NO:

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2025

JUSTIN MEYER,
***Petitioner*,**
v.

UNITED STATES OF AMERICA,

***Respondent*.**

On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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APPENDIX

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2026 WL 621243
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United States Court of Appeals, Eleventh Circuit.

UNITED STATES Of America, Plaintiff-Appellee,
v.
Justin MEYER, Defendant-Appellant.

No. 25-10003
|
Non-Argument Calendar
|
Filed: 03/05/2026

Appeal from the United States District Court for the Southern District of Florida, D.C. Docket No. 4:22-cr-10012-RKA-1

Attorneys and Law Firms

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Before Newsom, Branch, and Brasher, Circuit Judges.

Opinion

PER CURIAM:

***1** Justin Meyer appeals his conviction for possessing a firearm and ammunition as a felon, in violation of 18 U.S.C. § 922(g)(1). He argues that § 922(g)(1) is unconstitutional under the Second Amendment. The government, in turn, moves for summary affirmance, arguing that our precedent forecloses Meyer's constitutional challenge to § 922(g)(1). Because the government's position is clearly right as a matter of law, we grant its motion and affirm.

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

In this Court, a "prior panel's holding is binding on all subsequent panels unless and until it is overruled or undermined to the point of abrogation by the Supreme Court or by this court sitting *en banc*." *United States v. Dubois*, 139 F.4th 887, 892 (11th Cir. 2025) (quotation omitted), *cert. denied*, No. 25-6281, 2026 WL 135685 (U.S. Jan. 20, 2026). When we "cannot harmonize our decisions" we must follow the earliest-decided precedent. *Corley v. Long-Lewis, Inc.*, 965 F.3d 1222, 1231 (11th Cir. 2020).

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

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

Then, in *N.Y. State Rifle & Pistol Ass'n v. Bruen*, the Supreme Court explained that, in determining whether a restriction on the possession of firearms is constitutional, courts must begin by asking whether the firearm law or regulation at issue governs conduct that falls within the plain text of the Second Amendment right. 597 U.S. 1, 17 (2022). If the regulation covers such conduct, it survives constitutional scrutiny only if the government "affirmatively prove[s] that its firearms regulation is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms." *Id.* at 19. As in *Heller*, *Bruen* confirmed that the Second Amendment protects the right of "law-abiding citizens" to possess handguns for self-defense. *Id.* at 8–10, 71.

***2** The Supreme Court applied *Bruen*'s history-and-tradition test in *United States v. Rahimi* and warned that "some courts have misunderstood the methodology of [its] recent Second Amendment cases," which "were not meant to suggest a law trapped in amber." 602 U.S. 680, 691 (2024). *Rahimi* reiterated that a historical analogue "need not be a 'dead ringer' or a 'historical twin' " to establish that a modern regulation "comport[s] with the principles underlying the Second Amendment." *Id.* at 692 (quoting *Bruen*, 597 U.S. at 30).

Finally, in *United States v. Dubois*, we explained that neither *Bruen* nor *Rahimi* abrogated our decision in *Rozier*, which upheld the constitutionality of § 922(g)(1) under the Second Amendment. 139 F.4th at 888–89. Applying our prior panel precedent rule in considering the defendant's Second Amendment challenge to his conviction under § 922(g)(1), we affirmed, holding that *Rozier* continued to bar Second Amendment challenges to § 922(g)(1) unless and until the Supreme Court offered clearer instruction. *Id.* at 892–94. *Rozier*, we made clear, remained binding precedent in this Circuit. *Id.*

The parties agree and are clearly right that Meyer's Second Amendment challenge fails under *Rozier*. Meyer, however, argues that *Dubois*, which reaffirmed *Rozier*, does not govern because it failed to apply the methodology set forth in *Bruen* and *Rahimi*, which we held in *National Rifle Ass'n v. Bondi*, 133 F.4th 1108 (11th Cir. 2025) (en banc), must be used to evaluate all Second Amendment challenges. So, Meyer argues, *Bondi* governs because when circuit authority conflicts, the earliest case controls and *Bondi* predates *Dubois*.

In *Bondi*, we said that "[w]hen a person challenges a law regulating arms-bearing conduct, courts must examine the 'historical tradition of firearm regulation' in our nation to 'delineate the contours of the right.' " 133 F.4th at 1114 (quoting *Rahimi*, 602 U.S. at 692). Our decision in *Dubois* does not conflict with that instruction from *Bondi*. While *Bondi* set forth a general rule for how courts must evaluate Second Amendment challenges, it did not discuss, let alone eliminate, the prior panel precedent rule in the Second Amendment context. *See id.* Nor did it explicitly overrule any of this Court's previous Second Amendment decisions. *See id.* So *Bondi* and *Dubois* can easily be read in harmony: *Bondi* reiterated the Supreme Court's history-and-tradition test but did not prevent future opinions (like *Dubois*) from invoking the prior panel precedent rule to rely on previously decided Second Amendment opinions that are not "clearly contrary to" *Heller*, *Bruen*, and *Rahimi*. *Dubois*, 139 F.4th at 892 (quotation omitted).

In sum, *Dubois* clearly dooms Meyer's Second Amendment challenge to § 922(g)(1) and is binding because it does not conflict with *Bondi*. Because the government's position as to Meyer's Second Amendment challenge to § 922(g)(1) "is clearly right as a matter of law," *see Groendyke Transp.*, 406 F.2d at 1162, we grant the government's motion for summary affirmance.

AFFIRMED.

All Citations

Not Reported in Fed. Rptr., 2026 WL 621243

Footnotes

1 *Bonner v. City of Prichard*, 661 F.2d 1206, 1207 (11th Cir. 1981) (en banc) (holding that all decisions from the Fifth Circuit Court of Appeals issued before October 1, 1981, are binding precedent in the Eleventh Circuit).

A-2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 22-10012-CR-ALTMAN/SNOW

18 U.S.C. § 922(g)(1)
18 U.S.C. § 924(d)(1)

UNITED STATES OF AMERICA

vs.

JUSTIN MEYER,

Defendant.
_______________________________/

INDICTMENT

The Grand Jury charges that:

Count 1
Possession of a Firearm and Ammunition by a Convicted Felon
(18 U.S.C. § 922(g)(1))

em YD

On or about January 27, 2022, in Monroe County, in the Southern District of Florida, the defendant,

JUSTIN MEYER,

knowingly possessed a firearm and ammunition in and affecting interstate and foreign commerce, knowing that he had previously been convicted of a crime punishable by imprisonment for a term exceeding one year, in violation of Title 18, United States Code, Sections 922(g)(l) and 924(a)(2).

It is further alleged that said firearm was one (1) 45 caliber Colt 1911, serial number GT12298.

Count 2
Possession of a Firearm and Ammunition by a Convicted Felon
(18 U.S.C. § 922(g)(1))

EM YD

On or about January 27, 2022, in Monroe County, in the Southern District of Florida, the defendant,

JUSTIN MEYER,

knowingly possessed a firearm and ammunition in and affecting interstate and foreign commerce, knowing that he had previously been convicted of a crime punishable by imprisonment for a term exceeding one year, in violation of Title 18, United States Code, Sections 922(g)(l) and 924(a)(2).

It is further alleged that said firearm was one (1) Anderson Multi Caliber AR-15 pistol, serial number 19135176.

FORFEITURE ALLEGATIONS

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

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

[Space Intentionally Left Blank]

All pursuant to Title 18, United States Code, Section 924(d)(l), and the procedures set forth at Title 21, United States Code, Section 853, as incorporated by Title 28, United States Code, Section 2461(c).

A TRUE BILL

[redacted]

FOREPERSON

JUAN ANTONIO GONZALEZ
UNITED STATES ATTORNEY

YARA DODIN
ASSISTANT UNITED STATES ATTORNEY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA **CASE NO.:**

v.

JUSTIN MEYER,

______________________________/

Defendant.

CERTIFICATE OF TRIAL ATTORNEY*

Superseding Case Information:

Court Division (select one)

☐ Miami ☑ Key West ☐ FTP
☐ FTL ☐ WPB

New Defendant(s) (Yes or No)
Number of New Defendants
Total number of New Counts

I do hereby certify that:

1. I have carefully considered the allegations of the indictment, the number of defendants, the number of probable witnesses and the legal complexities of the Indictment/Information attached hereto.
2. I am aware that the information supplied on this statement will be relied upon by the Judges of this Court in setting their calendars and scheduling criminal trials under the mandate of the Speedy Trial Act, Title 28 U.S.C. §3161.
3. Interpreter: (Yes or No) No
   List language and/or dialect:
4. This case will take 3 days for the parties to try.
5. Please check appropriate category and type of offense listed below:

(Check only one)		(Check only one)
I	☑ 0 to 5 days	☐ Petty
II	☐ 6 to 10 days	☐ Minor
III	☐ 11 to 20 days	☐ Misdemeanor
IV	☐ 21 to 60 days	☑ Felony
V	☐ 61 days and over	

6. Has this case been previously filed in this District Court? (Yes or No) No
   If yes, Judge Case No.
7. Has a complaint been filed in this matter? (Yes or No) No
   If yes, Magistrate Case No.
8. Does this case relate to a previously filed matter in this District Court? (Yes or No) No
   If yes, Judge Case No.
9. Defendant(s) in federal custody as of
10. Defendant(s) in state custody as of
11. Rule 20 from the District of
12. Is this a potential death penalty case? (Yes or No) No
13. Does this case originate from a matter pending in the Northern Region of the U.S. Attorney's Office prior to August 8, 2014 (Mag. Judge Shaniek Maynard? (Yes or No) No
14. Does this case originate from a matter pending in the Central Region of the U.S. Attorney's Office prior to October 3, 2019 (Mag. Judge Jared Strauss? (Yes or No) No

By: *Yara Dodin*
Yara Dodin
Assistant United States Attorney
FLA Bar No. 0124979

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

PENALTY SHEET

Defendant's Name: Justin Meyer

Case No:

Count #: 1

Possession of a Firearm and Ammunition by a Convicted Felon

Title 18, United States Code, Section 922(g)(1)
* **Max. Term of Imprisonment:** 10 years' imprisonment
* **Mandatory Min. Term of Imprisonment (if applicable):**
* **Max. Supervised Release:** 3 years' supervised release
* **Max. Fine:** $250,000

Count #: 2

Possession of a Firearm and Ammunition by a Convicted Felon

Title 18, United States Code, Section 922(g)(1)
* **Max. Term of Imprisonment:** 10 years' imprisonment
* **Mandatory Min. Term of Imprisonment (if applicable):**
* **Max. Supervised Release:** 3 years' supervised release
* **Max. Fine:** $250,000

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

A-3

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 22-10012-CR-ALTMAN

UNITED STATES OF AMERICA,
Plaintiff,
v.

JUSTIN MEYER,
Defendant.
________________________________/

MEYER'S RENEWED MOTION TO DISMISS INDICTMENT ON GROUNDS 18 U.S.C. § 922(g)(1) IS UNCONSTITUTIONAL *AS APPLIED* TO HIM

The Defendant, Justin Meyer, through undersigned counsel, respectfully renews his motion pursuant to Fed. R. Crim. P. 12(b) to dismiss both counts of the indictment as unconstitutional under the Second Amendment as applied to him, pursuant to the Supreme Court's decision in *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022), as clarified in *United States v. Rahimi*, 602 U.S. ___, ___ S.Ct. ___, 2024 WL 3074728(U.S. June 21, 2014). In support thereof, he states:

Factual and Legal Background

On November 18, 2012, when he was 21 years old and a student at Florida Keys Community College, Justin Meyer took a cellphone from a table in a locker room at the college when the owner was giving diving lessons and no other person was around. There was no violence involved in the theft. On February 21, 2013, he pled guilty to grand theft, adjudication was withheld, and he was sentenced to probation. Although he violated his probation several times, each time it was for non-violent conduct. On October 4, 2019, he appeared for his final violation hearing and was adjudicated guilty on that date. Notably, as argued in prior pleadings, although the offense qualified as a third degree felony at the time of Mr. Meyer's plea, by the time he was adjudicated in 2019, it had become a misdemeanor (which it remains to this day). Mr. Meyer has never been convicted of any other crime.

Based on this single theft-of-a-cellphone conviction for a non-violent offense committed almost a decade earlier, after he was found with two loaded handguns in his home in Monroe County on January 27, 2022, the government charged Mr. Meyer with two counts of being a felon in knowing possession of a firearm and ammunition, in violation of 18 U.S.C. § 922(g)(1). (DE 1).

On September 1, 2022, Mr. Meyer moved to dismiss the indictment as both facially unconstitutional after *Bruen*, and as applied to him, given his single non-violent prior. (DE 10). The government opposed the motion, arguing it was "foreclosed by binding precedent"—namely, *United States v. Rozier*, 598 F.3d 768, 770 (11th Cir. 2010), issued in the aftermath of *District of Columbia v. Heller*, 554 U.S. 570 (2008). (DE 11:2-3). Mr. Meyer argued strenuously in reply that *Rozier* had mistakenly relied upon *Heller*'s dicta rather than its textual holding on "the people," and that *Rozier*'s dicta-based mode of analysis had not survived *Bruen*'s clarification of *Heller*'s "text and history" approach, since the *Rozier* panel never examined the text of the Second Amendment, nor considered whether there was a consistent history of similar regulation dating to the Founding as *Bruen* dictates. (DE 13:1-19).

But the Court agreed with the government. On May 9, 2023, the Court denied the motion based on *Rozier*, even though the latter—the Court acknowledged—had relied upon what was unmistakably dicta in *Heller*. (DE 53:1-3). In following the *Heller* dicta, and finding that nothing in *Bruen* had abrogated it, the Court noted with significance that "*every federal judge* who has considered this question since *Bruen* has upheld the continued validity of § 922(g)(1)," and the "possibility of such a systemic misapprehension" would be unlikely. (DE 53:4-6; citation omitted).

But the legal landscape changed significantly after that. District and court of appeals judges across the country found § 922(g)(1) unconstitutional as applied to defendants with non-violent priors. The Court, accordingly, invited Mr. Meyer to refile his as-applied challenge.

While undersigned counsel was writing up Mr. Meyer's renewed as-applied challenge, the Eleventh Circuit adhered to *Rozier* in *United States v. Dubois*, 94 F.4th 1284 (11th Cir. Mar. 5, 2024). However, for the reasons detailed below, in *United States v. Rahimi*, 144 S.Ct. 1889 (June 21, 2024) the Supreme Court necessarily rejected all of the arguments in *Dubois* as to why *Rozier* continues to govern post-*Bruen*, and preempt further Second Amendment analysis of § 922(g)(1) cases under *Bruen*'s framework. As such, whether § 922(g)(1) is unconstitutional as applied to Mr. Meyer after *Bruen/Rahimi* is a question of first impression this Court must consider *de novo* here, unhampered by *Rozier* and *Dubois*—neither of which applied the newly-mandated, now-clarified, *Bruen* methodology. And for the reasons set forth in Part C.4 below, the Court should hold § 922(g)(1) unconstitutional *as applied* to Mr. Meyer after *Bruen/Rahimi*.[1]

ARGUMENT

The Second Amendment provides, "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. CONST. amend. II. In *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022) the Supreme

[1]Because the Court merely invited Mr. Meyer to renew his as-applied challenge, Mr. Meyer will not reassert herein (although he does *not* abandon, and continues to preserve) his argument in DE 10 that § 922(g)(1) is facially unconstitutional, which he maintains is supported by *Rahimi*. Notably, even prior to *Rahimi*, at least three district judges had found § 922(g)(1) facially unconstitutional under *Bruen*. *See, e.g., United States v. Prince*, ___ F.Supp.3d ___, 2023 WL 7220127 (N.D. Ill. Nov. 2, 2023) (Gettleman, J.); *United States v. Hale*, ___ F.Supp.3d ___, 2024 WL 621614, at *3, n.1 (citing other opinons by Judge Gettleman); *United States v. Taylor*, 2024 WL 245557 (S.D. Ill. Jan. 22, 2024) (Yandle, J.); *United States v. Martin*, ___ F.Supp.3d ___, 2024 WL 728571 (S.D. Ill. Feb. 22, 2024) (Yandle, J.); *United States v. Neal*, ___ F. Supp.3d ___, 2024 WL 833607 (N.D. Ill. Feb. 7, 2024)(Ellis, J.).

Court for the first time set forth a general test for assessing the constitutionality of all firearm regulations going forward.

At Step One of *Bruen*'s Second Amendment test, courts may consider *only* whether "the Second Amendment's plain text covers an individual's conduct." 597 U.S. at 17. If it does, *Bruen* held, "the Constitution presumptively protects that conduct." *Id.* And, regulating presumptively protected conduct is unconstitutional unless the government, at Step Two of the analysis, can "justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation"—that is, the tradition in existence "when the Bill of Rights was adopted in 1791." *Id.* at 37. Here, because Mr. Meyer's conduct is covered by the plain text of the Second Amendment, and the government cannot show § 922(g)(1) as applied to him is consistent with America's historical tradition of firearm regulation—given his single non-violent prior, which was not even a felony at the time of adjudication and conviction—the indictment must be dismissed.

A. As confirmed by *Rahimi*, *Bruen* dictates a completely different mode of Second Amendment analysis from the dicta-based mode of analysis in *Rozier* and *Dubois*; those decisions no longer control.

Just after *District of Columbia v. Heller*, 554 U.S. 570 (2008), but before the clarification of *Heller*'s text-and-history approach in *Bruen*, *Rozier* held "statutes disqualifying felons from possessing a firearm under any and all circumstances do not offend the Second Amendment." 598 F.3d at 771. Notably, *Rozier* reached that conclusion without considering the Second Amendment's "plain text," including *Heller*'s specific determination that reference to "the people" in the Second Amendment—consistent with the use of the same term in other amendments—"unambiguously refers" to "all Americans." 554 U.S. at 579-81. Moreover, *Rozier* also failed to engage in the type of meticulous historical analysis dictated by both *Heller* and *Bruen* (and now *Rahimi*).

Instead, *Rozier* relied entirely upon dicta in *Heller* about "presumptively lawful" "longstanding prohibitions" against felons possessing firearms, even though there was no question about § 922(g)(1) in *Heller*, and the Court acknowledged it had not engaged in an "exhaustive historical analysis" on the point. *Compare Heller*, 554 U.S. at 626-27 & n. 26 ("Although we do not undertake an exhaustive historical analysis today of the full scope of the Second Amendment") *with Rozier*, 598 F.3d at 768 (ignoring the latter caveat; finding dispositive, *Heller*'s comment, 554 U.S. at 626, that "nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons").

As noted above, post-*Bruen* but prior to *Rahimi*, the Eleventh Circuit in *Dubois* continued to follow the pre-*Bruen* approach of *Rozier*. In declining to conduct *Bruen*'s new two-step analysis for Second Amendment challenges, viewing that as "foreclose[d]" by *Rozier*, 94 F.4th at 1291—and rejecting the suggestion *Bruen* had abrogated *Rozier, id.*—the *Dubois* Court cited, as determinative, the dicta from *Heller* quoted *supra*. *See Dubois, id.* at 1291-93 (stating the Supreme Court "made it clear" in *Heller*, *id.* at 626-27 & n. 26, that its holding "did not cast doubt" on felon-in-possession prohibitions," which were "presumptively lawful;" and in *Bruen*, 597 U.S. at 17, that its holding was "'[i]n keeping with *Heller*'"). Importantly, though, the *Dubois* Court *did* leave the door open to reconsideration after *Rahimi*, by stating: "We require clearer instruction from the Supreme Court before we may reconsider the constitutionality of section 922(g)(1)." 94 F.4th at 1293.

And indeed, in *Rahimi*, the Supreme Court provided very clear instruction on the post-*Bruen* required methodology—instruction that directly undercuts the assumptions, reasoning, and approach of both *Rozier* and *Dubois*. After *Rahimi*, neither *Rozier* nor *Dubois* can "foreclose" Mr. Meyer's post-*Bruen* challenge, for multiple reasons.

First, the Supreme Court made undeniably clear in *Rahimi* that (1) *Bruen* indeed set forth a new methodology for Second Amendment analysis that lower courts must follow, and (2) *Rahimi* "clarified" that methodology. Every member of the Court agreed on those points. *See* 144 S.Ct. at 1891 (Roberts, C.J., writing for the majority) ("As we explained in *Bruen*, the *appropriate analysis* involves considering whether the challenged regulation is consistent with the principles that underpin our regulatory tradition. A court *must ascertain* whether the new law is 'relevantly similar' to laws that our tradition is understood to permit, 'apply[ing] faithfully the balance stuck by the founding generation to modern circumstances.") (internal citations to *Bruen* omitted; emphasis added).[2]

Rozier did *not* comply with *Bruen*'s later-announced, text-and-historical tradition methodology. And neither did *Dubois*. *Rozier* most definitely did *not* "answer" *Bruen*'s "first

[2]*See also id.* at 1904-05 (Sotomayor, J. joined by Kagan, J., concurring) ("The Court's opinion *clarifies an important methodological point*"—namely, that "*courts applying Bruen should 'conside[r]* whether the challenged regulation is consistent with the *principles* that underpin our regulatory tradition;" "*The Court today clarifies Bruen's historical inquiry*") (internal citations to *Bruen* omitted; emphasis added); *id.* at 1907, 1910 (Gorsuch, J., concurring) (under *Bru*en, "'[T]ext *and history' dictate* the contours of [the Second Amendment] right;" the government *must establish* that, "in at least some of its applications, the challenged law 'impose[s] a comparable burden on the right of armed self-defense' to that imposed by a historically recognized regulation," and "the burden imposed by the current law 'is comparably justified;" "The Court *reinforces the focus on text, history, and tradition, following exactly the path we described in Bruen*") (internal citations to *Bruen* omitted; emphasis added); *id.* at 1923 (Kavanaugh, J., concurring) ("in today's opinion the Court "builds on" *Bruen*'s "relevantly similar" standard); *id.* at 1924-25 (Barrett, J., concurring) ("courts *must examine our tradition of firearm regulation*," and "[a] regulation is constitutional only if the government *affirmatively proves* that it is 'consistent with the Second Amendment's text and historical understanding;'" "'[a]nalogical reasoning' under *Bruen* demands a wider lens: Historical regulations reveal a principle not a mold") (internal citations omitted); *id.* at 1926 (Jackson, J., concurring) (the Court adopted a "*new legal standard in Bruen*," and "*Bruen is now binding law*;" "*The tests we established bind lower court judges*;" pointing to *Dubois* as one example of lower courts calling out for more guidance; "The Court today *expounds on the history-and-tradition inquiry that Bruen requires*," "'*to clear up "'misunderst*[*andings*]'") (internal citations omitted; emphasis added); *id.* at 1931 (Thomas, J., dissenting) (*Bruen* "laid out the *appropriate framework* for assessing whether a firearm regulation is constitutional," and "*as the Court [today] recognizes*," whether that modern regulation "violates the Second Amendment mandate") (emphasis added).

question, or "examine" *Heller*'s "initial question," or properly "apply *Heller*" at all, as the government has previously claimed. Indeed, neither *Rozier* nor *Dubois* considered the text of the Second Amendment, as both *Heller* and *Bruen* mandated. Nor did they require the government to identify any Founding era analogues, in order to determine whether it had proved a consistent historical tradition of regulation dating to the Founding that was *at least* "relevantly similar," by being both "comparably justified" and imposing a "comparable burden," as *Bruen* newly-mandated and *Rahimi* confirmed is indeed now the law. *See* Part C *infra*. Rather, *Dubois* adhered rigidly to *Rozier* which had avoided all textual and historical analysis by following *Heller*'s dicta on "presumptively lawful" purportedly "longstanding prohibitions." That dicta-based approach is ***not*** permitted after *Bruen* and *Rahimi*.

Second, and relatedly, the *Rahimi* Court squarely "reject[ed] the Government's contention" that legislatures can disarm anyone who is not "responsible." 144 S.Ct. at 1903. And notably, the *Dubois* Court expressly accepted that now-definitively-rejected contention. *See* 94 F.4th at 1293 (underscoring that "*Bruen*, like *Heller* repeatedly described the [Second Amendment] right as extending only to 'law-abiding responsible citizens") (citations omitted).

At oral argument in *Rahimi*, the government argued the word "responsible," as used in *Heller* and *Bruen*, meant "non-dangerous." *See* Tr. of Oral Argument, *United States v. Rahimi*, 2023 WL 9375567, at *11 (U.S. Nov. 7, 2023) (government's position was there is "no daylight" between "not responsible and dangerous;" arguing the Court used the term "responsible" previously to "identify[] those whose possession of firearms presents an unusual danger beyond the ordinary citizen").

But *Rahimi* rejected that. The Court declared the term "responsible," advanced by the government as its hoped-for Second Amendment standard, to not only be "vague," but that any purported dividing line predicated on "responsible" does *not* "derive from our case law." 144 S.Ct. at 1903. Indeed, it explained, while *Heller* and *Bruen* did use the term "responsible," they did so simply to "describe the class of ordinary citizens who undoubtedly enjoy the Second Amendment right." Those opinions "said nothing about the status of citizens who were not 'responsible,'" because "[t]he question was simply not presented." *Id.*

Importantly, the government derived its proffered "responsible" limitation in *Rahimi* from the same place it has derived its supposed rule for § 922(g)(1) that "non-law-abiding" people can be disarmed: passages in *Heller* and *Bruen* that use those words. Notably, although the government's focus at the *Rahimi* oral argument narrowed to the term "responsible," in its briefing it specifically argued that, as interpreted in *Heller* and *Bruen*, "The Second Amendment Allows Congress to Disarm Persons Who Are Not *Law-Abiding*, Responsible Citizens." Government's Brief, *United States v. Rahimi*, 2023 WL 5322645, at **10-13 (U.S. Aug. 14, 2023)(emphasis added); Government's Reply Brief, *Rahimi*, 2023 WL 716695, at **6-14 (U.S. Oct. 25, 2023) (same). Accordingly, if "responsible" is out as a limiting Second Amendment principle for the reasons explained by the *Rahimi* majority, "law-abiding" is necessarily out as well.

Justice Thomas made that clear in a portion of his dissent—not disputed by the majority—stating:

> The Government, for its part, tries to rewrite the Second Amendment to salvage its case. *It argues that the Second Amendment allows Congress to disarm anyone who is not 'responsible' and 'law-abiding.' Not a single Member of the Court adopts the Government's theory.* Indeed, the Court disposes of it in half a page—and for good reason. *Ante*, at ___. The Government's argument lacks any basis in our precedents and would eviscerate the Second Amendment altogether.
>
> The Government's position is a bald attempt to refashion this Court's doctrine. ... The Government's claim that the Court already held [in *Heller* and *Bruen*] the Second Amendment protects only '*law-abiding*, responsible citizens' is specious at best. ...

> [T]he Government's '*law-abiding*, dangerous citizen' test—and indeed any similar, principle-based approach—would hollow out the Second Amendment of any substance.

144 S.Ct. at 1945-46 (emphasis added). As thus confirmed, and importantly for this case, *Rahimi* puts the "law-abiding, responsible citizen" principle advanced by the government, and expressly followed by *Dubois*, to rest once and for all.

Third, although in one instance, the *Rahimi* majority mentioned the "presumptively lawful" dicta in *Heller* (followed in *Rozier* and *Dubois*), review of its full statement is crucial to assess the significance of this single reference:

> Rahimi argues *Heller* requires us to affirm, because Section 922(g)(8) bars individuals subject to restraining orders from possessing guns in the home, and in *Heller* we invalidated an 'absolute prohibition on handguns ... in the home.' 554 U.S., at 636; Brief for Respondent at 32. But *Heller* never established a categorical rule that the Constitution prohibits regulations that forbid firearm possession in the home. In fact, our opinion stated that many such prohibitions, like those on the possession of firearms by 'felons and the mentally ill,' are 'presumptively lawful.' 554 U. S., at 626, 627, n.26. Op. 15.

144 S.Ct. at 1902.

Here, the Court was simply saying Rahimi had over-read *Heller*, which on its own terms did not support his position that all gun bans in the home are unconstitutional. The Court was *not* independently endorsing the idea that all-felon-disarmament is lawful; it was simply noting *Heller* did not support Rahimi's position. Indeed, the *Rahimi* Court thereafter confirmed that, as in *Heller* and *Bruen*, it was "not 'undertak[ing] an exhaustive historical analysis ... of the full scope of the Second Amendment,'" and was "only" holding people who pose a "credible threat" to others may be disarmed. 144 S.Ct. at 1903. These statements and others preclude reading the *Rahimi* majority's passing reference to footnote 26 in *Heller* as a "holding" about the constitutionality of § 922(g)(1). It was *not*. *See also Rahimi*, *id.* at 1901 (making clear the Court was declining to decide whether categorical bans like § 922(g)(1), referenced in *Heller*, were actually lawful); *id.* at 1910 (Gorsuch, J., concurring) ("Nor do we purport to approve in advance other laws denying firearms on a categorical basis to any group of persons a legislature happens to deem, as the government puts it, 'not "responsible;"' agreeing with Justice Thomas that "Not a single Member of the Court adopts the Government's theory.")

This Court has always drawn a clear distinction between "dicta" in a decision and the actual "holding" of a case. *See United States v Kaley*, 579 F.3d 1246, 1253 n.10 (11th Cir. 2009); *Edwards v. Prime, Inc.*, 602 F.3d 1276, 1298 (11th Cir. 2010). And given that precedent, this brief allusion to *Heller*'s dicta, which was not in any way necessary to *Rahimi*'s ultimate holding, cannot be over-read. Notably, Justice Thomas was clear in his *Rahimi* dissent, and no one in the majority disagreed, that the "passing reference in *Heller* to laws banning felons and others from possessing firearms" was indeed "dicta."[3] 144 S.Ct. at 1944, at n.7 (Thomas, J., dissenting). And *Bruen*, Justice Thomas confirmed, used the phrase "ordinary, law-abiding citizens" merely to describe those who were unable to publically carry a firearm in New York." *Id.*

With that confirmation from the author of *Bruen* as to what was meant by the language followed in *Dubois*, *Rahimi*'s single reference to *Heller*'s dicta cannot now save *Dubois*. The approach and holding of *Rozier/Dubois* has been "undermined to the point of abrogation" by *Bruen* and *Rahimi*. *See United States v. Archer*, 531 F.3d 1347, 1352 (11th Cir. 2008) (where the Supreme

[3]Prior to authoring *Bruen*, Justice Thomas acknowledged in *Voisine v. United States*, 579 U.S. 686, 715 (2016) that the discussion of felon disarmament laws in *Heller* was "dicta," and then-Judge Barrett agreed in *Kanter v. Barr*, 919 F.3d 437, 453-54 (7th Cir. 2019) (Barrett, J., dissenting).

Court sets forth a new "mode of analysis," it "undermines to the point of abrogation" prior circuit precedent analyzing the same or even related legal questions under a different "mode of analysis").

Archer confirms *Rozier* did *not* survive *Bruen*. And it now additionally confirm *Dubois* has not survived *Rahimi*. *Rozier*'s "Step One" was *not* in any way comparable to the new *Bruen* Step One. *Bruen* changed the threshold inquiry for all Second Amendment claims to be exclusively about "plain text." No history can be considered at Step One—and dicta about history has no relevance at any step of *Bruen*. History comes into play only at Step Two of *Bruen*'s inquiry, where the government must show similar laws dating to the Founding; it may not rely on dicta about laws without an exhaustive historical analysis.

Notably, post-*Bruen* but prior to *Rahimi*, the Tenth Circuit—like the Eleventh Circuit in *Dubois*—continued to adhere to a pre-*Bruen* precedent analogous to *Rozier* resting "solely" on language in *Heller* that "appeared to recognize the constitutionality of longstanding prohibitions on possession of firearms by convicted felons." *Vincent v. Garland*, 80 F.4th 1197, 1201 (10th Cir. 2023) (finding *Bruen* did not abrogate *United States v. McCane*, 573 F.3d 1037, 1047 (10th Cir. 2009)). Vincent sought certiorari, arguing the Tenth Circuit "did not apply *Bruen*'s text, history, and tradition test," but instead "relied on pre-*Bruen* circuit precedent, which in turn relied on dicta from *Heller*." Brief for the Petitioner, *Vincent v. Garland*, at 5 (U.S. Dec. 21, 2023) (No. 23-683).

The Solicitor General initially asked the Supreme Court to hold *Vincent* and other §922(g)(1) petitions pending *Rahimi* because there was "substantial overlap;" in both §922(g)(1) cases and *Rahimi* the government relied on statements in *Heller* and *Bruen* "that the right to keep and bear arms belongs to law-abiding, responsible citizens;" the government relied on "similar precursors" in all these cases; and they raised "similar methodological questions about how to apply the historical test set forth in *Bruen*." Brief for the Respondent, *Vincent v. Garland*, at 4 (U.S. Feb. 26, 2024).

Once *Rahimi* issued, the Solicitor asked the Court to grant plenary review in either *Vincent* or *Garland v. Range*, No. 23-374, and two Eighth Circuit cases, as these cases involved different felonies that would "enable the Court to consider Section 922(g)(1)'s constitutionality across a range of circumstances." Supplemental Brief for the Federal Parties, *Garland v. Range, et al.*, at 5 (U.S. June 24, 2024) (suggesting the Court consolidate these cases for briefing and oral argument). However, the Solicitor argued, *if* the Court did not do so, it should GVR in *Range*, but ***deny*** the petitions in *Vincent* and the other cases. *Id.* at 8. While acknowledging *Vincent* "rested" on "language from *Heller*," the Solicitor notably did *no*t argue that "language" resolved § 922(g)(1)'s constitutionality after *Bruen*; it simply argued there was "no 'reasonable probability,' *Lawrence* [*v. Chater*], 516 U.S. [163], 167 [1996)," the Tenth Circuit "would reach a different result in light of this Court's intervening decision." *Id.* at 9.

But the Supreme Court disagreed. It GVR'd in all of these cases, remanding "for further consideration in light of *Rahimi*." *Vincent v. Garland*, ___ S.Ct. ___, 2024 WL 3259668 (U.S. July 2, 2024) (No. 23-683); *see also Jackson v. United States*, ___ S.Ct. ___, 2024 WL 3259675 (U.S. July 2, 2024) (No. 23-6170). The GVR in *Vincent*, over the express objection of the Solicitor General, is particularly significant here because it confirms *Dubois* has not survived *Rahimi*. If pre-*Bruen* precedents like *McCane* and *Rozier* continued to control Second Amendment review post-*Bruen* with no additional analysis necessary even after *Rahimi*, the Court would have denied certiorari in *Vincent* as the Solicitor requested. It GVR'd instead because, as referenced in *Lawrence*, 516 U.S. at 167, the Tenth Circuit "did not fully consider the intervening development" in the law due to *Bruen*, and there was a "reasonable probability" it "would reject" its prior "premise" and reach a different outcome "if given an opportunity for reconsideration" in light of *Rahimi*.

Finally, and related to the above point, it is not merely the GVR in *Vincent* and the Eighth Circuit cases that prove the point that post-*Bruen* as-applied challenges are cognizable and must be taken seriously after *Rahimi*. Even ***if*** *Dubois* ***could*** be read to reject every possible as-applied post-*Bruen* challenge to § 922(g)(1) without considering either text, historical regulations that might possibly be Founding era "analogues" for § 922(g)(1), or a defendant's prior record, that position was squarely rejected by the Court itself in *Rahimi*.

In holding that Rahimi's facial challenge failed because the statute "is constitutional as applied to the facts of Rahimi's own case," 144 S.Ct. at 1898, the Supreme Court necessarily and squarely rejected the position the government took at the *Rahimi* oral argument that as-applied challenges are unavailable in Second Amendment cases "if and when they come." 2023 WL 9375567, at *43. In fact, in making clear that the "no set of circumstances" standard from *United States v. Salerno*, 481 U.S. 739, 745 (1987) indeed applies to Second Amendment challenges, the Supreme Court necessarily recognized that as-applied Second Amendment challenges *are* permitted. *See id.* ("[T]o prevail, the Government need only demonstrate that Section 922(g)(8) is constitutional in some of its applications.")

Notably, although an as-applied challenge to § 922(g)(1) was not before the Court in *Rahimi*, at the oral argument Justice Gorsuch stated in response to the government's now-provably-wrong assertion that the Court should never entertain as-applied Second Amendment challenges, that there may indeed "be an as-applied *if it's a lifetime ban*." 2023 WL 9375567, at 43. And that—of course—is the exact issue before the Court here.

The Court should address it in this case, by strictly applying *Bruen*'s two-part, text-and-historical tradition test, as confirmed and now clarified in *Rahimi*.

A. *Bruen* Step One: The Second Amendment's "plain text" protects Mr. Meyer's possession of handguns and ammunition in his home.

Applying *Bruen's* newly-defined first step for Second Amendment analysis, 597 U.S. at 17, the Court should hold that the Second Amendment's "plain text" covers Mr. Meyer and his conduct. The Second Amendment's operative clause contains only three elements, guaranteeing the right (1) "of the people," (2) "to keep and bear," (3) "arms." *Heller*, 554 U.S. at 579-95. And Mr. Meyer and his conduct fall squarely within these elements.

As an American citizen and life-long member of the national community, Mr. Meyer is part of the "people" protected by the Second Amendment. The Supreme Court was clear in *Heller* that "the people" as used in the Second Amendment "unambiguously refers" at the very least to "*all Americans*"—"not an unspecified subset"—because any other interpretation would be inconsistent with the Court's interpretation of the same phrase in the First, Fourth, Ninth, and Tenth Amendments. *Id.* at 579-81 (citing *United States v. Verdugo–Urquidez*, 494 U.S. 259, 265 (1990) ("the people" was a "term of art" at the time, which had the same meaning as in other parts of the Bill of Rights)).

Just as *Bruen* found dispositive that the Second Amendment does not "draw ... a home/public distinction with respect to the right to keep and bear arms," 597 U.S. at 32, it should be dispositive here—as a textual matter—that the Second Amendment likewise does not draw a felon/non-felon distinction. Indeed, even prior to *Bruen* the Eleventh Circuit and others had recognized that the term "people" in the Second Amendment is *not* textually limited to law-abiding citizens. *See United States v. Jimenez-Shilon*, 34 F.4th 1042, 1046 (11th Cir. 2022) (noting that even "dangerous felons" are "indisputably part of 'the people'" for Second Amendment purposes); *see also United States v. Meza-*

Rodriguez, 798 F.3d 664, 671 (7th Cir. 2015) (a person's criminal record is irrelevant in determining whether he is among "the people" protected under the Second Amendment; the amendment "is not limited to such on-again, off-again protections").

But indeed, *if* there even *could* have been doubt on that point prior to *Rahimi*, there clearly *cannot* be after *Rahimi*. That is because, as explained in Part A *supra*, *Rahimi* squarely rejected the Solicitor General's proffered limitation of "the people" to the narrower subset of "law-abiding, responsible" citizens. Although the *Rahimi* majority confirmed the Second Amendment "secures *for Americans* a means of self-defense," *id.* at 1897 (emphasis added), Justice Thomas—the author of *Bruen*, who disagreed with the majority *only* as to *Bruen* Step Two—supported that with a robust explanation of the proper Step One analysis, confirming that *any American citizen* is among "the people" as a matter of the plain text. 144 S.Ct. at 1933 (noting "the people" "unambiguously refers to all members of the political community, not an unspecified subset;'" "The Second Amendment thus recognizes a right 'guaranteed to "*all Americans*;"' citing *Bruen*, 597 U.S. at 70, and *Heller*, 554 U.S. at 581) (emphasis added).

And indeed, in the portion of his *Rahimi* dissent quoted *supra*, at 8-9, Justice Thomas left no doubt about the implication of *Heller*/*Bruen*/*Rahimi* for "the people" question in § 922(g)(1), by confirming that "Not a single Member of the Court adopts the Government's [law-abiding, responsible citizen] theory." 144 S.Ct. at 1944. In short, as Justice Thomas has definitively exposed, the "law-abiding, responsible citizen" theory unanimously rejected by *Rahimi* "is the Government's own creation, designed to justify every one of its existing regulations. It has no doctrinal or constitutional mooring." *Id.* at 1945. And since that necessarily abrogates the assumptions underlying *Rozier/Dubois*, *Rahimi* compels the conclusion that the Supreme Court indeed meant what it said when it declared in *Heller* that the Second Amendment right "belongs to all Americans." 554 U.S. at 581. The Court should so find here.

Because Mr. Meyer, an American citizen, is among "the people" covered by the Second Amendment's plain text—and there cannot be any dispute that after *Heller*, the right to "keep and bear" arms includes the individual right to possess a handgun for self-defense in the home, 554 U.S. at 635-36, or that "arms" includes handguns and ammunition, *see Ass'n of N.J. Rifle & Pistol Clubs, Inc., v. Atty. Gen. of N.J.*, 910 F.3d 106, 116 (3d Cir. 2018); *Jackson v. City of San Francisco*, 756 F.3d 953, 967 (9th Cir. 2014)—the Court should conclude under *Bruen* that § 922(g)(1) is presumptively unconstitutional as applied to Mr. Meyer and his conduct.

C. *Bruen* Step Two: The government cannot meet its burden because there is no historical tradition of lifetime disarmament of someone like Mr. Meyer, which is necessary to uphold § 922(g)(1) as applied to him.

Admittedly, just because the Second Amendment protects all Americans, that does not mean that the right to bear arms is "unlimited." *Bruen*, 597 U.S. 21. *Kanter*, 919 F.3d at 452 (Barrett, J., dissenting) (explaining that "all people have the right to keep and bear arms," though the legislature may constitutionally "strip certain groups of that right.")

Bruen established strict rules for determining in what circumstances those pre-existing Second Amendment rights may be "stripped." Specifically, the Court held, where as here an individual's conduct—possessing a firearm in the home—is presumptively protected by the Second Amendment's plain text, a regulation restricting that fundamental right can only stand where the Government shows it "is consistent with the Nation's historical tradition of firearm regulation," that is, the tradition in existence "when the Bill of Rights was adopted in 1791." *Bruen*, 597 U.S. at 37.

And here, the government cannot meet that burden as to § 922(g)(1) generally, or as to Mr.

Meyer in particular who has only been convicted of a single, non-violent offense, because not only were there no felon disarmament regulations at or near the Founding; there were no Founding-era laws specifically disarming *any* citizens or category of citizens—even for past firearm misuse or expected future misuse—*for life*.

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

As a preliminary matter, *Bruen* prescribed two ways of conducting the required historical tradition inquiry. Where a modern statute is directed at a "longstanding" problem that "has persisted since the 18th century," *Bruen* directed a "straightforward" inquiry: if there is no historical tradition of "distinctly similar" regulation, the regulation is unconstitutional. *Id.* at 26-28 (conducting this "straightforward" inquiry to strike down New York's restriction on public carry of firearms). However, if the statute is directed at "unprecedented societal concerns or dramatic technological changes," or problems "unimaginable at the founding," then and only then *Bruen* held, are courts empowered to reason "by analogy." *Id.* at 2132. Courts in such a case ask only whether historical analogues are "*relevantly* similar." *Id.* (emphasis added). Notably, the "central considerations" in a "relevantly similar" inquiry are what *Bruen* called the "*how* and *why:"* "whether modern and historical regulations impose a *comparable burden* on the right of armed self-defense and whether that burden is *comparably justified*." *Id.* at 2133 (emphasis added).

If there were any lack of clarity about this prior to *Rahimi*, the Supreme Court confirmed in *Rahimi* that *both* a comparable burden *and* a comparable justification for Founding-era regulations are required in a "relevantly similar" analysis; a comparable justification alone does *not* suffice. *See* 144 S.Ct. at 1899-1902 (finding, from among the multitude of purported "analogues" the government proffered in its brief, *see* 2023 WL 5322645, at **13-27, that *only* "*two distinct legal regimes"* *"specifically addressed firearms violence*"—namely, only the surety and going-armed laws were "'relevantly similar' *in both why and how it burden*s the Second Amendment;" explaining "the penalty" is "another relevant aspect of the burden," and "[t]he burden that Section 922(g)(8) imposes on the right to bear arms also fits within the Nation's regulatory tradition") (emphasis added); *see also id.* at 1907 (Gorsuch, J., concurring) (reiterating the important methodological point that the government must show *both* a "comparable justification" *and* a comparable burden").

In choosing between *Bruen*'s two historical tradition standards here, the Court should note that in contrast to the modern problem of gun violence by domestic abusers which *Rahimi* analyzed under the "relevantly similar" standard, *see* 144 S.Ct. at 1898, the colonies were heavily populated with felons sent from England in 1791, and thus, the problem of felon gun violence addressed by §922(g)(1) was "longstanding."[4] Thus, the Court should rightly analyze § 922(g)(1) under the "straightforward" analysis used in both *Heller* and *Bruen*, where the challenged statutes likewise aimed to prevent interpersonal gun violence. *See id.* at 1932 (Thomas, J., dissenting).

However, even *if* the Court were were to employ the more nuanced "relevantly similar" analysis used in *Rahimi* to assess whether the government has met its burden to "establish the relevant tradition of regulation" for § 922(g)(1), *Bruen* dictates—and *Rahimi* confirms—that this Court must hold the government to four additional rules:

[4] *See, e.g.*, Encyclopedia Virginia, "Convict Labor during the Colonial Period," *available at* encyclopediavirginia.org/entries/convict-labor-during-the-colonial-period/(last accessed July 5, 2024) (noting that as of 1776, Virginia alone housed at least 20,000 British convicts). Notably, in 1751, Ben Franklin even wrote a satirical article entitled "Rattle-Snakes for Felons," criticizing the way England had been ridding itself of its felons by sending them to the colonies to grow their population, and suggesting that rattlesnakes be sent back to England as "suitable returns for the human serpents sent us by our Mother Country." Bob Ruppert, "The Rattlesnake Tells the Story," *Journal of the American Revolution* (Jan. 2015).

First, to establish a true "*tradition*" of "historical regulation," the government must point to *actual early regulations*, that is, laws or statutes—not proposals or vague "understandings" never enacted into law. *See Rahimi*, 144 S.Ct. at 1898 (focusing on the burdens imposed by "regulations" and "laws at the founding"); *id.* at 1936 (Thomas, J., dissenting) (explaining that under *Bruen,* rejected proposals "carry little interpretive weight").

Second, the government must then show that the same type of regulation was actually *prevalent* in the country at the Founding, that is, that the firearm regulation(s) on which it relies were "well-established and representative." "[A] single law in a single State" is not enough; instead, a "widespread" historical practice "broadly *prohibiting*" the conduct in question is required. *Bruen*, 597 U.S. at 36, 38, 46, 65 (expressing doubt that regulations in even *three* of the thirteen colonies "could suffice") (emphasis added).

Third, a "*longstanding*" tradition is required, and that accounts for time. Per *Bruen*, "when it comes to interpreting the Constitution, not all history is created equal" because "Constitutional rights are enshrined with the scope they were understood to have when the people adopted them," which in the case of the Second Amendment, was in 1791. *Id.* at 34. Courts must "guard against giving postenactment history more weight than it can rightly bear." *Id.* at 35. As the historical evidence moves past 1791, the less probative it becomes.

Finally, the government "bears the burden" of "affirmatively prov[ing] that its firearms regulation is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms." *Id.* at 19. Consistent with "the principle of party presentation," courts are "entitled to decide a case based on the historical record compiled by the parties." *Id.* at 25, n. 6. They "are not obliged to sift the historical materials for evidence to sustain [a] statute." *Id.* at 60. If "history [is] ambiguous at best," the statute is unconstitutional. *Id.* at 39-40.

In short, to meet the *Bruen* Step Two inquiry, the government must affirmatively present evidence of actual historical regulations that were: *not only* "comparably justified" to § 922(g)(1), *but also* imposed a "comparable burden;" sufficiently prevalent to constitute a true "tradition;" and date to the Founding. While the government was able to make such a showing in *Rahimi* because surety and "going armed" laws established a tradition of "*temporarily* disarm[ing]" an "individual *found* by a court to *pose a credible threat* to the physical safety of another," 144 S.Ct. at 1903 (emphasis added), for the reasons described below, the government cannot meet its burden for § 922(g)(1) with any longstanding "relevantly similar" regulations here.

2. The Government cannot meet its burden for § 922(g)(1) because there is no longstanding tradition dating to the Founding of depriving *any*, and certainly *all*, felons—including non-violent ones—from possessing a firearm.

The government cannot meet its *Bruen* Step Two burden in this case for multiple reasons.

First, Federal law has only included a general prohibition on firearm possession by individuals convicted of crimes punishable by over a year—meaning, *for all felons—since 1961*. *See* Act To Strengthen The Federal Firearms Act, Pub. L. No. 87-342, 75 Stat. 757 (1961). And, a law passed 170 years after the Second Amendment's ratification cannot meet the "longstanding" requirement of *Bruen*. *See id.* at 36-37 (emphasizing that "belated innovations" from the 20th century "come too late to provide insight into the meaning of the Constitution in [1791];" citing with approval the Chief Justice's dissent in *Sprint Communications Co. v. APCC Services, Inc.*, 554 U.S. 269, 312 (2008)); *see also Bruen, id.* at 66 n.28 (declining to "address any of the 20th century historical evidence brought to bear by [the government] or their *amici*").

Second, even the earliest version of § 922(g)(1), which applied exclusively to certain types of *violent criminals*, and prohibited them from "*receiving*" firearms, was only enacted *in 1938*, well after the Bill of Rights was adopted (1791)—and also, to the extent it is relevant, well after the Fourteenth Amendment was enacted (1868). *See* The Federal Firearms Act of 1938, Pub. L. No. 75-785, §§ 1(6), 2(f), 52 Stat. 1250, 1250–51 (1938)). It was not until even later—*1968*—that Congress gave § 922(g)(1) its current form, prohibiting *all felons* from *possessing* firearms.

Third, as scholars and historians have long pointed out, "no colonial or state law in eighteenth century America formally restricted"—much less prohibited, *permanently and under pain of criminal punishment*—"the ability of felons to own firearms."[5] Indeed, even before *Bruen*, judges—including then-Judge Barrett in *Kanter*—had so recognizedl. *See* 919 F.3d at 451, 458 (Barrett, J., dissenting) ("Founding-era legislatures did not strip felons of the right to bear arms simply because of their status as felons," and "no[] historical practice supports a legislative power to categorically disarm felons because of their status as felons").

Finally, the lack of any longstanding tradition in this country of permanently disarming felons may well be explicable by the fact that at the Founding, felons—unlike many other classes of citizens in the country—were *not* exempted from militia service. And indeed, as militia members, they were not simply *permitted* to possess arms; they were actually *required* to purchase and possess arms for militia service. *See* Federal Militia Act of May 8, 1792, §§ 1-2, 1 Stat. 272 ("each and every free able-

[5]Carlton F.W. Larson, *Four Exceptions in Search of a Theory: District of Columbia v. Heller and Judicial Ipse Dixit*, 60 Hastings L.J. 1371, 1374 (2009); *accord* C. Kevin Marshall, *Why Can't Martha Stewart Have A Gun?*, 32 Harv. J.L. & Pub. Pol'y 695, 708 (2009); Royce de R. Barondes, *The Odious Intellectual Company of Authority Restricting Second Amendment Rights to the "Virtuous"*, 25 Tex. Rev. L. & Pol. 245, 291 (2021); Adam Winkler, *Heller's Catch-22*, 56 UCLA L. Rev. 1551, 1563 (2009).

bodied white male citizen of the respective states, resident therein, who is or shall be of the age of eighteen years, and under the age of forty-five years ... *shall* severally and respectively be enrolled in the militia, and that every citizen so enrolled "*shall*, within six months thereafter, provide himself with a good musket or firelock, a sufficient bayonet and belt," and various other firearm accoutrements, including ammunition; exempting many classes of people from this requirement—such as "all custom-house officers"—but *not* felons). Moreover, the militia statutes of eight states (Pennsylvania, Massachusetts, New York, Georgia, New Hampshire, Delaware, Maryland and Connecticut), passed shortly before or after 1791, contained similar requirements, and similarly did not exempt felons.[6] Given this historical evidence, the government cannot show a historical tradition of gun regulation either "distinctly" or "relevantly" similar to § 922(g)(1).

3. The historical analogues that supported § 922(g)(8) in *Rahimi* cannot support § 922(g)(1) because they were not "comparably justified," nor did they impose a "comparable burden" of disarmament *for life*.

Even *if* the government is permitted to reason "by analogy" under the "relevantly similar" standard from *Rahimi*, it still cannot meet its heavy burden here because there was no historical tradition of *any* analogous regulation in the Founding era that was *not only* "comparably justified" to § 922(g)(1), *but also* posed a "comparable burden" (*lifetime disarmament*), as *Bruen/Rahimi* requires.

[6] *See* Mitchell, Statutes at Large of Pennsylvania, Act of March 20, 1780, §§ III, XXI, at 146, 154 (1700-1809); Wright and Potter, 7 Acts and Laws of the Commonwealth of Massachusetts, 1780-1805, ch. 14, at 381-82,389-90 (1898); Thomas Greenleaf, Laws of the State of New-York, Act of April 4, 1786, at 227-28, 232-33 (1792); Marbury, Digest of Laws of the State of Georgia, Act of December 24, 1792, §§ 9-10, at 350 (1802); Constitution and Laws of the State of New-Hampshire, Act of Dec. 28, 1792, at 251-52, 256 (1805); Laws of the State of Delaware, ch. XXXVI, §§ 1, 2, 4, at 1134-36 (1797); Herty, Digest of the Laws of Maryland, "Militia," §§ 7, 15, 19, 20, at 367-70 (1799); and Public Statute Laws of the State of Connecticut, Title CXII, ch. I, §§ 1, 10, at 499-500, 505-06 (1808).

The surety and going-armed statutes that *Rahimi* found proper "analogues" to the temporary ban in § 922(g)(8)(C)(i) based on a "credible threat," are ***not*** proper analogues for the lifetime ban for any and all felons in § 922(g)(1)—for obvious reasons. As a threshold matter, § 922(g)(8)(C)(i) "restricts gun use to mitigate demonstrated threats of physical violence" and applies only once a court has made an individualized finding that "a credible threat" exists. *Rahimi*, 144 S.Ct. at 1901. By contrast, § 922(g)(1) is a categorical ban, prohibiting every person convicted of a felony from possessing a gun—without an individualized finding and whether or not they threaten others. And although a person subject to a surety bond received "significant procedural protections" and "could obtain an exception if he needed his arms for self-defense," *id.* at 1900, that is never allowed for a felon.

Importantly for the *Bruen/Rahimi* "comparable justification" analysis, surety statutes were intended to mitigate "demonstrated threats of physical violence"—just like § 922(g)(8)—which is why they required "individualized" findings. 144 S.Ct. at 1899, 1901. But § 922(g)(1) contains *no* requirement that someone pose a threat. And "going-armed" laws likewise specifically "provided a mechanism for punishing those who had menaced others with firearms." Id. at 1900-01. Indeed, "going-armed" laws specifically required a judicial determination that "a particular defendant ... had *threatened another with a weapon. Id.* at 1902 (emphasis added). In other words, both of these early legal regimes criminalized specific—and serious—misconduct with a gun either in the past, or expected in the near future. Section 922(g)(1), on the other hand, bans a category of people from possessing firearms whether or not they have "terrif[ied] the good people of the land," *id.* at 1901, or in fact, whether they have ever used or misused a gun.

Finally, and important for the separately-required "comparable burden" analysis—the "how" metric in *Bruen*—the Supreme Court was clear in *Rahimi* that the "penalty" is an important component of the burden imposed by a statute. *Id.* at 1902. That is why the Court repeatedly underscored that § 922(g)(8)'s restriction is "temporary"—it exists only "so long as the defendant 'is' subject to a restraining order." *Id.* at 1902. And of course, in stark contrast, § 922(g)(1)'s categorical ban is *for life*. Thus both analogue regimes *Rahimi* relied on to hold § 922(g)(8) fits within our Nation's tradition of firearm regulation are distinguishable in both the "why" and the "how" from § 922(g)(1). They therefore cannot serve as proper analogues for upholding § 922(g)(1) here.

Notably, the government at no time, in any case before any court at any level in this country, has *ever* been able to identify *any* Founding-era analogue like the surety and going-armed laws, that "importantly ... targeted the misuse of firearms," 144 S.Ct. at 1900, ***but also*** categorically disarmed any citizen or any group of citizens, ***for life***. Thus, the government will never be able to satisfy both the "why" and the "how"—that is, the "comparable justification" and "comparable burden"—components of the "relevantly similar" analysis, which *Bruen* held, and *Rahimi* has confirmed, is the minimum requirement for every Second Amendment case going forward. As such, § 922(g)(1) is facially unconstitutional under *Bruen/Rahimi*. Unlike § 922(g)(8)(C)(i) it violates the Second Amendment in all circumstances. *Rahimi*, *id.* at *2.

But the Court need not go that far here.

4. All the Court needs to find here is that there is no historical tradition of permanently disarming individuals <u>like Mr. Meyer</u>.

As confirmed by *Rahimi*, in a facial challenge, the defendant must prove there are no set of circumstances in which the law could be applied constitutionally. *United States v. Pugh*, 90 F.4th 1318, 1325 (11th Cir. 2024); *accord Rahimi*, 144 S.Ct. at 1898 (citing *Salerno*, 481 U.S. at 745). But in an as-applied challenge, a defendant seeks only to vindicate his constitutional rights. Thus, the Court need only determine whether a statute is unconstitutional on the facts of a particular case, or in application to the defendant. *McGuire v. Marshall*, 50 F.4th 986, 1003 (11th Cir. 2022).

The as-applied issue in this case can be easily disposed of with a fact-based ruling that there is no historical tradition to support application of § 922(g)(1) as to Mr. Meyer, who has only been convicted of a single, remote, non-violent crime which—though punished as a third-degree felony at the time of commission—was not even a felony at the time of conviction. And there is ***no tradition*** in this country to support permanent disarmament of such an individual. Due to the non-violent nature *and* remoteness of Mr. Meyer's offense and lack of any other prior criminal history, he is analogously-situated not only to the defendants in both *Range* and *Vincent*, but specifically, to Mr. Stewart in the recent case of *Linton v. Bonta*, 2024 WL 846241, at **2-3, 11 (N.D. Calif. Feb. 28, 2024). *See id.* at **2-3, 10-12 (holding § 922(g)(1) unconstitutional as applied to plaintiff Stewart, who was convicted at 18 of burglary for stealing tools from an unlocked truck, without any weapons or violence; served 3 years' probation). And Mr. Meyer is actually *unique* even by comparison to the defendants in *Vincent*, *Range*, *Stewart*—and the defendants in *Rozier* and *Dubois*—in that Mr. Meyer's offense was ***not even a felony by the time of adjudication and conviction***. Nor was it a felony when he was charged in the instant case. Nor is it a felony today. Under these unique circumstances, the Court should hold § 922(g)(1) unconstitutional as applied to Mr. Meyer after *Bruen*, as clarified by *Rahimi*.

CONCLUSION

Based on the foregoing argument and authority, and particularly in light of the Supreme Court's confirmation and clarification of *Bruen*'s Second Amendment methodology in *Rahimi*, the Court should find § 922(g)(1) unconstitutional as applied to Mr. Meyer, and dismiss the indictment.

Respectfully Submitted,

HECTOR DOPICO
INTERIM FEDERAL PUBLIC DEFENDER

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CERTIFICATE OF SERVICE

I HEREBY certify that on **July 25, 2024**, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

s/ Brenda G. Bryn

A-4

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 22-cr-10012-ALTMAN

UNITED STATES OF AMERICA,

v.

JUSTIN MEYER,

Defendant.
_______________________________________/

ORDER DENYING MOTION TO DISMISS INDICTMENT

In *United States v. Rozier*, the Eleventh Circuit "upheld section 922(g)(1) on the threshold ground that felons are categorically 'disqualified' from exercising their Second Amendment right under *Heller*." *United States v. Dubois*, 94 F.4th 1284, 1293 (11th Cir. 2024) (quoting *Rozier*, 598 F.3d 768, 770–71 (11th Cir. 2010)). We're bound by *Rozier* until the Supreme Court "demolish[es]" and "eviscerate[s]" each of *Rozier*'s "fundamental props." *Ibid.* (quoting *Del Castillo v. Sec'y, Fla. Dep't of Health*, 26 F.4th 1214, 1223 (11th Cir. 2022)). Since that hasn't happened, we must deny Justin Meyer's renewed Motion to Dismiss the Indictment Under the Second Amendment (the "Renewed MTD") [ECF No. 109].

This is Meyer's second attack on the as-applied constitutionality of § 922(g)(1).[1] In his first motion to dismiss the indictment, Meyer argued that § 922(g)(1) "fail[ed]" the two-step "text, history, and tradition" test the Supreme Court laid out in *N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*. *See* First MTD [ECF No. 10] at 6 (citing *Bruen*, 597 U.S. 1 (2022)). The *Bruen* test asks us to

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[1] Meyer's brief focuses on his as-applied challenge, but he emphatically "[did] *not* abandon, and continues to preserve[,] his argument . . . that § 922(g)(1) is facially unconstitutional, which he maintains is supported by" substantially the same arguments he advances in his as-applied challenge. Renewed MTD at 3 n.1. We agree that he's preserved his facial challenge. But, as we'll explain, both challenges fail for the same reasons. *Cf. Flick v. Att'y Gen., Dep't of J.*, 812 F. App'x 974, 975 (11th Cir. 2020) ("Flick contends that because *Rozier* was a facial constitutional challenge rather than an as-applied challenge, it does not apply to his as-applied challenge. We disagree. . . . Our reasoning in *Rozier* applies equally to Flick's as-applied challenge [to § 922(g)(1)] and thus forecloses it.").

determine whether the Second Amendment covers an individual's conduct; if it does, then the Government must demonstrate that its effort to regulate that conduct is consistent with "this Nation's historical tradition of firearm regulation." *Bruen*, 597 U.S. at 17. "*Rozier* ha[d] not survived *Bruen*," Meyer explained, because instead of subjecting § 922(g)(1) to the *Bruen* test, *Rozier* "relied exclusively" on dicta from the Supreme Court's *Heller* opinion. Reply Supporting First MTD [ECF No. 13] at 4–11, 15–16 (first citing *Rozier*, 598 F.3d at 771; and then citing *Dist. of Columbia v. Heller*, 554 U.S. 570, 626 (2008)).

We disagreed. *See United States v. Meyer*, 2023 WL 3318492, at *2–3 (S.D. Fla. May 9, 2023) (Altman, J.). *Rozier* (it's true) *had* relied on dicta from *Heller*. *See Rozier*, 598 F.3d at 771 ("[N]othing in [the *Heller*] opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons." (quoting *Heller*, 554 U.S. at 626)). To put it in terms of the *Bruen* test, *Rozier* understood *Heller* to "suggest[ ] that statutes disqualifying felons from possessing a firearm under any and all circumstances *do not offend the Second Amendment*." *Ibid* (emphasis added). While this part of *Heller* may have been dicta, *Bruen* never repudiated this "suggestion" or undermined any other aspect of *Heller*. On the contrary, the *Bruen* majority declared that it had made *Heller* only "more explicit." *Bruen*, 597 U.S. at 3. Plus, "three of the six justices who signed the *Bruen* majority wrote separately to underscore the continued validity of this aspect of *Heller*," and three more "dissented from *Bruen*'s invalidation of a New York law that severely restricted the gun-possession rights of *even* law-abiding citizens." *Meyer*, 2023 WL 3318492, at *2 (citing *Bruen*, 597 U.S. at 81 (Kavanaugh, J., concurring, joined by Roberts, C.J.) (approvingly quoting *Heller*'s "longstanding prohibitions" language); *id.* at 72 (Alito, J., concurring) ("Nor have we disturbed anything that we said in *Heller* . . . about restrictions that may be imposed on the possession or carrying of guns.")). It seemed to us, then, that "*at least* six of the Court's nine justices . . . support[ed] the continued constitutionality of § 922(g)(1)." *Ibid.* So, we determined that *Bruen* had not abrogated *Rozier*.[2] *Ibid.*

The Eleventh Circuit ultimately reached the same conclusion in *Dubois*. *See* 94 F.4th at 1293 ("*Bruen* did not abrogate *Rozier*."). It explained there that *Rozier* "interpreted *Heller* as limiting the right to 'law-abiding and qualified individuals' and as clearly excluding felons from those categories by referring to felon-in-possession bans as presumptively lawful." *Ibid.* (citing *Rozier*, 598 F.3d at 771 & n.6). As we do, the *Dubois* panel reasoned that, since *Bruen* "repeatedly stated that its decision was faithful to *Heller*," it had not "demolish[ed]" or "eviscerate[ed]" the "fundamental props" undergirding *Rozier*. *Ibid.*

Meyer's renewed motion retreads much of the same ground, except that he now argues that the Supreme Court's *Rahimi* decision "directly undercuts the assumptions, reasoning, and approach of both *Rozier* and *Dubois*," such that we're no longer bound by those decisions. Renewed MTD at 5 (citing *United States v. Rahimi*, 144 S. Ct. 1889, 1891 (2024)). Specifically, Meyer says that *Rahimi* "made undeniably clear" that *Bruen* requires courts to apply the "text, history, and tradition" analysis to any challenged firearm regulation. *Id.* at 6. And (Meyer insists) neither *Rozier* nor *Dubois* applied that test properly. Instead, "*Dubois* adhered rigidly to *Rozier*[,] which had avoided all textual and historical analysis by following *Heller*'s dicta. . . . [But] [t]hat dicta-based approach is *not* permitted after *Bruen* and *Rahimi*." *Id.* at 5–7. Meyer also contends that *Rahimi* rejected categorical bars against as-applied challenges to firearm regulations. *Id.* at 11–14. Meyer ultimately wants us to take up his as-

[2] Meyer also argued that *Rozier* was "grounded" in an impermissible "interest-balancing, means-ends analysis . . . abrogated by *Bruen*." Reply Supporting First MTD at 16. But that's just not true. The Eleventh Circuit has "never actually applied the . . . means-end-scrutiny step." *Dubois*, 94 F.4th at 1292 (citing *United States v. Jimenez-Shilon*, 34 F.4th 1042, 1052–53 (11th Cir. 2022) (Newsom, J., concurring)); *see also United States v. Wright*, 2024 WL 1720847, at *2 (M.D. Fla. Apr. 22, 2024) (Merryday, J.) ("Because *Bruen* . . . abrogates a [means-end] test that *Rozier* never employed, *Bruen* and *Rozier* are entirely consistent."); *United States v. Beasley*, 702 F. Supp. 3d 1243, 1246 (M.D. Fla. 2023) (Mizelle, J.) ("*Rozier* was not a means-end scrutiny case.").

applied challenge to § 922(g)(1), to hold that the Second Amendment shields him from this prosecution, and to dismiss the indictment.

As we've previewed, however, the Eleventh Circuit's prior-panel rule precludes us from doing any of that. "Even if the reasoning of an intervening high court decision is at odds with a prior appellate court decision, that does not provide the . . . court with a basis for departing from its prior decision." *United States v. Vega-Castillo*, 540 F.3d 1235, 1237 (11th Cir. 2008). "For a Supreme Court decision to undermine panel precedent to the point of abrogation, the 'decision must be clearly on point' and '*clearly contrary*' to the panel precedent." *Edwards v. U.S. Att'y Gen.*, 97 F.4th 725, 743 (11th Cir. 2024) (quoting *Garrett v. Univ. of Ala. at Birmingham Bd. of Trs.*, 344 F.3d 1288, 1292 (11th Cir. 2003)). As we noted earlier, a "clearly contrary" Supreme Court decision "demolish[es]" and "eviscerate[s]" each of the panel decision's "fundamental props." *Dubois*, 94 F.4th at 1293 (quoting *Del Castillo*, 26 F.4th at 1223). If the Supreme Court "'never discussed' [the] precedent and did not 'otherwise comment[ ] on' the precise issue before the prior panel, [the] precedent remains binding." *Ibid.* (quoting *Vega-Castillo*, 540 F.3d at 1238).

With that standard in mind, we can't agree that *Rahimi* abrogated *Rozier*. *Rahimi* considered a constitutional challenge to a different law, § 922(g)(8)(C)(i), which prohibits individuals subject to a domestic violence restraining order from possessing a firearm—but it said nothing about the constitutionality of § 922(g)(1), the "precise issue" before us. And we don't read anything in *Rahimi* as renouncing any aspect of *Heller*. In fact, *Rahimi* reiterated *Heller*'s statement that categorical prohibitions on the possession of firearms by "felons" (like Meyer) are "presumptively lawful." *Rahimi*, 144 S. Ct. at 1891 (quoting *Heller*, 554 U.S. at 626–27 & n.26). That's not "clearly contrary" to *Rozier*.

Unsurprisingly, *every* post-*Rahimi* Eleventh Circuit decision on § 922(g)(1) has held that *Rahimi* did not abrogate *Rozier* and affirmed the constitutionality of that statute—against both facial and as-applied challenges. *See, e.g.*, *United States v. Hester*, 2024 WL 4100901, at *1 (11th Cir. Sept. 6, 2024) ("Our binding precedents also foreclose Hester's argument that section 922(g)(1) violates the Second Amendment. *Rahimi* did not discuss section 922(g)(1) or undermine our interpretation of *Heller*."); *United States v. Sheely*, 2024 WL 4003394, at *3 (11th Cir. Aug. 30, 2024) ("Nor is *Rahimi* clearly on point, as the Supreme Court in that case addressed a different section of § 922(g)—§ 922(g)(8). And it abrogated neither *Rozier* [n]or *Dubois*. Accordingly, our prior-panel-precedent rule forecloses Sheely's arguments as to the constitutionality of § 922(g)(1)." (internal citations omitted)).[3]

Indeed, just two months ago, the Eleventh Circuit even rejected an as-applied challenge to § 922(g)(1) brought by a non-violent felon—a motion that, for all practical purposes, was indistinguishable from Meyer's. *See United States v. Whitaker*, 2024 WL 3812277, at *2 (11th Cir. Aug. 14, 2024); *see also* Initial Brief of Appellant Torrence Denard Whitaker at 6, *United States v. Whitaker*, No. 24-10693 (11th Cir. June 27, 2024) ("[H]ere, Mr. Whitaker argued, the government could not meet [its] burden as to § 922(g)(1) generally, or as applied to him in particular, since there was no general prohibition on any felons possessing firearm[s] before 1961, *and all of his priors were non-violent*." (emphasis added)).

[3] *See also United States v. Thomas*, 2024 WL 3874142, at *3 (11th Cir. Aug. 20, 2024) (holding, post-*Rahimi*, that "Thomas's challenge is foreclosed by this Circuit's precedent holding that § 922(g)(1) survives Second Amendment scrutiny"); *United States v. Bass*, 2024 WL 3861611, at *3 (11th Cir. Aug. 19, 2024) (rejecting Second Amendment challenge to § 922(g)(1) because, "contrary to Bass's arguments otherwise, the Supreme Court's recent decision in *Rahimi* does not change our analysis"); *United States v. Rambo*, 2024 WL 3534730, at *2 (11th Cir. July 25, 2024) (rejecting Second Amendment challenge to § 922(g)(1) and holding that "[*Rahimi*] did not abrogate *Dubois* or *Rozier* because it did not 'demolish' or 'eviscerate' the 'fundamental props' of those precedents"); *United States v. Johnson*, 2024 WL 3371414, at *3 (11th Cir. July 11, 2024) ("Johnson . . . has not identified any on-point precedent from this Court or the United States Supreme Court holding that § 922(g)(1)'s prohibition on felons possessing firearms is unconstitutional. To the contrary, Johnson's constitutional argument is foreclosed by precedent. . . . The Supreme Court's recent decision in [*Rahimi*] does not change our analysis.").

Because *Rozier* applies with the same force to Meyer's Renewed MTD as it did to his First MTD, his as-applied challenge fails.[4] After careful review, then, we hereby **ORDER and ADJUDGE** that Meyer's renewed Motion to Dismiss the Indictment [ECF No. 109] is **DENIED**.

DONE AND ORDERED in the Southern District of Florida on October 21, 2024.

ROY K. ALTMAN
UNITED STATES DISTRICT JUDGE

cc: counsel of record

[4] To be perfectly clear, we're not suggesting that *Rozier* is indisputably constitutional as applied to non-violent felons like Meyer. There's room for reasonable disagreement on that issue. *See, e.g.*, *Range v. Att'y Gen.*, 69 F.4th 96 (3d Cir. 2023) (en banc), *vacated and remanded*, 2024 WL 3259661 (July 2, 2024). All we hold today is that neither facial nor as-applied Second Amendment challenges to § 922(g)(1) may proceed *in this Circuit* while *Rozier* remains good law.

A-5

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
KEY WEST DIVISION

UNITED STATES OF AMERICA	§	**JUDGMENT IN A CRIMINAL CASE**
	§	
v.	§	
	§	Case Number: **4:22-CR-10012-RKA(1)**
JUSTIN MEYER	§	USM Number: **11749-510**
	§	
	§	Counsel for Defendant: Ian McDonald
	§	Counsel for United States: Brianna Coakley

THE DEFENDANT:

☒	pleaded guilty to counts 1 and 2 of the indictment.	
☐	pleaded guilty to count(s) before a U.S. Magistrate Judge, which was accepted by the court.	
☐	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) - Possession of a firearm and ammunition by a convicted felon.	01/27/2022	1
18 U.S.C § 922(g)(1) - Possession of a firearm and ammunition by a convicted felon.	01/27/2022	2

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.

December 20, 2024
Date of Imposition of Judgment

Signature of Judge

ROBERT N. SCOLA, JR.,for Roy K. Altman
SENIOR UNITED STATES DISTRICT JUDGE
Name and Title of Judge

December 20, 2024
Date

DEFENDANT: JUSTIN MEYER
CASE NUMBER: 4:22-CR-10012-RKA(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 **time served** as to each of counts 1 and 2, to be served concurrently.

☐ The court makes the following recommendations to the Bureau of Prisons:

☒ 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: JUSTIN MEYER
CASE NUMBER: 4:22-CR-10012-RKA(1)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **two (2) years.** This term consists of two years as to each of counts 1 and 2, to be served concurrently.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
   ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. (*check if applicable*)
4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☒ You must cooperate in the collection of DNA as directed by the probation officer. (*check if applicable*)
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. (*check if applicable*)
7. ☐ You must participate in an approved program for domestic violence. (*check if applicable*)

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

DEFENDANT: JUSTIN MEYER
CASE NUMBER: 4:22-CR-10012-RKA(1)

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. I understand additional information regarding these conditions is available at www.flsp.uscourts.gov.

Defendant's Signature ______________________________ Date ____________________

DEFENDANT: JUSTIN MEYER
CASE NUMBER: 4:22-CR-10012-RKA(1)

SPECIAL CONDITIONS OF SUPERVISION

No special conditions imposed.

DEFENDANT: JUSTIN MEYER
CASE NUMBER: 4:22-CR-10012-RKA(1)

CRIMINAL MONETARY PENALTIES

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

	Assessment	Restitution	Fine	AVAA Assessment*	JVTA Assessment**
TOTALS	$200.00	$.00	$.00		

☐ The determination of restitution is deferred until An *Amended Judgment in a Criminal Case (AO245C)* will be entered after such determination.

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

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

☐ Restitution amount ordered pursuant to plea agreement $

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

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

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

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

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

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, 18 U.S.C. §2259.
** Justice for Victims of Trafficking Act of 2015, 18 U.S.C. §3014.
*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: JUSTIN MEYER
CASE NUMBER: 4:22-CR-10012-RKA(1)

SCHEDULE OF PAYMENTS

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

A ☒ Lump sum payment of $200.00 due immediately.

It is ordered that the Defendant shall pay to the United States a special assessment of $200.00 for Counts 1 and 2 , which shall be due immediately. Said special assessment shall be paid to the Clerk, U.S. District Court. Payment is to be addressed to:

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

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several
See above for Defendant and Co-Defendant Names and Case Numbers *(including defendant number)*, Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:
FORFEITURE of the defendant's right, title and interest in certain property is hereby ordered consistent with the plea agreement. The United States shall submit a proposed Order of Forfeiture within three days of this proceeding.

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