the judgment of the District Court is AFFIRMED.

FOR THE COURT:

Catherine O’Hagan Wolfe, Clerk of Court

Catherine O’Hagan Wolfe

The seal of the United States Second Circuit Court of Appeals is circular. It features a red outer ring with the words "UNITED STATES" at the top and "COURT OF APPEALS" at the bottom. Inside this ring is a blue circle with the words "SECOND CIRCUIT" in white. The seal is positioned over the signature of Catherine O'Hagan Wolfe.

**United States Court of Appeals for the Second Circuit
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, NY 10007**

DEBRA ANN LIVINGSTON
CHIEF JUDGE

Date: March 31, 2026
Docket #: 24-1952
Short Title: United States of America v. White

CATHERINE O'HAGAN WOLFE
CLERK OF COURT

DC Docket #: 7:23-cr-140-1
DC Court: SDNY (WHITE PLAINS)
DC Judge: Trial Judge - Nelson
Stephen Roman

BILL OF COSTS INSTRUCTIONS

The requirements for filing a bill of costs are set forth in FRAP 39. A form for filing a bill of costs is on the Court's website.

The bill of costs must:

- * be filed within 14 days after the entry of judgment;
- * be verified;
- * be served on all adversaries;
- * not include charges for postage, delivery, service, overtime and the filers edits;
- * identify the number of copies which comprise the printer's unit;
- * include the printer's bills, which must state the minimum charge per printer's unit for a page, a cover, foot lines by the line, and an index and table of cases by the page;
- * state only the number of necessary copies inserted in enclosed form;
- * state actual costs at rates not higher than those generally charged for printing services in New York, New York; excessive charges are subject to reduction;
- * be filed electronically or if counsel is exempted with the original and two copies.

**United States Court of Appeals for the Second Circuit
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, NY 10007**

DEBRA ANN LIVINGSTON
CHIEF JUDGE

Date: March 31, 2026
Docket #: 24-1952
Short Title: United States of America v. White

CATHERINE O'HAGAN WOLFE
CLERK OF COURT

DC Docket #: 7:23-cr-140-1
DC Court: SDNY (WHITE PLAINS)
DC Judge: Trial Judge - Nelson
Stephen Roman

VERIFIED ITEMIZED BILL OF COSTS

Counsel for

respectfully submits, pursuant to FRAP 39 (c) the within bill of costs and requests the Clerk to prepare an itemized statement of costs taxed against the

and in favor of

for insertion in the mandate.

Docketing Fee _____

Costs of printing appendix (necessary copies _____) _____

Costs of printing brief (necessary copies _____) _____

Costs of printing reply brief (necessary copies _____) _____

(VERIFICATION HERE)

Signature

UNITED STATES DISTRICT COURT

Southern District of New York

UNITED STATES OF AMERICA

v.

TAMEEK WHITE

JUDGMENT IN A CRIMINAL CASE

Case Number: 7:23Cr.00140-01 (NSR)

USM Number: 26506-510

Andrew Patel, Esq.

Defendant's Attorney

THE DEFENDANT:☒ pleaded guilty to count(s) One☐ 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:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 USC § 922(g)(1)	Unlawful Possession of Ammunition - Class C Felony	10/13/2022	1

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.☐ The defendant has been found not guilty on count(s) _____☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

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

7/16/2024

Date of Imposition of Judgment

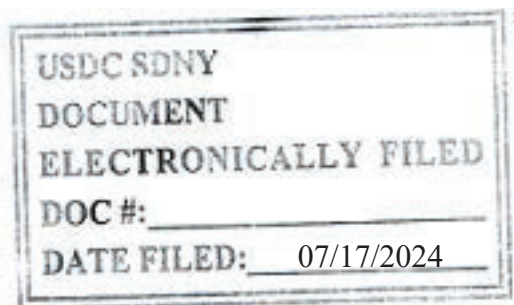
Signature of Judge

Nelson S. Román, U.S.D.J.

Name and Title of Judge

7/17/2024

Date



DEFENDANT: TAMEEK WHITE
CASE NUMBER: 7:23Cr.00140-01 (NSR)

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:
Sixty-Six (66) Months. Defendant advised of his right to appeal.

- ☒ The court makes the following recommendations to the Bureau of Prisons:
The Court recommends incarceration at FCI Otisville or a facility nearest to Orange County, New York to facilitate family visitation.
- ☒ 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: TAMEEK WHITE
CASE NUMBER: 7:23Cr.00140-01 (NSR)

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of:

Three (3) Years, subject to the standard conditions 1-12 as well as mandatory and special conditions.

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.

DEFENDANT: TAMEEK WHITE
CASE NUMBER: 7:23Cr.00140-01 (NSR)

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. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

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

Defendant's Signature _____

Date _____

DEFENDANT: TAMEEK WHITE
CASE NUMBER: 7:23Cr.00140-01 (NSR)

SPECIAL CONDITIONS OF SUPERVISION

1. You will participate in an outpatient treatment program approved by the United States Probation Office, which program may include testing to determine whether you have reverted to using drugs or alcohol. You must contribute to the cost of services rendered based on your ability to pay and the availability of third-party payments. The Court authorizes the release of available drug treatment evaluations and reports, including the presentence investigation report, to the substance use disorder treatment provider.
2. You must participate in an outpatient mental health treatment program approved by the United States Probation Office. You must continue to take any prescribed medications unless otherwise instructed by the health care provider. You must contribute to the cost of services rendered based on your ability to pay and the availability of third-party payments. The Court authorizes the release of available psychological and psychiatric evaluations and reports, including the presentence investigation report, to the health care provider.
3. You shall submit your person, and any property, residence, vehicle, papers, computer, other electronic communications, data storage devices, cloud storage or media, and effects to a search by any United States Probation Officer, and if needed, with the assistance of any law enforcement. The search is to be conducted when there is reasonable suspicion concerning violation of a condition of supervision or unlawful conduct by the person being supervised. Failure to submit to a search may be grounds for revocation of release. You shall warn any other occupants that the premises may be subject to searches pursuant to this condition. Any search shall be conducted at a reasonable time and in a reasonable manner.
4. 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.
5. The Court recommends you be supervised by the district of residence.

DEFENDANT: TAMEEK WHITE
CASE NUMBER: 7:23Cr.00140-01 (NSR)

CRIMINAL MONETARY PENALTIES

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

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

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

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

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

<u>Name of Payee</u>	<u>Total Loss***</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
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TOTALS	\$	<u>0.00</u>	\$	<u>0.00</u>
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☐ Restitution amount ordered pursuant to plea agreement \$ _____

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

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

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

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

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

DEFENDANT: TAMEEK WHITE
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SCHEDULE OF PAYMENTS

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

- A** ☒ Lump sum payment of \$ 100.00 due immediately, balance due
- ☐ not later than _____, or
☐ in accordance 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 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F** ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All 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

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

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

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-v.-

TAMEEK WHITE,

Defendant.

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 9/18/2023

23-CR-140 (NSR)
OPINION & ORDER

NELSON S. ROMÁN, United States District Judge:

Defendant Tameek White (“Defendant”) was charged on March 16, 2023, with one count of being a felon in possession of ammunition in violation of 18 U.S.C. § 922(g)(1). (ECF No. 21.) On June 30, 2023, Defendant filed a motion to dismiss Information pursuant to Federal Rules of Criminal Procedure 12 challenging the constitutionality of 18 U.S.C. § 922(g)(1) (ECF No. 30.). For the following reasons, Defendant’s motion to dismiss is DENIED.

BACKGROUND

The Complaint alleges that on or about July 24, 2022, Mount Vernon Police Department (“MVPD”) officers responded to a report of shots fired in the vicinity of 204 Union Avenue in Mount Vernon, NY. (ECF No. 2 at ¶ 3). MVPD officers canvassed the area and reviewed surveillance footage (*Id.*). That footage showed, at approximately 10:44am, a male dressed in a grey t-shirt, jeans, and black fanny pack (“Shooter-1”) walking down East Third Street towards Union Avenue. (*Id.*) Shooter-1 removed what appeared to be a handgun from the fanny pack. (*Id.*) Before reaching Union Avenue, Shooter-1 appeared to see another individual (“Shooter-2”) near the corner of East Third Street and Union Avenue, at which time Shooter-1 chased after Shooter-2. (*Id.*).

Shooter-2 appeared to fire first at Shooter-1, who appeared to return fire before ducking behind a parked car for cover. (*Id.*) Shooter-1 is then shown attempting to fire his handgun again in the direction of Shooter-2 before retreating behind the parked car. (*Id.*). Shortly thereafter, Shooter-1 began walking back down East Third Street away from Union Avenue. (*Id.*)

At least one of the surveillance recordings reviewed by law enforcement contained audio of what appears to be shots being fired. (*Id.*). Other surveillance footage shows muzzle flashes and shells being expelled from Shooter-2's handgun. (*Id.*). MVPD officers who responded to the scene recovered one .45 auto caliber PMC shell from underneath the tire of the parked vehicle where Shooter-1 appeared to fire his handgun. (*Id.*).

On or about July 27, 2022, MVPD detectives who had reviewed at least some of the surveillance footage observed an individual who resembled Shooter-1 on South Second Avenue in Mount Vernon. (*Id.*). After approach, the individual identified himself as "Tameek Rashard White" and provided a date of birth. (*Id.*). Using that date of birth, law enforcement officers obtained a criminal history report for a "Tameek Rashard White", which indicated several prior felony convictions and that the individual was on parole status until approximately March 2022. (*Id.*)

On or about July 28, 2022, MVPD detectives showed surveillance footage, and a still image taken therefrom, to a New York State Parole Officer who had supervised Defendant from approximately 2020 through March 2022. (*Id.*). Based on that footage and still image, the Parole Officer identified Shooter-1 as the Defendant. (*Id.*). The criminal history records for Defendant indicate that on or about September 16, 2019, Defendant plead guilty in Kings County Supreme Court to second-degree burglary, violating New York Penal Law § 140.25(2). (*Id.* at ¶ 5). Defendant was sentenced principally to 42 months' imprisonment on October 1, 2019. (*Id.*).

Subsequently, Defendant was charge with knowingly possessing ammunition after having previously been convicted in court of a crime punishable by imprisonment for a term exceeding one year. (ECF No. 21, at ¶ 1).

On June 30, 2023, Defendant filed a motion to dismiss the Information (ECF No. 21) on grounds that the Second Amendment of the United States Constitution renders 18 U.S.C. § 922(g)(1) facially unconstitutional. (“Def. Motion”) (ECF No. 30). The Government filed an opposition on July 31, 2023. (“Gov’t Opposition”) (ECF No. 32), and the Defendant replied on August 27, 2023 (“Def. Reply”) (ECF No. 34).

LEGAL STANDARD

The Second Amendment to the Constitution of the United States 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. “In *District of Columbia v. Heller*, 554 U.S. 570 (2008) and *McDonald v. Chicago*, 561 U.S. 742 (2010),” the Supreme Court held that “the Second and Fourteenth Amendments protect the rights of ordinary, law-abiding citizens to possess a handgun for self-defense outside the home.” *N.Y. State Rifle & Pistol Ass’n, Inc. v. Bruen*, 142 S. Ct. 2111, 2122 (2022).

Bruen set forth a new framework for analyzing Second Amendment claims: (1) “when the Second Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects that conduct . . .” and therefore, (2) “the government must demonstrate that the regulation is consistent with this Nation’s historical tradition of firearm regulation.” *Id.* at 2126. In other words, at the second step, “the government must affirmatively prove that its firearms regulation is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms.” *Id.* at 2127.

“When confronting . . . present-day firearm regulations, [the] historical inquiry that courts will conduct will often involve reasoning by analogy” *Id.* at 2132. Such reasoning requires “that the government identify a well-established and representative historical *analogue*, not a historical *twin*. So even if a modern-day regulation is not a dead ringer for historical precursors, it still may be analogous enough to pass constitutional muster.” *Id.* at 2133 (emphasis in original). Relying on *Heller* and *McDonald*, the Supreme Court further directed lower courts to focus their analysis on at least two “metrics” when analyzing firearm regulations: “how and why the regulations burden a law-abiding citizen’s right to armed self-defense.” *Id.* That is, courts must consider: (1) “whether modern and historical regulations impose a comparable burden on the right of armed self-defense”; and (2) “whether that burden is comparably justified.” *Id.*

The Supreme Court has also identified historical sources enacted around the time the Second (1791) and Fourteenth (1868) Amendments were adopted as particularly instructive, noting that

when it comes to interpreting the Constitution, not all history is created equal. Constitutional rights are enshrined with the scope that they were understood to have when the people adopted them. The Second Amendment was adopted in 1791; the Fourteenth in 1868. Historical evidence that long predates either date may not illuminate the scope of the right if linguistic or legal conventions changed in the intervening years. It is one thing for courts to reac[h] back to the 14th century for English practices that prevailed up to the period immediately before and after the framing of the Constitution. It is quite another to rely on an ancient practice that had become obsolete in England at the time of the adoption of the Constitution and never was acted upon or accepted in the colonies.

Id. at 2136 (internal quotations and citations omitted).

Similarly, we must also guard against giving post-enactment history more weight than it can rightly bear. It is true that in *Heller* we reiterated that evidence of how the Second Amendment was interpreted from immediately after its ratification through the end of the 19th century represented a critical tool of constitutional interpretation. We therefore examined a variety of legal and other sources to determine *the public understanding* of [the Second Amendment] after its . . .

ratification. And, in other contexts, we have explained that a regular course of practice can liquidate & settle the meaning of disputed or indeterminate terms & phrases in the Constitution.

Id. (internal quotations and citations omitted) (emphasis in original).

Lastly, “other cases implicating unprecedented societal concerns or dramatic technological changes may require a more nuanced approach.” *Id.* at 2132. This is because “[t]he regulatory challenges posed by firearms today are not always the same as those that preoccupied the Founders in 1791 or the Reconstruction generation in 1868.” *Id.* Nonetheless, “the Constitution can, and must, apply to circumstances beyond those the Founders specifically anticipated.” *Id.*

DISCUSSION

Here, Defendant argues that, post-*Bruen*, 18 U.S.C. § 922(g)(1) is facially unconstitutional. (Def.’s Mot. to Dismiss at p. 7).

I. The Constitutionality of § 922(g)(1) post-*Bruen*

a. Discussion of the Prohibition on Felons Possessing Firearms & Ammunition in *Heller*, *McDonald*, and *Bruen*

Before turning to the *Bruen*’s mandated analysis, the Court first considers the Supreme Court’s discussion of the propriety of the prohibition on felons possessing firearms and ammunition in *Bruen*, *McDonald*, and *Heller*. *Heller* explicitly stated “nothing in [this] opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons” *Heller*, 554 U.S. at 626. *McDonald* “repeated that assurance[.]” *McDonald*, 561 U.S. at 786.

Bruen’s majority opinion does not directly address the issue. *Bruen*’s concurrences and dissent, however, are not shy in their support for the bar on felons possessing firearms. In his concurrence, Justice Alito insisted that *Bruen* did not “disturb[] anything that [was] said in *Heller* or *McDonald* . . . about restrictions that may be imposed on the possession or carrying of guns. *Id.*

at 2157 (Alito, *J.*, concurring). Justice Kavanaugh, joined by Chief Justice Roberts, was express that “[p]roperly interpreted, the Second Amendment allows a variety of gun regulations . . .” before citing with approval *Heller*’s statement that the prohibition on felons possessing firearms stands without question. *Id.* at 2162 (Kavanaugh, *J.*, joined by Roberts, *C.J.*, concurring) (internal quotations and citations omitted). Finally, the dissent reads the *Bruen* majority “to cast no doubt” on that same assertion. *Id.* at 2189 (Breyer, *J.*, joined by Sotomayor and Kagan, *J.J.*, dissenting). In sum, then, four active justices¹ have made clear their opinion that the prohibition on felons possessing firearms made explicit in *Heller*, and already once expressly reaffirmed, is constitutional.

While the Court finds the foregoing to be sufficient grounds to hold § 922(g)(1) constitutional—and indeed already has, *see, United States v. King*, 634 F. Supp. 3d 76, 83 (S.D.N.Y. 2022)—prudence compels the Court to evaluate § 922(g)(1)’s constitutionality under the *Bruen* framework.

b. Bruen Analysis

At the outset, § 922(g)(1) unquestionably implicates the plain text of the Second Amendment. *Bruen*, 142 S. Ct. at 2122. The question then becomes whether felons fall within the meaning of “the people” that the Second Amendment was intended to protect.

i. Whether Felons Are Within the Scope of “People” Protected by the Second Amendment

¹ The Government also notes that, two years prior to *Bruen*, Justices Thomas and Gorsuch joined an opinion from Justice Alito noting “history supported the constitutionality of some laws limiting the right to possess a firearm, such as laws . . . prohibiting possession by felons and other dangerous individuals.” Gov’t Opp. at p.5, fn. 2 (citing *N.Y. State Rifle & Pistol Ass’n, Inc. v. City of New York*, 140 S.Ct. 1525, 1540-41 (2020) (Alito, *J.*, joined by Thomas and Gorsuch, *J.J.*, dissenting).

Notably, the *Bruen* majority focused its analysis solely on the right of law-abiding citizens to possess a firearm for self-defense. *See, e.g., Bruen*, 142 S. Ct. at 2122 (“[W]e recognized that the Second . . . Amendment protect[s] the right of an ordinary, law-abiding citizen to possess a handgun in the home for self-defense.”); *Id.* at 2124-25 (noting that the petitioners were “law-abiding . . . citizens”); *Id.* at 2132-33 (expressly premising *Bruen*’s new analytical framework on discerning “how and why [a] regulation burden[s] a law-abiding citizen’s right to self-defense.”) Similarly, *Heller* and *McDonald* also limit their Second Amendment analyses to law-abiding citizens. *See, e.g., Heller*, at 554 U.S. at 635; *McDonald*, 561 U.S. at 790. The omission of any concrete discussion of whether felons fall within the scope of “the people” is not, however, dispositive of the issue.

Heller states that “the people” refers to the “political community”, who are those that “are part of a national community or who have otherwise developed sufficient connection with [the United States] to be considered part of that community.” *Heller*, 554 U.S. at 580 (citing *United States v. Verdugo-Urquidez*, 494 U.S. 259, 265 (1990)). It is a difficult proposition to categorically remove felons from those individuals who are part of the national community. *Id.* The Court finds illuminating the *Bruen* majority’s statement that the Second Amendment “surely elevates above all other interests the right of law-abiding, responsible citizens to use arms for self-defense.” *Id.* at 2131 (citing *Heller*, 554 U.S. at 535) (internal quotations omitted). From this, it follows that the Second Amendment rights afforded to felons, if any, are not so comprehensively protected as those held by law-abiding citizens. *See also, Id.* at 2128 (citing *Heller* for the proposition that Second Amendment rights are not unlimited (internal citations and quotations omitted)). It does not necessarily follow, though, that felons are completely removed from the scope of the Second Amendment’s protection. Thus, upon consideration of the foregoing, the Court holds that felons

are included with the scope of “the people” as contemplated by the Second Amendment—as other courts in this District have held, *see, United States v. Davila*, 2023 WL 5361799, at *2 (S.D.N.Y. August 22, 2023). As such, the Courts turns to the historical understanding of those protections at the time the Second Amendment was enacted to assess whether § 922(g)(1) violates said protections.

ii. The Nation’s History of Firearm Regulation

The Government bears the burden of showing that § 922(g)(1) is consistent with the nation’s history of firearm regulation. *Bruen*, 142 S. Ct. at 2126. That is, the Government must show that § 922(g)(1) imposes a “comparable burden” on the right of felons to possess arms and ammunition and that said burden is “comparably justified” as an analogous historical regulation. *Id.* at 2133. Defendant summarily states that no such a tradition of regulation exists. *See*, (Def. Mot. at p. 8); (Def. Reply at p.2) Defendant also claims that the first such statutes barring felons from possessing firearms and ammunition only arose in the 20th century. (Def. Mot. At p. 8; Def. Reply at p.2).

The Government takes a more comprehensive approach, providing examples from 17th century England (Gov’t Opp. at p. 12-13); the Colonial Era (*Id.* at p. 13-14); the Revolutionary War (*Id.* at p. 14-16) and the debates over the ratification of the Bill of Rights (*Id.* at p. 16-18).² Taken together, the Government contends these examples demonstrate that there was a “robust tradition” of legislatures disarming categories of individuals it deemed a threat to ordered society and compliance with legal norms at the time the Second Amendment was ratified. (*Id.* at p. 12).

² While the Court does not take the Supreme Court’s approving examples of “14th century . . . English practices” and “evidence of how the Second Amendment was interpreted from immediately after its ratification through the end of the 19th century”, *Bruen*, 142 S. Ct at 2136 (internal quotations and citations omitted), as hard and fast temporal bounds within which sources may yield compelling historical analogues, the Court does note that all of the Government’s examples fall well within that timeframe and thus find them to carry persuasive weight.

This Court agrees, as have others. *See, e.g., United States v. Jackson*, 69 F.4th 495, 504 (8th Cir. 2023).

For instance, in the late 1860s, the English parliament prohibited Catholics from possessing arms and ammunition absent a renunciation of their faith—enacted after the Glorious Revolution of 1688, which saw a Protestant claimant displace the reigning Catholic monarch. (1 W. & M., Sess. 1, c. 15, in 6 *Statutes of the Realm* 71-73 (1688)). Catholics were targeted for disarmament due to the view they were “unwilling to obey the government and its laws.” *Jackson*, 69 F.4th at 502. Similarly, some colonial governments also disarmed Catholics. *Id.* at 502-03 (citing Michael A. Bellesiles, *Gun Laws in Early America, The Regulation of Firearms Ownership, 1607-1794*, 16 *LAW & HIST. REV.* 567, 574 (1998)). Racial restrictions on gun ownership were also widespread throughout the colonies based on the view that non-white races were dangerous.³ *See Jackson*, 69 F.4th at 502 (citing Bellesiles, *supra*, at 578-79;); *see also, Davila*, 2023 WL 5361799 at *3 (citing Saul Cornell, *A Well-Regulated Militia: The Founding Fathers and the Origins of Gun Control in America* 28-29 (2006)). Moreover, the Government musters numerous examples of state legislatures during the Revolutionary disarming those individuals who were not sufficiently supportive of, or loyal to, the American cause. *See, e.g., The Public Records of the Colony of Connecticut From May, 1775 to June, 1776*, at 1993 (1890) (1775 Conn. law); *The Acts and Resolves, Public and Private, of the Province of the Massachusetts Bay* 479-84 (1886) (1776 Mass. law); *Records of the Colony of Rhode Island and Providence Plantations in New England* 567 (1862) (1776 R.I. law); *The Public Acts of the General Assembly of North Carolina* 231 (1804) (1777 N.C. law); *Acts of the General Assembly of the State of New-Jersey at a Session Begun on the 27th Day of August, 1776*, at 90 (1777) (1777 N.J. law); *The Statutes at Large of Pennsylvania*

³ It goes without saying that such religious and racial restrictions would be flagrantly unconstitutional today.

from 1682 to 1801, at 112-13 (1903) (1777 Pa. law); *The Statutes at Large; Being a Collection of All the Laws of Virginia* 282 (1821) (1777 Va. law). The Continental Congress itself even recommended the states enact such laws. *Journals of the Continental Congress 1774-1789*, at 205 (1906) (resolution of March 14, 1776).

Perhaps most persuasive is the Government’s “highly influential” example that arose from debate at the Pennsylvania ratifying convention for the Constitution. *Heller*, 554 U.S. at 604. During these debates, a minority of delegates insisted that the Constitution should have a Bill of Rights. Bernard Schwartz, *The Bill of Rights: A Documentary History* 627 (1971). Though initially unsuccessful, these delegates won the day four years later with the adoption of the Bill of Rights, which was greatly influenced by proposals set forth by the delegates. (*Id.* art 628). Most notably, these delegates proposed a right to bear arms that was unqualified “unless for crimes committed, or real danger of public injury from individuals.” (*Id.* at 665).

The Government also offers compelling evidence of a tradition on barring those deemed dangerous from possessing ammunition. England’s law disarming Catholics extended not just to arms, but also to “Gunpowder [and] Ammunition” W. & M., Sess. 1, c. 15, in 6 *The Statutes of the Realm* 71-73 (1688). Some of the racial restrictions of the colonial era expressly extended to powder and ammunition. See, e.g., *The Statues at Large; Being A Collection of All the Laws of Virginia* 255-56 (1823); *Records of the Colony of Rhode Island and Providence Plantations* 561 (1857). Similarly, the Government has shown that Rhode Island, New Jersey, and Pennsylvania’s Revolutionary War-era loyalty laws encompassed not just arms, but also ammunition. See, *Records of the Colony of Rhode Island and Providence Plantations* 567 (1857); *Acts of the General Assembly of the State of New-Jersey at a Session Begun on the 27th Day of August, 1776*, at 90 (1777); *Act of Apr. 1, 1778*, ch. LXI, § 5, 1777-1778 P.A. Laws 123, 126.

The Court is also persuaded by the Government’s historical evidence relating to punishment for felonies. Under English law shortly before the Revolution, conviction of a felony could lead to “total forfeiture” of land and goods and was “generally connected with that of capital punishment” William Blackstone, *Commentaries on the Laws of England*, 95, 98 (1769). The colonies and later states continued to punish felonies in the same way. *See Folajtar v. Attorney General*, 980 F.3d 897, 904-05 (3d Cir. 2020); *Baze v. Rees*, 554 U.S. 35, 94 (2008) (Thomas, *J.*, joined by Scalia, *J.*, concurring in the judgment). Notably, the First Congress extended capital punishment for felony convictions to even non-violent conduct, such as forgery and counterfeiting. An Act for the Punishment of Certain Crimes Against the United States, 1. State. 112-15 (1790). It is a difficult row to hoe to suggest the generation that drafted and enacted the Second Amendment could countenance capital punishment for a non-violent felony, but not a prohibition on the possession of arms and ammunition.

Taken together, the foregoing is sufficient to show a tradition in the nation’s history of disarming categories of individuals, including prohibiting those individuals from possessing ammunition, that the legislature considers dangerous to ordered society and compliance with legal norms. Therefore, the Court now turns to whether § 922(g)(1) is sufficiently analogous to this tradition by scrutinizing “how and why” it burdens felons’ rights—and it is. *Bruen*, 142 S. Ct. at 2133 As to “how”, § 922(g)(1) is identical to this tradition: it disqualifies a discrete group of individuals, felons. The “why” is also identical: Congress has identified this group of individuals as dangerous ordered society and are, inherently, not in compliance with legal norms. *See also, Davila*, 2023 WL 5361799 at *5. That is, the Government has established “a well-established and historical analogue, [even if it is] not a historical twin” for § 922(g)(1). *Bruen*, 142 S. Ct. at 2133

Accordingly, the Court holds that § 922(g)(1) does not run afoul of the Second Amendment.

CONCLUSION

For the foregoing reasons, Defendant's motion to dismiss is DENIED. The Clerk of Court is respectfully directed to terminate the motion at ECF No. 30.

Dated: September 18, 2023

SO ORDERED:

White Plains, New York

A handwritten signature in blue ink, appearing to read "Nelson S. Román", is written over a horizontal line.

NELSON S. ROMÁN

United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - x
UNITED STATES OF AMERICA :
- v. - :
TAMEEK WHITE, :
Defendant. :
- - - - - x

INFORMATION

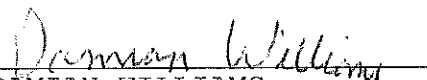
23 Cr. 140 (NSR)

COUNT ONE
(Unlawful Possession of Ammunition)

The United States Attorney charges:

1. On or about July 24, 2022, in the Southern District of New York and elsewhere, TAMEEK WHITE, the defendant, knowing he had previously been convicted in a court of a crime punishable by imprisonment for a term exceeding one year, knowingly possessed ammunition, to wit, one .45 auto caliber Poongsan Metal Manufacturing Company round, which was in and affecting commerce.

(Title 18, United States Code, Section 922(g)(1).)


DAMIAN WILLIAMS
United States Attorney

Approved: _____

RYAN W. ALLISON

Assistant United States Attorney

Before: THE HONORABLE ANDREW E. KRAUSE
United States Magistrate Judge
Southern District of New York

----- X

UNITED STATES OF AMERICA

- v. -

TAMEEK WHITE,

Defendant.

----- X

SEALED COMPLAINT

22mj7150

Violation of
18 U.S.C. § 922(g)

COUNTY OF OFFENSE:
WESTCHESTER

SOUTHERN DISTRICT OF NEW YORK, ss.:

ERIC DORNBUSCH, being duly sworn, deposes and says that he is a Special Agent with the Bureau of Alcohol, Tobacco, Firearms & Explosives ("ATF"), and charges as follows:

COUNT ONE

(Unlawful Possession of Ammunition)

1. On or about July 24, 2022, in the Southern District of New York and elsewhere, TAMEEK WHITE, the defendant, knowing he had previously been convicted in a court of a crime punishable by imprisonment for a term exceeding one year, knowingly did possess ammunition, to wit, one .45 auto caliber Poongsan Metal Manufacturing Company ("PMC") shell casing, which previously had been shipped and transported in interstate or foreign commerce.

(Title 18, United States Code, Section 922(g)(1).)

The bases for my knowledge and for the foregoing charge are, in part, as follows:

2. I have been a Special Agent with the ATF since December 2009. Before joining ATF, I was a U.S. Federal Air Marshal for approximately three years, and prior to that I was a Background

Investigator for the U.S. Department of Defense for five years. During my time in law enforcement, I have participated in numerous firearms and ammunition investigations. I base this affidavit on my experience and training, my participation in this investigation, my conversations with other law enforcement officers, and my examination of various reports and records. Because this affidavit is being submitted for the limited purpose of establishing probable cause, it does not include all the facts I have learned during the investigation. Where the contents of documents or the actions, statements, or conversations of others are reported herein, they are reported in substance and in part, except where otherwise indicated.

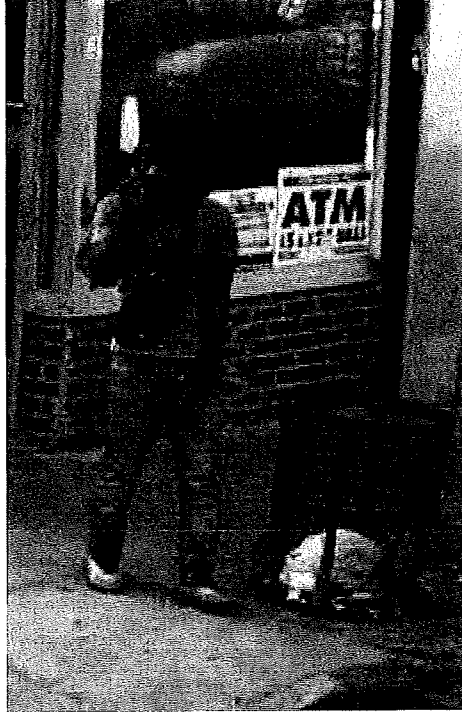
3. Based on my communications with law enforcement officers from the ATF and the Mount Vernon Police Department (the "MVPD"), my participation in this investigation, and my review of surveillance video recordings, reports, and records, I have learned, among other things, the following, in substance and in part:

a. On or about July 24, 2022, at approximately 10:55 a.m., MVPD officers responded to a report of shots fired at or near the area of 204 Union Avenue, near the corner of East Third Street and Union Avenue in Mount Vernon, New York.

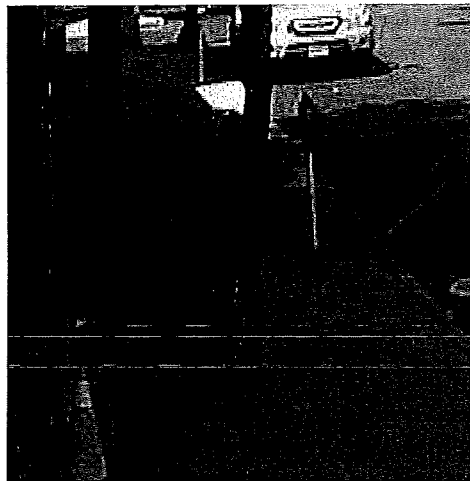
b. Law enforcement officers later canvassed the surrounding area and recovered surveillance footage taken on or about July 24, 2022, at and near the corner of East Third Street and Union Avenue. This surveillance footage, which I have reviewed, shows the following:

i. At approximately 10:44 a.m., a male individual ("Shooter-1") wearing a grey t-shirt, jeans, and a black fanny pack draped over his left shoulder was standing outside a market

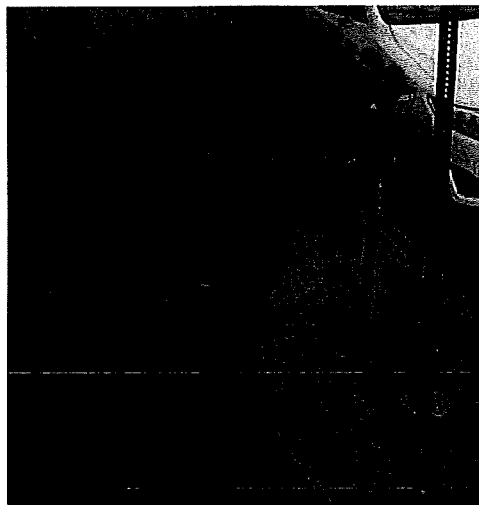
(the "Market") at or near the southwest corner of South Third Avenue and East Third Street, while speaking on a cellphone:



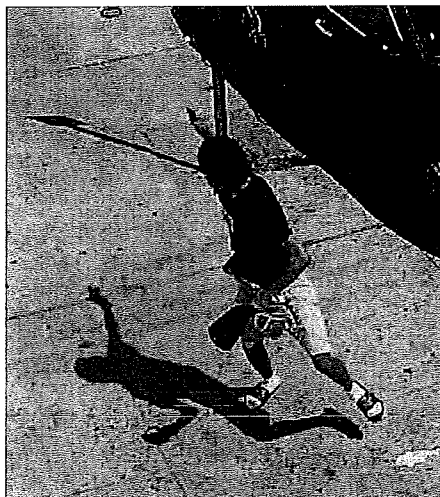
ii. Minutes later, Shooter-1 walked eastbound on the southern side of East Third Street from South First Avenue to Union Avenue. When Shooter-1 reached approximately the middle of the block, he removed from his fanny pack an object that appeared to be a handgun and continued walking towards Union Avenue:



iii. Before Shooter-1 reached Union Avenue, he appeared, based on his movements, to see another individual ("Shooter-2") at or near the southwest corner of East Third Street and Union Avenue. Shooter-2 then appeared, based on his movements, to see Shooter-1 and started running, making a right turn around the southwest corner of Union Avenue. Shooter-1, still holding his handgun, chased after Shooter-2:



iv. Shooter-2 ran southbound on the western side of Union Avenue. While he was doing so, Shooter-2 pulled a handgun from the area near his waistband, turned, and appeared to fire multiple rounds at Shooter-1:



v. Shooter-1 appeared to return fire at Shooter-2 and then ducked behind a dark-colored Jeep sport utility vehicle (the "Dark Jeep") parked on Union Avenue:



vi. After a few seconds, Shooter-1 stepped out from behind the Dark Jeep and pointed his handgun southbound on Union Avenue, in the direction of Shooter-2, and appeared to attempt to fire the handgun again. Shooter-1 then looked at his handgun and stepped back behind the Dark Jeep.

vii. Shortly thereafter, Shooter-1 walked back westbound on the southern side of East Third Street from Union Avenue, heading towards South First Avenue.

viii. Shots can be heard on at least one of the clips of surveillance footage, which contains audio. Other clips did not have audio recording enabled but clearly show several muzzle flashes and spent shell casings coming from Shooter-2's handgun.

c. The MVPD officers who responded on or about July 24, 2022, to the report of shots fired at or near the corner of East Third Street and Union Avenue recovered several spent shell casings. From underneath or nearby a tire of a vehicle parked at or near 204 Union Avenue, which is where Shooter-1 was standing when he appeared to fire at Shooter-2, law enforcement officers recovered one .45 auto caliber PMC shell casing (the "Ammunition"). From at or near 206 Union Avenue, which is farther south in the direction Shooter-2 ran to get away from Shooter-1, law enforcement officers found seven 9mm caliber shell casings.

d. On or about July 27, 2022, MVPD detectives who had reviewed some or all of the aforementioned surveillance footage observed an individual that appeared to look like Shooter-1 at or

near a particular address on South Second Avenue. The detectives approached this individual, identified themselves, and asked for identification. The individual produced a New York State non-driver identification card bearing the name "Tameek Rashard White" and listing a particular date (the "Date") as the individual's date of birth.

e. Law enforcement officers later obtained a criminal history report for "Tameek Rashard White" with the Date listed as his date of birth. Law enforcement officers then learned that "Tameek Rashard White" had several prior felony convictions and had been on parole until approximately March 2022.

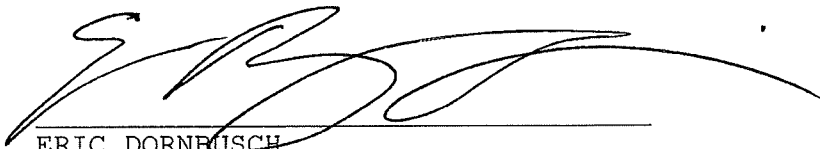
f. On or about July 28, 2022, an MVPD detective showed surveillance footage that captured Shooter-1 talking on his cellphone outside the Market on or about July 24, 2022, and a still image taken therefrom (the "Still Image") to a New York State Parole Officer ("Parole Officer-1") who had supervised TAMEEK WHITE, the defendant, from approximately 2019 to approximately 2020. Parole Officer-1 stated that Parole Officer-1 had met WHITE in person approximately ten or more times, with the last meeting occurring in 2020. After reviewing the Still Image, Parole Officer-1 identified Shooter-1 as the defendant.

g. On or about August 3, 2022, an MVPD detective showed surveillance footage that captured Shooter-1 talking on his cellphone outside the Market on or about July 24, 2022, and the Still Image to another New York State Parole Officer ("Parole Officer-2") who had supervised the defendant from approximately 2020 to approximately March 2022. Parole Officer-2 stated that Parole Officer-2 had met WHITE in person approximately five or more times, with the last meeting occurring in or about February or March 2022. After reviewing the Still Image, Parole Officer-2 also identified Shooter-1 as the defendant.

4. In addition to my duties as a Special Agent, I am an interstate nexus expert for the ATF. I reviewed the Ammunition, and I concluded that the Ammunition was manufactured outside of New York State.

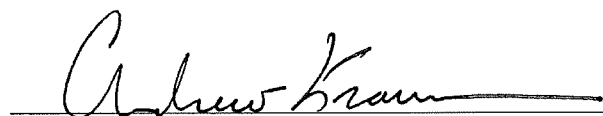
5. I have reviewed criminal history records pertaining to TAMEEK WHITE, the defendant, which show that, among other felony convictions, on or about September 16, 2019, WHITE pleaded guilty in Kings County Supreme Court to second-degree burglary, in violation of New York Penal Law § 140.25(2), which is punishable by imprisonment for a term of more than one year, and was sentenced on October 1, 2019, principally to 42 months' imprisonment.

WHEREFORE, the deponent respectfully requests that TAMEEK WHITE, the defendant, be arrested and imprisoned or bailed, as the case may be.



ERIC DORNBUSCH
SPECIAL AGENT
BUREAU OF ALCOHOL, TOBACCO, FIREARMS &
EXPLOSIVES

Sworn to before me this 31st day of August, 2022



THE HONORABLE ANDREW E. KRAUSE
UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF NEW YORK