

No. \_\_\_\_\_

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IN THE  
**Supreme Court of the United States**

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**LEONARD J. HIGGINS,**  
**Petitioner,**  
**v.**

**UNITED STATES,**  
**Respondent.**

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**On Petition for a Writ of Certiorari**  
**To the United States Court of Appeals for the Eighth Circuit**

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**APPENDIX**

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**United States Court of Appeals**  
**For the Eighth Circuit**

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No. 25-2817

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United States of America

*Plaintiff - Appellee*

v.

Leonard J. Higgins, also known as Antonious L. Higgins, also known as  
Anthonious L. Higgins

*Defendant - Appellant*

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Appeal from United States District Court  
for the Western District of Missouri - Kansas City

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Submitted: July 21, 2026  
Filed: July 28, 2026  
[Unpublished]

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Before LOKEN, L.R. SMITH, and BENTON, Circuit Judges.

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PER CURIAM.

Leonard Higgins appeals after the district court<sup>1</sup> denied his motion to dismiss the indictment, found him guilty of being a felon in possession of a firearm, and sentenced him to 120 months in prison and 3 years of supervised release. On appeal, he challenges the constitutionality of 18 U.S.C. § 922(g)(1).

Upon careful review, we conclude Higgins's arguments as to the constitutionality of section 922(g)(1) are foreclosed by circuit precedent. See United States v. Eagle Chasing, 965 F.3d 647, 650 (8th Cir. 2020) (standard of review); United States v. Yielding, 657 F.3d 688, 702 (8th Cir. 2011) (same); United States v. Cunningham, 114 F.4th 671, 675 (8th Cir. 2024) (holding that § 922(g)(1) is facially constitutional); United States v. Jackson, 110 F.4th 1120, 1125-29 (8th Cir. 2024) (rejecting as-applied challenge to § 922(g)(1)), cert. denied, 145 S. Ct. 2708 (2025).

Accordingly, we affirm the judgment of the district court.

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<sup>1</sup>The Honorable David Gregory Kays, United States District Judge for the Western District of Missouri, adopting the report and recommendation of the Honorable Jill A. Morris, United States Magistrate Judge for the Western District of Missouri.

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION

|                           |   |                               |
|---------------------------|---|-------------------------------|
| UNITED STATES OF AMERICA, | ) |                               |
|                           | ) |                               |
| Plaintiff,                | ) |                               |
|                           | ) |                               |
| v.                        | ) | Case No. 24-00116-01-CR-W-DGK |
|                           | ) |                               |
| LEONARD J. HIGGINS,       | ) |                               |
|                           | ) |                               |
| Defendant.                | ) |                               |

**REPORT & RECOMMENDATION TO DENY**  
**DEFENDANT'S MOTION TO DISMISS**

Before the Court is Defendant's Motion to Dismiss the Indictment. (Doc. 32) Defendant contests the constitutionality of the statute under which he is charged. For the following reasons, it is recommended that Defendant's motion be denied.

**I. BACKGROUND**

On May 24, 2024, the Grand Jury returned an Indictment charging Defendant with one count of felon in possession of a firearm, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(8). (Doc. 1) On July 30, 2024, Defendant filed the instant motion to dismiss. (Doc. 32) The Government filed its suggestions in opposition on August 13, 2024. (Doc. 36) Defendant did not file a reply, and the time for doing so has passed.

**II. LEGAL ANALYSIS**

Title 18, United States Code, Section 922(g)(1) makes it unlawful for a person "who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year" to, *inter alia*, possess in or affecting commerce, a firearm. Defendant contends that the Indictment should be dismissed on grounds that 18 U.S.C. § 922(g)(1) violates the Second

Amendment to the United States Constitution,<sup>1</sup> both facially and as applied. Defendant additionally contends that the statute is unconstitutionally overbroad and that it violates the Fifth Amendment’s due process clause. Each argument will be addressed in turn.

### **A. Second Amendment and Overbreadth**

Citing *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022), *United States v. Rahimi*, 144 S. Ct. 1889 (2024), and the remand of *United States v. Jackson*, 69 F.4th 495 (8th Cir. 2023), and *United States v. Doss*, No. 22-3662, 2023 WL 8299064 (8th Cir. Dec. 1, 2023), Defendant contends that the Indictment should be dismissed on grounds that 18 U.S.C. § 922(g)(1) violates the Second Amendment on its face and as applied to him.<sup>2</sup> This argument is foreclosed by the Eighth Circuit’s recent decisions in *United States v. Jackson*, No. 22-2870, 2024 WL 3711155, at \*4 (8th Cir. Aug. 8, 2024) (“*Jackson II*”) (precluding as-applied statutory challenges), and *United States v. Cunningham*, No. 22-1080, 2024 WL 3840135, at \*3 (8th Cir. Aug. 16, 2024) (“*Cunningham II*”) (concluding that 18 U.S.C. § 922(g)(1) is facially constitutional), which were both decided on remand following *Rahimi*.

In *Jackson II* the Eighth Circuit stated, in relevant part:

We conclude that . . . § 922(g)(1) is not unconstitutional as applied to Jackson based on his particular felony convictions. The Supreme Court has said that nothing in *District of Columbia v. Heller*, 554 U.S. 570, 128 S.Ct. 2783, 171 L.Ed.2d 637 (2008), which recognized an individual right to keep and bear arms, “should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons.” *Id.* at 626, 128 S.Ct. 2783; *see McDonald v. City of Chicago*, 561 U.S. 742, 786, 130 S.Ct. 3020, 177 L.Ed.2d 894 (2010) (plurality opinion) (“We repeat

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<sup>1</sup>The Second Amendment provides, “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.” U.S. CONST. amend. II.

<sup>2</sup>Defendant states that he “purportedly has convictions for robbery, burglary, and unlawful restraint.” (Doc. 32, p. 23) Defendant’s bond report, which the parties stipulated would be consistent with the testimony of pretrial services, reflects Defendant has prior felony convictions. (Docs. 10, 15, 16)

those assurances here.”). The decision in *Bruen*, which reaffirmed that the right is “subject to certain reasonable, well-defined restrictions,” 597 U.S. at 70, 142 S.Ct. 2111, did not disturb those statements or cast doubt on the prohibitions. *See id.* at 72, 142 S.Ct. 2111 (Alito, J., concurring); *id.* at 81, 142 S.Ct. 2111 (Kavanaugh, J., concurring, joined by Roberts, C.J.); *id.* at 129, 142 S.Ct. 2111 (Breyer, J., dissenting, joined by Sotomayor and Kagan, JJ.). Neither did the decision in *Rahimi*. *See* 144 S. Ct. at 1901-02. Given these assurances by the Supreme Court, and the history that supports them, we conclude that there is no need for felony-by-felony litigation regarding the constitutionality of § 922(g)(1).

In sum, we conclude that legislatures traditionally employed status-based restrictions to disqualify categories of persons from possessing firearms. Whether those actions are best characterized as restrictions on persons who deviated from legal norms or persons who presented an unacceptable risk of dangerousness, Congress acted within the historical tradition when it enacted § 922(g)(1) and the prohibition on possession of firearms by felons.

2024 WL 3711155, at \*5, 7 (emphasis added).

While *Jackson II* considered an “as-applied challenge,” the Eighth Circuit also confirmed that Section 922(g)(1) is facially constitutional following *Bruen* and *Rahimi*. *United States v. Doss*, No. 22-3662, 2024 WL 3964616, at \*1 (8th Cir. Aug. 28, 2024) (“We have already rejected this argument . . . *See United States v. Cunningham*, — F.4th —, 2024 WL 3840135, at \*3 (8th Cir. Aug. 16, 2024) (concluding that 18 U.S.C. § 922(g)(1) is facially constitutional[.])”). *See also United States v. Lowry*, No. 23-2942, 2024 WL 3819783, at \*3 (8th Cir. Aug. 15, 2024) (finding defendant’s conviction under 18 U.S.C. § 922(g)(1) did not violate his Second Amendment rights); *United States v. Lindsey*, No. 23-2871, 2024 WL 2207445 (8th Cir. May 16, 2024) (per curiam) (affirming denial of both facial and as-applied constitutional challenges to § 922(g)(1)). This Court cannot depart from Eighth Circuit controlling precedent “until overruled by [the] court en banc, by the Supreme Court, or by Congress.” *M.M. ex rel L.R. v. Special Sch. Dist. No. 1*, 512 F.3d 455, 459 (8th Cir. 2008). As a result, Defendant’s as applied and facial

challenges must fail.

Defendant also asserts that § 922(g)(1) is unconstitutional on its face, arguing it is substantially overboard as it applies to millions of individuals, including nonviolent felons and those with decades-old convictions. Overbreadth claims are recognized only in limited circumstances. *See Sabri v. United States*, 541 U.S. 600, 609-10 (2004) (recognizing “the validity of facial attacks alleging overbreadth (though not necessarily using that term) in relatively few settings, and, generally, on the strength of specific reasons weighty enough to overcome [the Court’s] well-founded reticence.”). Such circumstances are not present here, and Defendant provides no authority in which overbreadth challenges have succeeded in the Second Amendment context. Given the limited application for overbreadth challenges and the lack of support here, the Court declines to invalidate Section 922(g)(1) on overbreadth grounds. Defendant’s motion to dismiss should be denied on this basis.

It is accordingly recommended that § 922(g)(1) be found constitutional on its face and as applied to Defendant Higgins, and that Defendant’s overbreadth claim be denied.

#### **B. Fifth Amendment**

Lastly, Defendant argues that § 922(g)(1) violates the Fifth Amendment due process clause by failing to provide a procedural mechanism by which an individual can have his Second Amendment rights restored. The Court disagrees. Section 922(g)(1) does contain a restoration mechanism. To be sure, 18 U.S.C. § 921(a)(20) states, “Any conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction for purposes of this chapter unless such pardon, expungement,

or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.” *See also* 18 U.S.C. § 925(c) (allowing felons to apply to the Attorney General to restore their right to possess firearms). Defendant’s Fifth Amendment challenge to § 922(g)(1) should also be denied.

### III. CONCLUSION

Based on the above, it is

RECOMMENDED that the Court, after making an independent review of the record and applicable law, enter an order denying Defendant’s Motion to Dismiss the Indictment.

Counsel are advised that, pursuant to 28 U.S.C. § 636(b)(1), each has fourteen days from the date of this Report and Recommendation to file and serve specific objections, unless an extension of time for good cause is obtained.

/s/ Jill A. Morris  
JILL A. MORRIS  
UNITED STATES MAGISTRATE JUDGE

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION**

|                           |   |                       |
|---------------------------|---|-----------------------|
| UNITED STATES OF AMERICA, | ) |                       |
|                           | ) |                       |
| Plaintiff,                | ) |                       |
|                           | ) |                       |
| v.                        | ) | No. 4:24-CR-00116-DGK |
|                           | ) |                       |
| LEONARD J. HIGGINS,       | ) |                       |
|                           | ) |                       |
| Defendant.                | ) |                       |

**ORDER ADOPTING THE MAGISTRATE’S REPORT AND RECOMMENDATION**  
**DENYING MOTION TO DISMISS INDICTMENT**

Pending before the Court are Defendant Leonard J. Higgins’ Motion to Dismiss Indictment, ECF No. 32, and United States Magistrate Judge Jill Morris’ Report and Recommendation recommending the Court deny the motion, ECF No. 44. Defendant did not file any objections to the report, and the time for doing so has passed.

After reviewing the report and conducting an independent review of the applicable law and record, *see* L.R. 74.1(a)(2), the Court agrees with the Magistrate’s conclusion that the Indictment does not violate the Second Amendment either on its face or as applied to Defendant, nor is it overbroad. The Court also agrees with the Magistrate’s conclusion that Defendant’s Fifth Amendment challenge to § 922(g)(1) should be denied.

The Court ADOPTS the Report and Recommendation and DENIES the motion.

**IT IS SO ORDERED.**

Date: October 1, 2024

/s/ Greg Kays  
GREG KAYS, JUDGE  
UNITED STATES DISTRICT COURT