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APPENDIX A

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

April 20, 2026

Lyle W. Cayce
Clerk

No. 26-60033
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

JOSHUA RYAN BURNS,

Defendant—Appellant.

Appeal from the United States District Court
for the Southern District of Mississippi
USDC No. 3:25-CR-53-1

Before KING, HAYNES, and HO, *Circuit Judges*.

PER CURIAM:*

Joshua Ryan Burns appeals his conviction for possession of a firearm by a convicted felon in violation of 18 U.S.C. § 922(g)(1). On appeal, he argues § 922(g)(1) violates the Second Amendment under the test set forth in *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1 (2022), both facially and as applied to him. He also argues that § 922(g)(1) is

* This opinion is not designated for publication. See 5TH CIR. R. 47.5.

No. 26-60033

unconstitutional under the Commerce Clause. However, he concedes that his claims are foreclosed, and the Government has filed an unopposed motion for summary affirmance.

The parties are correct that all of Burns's claims are foreclosed. *See United States v. Diaz*, 116 F.4th 458, 471-72 (5th Cir. 2024) (rejecting facial challenge), *cert. denied*, 145 S. Ct. 2822 (2025); *United States v. Schnur*, 132 F.4th 863, 866-70 (5th Cir. 2025) (rejecting as-applied challenge); *United States v. Alcantar*, 733 F.3d 143, 145 (5th Cir. 2013) (rejecting argument that § 922(g)(1) exceeds Congress's power under the Commerce Clause). Summary affirmance is thus warranted. *See Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969).

Accordingly, the Government's motion for summary affirmance is GRANTED, and the district court's judgment is AFFIRMED.

APPENDIX B

UNITED STATES DISTRICT COURT

Southern District of Mississippi

UNITED STATES OF AMERICA

v.

JOSHUA RYAN BURNS

JUDGMENT IN A CRIMINAL CASE

Case Number: 3:25CR53KHJ-ASH-001

USM Number: 74785-511

Abby Brumley Edwards

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) 1 of the Indictment☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	By: _____, Deputy Clerk	Offense Ended	Count
18 U.S.C. §§ 922(g)(1) and 924(a)(8)	Possession of a Firearm by a Convicted Felon	11/12/2024	1	

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

1/13/2026

Date of Imposition of Judgment

Kristi H. Johnson

Signature of Judge

The Honorable Kristi H. Johnson, U.S. District Judge

Name and Title of Judge

1/14/2026

Date

26-60033.127

DEFENDANT: JOSHUA RYAN BURNS
CASE NUMBER: 3:25CR53KHJ-ASH-001

IMPRISONMENT

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

37 months as to Count 1, to run consecutively to Neshoba County Circuit Court Docket No. 15-CR-0064.

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

The defendant be designated to FCI Yazoo City, Mississippi, and participate in the CDL program, or nearest facility with such a program, as deemed eligible.

☒ 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: JOSHUA RYAN BURNS
CASE NUMBER: 3:25CR53KHJ-ASH-001

SUPERVISED RELEASE

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

3 years

MANDATORY CONDITIONS

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

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

DEFENDANT: JOSHUA RYAN BURNS
CASE NUMBER: 3:25CR53KHJ-ASH-001**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. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____

Date _____

DEFENDANT: JOSHUA RYAN BURNS
CASE NUMBER: 3:25CR53KHJ-ASH-001

SPECIAL CONDITIONS OF SUPERVISION

1. You shall pay said fine and you shall provide the probation office with access to any requested financial information.
2. You must notify the Court of any material changes in economic circumstances, which could impact payment of the fine.
3. You shall not incur new credit charges or open additional lines of credit without the approval of the probation officer, unless in compliance with the installment payment schedule.
4. You shall submit your person, property, house, residence, vehicle, papers, or office, to a search conducted by a United States probation officer. Failure to submit to a search may be grounds for revocation of release. You shall warn any other occupants that the premises may be subject to searches pursuant to this condition. An officer may conduct a search pursuant to this condition only when reasonable suspicion exists that you have violated a condition of your supervision and that the areas to be searched contain evidence of this violation. Any search must be conducted at a reasonable time and in a reasonable manner.
5. You shall participate in a program of testing and outpatient treatment (and inpatient treatment if approved by the Court during the term of supervised release) for alcohol/drug abuse as directed by the probation office. When enrolled in an alcohol/drug treatment program, either inpatient or outpatient, you shall abstain from consuming alcoholic beverages during treatment and shall continue abstaining for the remaining period of supervision. You shall contribute to the cost of treatment in accordance with the probation office co-payment policy.
6. You shall not possess, ingest, or otherwise use, a synthetic cannabinoid, or other synthetic narcotic.
7. In the event that you reside in or visit a jurisdiction where marijuana or marijuana products have been approved, legalized, or decriminalized, you shall not possess, ingest, or otherwise use marijuana or marijuana products.

DEFENDANT: JOSHUA RYAN BURNS
CASE NUMBER: 3:25CR53KHJ-ASH-001**CRIMINAL MONETARY PENALTIES**

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

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
TOTALS	\$ 100.00	\$	\$ 1,500.00	\$	\$

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

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

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

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

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

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

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

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

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

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

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

DEFENDANT: JOSHUA RYAN BURNS
CASE NUMBER: 3:25CR53KHJ-ASH-001

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 \$ _____ due immediately, balance due
- ☐ not later than _____, or
- ☐ in accordance with ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B** ☒ Payment to begin immediately (may be combined with ☐ C, ☒ D, or ☒ F below); or
- C** ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D** ☒ Payment in equal monthly (e.g., weekly, monthly, quarterly) installments of \$ 50.00 over a period of xxxx (e.g., months or years), to commence 60 days (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E** ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F** ☒ Special instructions regarding the payment of criminal monetary penalties:
In the event the fine is not paid in full prior to the termination of supervised release, you are ordered to enter into a written agreement with the Financial Litigation Program of the U.S. Attorney's Office for payment of the remaining balance. Additionally, the value of future discovered assets may be applied to offset the balance of criminal monetary penalties. You may be included in the Treasury Offset Program allowing qualified federal benefits to be applied to offset the balance of criminal monetary penalties.

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

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

☐ Joint and Several

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

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

26-60033.133

APPENDIX C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

UNITED STATES OF AMERICA

V.

CRIMINAL NO. 3:25-CR-53-KHJ-ASH-1

JOSHUA RYAN BURNS

ORDER

Before the Court is Defendant Joshua Ryan Burns’s (“Burns”) [20] Motion to Dismiss Indictment. The Court denies the motion.

I. Background

Under 18 U.S.C. § 922(g)(1), no person “who has been convicted in any court of[] a crime punishable by imprisonment for a term exceeding one year” may possess a firearm in or affecting commerce. And 26 U.S.C. § 5861(d) makes it unlawful to possess certain firearms, unless they have been registered as required by the National Firearms Act (“NFA”).

Burns has 2016 felony convictions for residential burglary, aggravated assault, and being a felon in possession of a firearm. MDOC Records [21-1] at 4–5.¹ During Burns’s probation period, while executing a search warrant in his home, law enforcement officers found Burns in possession of two firearms—a pistol and a

¹ Burns also has a 2003 felony conviction for burglary. Resp. [21] at 2; Kemper Cnty. Incident Rep. [21-2] at 3.

short-barreled shotgun. [21-2] at 1–3.² In March 2025, a federal grand jury returned a two-count [3] Indictment, charging Burns with knowingly possessing a firearm as a felon, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(8), and with knowingly receiving and possessing a short-barreled shotgun, not registered to him in the National Firearms Registration and Transfer Record, in violation of 26 U.S.C. §§ 5841, 5861(d), and 5871. [3] at 1.

Burns now moves to dismiss the [3] Indictment, arguing that Section 922(g)(1) violates the Second Amendment on its face and as applied to him under *Bruen*,³ violates the Fifth Amendment’s guarantees of equal protection and due process under the law, is void for vagueness, and exceeds Congress’s authority under the Commerce Clause. [20] at 1.⁴ Burns also argues that Section 5861(d) violates the Second Amendment on its face and as applied to short-barreled shotguns. *Id.* The United States filed a [21] Response; Burns filed a [23] Reply.

II. Standard

Under Rule 12, “[a] party may raise by pretrial motion any defense, objection, or request that the court can determine without a trial on the merits.” Fed. R. Crim. P. 12(b)(1). A court may consider a motion to dismiss an indictment if the defect “in the prosecution is essentially one of law” *United States v. Guthrie*, 720 F.

² The [3] Indictment lists the shotgun as “a weapon having a barrel of less than 18 inches in length, that is a Sears, Roebuck, & Company Ted Williams, Model 21, 12[-]gauge shotgun.” [3] at 1.

³ *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1 (2022).

⁴ Burns concedes that his facial challenge under the Second Amendment and his Commerce Clause challenge against Section 922(g)(1) are both foreclosed by Fifth Circuit precedent. [20] at 1 nn.1–2.

App’x 199, 201 (5th Cir. 2018) (per curiam) (citation modified). A criminal defendant may use Rule 12(b)(1) to challenge the constitutionality of the charged statutes. *See United States v. Flores*, 652 F. Supp. 3d 796, 798 (S.D. Tex. 2023).

III. Analysis

A. Section 922(g)(1)

1. Second Amendment

Section 922(g)(1) does not violate the Second Amendment.

a. Facial Challenge

First, Burns argues that Section 922(g)(1) is facially unconstitutional under the Second Amendment. *See* [20] at 7–11. Burns concedes that this argument is foreclosed by Fifth Circuit precedent, *see United States v. Diaz*, 116 F.4th 458, 472 (5th Cir. 2024), *cert. denied*, No. 24-6625, 2025 WL 1727419 (U.S. June 23, 2025), and he raises it here only to preserve his argument for further review. [20] at 1 n.1, 7–11. Bound by Fifth Circuit precedent, this Court need not address this challenge.

b. As-Applied Challenge

Second, Burns argues that Section 922(g)(1) is unconstitutional under the Second Amendment, as applied to him, because “the Government has not shown that the permanent restriction of [his] right to possess a firearm is consistent with the Nation’s historical traditions” *Id.* at 12 (citing *Bruen*, 597 U.S. at 17).

Bruen set forth “the standard for applying the Second Amendment” 597 U.S. at 24. First, courts must determine whether “the Second Amendment’s plain text covers an individual’s conduct” *Id.* at 17. If so, then the “Constitution presumptively protects that conduct,” and the “government must then justify its

regulation by demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation.” *Id.* at 24. “Only if the government meets that burden ‘may a court conclude that the individual’s conduct falls outside the Second Amendment’s unqualified command.’” *United States v. Kimble*, ___ F.4th ___, No. 23-50874, 2025 WL 1793832, at *2 (5th Cir. June 30, 2025) (quoting *Bruen*, 597 U.S. at 24).

“As to the first inquiry, ‘[t]he plain text of the Second Amendment covers the conduct prohibited by [Section] 922(g)(1).’” *Id.* (quoting *Diaz*, 116 F.4th at 467). “That is because convicted felons are unequivocally among the people protected by the Second Amendment.” *Id.* (citation modified).

As to the second inquiry, “caselaw recognizes three categories of offenses that doom a defendant’s as-applied challenge to (g)(1): theft, violence, and violating the terms of one’s release by possessing arms while on parole.” *Id.* at *3. In *United States v. Giglio*, 126 F.4th 1039, 1044 (5th Cir. 2025), the Fifth Circuit “upheld a [Section 922](g)(1) conviction where the defendant was found armed while still serving his sentence on supervised release . . . because, historically, convicts could be required to forfeit their weapons and were prevented from reacquiring arms until they had finished serving their sentences.” *Kimble*, 2025 WL 1793832, at *3 (quoting *Giglio*, 126 F.4th at 1044); *see also United States v. Contreras*, 125 F.4th 725, 732–33 (5th Cir. 2025)). In short, “if a defendant is caught possessing a gun while out on supervised release for a prior felony sentence, his as-applied challenge will . . . fail.” *Kimble*, 2025 WL 1793832, at *3.

During the execution of a search warrant by his probation officers, Burns was found in possession of two firearms, in violation of Sections 922(g)(1) and 924(a)(8). *See* [21-2]; [3]. For this reason, Burns’s as-applied challenge to Section 922(g)(1) fails. His disarmament does not offend our Nation’s historical tradition of firearm regulation, so it is lawful and appropriate under the Second Amendment and the *Bruen*. *See Kimble*, 2025 WL 1793832, at *3.⁵

Burns’s Second Amendment challenges fail.⁶

2. Fifth Amendment

Section 922(g)(1) does not violate the Fifth Amendment.

Burns also argues Section 922(g)(1) is unconstitutional under the Fifth Amendment because it violates “equal protection and due process guarantees by abridging the right to bear arms based on varied state statutes and by stripping [him] of his right to bear arms without due process.” [20] at 1.

a. Equal Protection

Burns contends that Section 922(g)(1) “burdens [his] fundamental right to keep and bear arms.” *Id.* at 18. He believes the statute cannot withstand strict

⁵ Burns’s as-applied challenge is also foreclosed by his prior burglary and aggravated assault convictions. *See Kimble*, 2025 WL 1793832, at *3 (citing *Diaz*, 116 F.4th at 468–70); *see also* [21-1] at 4–5 (reflecting Burns’s theft-related crime and violent crime). Fifth Circuit “caselaw establishes that if a defendant’s predicate felony involves theft or violence, his as-applied challenge to [Section] 922(g)(1) will fail.” *Kimble*, 2025 WL 1793832, at *3.

⁶ Burns concedes this point in his [23] Reply. He writes: “[T]he caselaw affirming the constitutionality of disarming people on probation . . . may foreclose his challenge to the as-applied constitutionality of [Section] 922(g)(1) if the Government proves that [Burns] was on probation at the time of his offense.” [23] at 1. It is undisputed, according to the Mississippi Department of Corrections records provided by the Government, that Burns was on probation when found in possession of a firearm. *See* [21-2] at 2.

scrutiny because it “contains no uniform definition of the conduct that will result in the loss of the right to possess a firearm,” and it “does not consistently restore the right to keep and bear arms . . . , resulting in a lack of uniform application.” *Id.* at 18–19. And although the Fifth Circuit has rejected this argument, *see United States v. Darrington*, 351 F.3d 632, 634–35 (5th Cir. 2003), Burns submits that “*Bruen* has . . . rendered this [caselaw] obsolete.” [20] at 18 (citing *Diaz*, 116 F.4th at 465).

It has not. *Darrington* “determined that governmental restrictions on the right to bear arms need not meet a strict scrutiny test because it was not a fundamental right.” *United States v. Howard*, No. 24-40033, 2024 WL 4449866, at *2 (5th Cir. Oct. 9, 2024) (per curiam), *cert. denied*, 145 S. Ct. 1210 (2025) (citing *Darrington*, 351 F.3d at 635). So although Burns argues *Bruen* has rendered *Darrington* obsolete, strict scrutiny should apply, and Section 922(g)(1) cannot withstand strict scrutiny, *see* [20] at 18, the Fifth Circuit “has rejected an identical argument applying the plain-error standard of review.” *Howard*, 2024 WL 4449866, at *2 (citing *United States v. Steward*, No. 23-20515, 2024 WL 3082334 (5th Cir. June 21, 2024)); *see also United States v. Branson*, 139 F.4th 475, 477 (5th Cir. 2025) (citing *Howard*, 2024 WL 4449866, at *2). In doing so, the Fifth Circuit explained: “Neither the Supreme Court nor [the Fifth Circuit] sitting en banc has overruled *Darrington*.” *Howard*, 2024 WL 4449866, at *2 (citation modified). There is no “controlling authority establishing that the right to keep and bear arms is a fundamental right.” *Id.* (citation modified). So Burns’s equal-protection challenge fails.

b. Due Process

Citing only to Justice Thomas’s dissent in *Rahimi*,⁷ Burns also contends that Section 922(g)(1) violates his right to due process of law under the Fifth Amendment by “disarming [him] based on generalized findings without any individualized inquiry about whether [he] poses a risk of violence.” [23] at 16; *see also* [20] at 19.

To support his position, Burns reiterates Justice Thomas’s stance that Section 922(g)(8) “strips an individual of his ability to possess firearms and ammunition without any due process.” *Rahimi*, 602 U.S. at 748 (Thomas, J., dissenting). Burns highlights that Section 922(g)(8) “affords ‘no hearing or opportunity to be heard on the statute’s applicability, and a court need not decide whether a person should be disarmed.’” [20] at 19 (quoting *Rahimi*, 602 U.S. at 748 (Thomas, J., dissenting)). “The only process [Section] 922(g)(8) requires is that provided (or not) for the underlying restraining order.” *Id.* (emphasis omitted) (quoting *Rahimi*, 602 U.S. at 748 (Thomas, J., dissenting)).

Burns asserts that Section 922(g)(1) “suffers these same defects.” *Id.* The statute, according to Burns, “is an automatic consequence of a felony conviction,” and “[i]t requires no finding that an individual should be disarmed or that an individual presents a danger to the public, if armed, before allowing for complete and permanent disarmament.” *Id.* All that is required is a conviction punishable by imprisonment for a term exceeding one year. *Id.* (citing § 922(g)(1)).

⁷ *United States v. Rahimi*, 602 U.S. 680, 747–778 (2024) (Thomas, J., dissenting).

But Burns was afforded due process before his right to bear arms was abridged—“specifically, he was entitled to a jury trial on the underlying conviction.” *United States v. Cockerham*, No. 5:25-CR-1, 2025 WL 1439458, at *4 (S.D. Miss. May 19, 2025). Burns’s “argument that [Section] 922(g)(1) does not provide a defendant with due process because it is the automatic result of a felony conviction ignores the fact that a criminal defendant’s entitlement to a jury trial provides him with process before he loses his right to bear arms.” *Id.* And he provides no case law to support the contention that the right to a jury trial for the underlying conviction is insufficient under the Due Process Clause. *See id.*

“Congress has imposed disarmament as a punishment for committing a felony,” and Burns “fails to explain how this lack of process violates the Due Process Clause” *Id.* at 5; *see also United States v. Lee*, No. 5:24-CR-8, 2025 WL 1261609, at *4 (S.D. Miss. Apr. 30, 2025) (addressing similar arguments).

Burns’s Fifth Amendment challenges fail.

4. Vagueness

Section 922(g)(1) is not void for vagueness.

Next, Burns argues Section 922(g)(1) is void for vagueness. *See* [20] at 1. He claims Section 922(g)(1) “is facially unconstitutional because it fails to provide a person of ordinary intelligence fair notice of what conduct is prohibited.” *Id.* at 19.

“A fundamental principle in our legal system is that laws which regulate persons or entities must give fair notice of conduct that is forbidden or required.” *Branson*, 139 F.4th at 478 (citation modified) (collecting cases). “Vagueness

challenges to statutes which do not involve First Amendment freedoms must be examined in the light of the facts of the case at hand.” *Id.* (citation modified) (collecting cases). So as a threshold matter, Burns must show that Section 922(g)(1) “is vague *in his case*” *United States v. Clark*, 582 F.3d 607, 614 (5th Cir. 2009).

He has not. Burns was “clearly put on notice that his offense comes within [Section] 922(g)(1).” *Branson*, 139 F.4th at 478.⁸ He “neatly fits the statutory text.” *Id.* He pleaded guilty to felony offenses in Mississippi for residential burglary, aggravated assault, and being a felon in possession of a firearm. [21] at 2; [21-1] at 4–5. While on probation, he was found with a firearm. [21-2].

Given these facts and the plain language of the Section 922(g)(1), “an ordinary person had fair notice that it is unlawful for them to possess a gun.” *Branson*, 139 F.4th at 478 (citing *United States v. Nat’l Dairy Prods. Corp.*, 372 U.S. 29, 32–33 (1963) (“Void for vagueness simply means that criminal responsibility should not attach where one could not reasonably understand that his contemplated conduct is proscribed.”)); *see also id.* (rejecting the same argument under *Diaz* that Burns presents here). “The statute, [Section] 922(g)(1), clearly defines the prohibited conduct—possessing a firearm as a felon.” *Branson*, 139 F.4th at 479. So “Section 922(g)(1) survives vagueness review because it defines the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited.” *Id.* (citation modified).

⁸ “As a reminder, [Section] 922(g)(1) makes it unlawful for any person who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year to possess any firearm.” *Branson*, 139 F.4th at 478 (citation modified).

Burns’s vagueness challenge fails.

5. Commerce Clause

Section 922(g)(1) is not unconstitutional under the Commerce Clause.

Burns then argues that Section 922(g)(1) “constitutes an unconstitutional extension of Congress’s authority under the Commerce Clause.” [20] at 1. But Burns concedes that this argument is foreclosed by Fifth Circuit precedent, and he raises it here only to preserve his argument for further review. *Id.* at 1 n.2, 21–24 (citing *United States v. Rawls*, 85 F.3d 240, 243 (5th Cir. 1996) (per curiam)); *see also United States v. Jones*, 88 F.4th 571, 573 (5th Cir. 2023) (per curiam), *cert. denied*, 144 S. Ct. 1081 (2024). Bound by Fifth Circuit precedent, this Court need not address this challenge.

Burns’s Commerce Clause challenge fails.

B. Section 5861(d)

Section 5861(d) does not violate the Second Amendment.

a. Facial Challenge

First, Burns argues that Section 5861(d) is facially unconstitutional under the Second Amendment. *See* [20] 1.

To sustain a facial challenge, “the challenger must establish that no set of circumstances exists under which the [statute] would be valid.” *United States v. Salerno*, 481 U.S. 739, 745 (1987). “Facial challenges to the constitutionality of statutes should be granted sparingly and only as a last resort.” *Serafine v. Branaman*, 810 F.3d 354, 365 (5th Cir. 2016) (citation modified).

Because Burns does not expand upon this conclusory allegation, he has not met his burden. *See* [20]; [23]. Further, and as discussed below, because Section 5861(d) is constitutional as applied to Burns, his facial challenge necessarily fails.

b. As-Applied Challenge

Next, Burns argues that Section 5861(d) is unconstitutional as applied to short-barreled shotguns. [20] at 1. Burns claims that short-barreled firearms are covered by the Second Amendment, and the Government “cannot meet its burden to show that [Section] 5861(d) is consistent with the Nation’s historical tradition of firearm regulation.” [20] at 13, 17.⁹

To sustain an as-applied challenge, the court asks whether a law with some permissible uses “is nonetheless unconstitutional as applied to appellant’s activity.” *Shepherd*, 2024 WL 71724, at *1 (citation modified). *Bruen* set forth “the standard for applying the Second Amendment” 597 U.S. at 24. First, courts must determine whether “the Second Amendment’s plain text covers an individual’s conduct” *Id.* at 17. If so, then the “Constitution presumptively protects that conduct,” and the “government must then justify its regulation by demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation.” *Id.* at 24. “Only if the government meets that burden may a court conclude that the

⁹ “To be clear, [Burns] was not indicted for simply *having* a short-barreled shotgun. He was indicted for having a short-barreled shotgun that was not registered according to the NFA.” *United States v. Shepherd*, No. 3:23-CR-39, 2024 WL 71724, at *2 (S.D. Miss. Jan. 5, 2024)

individual's conduct falls outside the Second Amendment's unqualified command.” *Kimble*, 2025 WL 1793832, at *2 (citation modified).

The Court need only reach the first inquiry.¹⁰ In *United States v. Miller*, the United States Supreme Court held that the Second Amendment does not protect short-barreled shotguns because they are not in common use. 307 U.S. 174, 178–79 (1939). The Supreme Court has reinforced this principle in both *Heller* and *Bruen* because sawed-off shotguns remain “dangerous and unusual weapons.” *District of Columbia v. Heller*, 554 U.S. 570, 627 (2008); *see also Bruen*, 597 U.S. at 21, 47 (citing *Heller*, 554 U.S. at 627).

Because the first step in the *Bruen* analysis is a threshold question, and the Court finds that Burns's conduct is not protected by the Second Amendment, his as-applied challenge fails. *See Shepherd*, 2024 WL 71724, at *1–6 (analyzing a similar issue).

IV. Conclusion

The Court has considered all arguments. Those not addressed would not have altered the Court's decision. For the stated reasons, the Court DENIES Defendant Joshua Ryan Burns's [20] Motion to Dismiss. The Court will set this matter for trial.

¹⁰ The Court notes, however, the registration regulation within Section 5861(d) is likely consistent with the history and tradition of firearm regulation. *See, e.g., Heller*, 554 U.S. at 627 (noting the “historical tradition of prohibiting the carrying of ‘dangerous and unusual weapons’”). Even so, “[t]he NFA does not bar [Burns's] possession of [this firearm]. It simply requires [its] registration. [On] these facts, the Court cannot conclude that the registration requirements are unconstitutional.” *Shepherd*, 2024 WL 71724, at *6.

SO ORDERED, this 23rd day of July, 2025.

s/ *Kristi H. Johnson*
UNITED STATES DISTRICT JUDGE