

No. _____

IN THE
Supreme Court of the United States

STEPHEN BIVIANO ZAPATA,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

APPENDIX

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TABLE OF APPENDICES

Page(s)

Appendix A – Court of appeals opinion (June 18, 2026)	1a
Appendix B – District Court order adopting report and recommendation and denying and deferring in part motion to dismiss (January 22, 2025)	3a
Appendix C – Court of appeals judgment (June 18, 2026).....	5a

United States Court of Appeals
For the Eighth Circuit

No. 25-2000

United States of America

Plaintiff - Appellee

v.

Stephen Biviano Zapata

Defendant - Appellant

Appeal from United States District Court
for the District of South Dakota - Central

Submitted: June 15, 2026

Filed: June 18, 2026

[Unpublished]

Before LOKEN, KELLY, and KOBES, Circuit Judges.

PER CURIAM.

Stephen Zapata appeals after he pled guilty to unlawful possession of a firearm as an unlawful user of a controlled substance in violation of 18 U.S.C. § 922(g)(3),

and the district court¹ sentenced him to 27 months in prison. He argues the district court erred by denying his motion to dismiss the indictment on the ground that the statute is unconstitutional on its face under the Second Amendment. Upon careful review, we conclude that the district court properly denied the motion, as Zapata’s argument is foreclosed by circuit precedent. See United States v. Veasley, 98 F.4th 906, 918 (8th Cir. 2024); see also Mader v. United States, 654 F.3d 794, 800 (8th Cir. 2011) (en banc) (“[O]ne panel is bound by the decision of a prior panel.”) The Supreme Court’s decision in United States v. Rahimi, 602 U.S. 680 (2024), does not call into question our precedent. See United States v. Deng, 142 F.4th 1075, 1084 (8th Cir. 2025) (rejecting request to reconsider Veasley precedent post-Rahimi).

Accordingly, we affirm the judgment of the district court.

¹The Honorable Eric C. Schulte, United States District Judge for the District of South Dakota, adopting the report and recommendations of the Honorable Mark A. Moreno, United States Magistrate Judge for the District of South Dakota.

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. STEPHAN BIVIANO ZAPATA, Defendant.	3:24-CR-30057-ECS ORDER ADOPTING REPORT AND RECOMMENDATION AND DENYING AND DEFERRING IN PART MOTION TO DISMISS
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Defendant Stephan Biviano Zapata was indicted for violating 18 U.S.C. §§ 922(g)(3), 924(a)(8), and 924(d) for allegedly knowingly possessing a firearm while being an unlawful user of controlled substances. Doc. 1. Zapata moved to dismiss the Indictment, Doc. 27, contending that 922(g)(3) is unconstitutional, both facially and as applied to him, based on the Second and Fifth Amendments to the United States Constitution and precedent from the United States Supreme Court, including New York State Rifle & Pistol Ass’n v. Bruen, 142 S. Ct. 2111 (2022). Magistrate Judge Mark A. Moreno issued a Report and Recommendation Denying and Deferring in Part Defendant’s Motion to Dismiss. Doc. 31. Judge Moreno recommended denying Zapata’s motion to the extent it seeks to have § 922(g)(3) declared facially unconstitutional under the Second and Fifth Amendments as well as the Separation-of-Powers Doctrine. Doc. 31 at 10. Judge Moreno further recommended deferring ruling on Zapata’s as-applied challenges as the issues arising from these challenges are not ripe for a final decision until a full factual record is developed at trial. Id. Zapata filed timely objections to the Report and Recommendation. Doc. 32.

When a party objects to a magistrate judge's report and recommendation, a district court judge must "make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1). The district court "judge ... may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." *Id.* This Court has reviewed the Report and Recommendation de novo and agrees with its findings and recommendations. This Court believes United States v. Veasley, 98 F.4th 906 (8th Cir. 2024) forecloses Zapata's arguments. Therefore, it is hereby

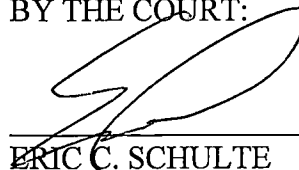
ORDERED that Defendant's Objections to the Report and Recommendation, Doc. 32, are overruled, and the January 15, 2025, Report and Recommendation, Doc. 31, is adopted. It is further

ORDERED that the Defendant's Motion to Dismiss Indictment, Doc. 27, is denied with prejudice as to its facial constitutional challenges and separation-of-powers challenge. It is further

ORDERED that Defendant's Motion to Dismiss Indictment, Doc. 27, is denied without prejudice as to its as-applied challenges.

DATED this 22nd day of January, 2025.

BY THE COURT:

A handwritten signature in black ink, appearing to read 'Eric C. Schulte', is written over a horizontal line.

ERIC C. SCHULTE
UNITED STATES DISTRICT JUDGE

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No. 25-2000

United States of America

Plaintiff - Appellee

v.

Stephen Biviano Zapata

Defendant - Appellant

Appeal from U.S. District Court for the District of South Dakota - Central
(3:24-cr-30057-ECS-1)

JUDGMENT

Before LOKEN, KELLY, and KOBES, Circuit Judges.

This appeal from the United States District Court was submitted on the record of the district court and briefs of the parties.

After consideration, it is hereby ordered and adjudged that the judgment of the district court in this cause is affirmed in accordance with the opinion of this Court.

June 18, 2026

Order Entered in Accordance with Opinion:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Susan E. Bindler