

No. _____

SUPREME COURT OF THE UNITED STATES

GARRITO FORT, a/k/a Tony,
Petitioner

v.

UNITED STATES OF AMERICA
Respondent

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Were Petitioner's Second Amendment rights violated when the trial court granted the United States's pretrial motion to preclude Petitioner from arguing self-defense at trial?

PARTIES TO THE PROCEEDING BELOW

Petitioner is Garrito Fort, a/k/a Tony, who was the Defendant-Appellant in the court below. Respondent, the United States of America, was the Plaintiff-Appellee in the court below.

TABLE OF CONTENTS

QUESTION PRESENTED	i
PARTIES TO THE PROCEEDING BELOW.....	ii
TABLE OF CONTENTS.....	iii
TABLE OF AUTHORITIES	iv
PETITION FOR WRIT OF CERTIORARI	1
PROCEEDINGS IN THE LOWER COURTS	1
STATEMENT OF JURISDICTION.....	1
RELEVANT CONSTITUTIONAL PROVISIONS	1
STATEMENT OF THE CASE.....	3
REASONS FOR GRANTING THE WRIT	5
<i>This Court’s Decisions in Bruen, Heller, and their Progeny Make Armed Self- Defense a Right of All Americans and Require a Less Restrictive Justification Test than that Articulated in United States v. Leahy.</i>	8
<i>Because the Leahy / Dixon Factors Unconstitutionally Cabin the Right to Self- Defense near the Home, It Is Improper for the District Court to Be Empowered Pre- Trial to Preclude the Justification of Self-Defense.....</i>	13
CONCLUSION	18
CERTIFICATE OF MEMBERSHIP OF SUPREME COURT BAR.....	19
CERTIFICATE OF WORD COUNT.....	20
APPENDIX.....	21
<i>Decision of the United States District Court, District of New Hampshire.....</i>	A1
<i>Decision of the United States Court of Appeals for the First Circuit.....</i>	A21

TABLE OF AUTHORITIES

Cases

<i>Binderup v. Attorney General</i> , 836 F.3d 336 (3d Cir. 2016).....	16
<i>Brown v. Ruane</i> , 630 F.3d 62 (1st Cir. 2011).....	16
<i>California v. Trombetta</i> , 476 U.S. 479 (1984).....	20
<i>Crane v. Kentucky</i> , 476 U.S. 683 (1986).....	16, 19, 20
<i>District of Columbia v. Heller</i> , 554 U.S. 570 (2008).....	passim
<i>Dixon v. United States</i> , 548 U.S. 1 (2006)	6, 7, 9, 15
<i>Kanter v. Barr</i> , 919 F.3d 437 (7th Cir. 2019)	15
<i>Martin v. Ohio</i> , 480 U.S. 228 (1987)	19
<i>McDonald v. City of Chicago</i> , 561 U.S. 742 (2010).....	11
<i>Mulaney v. Wilbur</i> , 421 U.S. 684 (1975).....	19
<i>New York State Rifle & Pistol Ass’n, Inc. v. Bruen</i> , 597 U.S. 1 (2022)	passim
<i>Patterson v. New York</i> , 432 U.S. 197 (1977)	18, 19
<i>Range v. Attorney General</i> , 69 F.4th 96 (3d Cir. 2022)	15
<i>Rocky Mt. Gun Owners v. Polis</i> , 121 F.4th 96 (10th Cir. 2024).....	15
<i>United States v. Alston</i> , 526 F.3d 91 (3d Cir. 2008).....	7
<i>United States v. Bailey</i> , 444 U.S. 394 (1980)	17, 19
<i>United States v. Bell</i> , 214 F.3d 1299 (11th Cir. 2000)	8
<i>United States v. Blankenship</i> , 67 F.3d 673 (8th Cir. 1995)	7
<i>United States v. Castro-Gómez</i> , 360 F.3d 217 (1st Cir. 2004)	8
<i>United States v. Cronin</i> , 466 U.S. 648 (1984)	20
<i>United States v. Diaz</i> , 116 F.4th 458 (5th Cir. 2024).....	15
<i>United States v. Fort</i> , 2023 U.S. Dist. LEXIS 169918, WL 6216755 (D.N.H. 2023) ..	1

<i>United States v. Fort</i> , No. 25-1025, 176 F.4th 1 (1st Cir. 2026)	1, 4
<i>United States v. Hemani</i> , 225 L. Ed. 2d 314 (2026)	5, 10
<i>United States v. Leahy</i> , 473 F.3d 401 (1st Cir. 2007)	passim
<i>United States v. Maxwell</i> , 254 F.3d 31 (1st Cir. 2001)	16, 17, 18
<i>United States v. Perrin</i> , 45 F.3d 869 (4th Cir. 1995)	7
<i>United States v. Salgado-Ocampo</i> , 159 F.3d 322 (7th Cir. 1998)	7
<i>United States v. Williams</i> , 113 F.4th 637 (6th Cir. 2024)	15
<i>United States v. Wofford</i> , 122 F.3d 787 (9th Cir. 1997)	7
<i>Wofford v. Lopez</i> , 225 L. Ed. 2d 494 (2026)	passim
<i>Worth v. Jacobson</i> , 108 F.4th 677 (8th Cir. 2024)	15

Statutes

18 U.S.C. § 922	3
28 U.S.C. § 1254	1

Other Authorities

William Blackstone, <i>Commentaries on the Laws of England</i> , 139 (1765)	10
William Tucker, <i>Blackstone’s Commentaries</i> 145-46 (1803)	10

Rules

Supreme Court Rule 10	5
Supreme Court Rule 13	1

Constitutional Provisions

Fourteenth Amendment	2, 8, 9, 14
Second Amendment	passim

PETITION FOR WRIT OF CERTIORARI

Petitioner, Garrito Fort, a/k/a Tony, respectfully requests a writ of certiorari to review the judgment of the United States Court of Appeals for the First Circuit.

PROCEEDINGS IN THE LOWER COURTS

Fort pled guilty to a one-count indictment for possession of a firearm and ammunition in violation of 18 U.S.C. §§ 922(g)(1) and 924(e) and reserved his right to appeal the district court's denial of his motion to dismiss and the district court's granting of the United States's motion to preclude Petitioner from raising a justification defense at trial. *United States v. Fort*, 2023 U.S. Dist. LEXIS 169918, WL 6216755 (D.N.H. 2023); Cert. App. 20. The United States Court of Appeals for the First Circuit affirmed the district court's rulings. *United States v. Fort*, No. 25-1025, 176 F.4th 1 (1st Cir. 2026); Cert. App. 19-36.

STATEMENT OF JURISDICTION

The Court of Appeals issued its decision on May 12, 2026. Petitioner did not seek a rehearing. This petition is timely filed according to Supreme Court Rule 13(1). This Court has jurisdiction under 28 U.S.C. § 1254(1).

RELEVANT CONSTITUTIONAL PROVISIONS

The Second Amendment to the United States Constitution provides that, "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."

The Fourteenth Amendment to the United States Constitution provides, in relevant part, that “No State shall . . . deprive any person of life, liberty, or property, without due process of law.”

STATEMENT OF THE CASE¹

Petitioner Garrito Fort, a black man and convicted felon, confronted potential white intruders in front of his property while briefly armed with his girlfriend's handgun. During the confrontation, the men trespassed onto Mr. Fort's property and attacked him. In self-defense, he shot his two attackers. One was injured. One died. The State of New Hampshire did not charge Mr. Fort for the injuries or death. It released a press release stating it would not file homicide charges because it could not disprove self-defense beyond a reasonable doubt. Nevertheless, the United States Attorney's Office obtained a grand jury indictment for a felon-in-possession charge.

Prior to trial, Mr. Fort filed a notice of defense, advising the trial court and government that he may rely on the defense of duress, necessity, and/or self-defense. Cert. App. 22. The government then filed a motion in limine to preclude evidence or argument in support of that defense at trial. Cert. App. 23. Mr. Fort also filed a motion to dismiss and accompanying memorandum of law, arguing that the allegation of an 18 U.S.C. § 922(g) violation, as applied to the facts of this case, violated his right to bear arms under the Second Amendment. Cert. App. 20. The government objected to that motion. Cert. App. 46.

On August 24, 2023, the trial court conducted an evidentiary hearing on these motions, heard testimony from two witnesses, and received offers of proof.

¹ Citations to the district court order and United States Court of Appeals for the First Circuit decision in *United States v. Fort*, No. 25-1025, 176 F.4th 1 (1st Cir. 2026) are cited to the included Appendix as "Cert. App. #."

Cert. App. 5, 23-24. The court then ruled that Mr. Fort would be precluded from raising a justification defense at trial. Cert. App. 1-18. The court denied the motion to dismiss. Cert. App. 20.

Preserving his right to appeal both issues, on October 16, 2023, Mr. Fort changed his plea to guilty. Cert. App. 24. On March 29, 2024, and December 18, 2024, the trial court convened a sentencing hearing. The court granted an upward variance and sentenced Mr. Fort to serve 60 months, with 3 years of supervised release. Cert. App. 33-34. Fort timely appealed to the First Circuit.

After briefing, the First Circuit heard oral argument on April 9, 2026. Thereafter, the First Circuit issued an opinion on May 12, 2026, affirming the district court's granting of the government's motion in limine precluding a justification defense and the district court's denial of the motion to dismiss. *See United States v. Fort*, No. 25-1025, 176 F.4th 1 (1st Cir. 2026); Cert. App. 19-35.

REASONS FOR GRANTING THE WRIT

The Court should review this case because the First Circuit Court of Appeals and the district court decided an important federal question that conflicts with relevant decisions of this Court. *See* Supreme Court Rules 10(c).

The issue presented is whether the Second Amendment permits a district judge to prohibit a defendant from raising the justification of self-defense before the jury, where the lower courts applied a four-factor test that does not comport with the history and tradition of the Second Amendment.

“The Second Amendment protects the right of ‘all Americans’ to keep and bear firearms for self-defense.” *United States v. Hemani*, 225 L. Ed. 2d 314, 322 (2026) (quoting *District of Columbia v. Heller*, 554 U.S. 570, 581 (2008)). The “inherent right of self-defense” is “central to the Second Amendment right.” *Heller*, 554 U.S. at 628.

In prohibiting Mr. Fort from arguing a self-defense justification to the jury, the district court relied on the First Circuit Court of Appeals’ precedent, *United States v. Leahy*, 473 F.3d 401 (1st Cir. 2007). Cert. App. 5. In that case, the court held that a justification defense is available in felon-in-possession cases, and when proof of the justification defense does not negate an element of the charged crime, the burden of proof rests with the defendant. *Id.* at 403. Relying on this Court’s decision in *Dixon v. United States*, 548 U.S. 1 (2006), the First Circuit Court of Appeals accepted the test mentioned in a footnote in *Dixon. Leahy*, 473 F.3d at 405 (citing *Dixon*, 548 U.S. at 4, n.2).

The *Leahy* test has four parts:

- (i) [the defendant] was under an unlawful and present threat of death or serious bodily injury;
- (ii) he did not recklessly place himself in a situation in which he would be forced to engage in criminal conduct;
- (iii) he had no reasonable legal alternative but to engage in that conduct; and
- (iv) there was a direct causal relationship between his criminal conduct and the need to avoid the threatened harm.

Leahy, 473 F.3d at 404; Cert. App. 5-6; *Dixon*, 548 U.S. at 4, n.2. Under the district court's and First Circuit Court of Appeals' analysis, Mr. Fort was required to make a threshold showing for each of the four factors. *See* Cert. App. 6-7, 28. Failure to meet any one factor would prohibit Mr. Fort from arguing self-defense to the jury.

This Court's decision in *Dixon* and the First Circuit Court of Appeals' decision in *Leahy* both predate this Court's landmark decisions in *District of Columbia v. Heller*, 554 U.S. 570 (2008), *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022), and their progeny. Likewise, in rejecting Mr. Fort's defense, the district court relied on many decisions from other circuits that predated the shift in Second Amendment jurisprudence. *See* Cert. App. 9 (citing *United States v. Perrin*, 45 F.3d 869 (4th Cir. 1995)); Cert. App. 10 (citing *United States v. Salgado-Ocampo*, 159 F.3d 322 (7th Cir. 1998)); Cert. App. 12 (citing *United States v. Blankenship*, 67 F.3d 673 (8th Cir. 1995); Cert. App. 14 (citing *United States v. Wofford*, 122 F.3d 787 (9th Cir. 1997), as amended (Aug. 21, 1997)).

So too did the First Circuit Court of Appeals. *See* Cert. App. 28 (citing *United States v. Alston*, 526 F.3d 91 (3d Cir. 2008) and *United States v. Bell*, 214 F.3d 1299 (11th Cir. 2000)); Cert. App. 29 (citing *United States v. Castro-Gómez*, 360 F.3d 217

(1st Cir. 2004)). The appellate court acknowledged Mr. Fort’s argument that “the *Leahy* criteria for asserting the justification defense are too narrow in light of the Second Amendment decision in *District of Columbia v. Heller*,” Cert. App. 29, but concluded that while “there may be cases with unique facts in which the right of self-defense is not adequately captured under *Leahy* in § 922(g)(1) prosecutions, his argument fails on what the facts of record here show.” Cert. App. 30. Furthermore, it refused to “narrow the justification analysis to the moment of the shooting” because when Mr. Fort briefly possessed the gun inside, “there was no plausible justification defense.” *Id.*

Finally, both the district court and the First Circuit Court of Appeals determined that the district court could, as a matter of law, preclude Mr. Fort from presenting his self-defense justification defense to the jury. Cert. App. 6-7, 27-28. Again, both courts relied on multiple decisions that predate *Heller* and *Bruen* and that concerned other, non-Second Amendment-related justification defenses. *Id.* Yet in both *Leahy* and *Dixon*, the test for a justification defense was articulated as part of jury instructions, not as a pretrial bench ruling. *See Leahy*, 473 F.3d at 404-05; *Dixon*, 548 U.S. at 4-5. Here, by contrast, Mr. Fort was prohibited from making his self-defense instruction pre-trial, by order of the judge. *See* Cert. App. 1-17. The district court’s ability to preclude a justification of self-defense as a matter of law cannot be squared with the scope of the Second Amendment’s fundamental right to armed self-defense.

In failing to account for how *Heller*, *Bruen*, and their progeny guaranteed the rights of all Americans to armed self-defense, and in preventing Mr. Fort from making his argument to a jury of his peers, the district court and First Circuit Court of Appeals erred. The merits of Mr. Fort’s argument are set forth below so that the issue presented for review may be considered in its full context.

This Court’s Decisions in Bruen, Heller, and their Progeny Make Armed Self-Defense a Right of All Americans and Require a Less Restrictive Justification Test than that Articulated in United States v. Leahy.

This Court’s decisions in *Heller*, *Bruen*, and their progeny demonstrate that the right to armed self-defense is at the very core of the Second Amendment. In its most recent term, this Court explained that the “Second Amendment protects the right of ‘all Americans’ to keep and bear firearms for self-defense.” *Hemani*, 225 L. Ed. 2d at 322 (quoting *Heller*, 554 U.S. at 581). *See also Wolford v. Lopez*, 225 L. Ed. 2d 494, 502 (explaining that *Bruen* held “that the Second and Fourteenth Amendments protect the right to carry handguns outside the home for self-defense”).

As *Heller* explains, the “inherent right of self-defense has been central to the Second Amendment right.” *Heller*, 554 U.S. at 628. The “natural meaning of bear arms” is to “wear, bear, or carry upon the person or in the clothing or in a pocket, for the purpose of being armed and ready for offensive or defensive action in a case of conflict with another person.” *Id.* at 584 (cleaned up). Handguns are “the quintessential self-defense weapon.” *Id.* at 629. Handguns in the home are “where the need for defense of self, family, and property is most acute.” *Id.* at 628. When it

is “impossible for citizens to use them for the core lawful purpose of self-defense,” prohibitions are “unconstitutional.” *Id.* at 630. In fact, this Court took particular issue with the suggestion “by the D.C. Court of Appeals’ statement that the statute [in question] forbids residents to use firearms to stop intruders,” which, for this Court, led to the “nonexistence of a self-defense exception.” *Id.* That was unconstitutional and the same is true here.

This Court’s decision in *Bruen* reiterated that “the Second and Fourteenth Amendments protect an individual’s right to keep and bear arms for self-defense.” 597 U.S. at 17. The Court then clarified the appropriate test for government regulation of the right to self-defense: “when the Second Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects that conduct.” *Id.* The burden then shifts to the government to demonstrate that its prohibition is consistent with “this Nation’s historical tradition of firearm regulation.” *Id.* The *Bruen* Court repeated what it said in *Heller* and *McDonald v. City of Chicago*, 561 U.S. 742 (2010), “individual self-defense is the *central component* of the Second Amendment right.” *Bruen*, 597 U.S. at 29 (quotations and citations omitted, italics in original). Likewise, “the Second Amendment guarantees an individual right to possess and carry weapons in case of confrontation.” *Bruen*, 597 U.S. at 33 (quoting *Heller*, 554 U.S. at 592).

Most recently, in *Wolford v. Lopez*, 225 L. Ed. 2d 494 (2026), this Court found unconstitutional a Hawaii law that “severely burdens the ability to carry a firearm” in self-defense. *Id.* at 502. Reiterating what *Bruen* said, the Court was clear: “the

plain text of the Second Amendment protects’...carry[ing] handguns for self-defense.” *Wolford*, 225 L. Ed. 2d 494 at 510 (quoting *Bruen*, 597 U.S. at 32). While that law concerned “prohibiting firearms on private property without the express and affirmative consent of the property owner,” it was “part of a tight web of laws that severely restricts the carrying of firearms for self-defense.” *Id.* at 502, 508. The Court expressly discussed how these restrictions “severely hamper[]” the right to armed self-defense. *Id.* at 510-12. The restrictions here are much greater. The right to armed self-defense is more restricted.

The facts of this case demonstrate how unconstitutionally narrow the justification of self-defense for felons-in-possession has become. A racist, violent, drug-addicted vandal was loitering near the front yard of Mr. Fort’s property. Cert. App. 2, 10. When Mr. Fort went outside to face the individual, borrowing his girlfriend’s handgun for protection, he was violently attacked. Cert. App. 4-5. He defended himself on his curtilage. *Id.* Yet both the trial court and appellate court concluded that because of Mr. Fort’s status as a felon, his constitutional right to armed self-defense required much more. Because he was a convicted felon, he had no “natural right of resistance and self-preservation,” including when “the intervention of society in his behalf, may be too late to prevent an injury.” *Heller*, 554 U.S. at 594-95 (quoting 1 William Blackstone, *Commentaries on the Laws of England*, 139 (1765) and 1 William Tucker, *Blackstone’s Commentaries* 145-46, n. 42 (1803)).

According to the district court, the threat was not imminent enough. Cert. App. 10-11. Fort was reckless for going outside his own home and was instead supposed to shelter inside and wait for the potential intruder to leave. Cert. App. 13. As long as he could potentially call the police, he had a “reasonable alternative” and no right to armed self-defense. Cert. App. 14-16. According to the district court’s *ex post facto* analysis, Mr. Fort was not “in imminent danger when he left his house while knowingly possessing the handgun,” and therefore there was no “necessary causal relationship between his possession of the gun and the need to avoid the harm.” Cert. App. 16.

The First Circuit Court of Appeals echoed this strict conditioning of the right to armed self-defense. Because Mr. Fort “was inside,” and the racist, violent potential intruder “was outside,” “he was under no threat of death or serious bodily injury.” Cert. App. 29. Because there was an inescapable temporal gap between when “Fort chose to arm himself and to go outside,” he could not assert a justification defense to the jury. *Id.* As long as there was a single moment in time when Mr. Fort “first possessed the gun inside, there was no plausible justification defense.” Cert. App. 30.

This Court has, however, recognized the opposite. The “central objective” or “central concern” of the Second Amendment is “protecting the fundamental right to self-defense.” *Wolford*, 225 L. Ed. 2d at 504, 515. That includes “the purpose of being armed and ready for offensive or defensive action in a case of conflict with another person.” *Heller*, 554 U.S. at 584 (cleaned up). If a felon is required to wait

inside his home until he is physically threatened with death or serious bodily injury, required to call the police or pursue civil legal remedies, that right is hollow. Felons would have to wait until their assailants were in the midst of attacking them before they could defend themselves. Even if the felon knows the potential intruder could react violently, Cert. App. 10, he has no choice but to wait until the attack begins until he can argue, as a matter of law, that he was entitled to defend himself. That cannot be squared with what this Court pronounced in *Heller* and *Bruen*.

Furthermore, because any *one* of the *Leahy / Dixon* factors is sufficient to defeat an individual like Mr. Fort from ever raising the justification of self-defense.² Yet the historical record for the proposition that convicted felons are categorically denied the right to armed self-defense is thin. *See, e.g., Kanter v. Barr*, 919 F.3d 437, 454 (7th Cir. 2019) (Barrett, J., dissenting) (describing how “thus far, scholars have not been able to identify any such laws” from the founding era permanently dispossessing all felons); *Binderup v. Attorney General*, 836 F.3d 336 (3d Cir. 2016); Adam Winkler, *Heller’s Catch-22*, 56 U.C.L.A. L. Rev. 1551, 1564 (2009) (laws disarming felons are “products of the 20th century”).

By creating essentially insurmountable hurdles for a felon to raise a claim of self-defense in a § 922(g)(1) prosecution, the district and appellate courts failed to

² Many Courts post-*Bruen* recognize that even convicted felons are part of “the people.” *See, e.g., Range v. Attorney General*, 69 F.4th 96, 98 (3d Cir. 2022); *United States v. Diaz*, 116 F.4th 458, 466 (5th Cir. 2024); *United States v. Williams*, 113 F.4th 637, 649 (6th Cir. 2024); *cf. Worth v. Jacobson*, 108 F.4th 677, 688-89 (8th Cir. 2024); *Rocky Mt. Gun Owners v. Polis*, 121 F.4th 96, 114-16 (10th Cir. 2024).

recognize this Court’s jurisprudence about the fundamental right to armed self-defense and therefore erred.

Because the Leahy / Dixon Factors Unconstitutionally Cabin the Right to Self-Defense near the Home, It Is Improper for the District Court to Be Empowered Pre-Trial to Preclude the Justification of Self-Defense.

As the district court recognized, the “Constitution guarantees criminal defendants a meaningful opportunity to present a complete defense.” Cert. App. 6 (quoting *Brown v. Ruane*, 630 F.3d 62, 71 (1st Cir. 2011) and *Crane v. Kentucky*, 476 U.S. 683, 690 (1986)). Nevertheless, relying on *United States v. Maxwell*, 254 F.3d 31 (1st Cir. 2001) and *United States v. Bailey*, 444 U.S. 394 (1980), the district court believed it was empowered to prohibit an affirmative defense pre-trial “when the proffer in support of an anticipated affirmative defense is insufficient as a matter of law to create a triable issue[.]” Cert. App. 6 (quoting *Maxwell*, 254 F.3d at 26 and *Bailey*, 444 U.S. at 414-15).

Neither *Bailey* nor *Maxwell* involved the justification of self-defense, let alone self-defense post-*Heller*. In *Bailey*, escaped convicts attempted to raise the defenses of duress or necessity. 444 U.S. at 415. This Court held that “where a criminal defendant is charged with escape and claims that he is entitled to an instruction on the theory of duress or necessity, he must proffer evidence of a bona fide effort to surrender or return to custody as soon as the claimed duress or necessity had lost its coercive force.” *Id.* The Court was concerned with “the potential for wasting valuable trial resources” and the jury being subjected to a “potpourri” of extraneous

evidence. *Id.* at 416. The case said nothing about a defendant asserting a justification defense based upon a fundamental right.

Likewise, in *Maxwell*, the defendant, charged with trespassing on United States military property, sought “to present affirmative defenses based upon necessity and international law.” 254 F.3d at 23-24. The First Circuit Court of Appeals considered the defendant’s argument “a right to present irrelevant evidence” and found he had not proffered sufficient evidence to raise either a defense of necessity or international law. *Id.* at 26-30. Again, the case says nothing about the fundamental right to armed self-defense under the Second Amendment.

As this Court held in *Bruen*, “when the Second Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects that conduct.” 597 U.S. at 16. The burden then shifts to the government, which “must demonstrate that the regulation is consistent with this Nation’s historical tradition of firearm regulation.” *Id.*

In *Patterson v. New York*, 432 U.S. 197 (1977), this Court decided whether the Fourteenth Amendment to the United States Constitution permitted a defendant to have the burden of proving the affirmative defense of extreme emotional disturbance. *Id.* at 198. Surveying the common law, the Court noted that when the Fifth and Fourteenth Amendments were adopted, the burden of proof for an affirmative defense rested with the defendant. *Id.* at 202-03. *See also Mulaney v. Wilbur*, 421 U.S. 684, 692-96 (1975).

However, it is one thing to place the burden of proof on the defendant for an affirmative defense and another to allow the judge, as a matter of law, to prevent the defendant from ever raising the issue before the jury. When, in *Martin v. Ohio*, 480 U.S. 228 (1987), this Court held that it was proper for Ohio to place the burden on the defendant, the defendant was still allowed to argue the defense before the jury. *Id.* at 230-31, 236. The Court made no mention of *Bailey*'s proffer requirement. Furthermore, these cases all predated this Court's recognition that the Second Amendment guarantees all Americans the fundamental right to armed self-defense. *See, e.g., Wolford*, 225 L. Ed. 2d at 504.

Likewise, in *Crane v. Kentucky*, 476 U.S. 683 (1986), this Court explained that "[w]hether rooted in the Due Process Clause of the Fourteenth Amendment, or in the Compulsory Process or Confrontation clauses of the Sixth Amendment, the Constitution guarantees defendant's 'a meaningful opportunity to present a complete defense.'" *Id.* at 690 (quoting *California v. Trombetta*, 476 U.S. 479, 485 (1984), internal citations omitted). An "essential component of procedural fairness is an opportunity to be heard" and "[t]hat opportunity would be an empty one if the State were permitted to exclude competent, reliable evidence[.]" *Crane*, 476 U.S. at 690.

The State of New Hampshire believed there was sufficient evidence to support Mr. Fort's self-defense claim such that it never charged him for murder or assault. Yet in this proceeding, the judge was empowered to prohibit Mr. Fort from ever raising that evidence in his defense. This "deprive[d]" Mr. Fort "of the basic

right to have the prosecutor's case encounter and 'survive the crucible of meaningful adversarial testing.'" *Id.* at 690-91 (quoting *United States v. Cronin*, 466 U.S. 648, 656 (1984)).

Under the district court's and First Circuit Court of Appeals' analyses, the judge alone is allowed to determine whether a black defendant, faced with a racist, drug-addicted, violent potential intruder, is allowed to defend himself. The defendant's exercise of his fundamental right to armed self-defense, guaranteed by the Second Amendment, is now conditioned on whether the judge believes the defendant could have stayed inside or could have called the police. Cert. App. 13-16. The district court decides how a citizen is supposed to protect himself and how imminent the threat must be. Cert. App. 8-11. The district court decides whether it was reckless for the defendant to confront the potential trespasser and protect his property. Cert. App. 11-13. The district court decides whether it was necessary for the defendant to exercise his fundamental right to armed self-defense. Cert. App. 16-17. In hindsight, so long as the judge can find any potential alternative, no matter how small, the person is precluded from ever raising self-defense at trial.

Put simply, the procedural obstacles the district court and First Circuit Court of Appeals erected to prevent Mr. Fort from raising his self-defense claim turn the fundamental right to armed self-defense, at least for convicted felons, into a nullity. As long as a judge can subsequently identify a potential reasonable alternative or find some brief moment between when the person armed themselves and when he

was attacked, the jury will never hear the self-defense claim. The Second Amendment demands more.

CONCLUSION

For all of the foregoing reasons, Mr. Fort respectfully requests that the Court grant his petition for a writ of certiorari.

Date: August 20, 2026

Respectfully submitted,

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CERTIFICATE OF MEMBERSHIP OF SUPREME COURT BAR

I, Theodore Lothstein, certify that I am a member of the Supreme Court Bar,
Bar No. 312384, since 2020.

/s/ Theodore Lothstein
Theodore Lothstein
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SUPREME COURT OF THE UNITED STATES

GARRITO FORT, a/k/a Tony,
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Respondent

CERTIFICATE OF WORD COUNT

As required by Supreme Court Rule 33.1(h), I certify that the Petition for a Writ of Certiorari in this case contains 4,002 words, excluding the parts of the document that are excluded by Supreme Court Rule 33.1(d). I declare under penalty of perjury that the foregoing is true and correct.

/s/ Theodore Lothstein
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SUPREME COURT OF THE UNITED STATES

GARRITO FORT, a/k/a Tony,
Petitioner

v.

UNITED STATES OF AMERICA
Respondent

APPENDIX

Table of Contents

Decision of the United States District Court, District of New Hampshire	1
Decision of the United States Court of Appeals for the First Circuit.....	19

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

United States of America

v.

Criminal No. 22-cr-090-SE
Opinion No. 2023 DNH 119

Garrito Fort

O R D E R

The government charged Garrito Fort with possession of a firearm by a convicted felon in violation of [18 U.S.C. §§ 922\(g\)\(1\) & 924\(e\)](#). Fort filed a "Notice of Defense - Duress" (doc. no. [31](#)), in which he informed the court and the government that he intended to rely on the justification defenses of duress, necessity and self-defense at trial. The government then filed a motion in limine, seeking to preclude Fort from introducing evidence of or argument in support of a justification defense at trial. Doc. no. [39](#). After Fort's objection and a hearing, and for the reasons stated below, the court grants the government's motion.

Background¹

In November 2021, Fort was living with his girlfriend, Amanda Lovejoy, in Seabrook, New Hampshire. They lived in a

¹ The facts in this section are taken from the evidence the parties offered in relation to the government's motion in limine. They are viewed in the light most favorable to Fort. See, e.g., [United States v. Gomez](#), 92 F.3d 770, 775 (9th Cir.

house owned by Lovejoy's grandfather, Richard Janvrin Sr.² A video camera attached to the house recorded the front of the yard where Fort parked his cars.

In the early morning hours of November 1, 2021, the camera streamed video to Fort's and Lovejoy's cell phones of Chris Coletti intentionally "scuff[ing] the . . . mirror" of one of Fort's cars with his own. Ex. 4T at 1301. Fort intended to talk to Coletti about the incident the next morning and get him to pay for the damage.

Fort proffered evidence at the hearing that he was familiar with Coletti's reputation. According to Fort's offer of proof, he knew that Coletti was a drug user and had been paid for work in drugs rather than money. Fort also knew that Coletti had previously assaulted another person and had committed a robbery. In addition, Coletti, who is white, had previously called Fort a racial slur.

1996) (noting that when considering whether a defendant has proffered adequate evidence to present a justification defense to the jury, the court must view the evidence in the light most favorable to the defendant). They are not in dispute unless otherwise noted.

² The government disputes that Fort lived at the house in question, and Janvrin Sr. testified at the hearing that Fort did not live there, but rather stayed over once or twice a week. Because whether Fort resided at the house or not is inconsequential to the court's decision, the court assumes for the purpose of this order that Fort lived at Janvrin Sr.'s house.

On the morning of November 1, 2021, Fort saw Coletti outside Janvrin Sr.'s house. Coletti was at his truck with Janvrin Sr. Janvrin Sr. testified at the hearing that Coletti had been there for about 15-20 minutes before Fort came out of the house. Fort told police that when he saw Coletti, he went "rushing to get outside . . . to get to him before he leaves, so [Fort] could talk to him, because [he knew Coletti was] going to work." Id. at 1265.

Fort, a former felon, stipulated at the hearing that he left the house knowing that he had a gun in the pocket of his hooded sweatshirt.³ He did not intend to use the gun but, as he told police afterward, he kept it as "a form of intimidation," id. at 1264, and for "scare tactics," id. at 1084. Indeed, Fort told police that in response to Lovejoy's admonition at the time not to use the gun, he had told her: "I'm not going to have to. You know, I'm not going to have to, because I was just like joking." Id. at 1257.

Fort walked over to Coletti and Janvrin Sr. to talk to Coletti about the damage to Fort's car and to ask him to pay for

³ The government introduced evidence showing that Fort knew he had a gun in his pocket before he approached Coletti. Because Fort stipulated for the purpose of the government's motion that he knowingly possessed the gun when he left the house, the government did not spend significant time on this evidence at the hearing.

it.⁴ The discussion became heated and both men began yelling. Lovejoy walked out of the house and over to the area where Coletti and Fort were arguing. Although unclear from the audio, Fort told the police that Coletti used racial slurs during the argument.

Eventually, Janvrin Sr. and Lovejoy helped to separate Fort and Coletti. At around this time, Coletti grabbed an object out of his truck to use as a weapon and started swinging it.⁵ In response to Coletti's actions, Fort removed the gun from his pocket and brandished it. Now back on camera, Janvrin Sr. continued to help separate Fort from Coletti and told Fort to put the gun away, but Fort did not. Lovejoy removed the weapon from Coletti's hand and threw it on the ground.

After being separated, Fort again approached Coletti as the two men continued arguing, and they returned to the area outside of camera range. Fort's counsel represented at the hearing that Fort approached Coletti at this time because Coletti was wrestling with Lovejoy.

⁴ The video footage of the November 1, 2021 incident does not show the area where Coletti and Janvrin Sr. were working or where this initial interaction took place. It does include muddled audio, however.

⁵ The object Coletti is holding in the video is unclear, but Janvrin Sr. told police that it was "a pole with an ice scraper on one end."

Shortly thereafter, the two men reappeared on-screen. Coletti approached Fort with his fists raised and Fort backed away for several seconds. As Fort backed up, Richard Janvrin Jr., Janvrin Sr.'s son and Lovejoy's uncle, emerged from the house and hit Fort in the face without warning. Fort then immediately shot Janvrin Jr. and Coletti in short succession. Janvrin Jr. survived, but Coletti died at the scene.

Discussion

The government moves in limine to preclude Fort from offering a justification defense at trial. The court held an evidentiary hearing on August 24, 2023, during which Janvrin Sr. testified and both parties offered evidence in support of their respective positions.

The First Circuit recognizes a justification defense to a felon-in-possession charge. [United States v. Leahy](#), 473 F.3d 401, 409 (1st Cir. 2007). At trial, a defendant must satisfy four elements by a preponderance of the evidence:

- (i) [the defendant] was under an unlawful and present threat of death or serious bodily injury;
- (ii) he did not recklessly place himself in a situation in which he would be forced to engage in criminal conduct;
- (iii) he had no reasonable legal alternative but to engage in that conduct; and

(iv) there was a direct causal relationship between his criminal conduct and the need to avoid the threatened harm.

Id. at 404.

At this stage the bar is much lower than proof by a preponderance of the evidence. The “Constitution guarantees criminal defendants a meaningful opportunity to present a complete defense.” Brown v. Ruane, 630 F.3d 62, 71 (1st Cir. 2011) (quoting Crane v. Kentucky, 476 U.S. 683, 690 (1986) (quotation omitted)). The “right to present relevant evidence is not unlimited, but rather is subject to reasonable restrictions.” United States v. Guzman, 603 F.3d 99, 109 (1st Cir. 2010) (quoting United States v. Scheffer, 523 U.S. 303, 308 (1998) (quotation omitted)). For instance, “when the proffer in support of an anticipated affirmative defense is insufficient as a matter of law to create a triable issue, a district court may preclude the presentation of that defense entirely.” United States v. Maxwell, 254 F.3d 21, 26 (1st Cir. 2001) (citing United States v. Bailey, 444 U.S. 394, 414–15 (1980)).

To be entitled to present an affirmative defense at trial, the defendant must “carry [an] entry-level burden of adducing competent proof” of the defense. Maxwell, 254 F.3d at 26; see also United States v. Brodhead, 714 F. Supp. 593, 596 (D. Mass. 1989) (“The constitutional right of the defendant to a fair trial is not diminished if the defendant is precluded from

raising defenses for which she can present no supporting evidence at all.”). This burden requires the defendant to “present ‘more than a scintilla of evidence’ that demonstrates that he can satisfy the legal requirements for asserting the proposed defense.” [United States v. Winnett](#), No. CRIM.A. 02-10272-RBC, 2003 WL 21488645, at *4 (D. Mass. June 23, 2003) (quoting [United States v. Tokash](#), 282 F.3d 962, 967 (7th Cir. 2002)). “The in limine procedure is proper to determine whether defendant’s anticipated defense is sufficient, as a matter of law, to present to the jury.” [United States v. Gottesfeld](#), 313 F. Supp. 3d 360, 362 (D. Mass. 2018).

The government argues that Fort cannot meet his minimal burden as to any of the four elements of a justification defense and, therefore, should not be allowed to present the defense at trial. After considering the evidence and the parties’ arguments, the court agrees with the government. Fort has not satisfied his burden as to any of the four elements of the justification defense, let alone all of them. Thus, he is not permitted to present evidence or argument in favor of the justification defense at trial.

I. Unlawful and Present Threat

To meet the first element, a defendant must “offer sufficient evidence to establish that [he] was under an

'unlawful and imminent threat of such a nature as to induce a well-grounded apprehension of death or serious bodily injury' at the time he was found in possession of a firearm." [United States v. Henderson](#), 911 F.3d 32, 36 (1st Cir. 2018) (quoting [Dixon v. United States](#), 548 U.S. 1, 4 n.2 (2006) (quotation omitted)).

"'[I]mminence' requires a real emergency giving rise to immediate danger to oneself or to a third party." [Henderson](#), 911 F.3d at 36.

Fort stipulated for the purpose of the government's motion that he knew he had the gun in his pocket when he left his house to confront Coletti. Thus, the question is whether Fort has proffered any competent evidence to show that, at the time he left the house, he was under an imminent threat of death or serious bodily injury. He has not.

Fort's statements to the police make it clear that he went to talk to Coletti to ask him to pay for the damage to his car. He further stated that he brought the gun with him to "intimidate" or "scare" Coletti, not because he felt he was in imminent danger. Fort offered no evidence to the contrary at the hearing. Instead, he argued that "he kept the gun hidden and brought it out when he needed to, when he was facing an attack." Hearing Tr. 112:7-8. Inherent in this assertion is an acknowledgement that he was not under an imminent threat when he left the house.

Nevertheless, at the hearing, Fort's counsel made various arguments that there was evidence of an unlawful and present threat of death or serious bodily injury. He pointed to the fact that Coletti had intentionally damaged Fort's car the night before and that the video showed Coletti as the aggressor, holding his fists up while walking toward Fort despite knowing that Fort had a gun. He further argued that, before leaving the house, Fort could not know how Coletti would react to Fort asking him to pay for the damage, given Coletti's history of violence, drug addiction, and racism. Id. 130:23-131:5. And so, Fort argues, he was entitled to a "preemptive concealed arming." Id. 143:14-22. Those arguments misunderstand the first element of the justification defense to a felon-in-possession charge.

To be able to present the justification defense to the jury, Fort must adduce some evidence — indeed, any evidence — that he was under an unlawful and present threat of death or serious bodily injury at the moment he first possessed the gun. See, e.g., [United States v. Perrin](#), 45 F.3d 869, 874 (4th Cir. 1995) (holding that for a defendant to meet the first prong of a justification defense to a felon-in-possession charge, he "must show that a real and specific threat existed at the time of the unlawful possession" (quotation omitted)). The question before this court is not whether there is evidence from which a reasonable jury could conclude that Fort was justified in

brandishing the weapon or shooting Coletti or Janvrin Jr. See United States v. Salgado-Ocampo, 159 F.3d 322, 326 (7th Cir. 1998), as amended (Nov. 4, 1998) (noting when discussing the justification defense that it "is important to note that the defendant is charged with illegal possession of a firearm, not illegal use of a firearm. The relevant inquiry is thus whether he was justified at the moment he borrowed the .380 pistol from his neighbor, not when he brandished the weapon at his wife's neighbor's boyfriend."). Nor is the question whether there was a possibility that Coletti could react poorly, even violently, when Fort confronted him about the damage to Fort's car. Id. (holding that the defendant failed to show present threat of bodily harm justifying possession of a firearm despite phone call from assailants stating that they would come over and kill him because "it was not at all clear the threat would ever be carried out, much less imminently"). Rather, the question is whether there is any competent proof that Fort was under an imminent threat of death or serious bodily injury at the time he left his house knowing he had a gun.

There is none. Even if Coletti's actions ultimately constituted an immediate danger, Fort was already in possession of the firearm. The threat of injury from Coletti's fists or his makeshift weapon cannot have prompted Fort to possess the firearm before that threat manifested itself. Fort's statements

to police, the video recording of the encounter, and the evidence Fort offered at the hearing all show that there is no competent proof of an imminent threat of such a nature as to induce a well-grounded apprehension of death or serious bodily injury at the moment Fort left the house with the gun. Therefore, Fort cannot satisfy the first prong of the four-part test.

Fort's failure to proffer sufficient evidence with respect to the first prong precludes him from offering the justification defense at trial. Nevertheless, because Fort failed to proffer sufficient evidence with respect to any of the four prongs of the defense, the court discusses the remaining elements below.

II. Recklessness

Even if Fort had met his burden to show that he faced an unlawful and present threat of harm, Fort has not adduced any competent proof to meet the second prong of the justification defense. There is no dispute that Fort voluntarily left his house to initiate a discussion with Coletti, while Coletti had been outside ignoring Fort and assisting Janvrin Sr. for some time. Thus, the record only supports the conclusion that Fort recklessly placed himself in the situation that purportedly forced him to break the law by possessing a firearm.

The Eighth Circuit's decision in United States v. Blankenship, 67 F.3d 673 (8th Cir. 1995) is instructive. There, Blankenship was charged with being a felon in possession of a firearm. Blankenship had been in his trailer home in the late evening when a man named Kellick, with others, arrived seeking the return of money Kellick claimed Blankenship owed him. Kellick threatened to harm both Blankenship and his family if he did not pay. Blankenship went out to talk to Kellick, who had a reputation for violence and was known to carry a knife or razor. The confrontation escalated. Blankenship went back inside his trailer, slipped out the back door, went to a nearby trailer, retrieved a shotgun, and returned to the yard to protect his family. Kellick refused to leave and grabbed for the shotgun, the two men scuffled, and the shotgun inadvertently discharged, killing Kellick.

The district court granted the government's motion to exclude testimony that Blankenship intended to offer at trial to prove a justification defense. On appeal, the Eighth Circuit affirmed, agreeing with the district court's conclusion that the proffered facts were not sufficient to allow evidence of the justification defense. With regard to the second element of the defense, the Eighth Circuit stated:

Blankenship recklessly placed himself in the situation. He did not have to open the door or go outside to confront Kellick. Once inside again,

Blankenship could have remained there, but instead he chose to slip out the back, go to a nearby trailer, retrieve a shotgun, and return to continue the confrontation.

Id. at 678.

As in Blankenship, Fort did not have to go outside his home to confront Coletti. Indeed, the proffered evidence here shows that Fort acted more recklessly than did the defendant in Blankenship. Unlike the defendant in that case, Fort voluntarily initiated an interaction with Coletti, who had not physically threatened him, and did so carrying a gun at the outset. As in Blankenship, Fort did not offer facts to support the second prong of the justification defense sufficient to allow him to present the defense to the jury.

III. No Reasonable Alternative

Fort also failed to proffer evidence to show that he had no reasonable legal alternative but to possess the gun. Indeed, in his statements to police after the shooting, Fort laid out his reasonable legal alternatives and talked about how he had planned to use them:

You know, and it's fine. Like I said, it's fine, because I have the camera on. I can always report it.

And Amanda said to the uncle that - in the message - we sent a message that we're going to report it. We're going to call Police.

That's where we're going to go with it. If you want me to bring it up, sue is my middle name. I don't want to kid you. I sue people on the regular. You see what I'm saying? I was just going to sue him for the money.

Ex. 4T at 1102-03. In the hearing, Fort dismissed the possibility of a lawsuit on the basis that it is not clear that a drug addict who works for a paving company would have a license or motor vehicle insurance, and so, a lawsuit is "almost nonsense talk." Hearing Tr. 134:4-135:2. As for calling the police, he argued that he did not agree that "calling the police over a scratch to a mirror is a reasonable legal alternative in this situation" in part because, he asserted, he had a right on his own property "to go outside and talk to Coletti armed with a concealed handgun . . . because of everything he knew about Coletti." Id. 135:3-14. This skepticism about Fort's potential satisfaction with the results of a lawsuit or a police report is not competent evidence that he had no reasonable legal alternative.

Indeed, the options Fort mentions are precisely the type of available alternatives that preclude a defendant from offering a justification defense. See [United States v. Wofford](#), 122 F.3d 787, 791 (9th Cir. 1997), as amended (Aug. 21, 1997) (affirming district court's decision to preclude testimony supporting justification defense to felon-in-possession charge and noting that cases "require the defendant to seek aid from law

enforcement before taking matters into his own hands"); [United States v. Shelton](#), No. 2:21-CR-00216-CCW, 2023 WL 1812743, at *5 (W.D. Pa. Feb. 8, 2023) (precluding defendant from presenting justification defense at trial and noting that "courts have held that, when a felon fears for his safety, a legal alternative to possession of a firearm is to contact law enforcement"). In other words, even if Fort was under a present threat of serious bodily injury and had not recklessly placed himself in that situation, he could have called the police before confronting Coletti with the gun.

Moreover, Fort had another reasonable legal alternative available: he simply could have stayed inside the house. Again, the evidence shows that Fort voluntarily left the house with the gun to confront Coletti. That decision alone shows that Fort failed to use a reasonable legal alternative. [United States v. Bare](#), No. CR-12-08142-PCT-NVW, 2012 WL 5984972, at *3 (D. Ariz. Nov. 28, 2012) (precluding defendant from offering a justification defense to felon-in-possession charge because the defendant's "decision to leave his home to confront [the threat] also demonstrates that he failed to utilize a legal alternative, and so cannot establish the third element of the justification defense"), *aff'd*, 583 F. App'x 721 (9th Cir. 2014); [United States v. Burnes](#), 666 F. Supp. 2d 968, 972 (D. Minn. 2009) (noting in the context of a justification defense to a felon-in-

possession charge that “refraining from leaving a safe location and refraining from entering a dangerous location are generally reasonable, legal alternative[s] to violating the law.” (citing cases and quotation omitted)), *aff’d*, 423 F. App’x 671 (8th Cir. 2011).

Fort offered no evidence that his only reasonable legal alternative on the morning of November 1, 2021, was to possess a firearm. Therefore, he has failed to offer competent evidence regarding the third prong of the four-part justification test.

IV. Direct Causal Relationship

Finally, Fort did not proffer any evidence that there was a direct causal relationship between his possession of the firearm and the need to avoid the threatened harm. This factor requires little discussion in light of the court’s analysis above. As mentioned, Fort presented no evidence that he was in imminent danger when he left his house while knowingly possessing the gun. Therefore, he has not shown the necessary causal relationship between his possession of the gun and the need to avoid that harm. United States v. Ashu, No. 1:10-CR-0174-WSD, 2011 WL 13176732, at *6 (N.D. Ga. May 18, 2011) (“Defendant cannot demonstrate a direct causal relationship between his criminal action and avoidance of a threatened harm already determined not to exist.”), *aff’d*, 447 F. App’x 71 (11th Cir.

2011)). Further, there can be no direct causal relationship when the defendant had a reasonable legal alternative to possessing the firearm, as Fort did in this case. [United States v. Hatten](#), No. 8:09CR267, 2010 WL 1815390, at *3 (D. Neb. May 4, 2010) (“Because Hatten did not satisfy the third element, she cannot satisfy this fourth element of the test, that a direct causal relationship may be reasonably anticipated between the [criminal] action and the avoidance of the [threatened] harm.” (quotation omitted)).

V. Summary

Fort has failed to proffer evidence to support any of the four prongs of the justification defense.⁶ Therefore, the court grants the government’s motion to preclude him from offering evidence and argument at trial in support of that defense.

The court notes that Fort argued at the hearing that even if the court granted the government’s motion, he could still present evidence and argument related to a justification defense

⁶ Even where a defendant can show a justification defense to a felon-in-possession charge, “that justification must persist; the defendant must prove that he abandoned the illegal conduct at the earliest possible opportunity.” [United States v. Dutton](#), 351 F. App’x 269, 272 (10th Cir. 2009) (quotation omitted). Because the court concludes that Fort was not justified in possessing the gun at the time he left his house, it need not decide whether Fort proffered evidence to show that he was not required to abandon his possession at some point prior to handing the firearm to Lovejoy after the shooting.

if the government opened the door to the defense at trial. The court's order is based on the evidence and argument proffered in the motion practice and at the hearing. To the extent that Fort believes the evidence the government offers at trial warrants reconsideration of the court's order, he may raise that argument at the appropriate time.

Conclusion

For the foregoing reasons, the government's motion in limine to preclude the justification defense (doc. no. 39) is granted.

SO ORDERED.

A handwritten signature in dark ink, appearing to read "SDElliott", is written over a horizontal line.

Samantha D. Elliott
United States District Judge

September 25, 2023

cc: Counsel of record.

United States Court of Appeals For the First Circuit

No. 25-1024

UNITED STATES OF AMERICA,

Appellee,

v.

GARRITO FORT, a/k/a Tony,

Defendant, Appellant.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

[Hon. Joseph N. Laplante, U.S. District Judge]

Before

Barron, Chief Judge,
Lynch and Montecalvo, Circuit Judges.

Theodore M. Lothstein, with whom Lothstein Guerriero, PLLC
was on brief, for appellant.

Alexander S. Chen, Assistant United States Attorney, with
whom Erin Creegan, United States Attorney, and Charles L. Rombeau,
Assistant United States Attorney, were on brief, for appellee.

May 12, 2026

LYNCH, Circuit Judge. Garrito "Tony" Fort pled guilty to one count of possessing a firearm and ammunition as a convicted felon, in violation of 18 U.S.C. §§ 922(g)(1) and 924(e), reserving two arguments. Using a pistol he brought to an altercation with his girlfriend's family and a family friend, Fort killed the family friend and seriously injured his girlfriend's uncle on November 1, 2021. Fort appeals, arguing that the district court erred (1) in precluding him from presenting at trial a justification defense, an affirmative defense rooted in the common law and recognized in this circuit's § 922(g) cases, with Fort also contending that the Second Amendment embodies a more defendant-friendly justification defense; and (2) in denying his motion to dismiss the indictment, arguing that § 922(g)(1) is unconstitutional as applied to him under the Second Amendment on the specific facts of this case. Fort also argues that his above-Guidelines sentence of 60 months' imprisonment is substantively unreasonable. We affirm.

I.

Because Fort's Second Amendment as-applied challenge turns largely on his proposed justification defense, we turn to that defense first. A district court may preclude the presentation of an affirmative defense to a jury if the defendant fails to produce sufficient evidence "to create a triable issue." United States v. Gottesfeld, 18 F.4th 1, 15 (1st Cir. 2021) (quoting United States v. Lebreault-Feliz, 807 F.3d 1, 4 (1st Cir. 2015)).

The parties disagree as to whether our review is governed by a de novo or an abuse of discretion standard. Our decisions reviewing whether a defendant has made a sufficient threshold showing to warrant submission of an affirmative defense to the jury use de novo review. See Gottesfeld, 18 F.4th at 15; United States v. Henderson, 911 F.3d 32, 36 (1st Cir. 2018); Lebreault-Feliz, 807 F.3d at 4. Other decisions use abuse of discretion review when addressing related but distinct issues. See United States v. Diaz-Castro, 752 F.3d 101, 108 (1st Cir. 2014) (reviewing for abuse of discretion the exclusion of evidence offered to support the asserted affirmative defenses, including duress, and reviewing de novo the refusal to give the requested jury instruction); United States v. Florentino-Rosario, 19 F.4th 530, 534, 538 (1st Cir. 2021) (explaining that "[p]reserved objections to denials of requested jury instructions are reviewed under a 'split standard': questions as to whether the applicable law is correctly stated are reviewed de novo, while questions as to whether the instruction's phrasing is unfairly prejudicial are reviewed for abuse of discretion" (quoting DeCaro v. Hasbro, Inc., 580 F.3d 55, 61 (1st Cir. 2009))). To the extent there is tension, we need not resolve it here because Fort's arguments fail even under de novo review.

A.

We begin with the relevant procedural history and later describe the facts as found by and presented to the district court.

In August 2022, a federal grand jury returned a one-count indictment charging Fort with violating 18 U.S.C. §§ 922(g)(1) and 924(e).¹ The predicate felony convictions were Fort's Massachusetts conviction for a 2006 assault with a dangerous weapon, and his 2016 Massachusetts convictions for assault and battery with a dangerous weapon and kidnapping.² Fort does not dispute those convictions.

On April 12, 2023, Fort filed a notice that at trial he intended to raise the justification defenses of duress, necessity, and self-defense, citing Dixon v. United States, 548 U.S. 1 (2006), and United States v. Leahy, 473 F.3d 401 (1st Cir. 2007).³ Fort, who is black, asserted that he possessed the firearm in response to what he characterized as a racially motivated attack on him by white assailants, arguing that the attack started while he was on

¹ On February 24, 2022, the New Hampshire Attorney General's Office announced that Fort had been charged under state law with being a felon in possession of a firearm, N.H. Rev. Stat. § 159:3, and that it would not bring homicide charges because it had concluded that the State could not disprove beyond a reasonable doubt Fort's assertion of self-defense. The State later referred the matter for federal prosecution.

² Fort's criminal history also included Massachusetts convictions for assault and battery, possession of a controlled substance, breaking and entering a motor vehicle with intent to commit a felony, and other offenses, in addition to a New Hampshire conviction for reckless operation of a motor car.

³ Fort's notice also argued that the government should bear the burden of disproving justification, and the government filed a separate response that, under Dixon and Leahy, it was Fort who had the burden of making the threshold showing.

his own property, in the driveway in front of the house where he was living with his then-girlfriend, Amanda Lovejoy. On July 19, 2023, the government filed a motion to preclude Fort from presenting that defense, arguing that he could not make a threshold showing as to any of its requirements. Fort filed an objection on August 4, 2023, largely disputing the government's account of the facts.

On August 24, 2023, the district court held an evidentiary hearing on the parties' pretrial motions, at which Richard Janvrin Sr. testified. Richard Sr.⁴ is Lovejoy's grandfather and the owner of a multi-unit house whose top-floor, three-bedroom residence was occupied by Richard Sr., his wife, Lovejoy, and Fort, and whose parking area was the site of the shooting. The parties also proceeded on exhibits submitted the day before.⁵ Fort made an offer of proof, over the government's objection, that he met the threshold requirements under Leahy to present a justification defense to the jury. Fort proffered that, by the time of the shooting, he had known of Christopher Coletti, the deceased victim, for about five months; understood that Coletti

⁴ Because several members of the Janvrin family are involved in the events at issue, we refer to them by their first names.

⁵ Fort's exhibits included a police report, search warrants, a probable cause affidavit, and interview transcripts; the government's exhibits included video evidence, the transcript of Fort's police interview, photographs of the scene, state court records, and Fort's criminal history.

was a friend of his girlfriend's family; had heard that Coletti used drugs and had committed theft and assault; and had been told that Coletti directed a racial slur at him before the day of the shooting. And so, Fort said, he reasonably feared Coletti when he left the upstairs residence knowing the loaded 9 mm pistol was in his sweatshirt pocket. The court rejected Fort's justification defense, orally granted the government's motion, and later explained in a September 25, 2023 written order that Fort had not made a sufficient showing as to any requirement of that defense.

On October 16, 2023, Fort entered a guilty plea conditional on the right to appeal from the ruling precluding a justification defense and the denial of his motion to dismiss.

B.

Because the parties agree that the facts relevant to the justification defense must be viewed in the light most favorable to Fort, we draw those facts principally from the district court's order granting the government's motion to preclude that defense, in which the court viewed the evidence in that light. See United States v. Arthurs, 73 F.3d 444, 448 (1st Cir. 1996). When relevant, we also take from the undisputed portions of the presentence investigation report and the sentencing record. See United States v. Cowette, 88 F.4th 95, 97 n.1 (1st Cir. 2023).

In November 2021, Fort was living with Lovejoy in the top-floor residence of Richard Sr.'s multi-unit house in Seabrook,

New Hampshire. Two of Lovejoy's uncles, Richard Janvrin Jr. and Anthony Janvrin, lived in apartments on the bottom floor. Fort kept two cars, including a Nissan Maxima, in a parking area on the property between the house and the street, and Fort attached a security camera to the house trained on that area to monitor his cars.

Either late on October 31, 2021, or in the early morning hours of November 1, 2021, Fort and Lovejoy watched the live camera feed and believed they saw Coletti scuff the Maxima's sideview mirror with his car. Fort had never interacted with Coletti but believed he had intentionally damaged the mirror. Lovejoy texted her uncle Anthony about what they had seen. Anthony responded after having apparently spoken with Coletti, who said he would have stopped had he realized he hit the Maxima. Anthony added that he was confident Coletti would pay for any damage to the car.

Later that morning, Coletti and Richard Sr. were outside the Janvrin home moving tools between two parked trucks, and Fort saw the two men from inside the house. Fort went outside to speak with Coletti about the damage to his car and to ask him to pay. Fort stipulated that when he left the house he took with him and concealed in the pocket of his hooded sweatshirt a loaded Taurus 9 mm pistol that Lovejoy had purchased months earlier. Fort had possession of the pistol, both before he left the house and at all relevant times thereafter. Fort later told police that he brought

the pistol with him not because he intended to use it but as "a form of intimidation" and for "scare tactics."

The initial exchange between Fort and Coletti occurred off camera, but later parts were recorded and introduced as evidence at the motion hearing.⁶ The discussion quickly became heated, with both men yelling. Fort says Coletti used racial slurs during the argument; the audio is unclear. Lovejoy came outside after hearing the commotion and walked to the off-camera area where Fort and Coletti were arguing. Lovejoy and Richard Sr. eventually separated the two men. Off camera, Coletti went to his car, grabbed a pole-like object, and began swinging it around. Fort later explained that it was this action by Coletti which caused him to take the pistol in his hand from out of his pocket. As recorded by the camera, Richard Sr. tried to separate the two men, and he repeatedly told Fort to put the gun away, but Fort did not do so. Lovejoy took the object from Coletti's hand and threw it to the ground.

Fort then moved closer to Coletti as the two men continued arguing. Fort later explained he did so because Coletti was wrestling with Lovejoy. After the two men moved off camera for a short time, the camera recorded Coletti walking toward Fort

⁶ The video footage does not show the area where Coletti and Richard Sr. were working or where Fort first approached them but does include muddled audio.

with his fists raised and what happened next: Fort backed away for several seconds among the parked cars, holding the pistol at his side. As Fort retreated, Richard Jr. emerged from the house, came up behind Fort, and, without warning, struck Fort on the side of his head. Fort immediately fired one shot from the pistol that hit Richard Jr. in the abdomen and, roughly one second later, fired a second shot which struck Coletti under the armpit. Coletti, who was standing several feet away, collapsed and died at the scene. Richard Sr. unsuccessfully tried to take the pistol from Fort's hand. Lovejoy intervened and took the pistol from Fort. Fort then fled the scene. Police found and arrested Fort later that day, and he agreed to a voluntary custodial interview, a transcript of which was part of the evidence. Richard Jr. survived the shooting, was in a coma for several weeks, and had part of his colon removed.

C.

We start with Fort's argument that the district court erred in its analysis of the threshold showing required under Leahy for him to present a justification defense to the jury. Leahy held that "there is a justification defense available in [federal] felon-in-possession cases, which typically encompasses duress, necessity, and self-defense." 473 F.3d at 403. Under the common law, the defendant bears the burden of making the threshold showing required to present such a defense. See Dixon, 548 U.S. at 8

(explaining, in addressing a duress defense to federal firearms charges, that, at common law, defendants bore the burden of proving "all . . . circumstances of justification, excuse or alleviation" (omission in original) (quoting Patterson v. New York, 432 U.S. 197, 202 (1977))). Fort thus had to produce enough evidence to create a triable issue on each of the defense's four requirements that "(i) [he] was under an unlawful and present threat of death or serious bodily injury; (ii) he did not recklessly place himself in a situation in which he would be forced to engage in criminal conduct; (iii) he had no reasonable legal alternative but to engage in that conduct; and (iv) there was a direct causal relationship between his criminal conduct and the need to avoid the threatened harm." Leahy, 473 F.3d at 404; see also id. at 409; Gottesfeld, 18 F.4th at 15. We agree with the district court that Fort failed to make the threshold showing.

The first requirement, imminence, is assessed under an objective standard. A defendant must demonstrate a "real emergency giving rise to immediate danger to oneself or to a third party." Henderson, 911 F.3d at 36; accord United States v. Alston, 526 F.3d 91, 95 n.7 (3d Cir. 2008) ("Only in rare circumstances will anything but an 'immediate emergency' constitute a present threat." (quoting United States v. Bell, 214 F.3d 1299, 1301 (11th Cir. 2000))). That inquiry does not turn on the defendant's "subjective perceptions about whether the threat was likely to be

acted upon or whether escape was possible." United States v. Castro-Gómez, 360 F.3d 216, 219 (1st Cir. 2004). Courts instead "hypothesize[] a defendant of ordinary firmness and judgment and ask[] what such a defendant was likely to have experienced or how such a defendant was likely to have acted." Id.

It is undisputed that Fort chose to arm himself and to go outside to talk to Coletti about the scuffing to his car mirror, and that he admittedly brought the pistol to intimidate and scare Coletti. When Fort first possessed the pistol -- when he took it in his hand and placed it in his sweatshirt pocket, and later left the house knowing it was there -- he was under no threat of death or serious bodily injury. Coletti was outside, and Fort was inside. Moreover, Richard Sr. had already told Fort he was sure Coletti would pay for any damage to the car. Those facts alone defeat Fort's effort to assert a justification defense and require affirmance of the district court's order. See Leahy, 473 F.3d at 404; Henderson, 911 F.3d at 33-34.

Shifting his arguments, Fort next contends that the Leahy criteria for asserting the justification defense are too narrow in light of the Second Amendment decision in District of Columbia v. Heller, 554 U.S. 570, 628-29 (2008). Even were we to accept Fort's assumption that the Second Amendment broadens justification defenses to defendants' benefit, Fort does not explain why it would be broadened in a way that would permit him

to prevail on these facts. Even if, on that premise, there may be cases with unique facts in which the right of self-defense is not adequately captured under Leahy in § 922(g)(1) prosecutions, his argument fails on what the facts of record here show. We also reject Fort's assumption that it is proper to narrow the justification defense analysis to the moment of the shooting. At the point Fort first possessed the gun inside, there was no plausible justification defense.

II.

Fort next challenges the district court's denial of his motion to dismiss the indictment in light of New York State Rifle & Pistol Ass'n, Inc. v. Bruen, 597 U.S. 1 (2022). Our review is de novo. United States v. Minor, 165 F.4th 616, 621 (1st Cir. 2026).

Fort raises an as-applied challenge that relies almost entirely on his justification defense.⁷ We need not resolve

⁷ Before this court, Fort has abandoned both his facial challenge to § 922(g)(1) and a separate as-applied challenge he raised in the trial court, namely, that the constitutionality of applying § 922(g)(1) to him turned on the facts underlying his Massachusetts predicate felony convictions. Fort described his 2016 Massachusetts convictions for kidnapping and for assault and battery with a dangerous weapon as arising from a domestic dispute and contended that, historically, men who mistreated or were violent toward women were not barred from possessing firearms. On August 28, 2023, the government filed a supplemental objection, arguing that United States v. Torres-Rosario, 658 F.3d 110, 113 (1st Cir. 2011), foreclosed the fact-specific inquiry Fort proposed and that his criminal history reflected multiple violent

whether as-applied challenges may be properly brought as to § 922(g)(1). Compare Range v. Att'y Gen., 124 F.4th 218, 232 (3d Cir. 2024) (en banc) (holding § 922(g)(1) unconstitutional as applied to a nonviolent offender), and United States v. Torres-Rosario, 658 F.3d 110, 113 (1st Cir. 2011) (reading Heller's "presumptively lawful" language to leave open the possibility of as-applied challenges to § 922(g)(1)), with United States v. Jackson, 110 F.4th 1120, 1125 (8th Cir. 2024) (rejecting "felony-by-felony litigation regarding the constitutionality of § 922(g)(1)"), and United States v. Hunt, 123 F.4th 697, 702 (4th Cir. 2024) (rejecting defendant's as-applied challenge to § 922(g)(1) because "neither Bruen nor [United States v. Rahimi, 602 U.S. 680 (2024),] abrogate[d] [Fourth Circuit] precedent foreclosing as-applied challenges to [§] 922(g)(1)" and because, in the alternative, § 922(g)(1) "would pass constitutional muster even if [the court] were unconstrained by circuit precedent").

Nor need we decide who would bear the burden on such a challenge, even if as-applied challenges were cognizable. Cf. United States v. Williams, 113 F.4th 637, 657, 662 (6th Cir. 2024) (placing burden on the defendant to show, in an as-applied

convictions. The district court rejected Fort's separate as-applied theory because (a) Fort had a Massachusetts conviction for a 2006 assault with a dangerous weapon "unrelated to domestic violence," and (b) the First Circuit "specifically cautioned courts not to allow highly fact-specific objections to 922(g)(1)'s ban based on individual circumstances" in Torres-Rosario.

challenge to § 922(g)(1), that he is not dangerous). Regardless of which party bears that burden, the facts here do not support justification under our cases, under the common law, or under Fort's own Second Amendment theory. Throughout this case, the government has argued that Bruen neither disturbed the Supreme Court's considered dicta recognizing the presumptive lawfulness of felon-in-possession restrictions nor abrogated controlling First Circuit precedent upholding § 922(g)(1) as to violent felons like Fort, and that § 922(g)(1) accords with a longstanding Anglo-American tradition of disarming dangerous or non-law-abiding persons.

Fort's Second Amendment as-applied challenge based on the facts of this case essentially concedes that there are applications of § 922(g)(1) which do not violate the Second Amendment and which do comport with this nation's history and tradition. Cf. Rahimi, 602 U.S. at 700 (upholding facial challenge to § 922(g)(8) on the basis that "[o]ur tradition of firearm regulation allows the [g]overnment to disarm individuals who present a credible threat to the physical safety of others"). The district court rejected his as-applied challenge and, given the narrow argument he makes to us and his lack of specificity in making it, we have no reason to disagree.

III.

The district court imposed an above-Guidelines sentence of 60 months' imprisonment followed by three years of supervised release. On appeal, Fort argues that the sentence was substantively unreasonable. Our review is for abuse of discretion. See United States v. Maldonado-Velazquez, 164 F.4th 154, 158, 161 (1st Cir. 2026). When a district court "imposes a sentence above the guideline sentencing range, it 'must justify a variance of the magnitude in question, . . .'" and "the rationale underlying the upward variance should be rooted either in the nature and circumstances of the offense or the characteristics of the offender.'" Id. at 161 (omission in original) (quoting United States v. Polaco-Hance, 103 F.4th 95, 104 (1st Cir. 2024)). The court must also explain why the defendant's case falls outside "the ordinary situation covered by the guidelines calculation." Id. (quoting Polaco-Hance, 103 F.4th at 104).

At a sentencing hearing on December 18, 2024, the district court calculated an advisory range of 24 to 30 months' imprisonment based on a total offense level of 17 and criminal history category of I. After hearing argument, the court imposed the 60-month sentence described above. The court explained that an upward variance was warranted because Fort's unlawful possession of the pistol was "not justified" and caused "the worst type of harm" § 922(g) is meant to prevent: he "cause[d] someone's

death" and "maimed another." The court also noted that the advisory range had been substantially lowered because each disputed Guidelines ruling had gone in Fort's favor.⁸ After considering Fort's mitigating evidence, the court concluded that a 60-month sentence was sufficient but not greater than necessary under 18 U.S.C. § 3553(a). The court added that even if it had made the guidelines adjustments sought by the government, it would have varied down to the same 60-month sentence.

Fort's arguments on appeal amount to mere disagreement with the district court's view of the facts and its weighing of the § 3553(a) factors. He argues that a reasonable reading of the record shows Coletti's death and Richard Jr.'s injury "were entirely the result of their own actions" and that the state homicide prosecution was "propped up based on the falsehoods told by his white accusers." The district court was not required to accept Fort's implausible view of the facts or to give any mitigating considerations the weight he preferred. The court's rationale was thoughtfully explained and rooted in facts that set Fort and his offense apart from the mine-run firearm possession case. See Maldonado-Velazquez, 164 F.4th at 161. Although Fort "surely would have preferred a different result, we decline to

⁸ The district court most notably declined to apply the homicide cross-reference in U.S.S.G. § 2K2.1(c)(1)(B) and a four-level enhancement under § 2K2.1(b)(6)(B).

'substitute his judgment for that of the sentencing court.'" Id.
(quoting United States v. Rivera-Morales, 961 F.3d 1, 21 (1st Cir.
2020)).

IV.

Fort's conviction and sentence are **affirmed**.