
PETITIONER'S APPENDIX

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2026 WL 1800683

Only the Westlaw citation is currently available.
United States Court of Appeals, Second Circuit.

UNITED STATES of America, Appellee,

v.

Victor GAVALO, Defendant-Appellant.

25-783-cr

|

June 23, 2026

Appeal from a judgment of the United States District Court for the Eastern District of New York ([Margo K. Brodie](#), *Chief Judge*).

Attorneys and Law Firms

For Appellee: [Margaret Larkin](#) ([Susan Corkery](#), on the brief), Assistant United States Attorneys, for [Joseph Nocella, Jr.](#), United States Attorney for the Eastern District of New York, Brooklyn, NY

For Defendant-Appellant: Yuanchung Lee, Federal Defenders of New York, Inc., Appeals Bureau, New York, NY

Present: [Gerard E. Lynch](#), [William J. Nardini](#), [Myrna Pérez](#), Circuit Judges.

SUMMARY ORDER

***1 UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that the judgment of the district court is **AFFIRMED**. We **REMAND** the case to the district court with instructions to vacate the standard conditions of supervised release and to conduct further proceedings consistent with this order.

Defendant-Appellant Victor Gavalo appeals from a judgment of the United States District Court for the Eastern District of New York entered on April 2, 2025, following a guilty plea to one count of possessing ammunition as a convicted felon, in violation of [18 U.S.C. § 922\(g\)\(1\)](#). The indictment stemmed from an incident recorded on video surveillance footage, which showed Gavalo driving his car past a parked Audi and stopping at an intersection in Astoria, Queens. Although the traffic light at the intersection was green, Gavalo's car stopped at the light, where it remained stationary for nearly half a minute. Shortly after Gavalo stopped at the light, the Audi

pulled out of its parking spot, drove up to Gavalo's stationary car, and stopped directly behind it. About ten seconds later, Gavalo emerged from his car and opened fire on the Audi while walking towards it. The driver of the Audi returned fire and wounded Gavalo, who nonetheless fired several more shots at the Audi before returning to his car and driving away. Law enforcement never found the gun that Gavalo used, but they recovered shell casings from the scene that showed he had used ammunition that had been transported across state lines.

The district court sentenced Gavalo to 96 months in prison, to be followed by two years of supervised release, and ordered that he pay a \$100 special assessment. Gavalo now appeals, challenging the procedural reasonableness of his prison sentence, the constitutionality of [§ 922\(g\)\(1\)](#), and whether his “standard” conditions of supervised release were properly pronounced at sentencing. We assume the parties’ familiarity with the case.

I. Application of the Attempted First-Degree Murder Enhancement

Gavalo argues first that his sentence was procedurally unreasonable, on the ground that the district court miscalculated his advisory sentencing range under the United States Sentencing Guidelines. *See United States v. Zhong*, 26 F.4th 536, 563–64 (2d Cir. 2022) (explaining that a district court procedurally errs when, *inter alia*, it miscalculates an advisory Guidelines range).¹ Specifically, Gavalo contends that the district court erred by applying an enhancement for attempted murder in the first degree after finding that Gavalo had both intended to kill the Audi's occupants and premeditated his actions. Those findings triggered a base offense level of 33. *See* [U.S.S.G. § 2A2.1\(a\)\(1\)](#) (applicable by cross-reference from [U.S.S.G. §§ 2K2.1\(c\)\(1\)\(A\)](#) and [2X1.1](#)).² After applying a three-level downward reduction for acceptance of responsibility, the court concluded that Gavalo had a total adjusted offense level of 30. Because Gavalo fell within criminal history category II, his resulting advisory sentencing range was 108 to 135 months in prison. The district court imposed a sentence of only 96 months, below the bottom end of that range.

***2** Gavalo contends that there was insufficient evidence to support the district court's findings that he had a specific intent to murder and that he had acted with premeditation, as required to prove attempted first-degree murder. Because the district court's determinations were “primarily factual”

rather than legal, we review them for clear error. *United States v. Helm*, 58 F.4th 75, 88 (2d Cir. 2023). As Gavalo correctly points out, the government did not present evidence of prior planning or a motive for the shooting. The evidence relevant to intent and premeditation came from the manner of the shooting itself, as captured on video. Gavalo argues that without a “back story,” his extended “wait” at the green light was “just an unremarkable passage of time” “temporally proximate” to the shooting, “not evidence that Gavalo thought about or planned to kill” the occupants of the Audi before shooting at them. Appellant’s Br. at 27.

We disagree with Gavalo’s contentions, and we discern no clear error in the district court’s determinations that Gavalo intended to kill the occupants of the Audi and that he had premeditated the killing. Those determinations were supported by video evidence showing that Gavalo drove to the scene of the crime with a gun; drove past the Audi; waited at a green traffic light until the Audi pulled up behind his car; and then got out of his car and, only a few feet away from the Audi, opened continuous fire on the occupants of the Audi even after being shot. Taken together, the evidence supports the district court’s findings that Gavalo intended to kill the people in the Audi and at least briefly reflected on the matter when he was parked at the green light. See *Fisher*, 328 U.S. at 467 n.3 (“It is the fact of deliberation that is important, rather than the length of time [that the deliberation] may have continued.”). We therefore reject any claim of procedural error in the imposition of Gavalo’s prison term.

II. Constitutional Challenge to 18 U.S.C. § 922(g)(1)

Gavalo next argues that his indictment should have been dismissed because 18 U.S.C. § 922(g)(1) is facially unconstitutional. But, as Gavalo concedes, this argument is foreclosed by *Zherka v. Bondi*, 140 F.4th 68 (2d Cir. 2025).

III. The Conditions of Supervised Release Imposed Only in the Written Judgment

Gavalo also contends, and the government agrees, that the district court erred by including in the judgment thirteen discretionary standard conditions of supervised release, even though they were neither orally pronounced at sentencing, nor orally cross-referenced to the Presentence Investigation Report or some other writing made available to Gavalo in advance of sentencing. We likewise agree that a limited remand is appropriate for the district court to vacate those thirteen conditions and, if it wishes, to consider reimposing them in the defendant’s presence, see *United States v. Maiorana*, 153 F.4th 306, 314–15 (2d Cir. 2025) (*en banc*), subject as always to the defendant’s ability to waive his rights in that regard, *id.* at 315 n.14.

* * *

For the foregoing reasons, we **AFFIRM** the judgment of the district court and **REMAND** the case to the district court with instructions to vacate the standard conditions of supervised release and to conduct further proceedings consistent with this order.

All Citations

Not Reported in Fed. Rptr., 2026 WL 1800683

Footnotes

- 1 Unless otherwise indicated, when quoting cases, all internal quotation marks, alteration marks, emphases, footnotes, and citations are omitted.
- 2 Absent a finding of premeditation, Gavalo would have been subject to a lower base offense level of 27, applicable to any form of attempted murder other than attempted murder in the first degree, including attempted murder in the second degree. See U.S.S.G. § 2A2.1(a)(2). Attempted murder in the first and second degree both require “a specific intent to kill.” *United States v. Mumuni*, 946 F.3d 97, 108 (2d Cir. 2019). What generally distinguishes the two is that murder in the first degree requires premeditation, whereas murder in the second degree does not. See *United States v. Capers*, 20 F.4th 105, 129 (2d Cir. 2021). The concepts of specific intent to kill and premeditation, however, are closely related: “[P]remeditation is the formation of a specific intent to kill.” See *Fisher v. United States*, 328 U.S. 463, 467 n.3 (1946). In other words, beyond the

specific intent to kill, first-degree murder requires that a defendant had “a cool mind ... capable of reflection” and that the defendant, with that cool mind, “reflect[ed] at least for a short period of time before [the] act of killing.” *United States v. Mulder*, 273 F.3d 91, 117 (2d Cir. 2001). Given the concepts’ relatedness, it is unsurprising that the same evidence may sometimes support a finding of a specific intent to kill and of premeditation. See, e.g., *United States v. Rodriguez*, 738 F. App’x 729, 730 (2d Cir. 2018) (summary order).

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

- against -

MEMORANDUM & ORDER
24-CR-80 (MKB)

VICTOR GAVALO,

Defendant.

MARGO K. BRODIE, United States District Judge:

On February 21, 2024, a grand jury indicted Defendant Victor Gavallo, charging him with one count of possessing ammunition as a convicted felon, in violation of 18 U.S.C. § 922(g)(1). (Indictment ¶ 1, Docket Entry No. 10.) The indictment alleges that on or about January 27, 2024, Gavallo knowingly and intentionally possessed ammunition, despite “knowing that he had previously been convicted in a court of one or more crimes punishable by a term of imprisonment exceeding one year.” (*Id.*)

On June 28, 2024, Gavallo moved to dismiss the indictment pursuant to Rule 12(b)(1) of the Federal Rules of Criminal Procedure, on the ground that the indictment under section 922(g)(1) violates his Second Amendment rights.¹ Gavallo argues that this charge should be dismissed because *New York State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1 (2022), rendered section 922(g)(1) unconstitutional. (Def.’s Mem. 4–5.) On July 31, 2024, the government opposed the motion. (Gov’t Opp’n to Def.’s Mot. (“Gov’t Opp’n”), Docket Entry No. 25.) For the reasons explained below, the Court denies the motion.

¹ (Def.’s Mot. to Dismiss Indictment (“Def.’s Mot.”), Docket Entry No. 23; Decl. of Michael K. Schneider in Supp of Def.’s Mot. (“Def.’s Mem.”), Docket Entry No. 23-1; Def.’s Reply in Supp. of Def.’s Mot. (“Def.’s Reply”), Docket Entry No. 26.)

I. Background

Gavalo was previously convicted of manslaughter in the first degree in violation of New York Penal Law Section 125.20, a class B felony, in connection with a shooting that took place in October of 2006.² (Gov’t Opp’n 1–2; Compl. ¶ 11, Docket Entry No. 1.) Gavalo was sentenced to seventeen years of imprisonment, and was released on August 3, 2021, to serve a five-year term of parole set to expire on August 3, 2026. (Gov’t Opp’n 2.)

The government alleges that on January 27, 2024, during his parole term, Gavalo was driving down a street in Queens when he exited his vehicle and opened fire on the occupants of a vehicle behind him. (*Id.* at 1.) When New York City Police Department officers responded to the scene, they found six 9-millimeter shell casings in the area where Gavalo had been standing. (*Id.*; *see also* Compl. ¶ 5 (alleging that “six Winchester casings were located in close proximity” to the vehicle Gavalo was driving, and noting that Winchester cartridges are “compatible with 9mm firearms”).) On February 21, 2024, a grand jury returned an indictment against Gavalo charging him with violating 18 U.S.C. § 922(g)(1) in connection with the shell casings recovered following the January 27 incident. (Gov’t Opp’n 2; *see also* Indictment.)

II. Discussion

Gavalo now moves to dismiss the indictment under Rule 12(b)(1) of the Federal Rules of Criminal Procedure³ on the grounds that, under *Bruen*’s new framework for Second Amendment challenges, “a total prohibition on firearm possession by felons . . . presumptively violates the

² The Court relies on the factual background as described in the government’s opposition and as charged in the initial complaint against Gavalo, for the sole purpose of providing context.

³ “Before trial, a defendant ‘may raise by . . . motion any defense, objection, or request that the court can determine without a trial on the merits,’ including a motion alleging ‘a defect in the indictment.’” *United States v. Ayier*, 33 F.4th 97, 116 (2d Cir. 2022) (quoting Fed. R. Crim. P. 12(b)(1), (b)(3)(B)).

Second Amendment,” and section 922(g)(1) is therefore unconstitutional.⁴ (Def.’s Mem. 11–12.) Gavalo first argues that *Bruen* requires courts to consider whether the “plain text” of the Second Amendment protects an individual’s conduct, and that this plain text protects Gavalo’s possession of ammunition. (*Id.* at 12–13.) Second, Gavalo argues that the government cannot, as required by *Bruen*, show that section 922(g)(1) “is consistent with this Nation’s historical tradition of firearm regulation.” (*Id.* at 13 (quoting *Bruen*, 597 U.S. at 17).) In support, Gavalo argues that there is no tradition of statutes “distinctly similar” to section 922(g)(1), and contends that this is particularly concerning because section 922(g)(1) seeks to address a “general societal problem” that would not have been “‘unimaginable’ at the founding.” (*Id.* at 13–16 (quoting *Bruen*, 597 U.S. at 28).) Gavalo further argues that Founding-era militia statutes demonstrate that “felons in the founding era not only were *permitted* to possess firearms, they actually were legally *required* to do so.” (*Id.* at 17.) Gavalo asserts that historical statutes making it illegal for “dangerous” or “unvirtuous” groups to bear arms do not undermine this argument. (*Id.* at 25–32.) Third, Gavalo argues that the Supreme Court’s statements about “presumptively lawful regulatory measures” restricting firearm usage to “law-abiding, responsible citizens” in *District of Columbia v. Heller*, 554 U.S. 570 (2008), do not justify “ignoring *Bruen*’s clear command” to assess whether challenged regulations are rooted in history and tradition. (*Id.* at 17–25.)

The government argues that while *Bruen* may have changed how courts are to approach Second Amendment challenges, binding Second Circuit precedent holds that section 922(g)(1) is a constitutional restriction on the rights of convicted felons. (Gov’t Opp’n 2–4.) The

⁴ Section 922(g)(1) makes it unlawful for “any person . . . who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year,” to “possess in or affecting commerce, any firearm or ammunition.” 18 U.S.C. § 922(g); *see also Gazzola v. Hochul*, 88 F.4th 186, 200 (2d Cir. 2023) (“Federal law prohibits certain classes of people, like felons, . . . from purchasing or possessing firearms or ammunition.”).

government further argues that even if *Bruen*'s framework were applied to this case, prohibitions on possession of firearms and ammunition by felons are consistent with the nation's history and tradition. (*Id.* at 4–8.)

“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.’” *Heller*, 554 U.S. at 576 (quoting U.S. Const. amend. II); *see also Gazzola v. Hochul*, 88 F.4th 186, 195 (2d Cir. 2023) (same). In *Heller*, the Supreme Court held for the first time that “the Second Amendment codifies a pre-existing individual right to keep and bear arms for self-defense in case of confrontation — a right that is not limited to service in an organized militia.” *Gazzola*, 88 F.4th at 195 (citing *Heller*, 554 U.S. at 592, 595). The Supreme Court clarified, however, that the “individual right to keep and bear arms” under the Second Amendment is “not unlimited.” *Heller*, 554 U.S. at 595, 626. In particular, *Heller* should not “be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons,” or on other such “presumptively lawful” regulations. *Id.* at 626–27 & n.26. Two years later, in holding that the Second Amendment applies to the states via the Fourteenth Amendment, the Supreme Court reaffirmed its holding in *Heller*, along with its support for “such longstanding regulatory measures as ‘prohibitions on the possession of firearms by felons.’” *See McDonald v. City of Chicago*, 561 U.S. 742, 786 (2010) (quoting *Heller*, 554 U.S. at 626).

In 2022, the Supreme Court announced a new framework for analyzing challenges to restrictions on Second Amendment rights. *See generally Bruen*, 597 U.S. 1. In *Bruen*, the Supreme Court concluded that the second step of the two-step test that “Courts of Appeals ha[d] developed to assess Second Amendment claims” was “inconsistent with *Heller*'s historical approach and its rejection of means-end scrutiny,” and established a new standard for applying

the Second Amendment. *Id.* at 18, 24. Under *Bruen*, the proper test must be “rooted in the Second Amendment’s text, as informed by history,” and the government must “justify its regulation by demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation.” *Id.* at 19, 24. After *Bruen*, the Supreme Court decided *United States v. Rahimi*, rejecting a challenge to 18 U.S.C. § 922(g)(8). 602 U.S. ---, ---, 144 S. Ct. 1889, 1894, 1897 (2024). Section 922(g)(8) “prohibits an individual subject to a domestic violence restraining order from possessing a firearm if that order includes a finding that he ‘represents a credible threat to the physical safety of [an] intimate partner,’ or a child of the partner or individual.” *Id.* at 1894 (alteration in original) (quoting 18 U.S.C. § 922(g)(8)). In upholding section 922(g)(8), the Supreme Court held that it was analogous to “surety” and “going armed” laws in effect at the time of the Founding, and thus “[w]hen an individual poses a clear threat of physical violence to another, the threatening individual may be disarmed.” *Id.* at 1899–1901.

Prior to *Bruen* and *Rahimi*, in *United States v. Bogle*, the Second Circuit issued a short per curiam opinion based on *Heller* and *McDonald* upholding the constitutionality of section 922(g)(1) in the face of a challenge similar to the one Gavalo now raises. 717 F.3d 281, 281–82 (2d Cir. 2013) (per curiam). The court avoided engaging in the type of means-end scrutiny, *i.e.*, strict or intermediate scrutiny, that the *Bruen* Court described as constituting “one step too many” in adjudicating Second Amendment challenges. *Bruen*, 597 U.S. at 19. Instead, in *Bogle*, the Second Circuit’s analysis relied on the Supreme Court’s caution in *Heller* and *McDonald* that those decisions should not “be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons.” 717 F.3d at 281 (quoting *Heller*, 554 U.S. at 626); *see also McDonald*, 561 U.S. at 786 (quoting the same). Relying only on such language, the Second Circuit “join[ed] every other circuit to consider the issue in affirming that [section] 922(g)(1) is a constitutional

restriction on the Second Amendment rights of convicted felons.” *Bogle*, 717 F.3d at 281–82.

The Court concludes that it is bound by *Bogle*’s holding — one that resulted from reasoning in *Heller* and *McDonald* that *Bruen* upheld — that section 922(g)(1) is constitutional under the Second Amendment, and Gavalo’s challenge accordingly fails. *See Bruen*, 597 U.S. at 9–10 (confirming that its holding was “consistent with *Heller* and *McDonald*”); *id.* at 38–39 (highlighting that its historical inquiry focused on, *inter alia*, whether “tradition limit[ed] public carry only to those law-abiding citizens who demonstrate a special need for self-defense”). The Court is unpersuaded by Gavalo’s argument that “*Bruen* abrogated the one-paragraph decision in *Bogle*.” (Def.’s Reply 1 (asserting that *Bogle* erroneously failed to use the “text-and-history” standard announced in *Bruen* (quoting *Bruen*, 597 U.S. at 39)).) Regardless of whether the Second Circuit chooses to revisit *Bogle*’s holding in light of *Bruen* and *Rahimi*, this Court remains bound by squarely applicable precedent. *See United States v. Steinberg*, 21 F. Supp. 3d 309, 319 (S.D.N.Y. 2014) (“[A lower court] should follow the case which directly controls, leaving to [reviewing courts] the prerogative of overruling [their] own decisions.” (alterations in original) (quoting *Rodriguez de Quijas v. Shearson/Am. Express, Inc.*, 490 U.S. 477, 484 (1989))), *abrogated on other grounds by United States v. Newman*, 773 F.3d 438 (2d Cir. 2014). If and when the Second Circuit eventually considers whether *Bruen* requires reversing *Bogle*,⁵ it will depart from *Bogle* only if it finds some “conflict, incompatibility, or ‘inconsistency’” between its decision and the Supreme Court’s decision in *Bruen*. *See In re Arab Bank, PLC Alien Tort Statute Litig.*, 808 F.3d 144, 155 (2d Cir. 2015) (alteration adopted) (quoting *Wojchowski v. Daines*, 498 F.3d 99, 109 (2d Cir. 2007)). Where, as here, “the Second Circuit

⁵ As the government points out, facial and as-applied challenges are pending before the Second Circuit in *United States v. Thawney*, No. 22-1399 (2d Cir.), and *Zherka v. Garland*, No. 22-1108 (2d Cir.). (Gov’t Opp’n 3 n.3.)

has spoken directly to the issue,” this Court is required to follow that ruling “unless a subsequent decision of the Supreme Court so undermines it that it will almost inevitably be overruled by the Second Circuit.” *United States v. Smith*, 489 F. Supp. 3d 167, 172–73 (S.D.N.Y. 2020) (quoting *United States v. Diaz*, 122 F. Supp. 3d 165, 179 (S.D.N.Y. 2015), *aff’d*, 854 F.3d 197 (2d Cir. 2017)).

The Court cannot conclude that the Second Circuit will “almost inevitably” overrule *Bogle* in light of *Bruen*. *See id.* As discussed, *Heller* explained that “nothing in [its] opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons.” 554 U.S. at 626. *McDonald* reaffirmed this statement, describing *Heller* as making “clear” that its holding “did not cast doubt on such longstanding regulatory measure as ‘prohibitions on the possession of firearms by felons.’” *McDonald*, 561 U.S. at 786 (quoting *Heller*, 554 U.S. at 626). The Second Circuit in *Bogle* relied on this language to reach its holding, *see* 717 F.3d at 281, and this language has not been undercut by *Bruen*.⁶ *Rahimi* further reinforces this conclusion. The *Rahimi* Court first reiterated that the Second Amendment does not prohibit “the enactment of laws banning the possession of guns by categories of persons thought by a legislature to present a special danger of misuse,” and then specified that under *Heller*, “many such prohibitions, like those on the possession of firearms by ‘felons and the mentally ill,’ are ‘presumptively lawful.’” 144 S. Ct. at 1901–02 (quoting *Heller*, 554 U.S. at 626–27 & n.26). *Bogle* did not apply means-end scrutiny and instead relied solely on this same language in *Heller* that highlighted historical, “longstanding prohibitions on the possession of

⁶ In addition, the *Bruen* Court abrogated the decisions of several circuit courts — including the Second Circuit’s decision in *Kachalsky v. County of Westchester*, 701 F.3d 81 (2d Cir. 2012) — faulting them for applying means-end scrutiny to determine the constitutionality of a firearms regulation. *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1, 19 & n.4 (2022). The Supreme Court did not, however, abrogate *Bogle*. *See id.*

firearms by felons.” *Bogle*, 717 F.3d at 281 (quoting *Heller*, 554 U.S. at 626). *Bogle* therefore remains good law following *Bruen*.⁷

The Court concludes that Gavalo’s indictment under section 922(g)(1) does not violate his Second Amendment rights, because under established Second Circuit precedent, “§ 922(g)(1) is a constitutional restriction on the Second Amendment rights of convicted felons.” *See Bogle*, 717 F.3d at 281–82. The Court therefore declines to engage in *Bruen*’s historical analysis.⁸

⁷ Other courts in this circuit to have addressed *Bogle* post-*Bruen* have similarly concluded that *Bogle* remains binding precedent. *See, e.g., United States v. Carter*, No. 23-CR-74, 2024 WL 3785366, at *3 (D. Conn. Aug. 13, 2024) (“*Bruen* did not disturb the precedents upon which *Bogle* relies and *Bogle* therefore remains binding upon this [c]ourt.”); *United States v. Pankey*, No. 24-CR-122, 2024 WL 3522138, at *4 (S.D.N.Y. July 23, 2024) (concluding that even after *Bruen*, “*Bogle*’s holding remains binding upon this [c]ourt and [s]ection 922(g)(1) is constitutional on its face”); *United States v. Montanez*, No. 23-CR-186, 2024 WL 3360534, at *3 (E.D.N.Y. July 10, 2024) (same); *United States v. Sanders*, 707 F. Supp. 3d 239, 241 (E.D.N.Y. 2023) (“Second Circuit precedents bind this [c]ourt, including the Second Circuit’s decision in [*Bogle*], holding that ‘[section] 922(g)(1) is a constitutional restriction on the Second Amendment rights of convicted felons.’” (quoting *Bogle*, 717 F.3d at 281–82)); *United States v. Sternquist*, 692 F. Supp. 3d 19, 26 (E.D.N.Y. 2023) (“[T]his [c]ourt joins the other district courts in this Circuit that have considered post-*Bruen* challenges to [section] 922(g)(1)’s constitutionality in light of *Bogle* in finding that ‘nothing in *Bruen*[] alters the rationale of *Bogle*’ and, ‘. . . *Bogle* remains binding precedent within this Circuit on the constitutionality of [section] 922(g)[(1)].” (fourth and sixth alterations in original) (first quoting *United States v. Garlick*, No. 22-CR-540, 2023 WL 2575664, at *5 (S.D.N.Y. Mar. 20, 2023); and then quoting *United States v. Hampton*, 676 F. Supp. 3d 283, 301 (S.D.N.Y. 2023))).

⁸ Although the Court declines to apply *Bruen*’s historical analysis to section 922(g)(1), other courts in the Second Circuit that have engaged in this inquiry have uniformly found that section 922(g)(1) is constitutional under *Bruen*’s historical analysis. *See Sanders*, 707 F. Supp. 3d at 243 n.5 (collecting cases); *see also Montanez*, 2024 WL 3360534, at *3; *United States v. Mitchell*, No. 23-CR-198, 2023 WL 8006344, at *4–7 (S.D.N.Y. Nov. 17, 2023); *United States v. Ford*, No. 23-CR-107, 2023 WL 7131742, at *3 (S.D.N.Y. Oct. 30, 2023); *United States v. Abreu*, No. 23-CR-67, 2023 WL 6541302, at *3–4 (S.D.N.Y. Oct. 6, 2023).

III. Conclusion

For the foregoing reasons, the Court denies Gavalo's motion to dismiss the indictment.

Dated: September 9, 2024
Brooklyn, New York

SO ORDERED:

s/ MKB
MARGO K. BRODIE
United States District Judge

UNITED STATES DISTRICT COURT

Eastern District of New York

UNITED STATES OF AMERICA

v.

VICTOR GAVALO

JUDGMENT IN A CRIMINAL CASE

Case Number: 24-CR-0080-001(MKB)

USM Number: 97699-510

Michael Schneider, Federal Defender of New York
Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) sole count of the Indictment

☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.

☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18U.S.C. 922(g)(1) and 924(a)(8)	Felon in Possession of Ammunition	1/27/2024	1

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☒ Count(s) no open counts ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

4/2/2025

Date of Imposition of Judgment

S/MKB

Signature of Judge

Margo K. Brodie, United States District Judge

Name and Title of Judge

4/2/2025

Date

DEFENDANT: VICTOR GAVALO
CASE NUMBER: 24-CR-0080-001(MKB)

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:
Ninety-six (96) months.

☒ The court makes the following recommendations to the Bureau of Prisons:
The Court recommends that the defendant be designated to FCI, Otisville and to a residential drug abuse program.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: VICTOR GAVALO
CASE NUMBER: 24-CR-0080-001(MKB)

SUPERVISED RELEASE

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

Two (2) years.

MANDATORY CONDITIONS

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

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

DEFENDANT: VICTOR GAVALO
CASE NUMBER: 24-CR-0080-001(MKB)

STANDARD CONDITIONS OF SUPERVISION

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

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

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____

Date _____

DEFENDANT: VICTOR GAVALO
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SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall submit his person, property, house, residence, vehicle or office, to a search to be conducted by a United States Probation Officer. Failure to submit to a search may be grounds for revocation of release. The defendant shall warn any other occupants that the premises may be subject to searches pursuant to this condition. An officer may conduct a search pursuant to this condition only when reasonable suspicion exists that the defendant has violated a condition of his supervision and that the areas to be searched contain evidence of this violation. Any search must be conducted at a reasonable time and in a reasonable manner.

DEFENDANT: VICTOR GAVALO
CASE NUMBER: 24-CR-0080-001(MKB)**CRIMINAL MONETARY PENALTIES**

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

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

- ☐ The determination of restitution is deferred until _____. An Amended Judgment in a Criminal Case (AO 245C) will be entered after such determination.
- ☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

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

<u>Name of Payee</u>	<u>Total Loss***</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
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TOTALS	\$	<u>0.00</u>	\$	<u>0.00</u>
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- ☐ Restitution amount ordered pursuant to plea agreement \$ _____
- ☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- ☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:
- ☐ the interest requirement is waived for the ☐ fine ☐ restitution.
- ☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

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

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

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

DEFENDANT: VICTOR GAVALO
CASE NUMBER: 24-CR-0080-001(MKB)**SCHEDULE OF PAYMENTS**

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

- A ☒ Lump sum payment of \$ 100.00 due immediately, balance due
- ☐ not later than _____, or
- ☐ in accordance with ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☒ Special instructions regarding the payment of criminal monetary penalties:
Payment shall be made payable to the Clerk of the Court.

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

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

☐ Joint and SeveralCase Number
Defendant and Co-Defendant Names
(including defendant number)

Total Amount

Joint and Several
AmountCorresponding Payee,
if appropriate

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

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