
PETITIONER'S APPENDIX

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25-458-cr
United States v. Foster

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

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007 IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 24th day of June, two thousand twenty-six.

PRESENT:

JOSEPH F. BIANCO,
STEVEN J. MENASHI,
Circuit Judges,
ANTHONY J. BRINDISI,
*District Judge.**

UNITED STATES OF AMERICA,

Appellee,

v.

25-458-cr

ISAAC FOSTER, AKA ISSAC FOSTER,

Defendant-Appellant.

FOR APPELLEE:

Raffaella S. Belizaire and Amy Busa, Assistant
United States Attorneys, *for* Joseph Nocella, Jr.,
United States Attorney for the Eastern District
of New York, Brooklyn, New York.

* Judge Anthony J. Brindisi, of the United States District Court for the Northern District of New York, sitting by designation.

FOR DEFENDANT-APPELLANT:

Siobhan C. Atkins, Federal Defenders of New
York, Inc., New York, New York.

Appeal from a judgment of the United States District Court for the Eastern District of New York (Brian M. Cogan, *Judge*).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the district court, entered on November 1, 2024, is **AFFIRMED**.

Defendant-Appellant Isaac Foster appeals from the district court’s judgment of conviction, following a guilty plea, to one count of possessing a firearm after having been convicted of a felony, in violation of 18 U.S.C. § 922(g)(1). Section 922(g)(1) made it unlawful for Foster to possess a gun on account of his prior felony convictions. The district court sentenced Foster principally to 30 months’ imprisonment, to be followed by a two-year term of supervised release. On appeal, Foster contends that Section 922(g)(1) is unconstitutional, facially and as applied to him, in light of the Supreme Court’s decision in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022). We assume the parties’ familiarity with the underlying facts, procedural history, and issues on appeal, to which we refer only as necessary to explain our decision to affirm.

In *United States v. Bogle*, 717 F.3d 281 (2d Cir. 2013), we rejected a facial constitutional challenge to Section 922(g)(1). In *Zherka v. Bondi*, 140 F.4th 68 (2d Cir. 2025), we affirmed that “Section 922(g)(1) is a ‘constitutional restriction on the Second Amendment rights of convicted felons,’” and survives *Bruen*. *Zherka*, 140 F.4th at 74–75 (quoting *Bogle*, 717 F.3d at 281–82). We reasoned that our nation’s historical tradition of firearm regulation evinces that Congress has the “legislative power, consistent with the Second Amendment, to disarm categories of persons presumed to be dangerous.” *Id.* at 90. A challenger “cannot,” we said, “‘mount a successful facial challenge’ to Section 922(g)(1).” *Id.* at 75 (quoting *Antonyuk v. James*, 120 F.4th 941, 983 (2d Cir. 2024)). Thus, Foster’s facial challenge fails.

Foster also argues that Section 922(g)(1) is unconstitutional as applied to him because he poses no “unique physical danger to others” and because his “most serious conviction . . . occurred over 20 years ago, when he was 16.” Appellant’s Br. at 10. However, in *Zherka*, we concluded that “Congress has the authority to disarm *all* felons,” 140 F.4th at 74 n.8 (emphasis added), because a felony conviction “is reasonably regarded as an indication that such a person lacks the character of temperament necessary to be entrusted with a weapon,” *id.* at 94 (internal quotation marks and citation omitted).

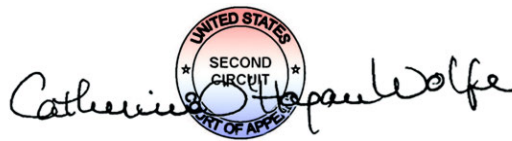
Although Foster contends that our analysis in *Zherka* was erroneous, we are “bound by prior decisions of this [C]ourt unless and until the precedents established therein are reversed *en banc* or by the Supreme Court.” *United States v. Jass*, 569 F.3d 47, 58 (2d Cir. 2009). Indeed, Foster concedes that *Zherka* forecloses his facial and as-applied challenge to Section 922(g)(1) and notes that he raises these arguments to “preserve[] his constitutional challenge for a potential petition for rehearing en banc or a petition for a writ of certiorari.” Appellant’s Br. at 11.

* * *

Accordingly, we **AFFIRM** the judgment of the district court.

FOR THE COURT:

Catherine O’Hagan Wolfe, Clerk of Court


 The image shows a handwritten signature in blue ink that reads "Catherine O'Hagan Wolfe". The signature is written over a circular official seal. The seal is divided into three horizontal sections: the top section is red and contains the words "UNITED STATES"; the middle section is white and contains the words "SECOND CIRCUIT" flanked by two small stars; the bottom section is blue and contains the words "COURT OF APPEALS".

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----	X
	:
UNITED STATES OF AMERICA,	:
	:
Plaintiff,	:
	:
-against-	:
	:
ISAAC FOSTER,	:
	:
Defendant.	:
-----	X

**ORDER ON DEFENDANT'S
MOTION TO DISMISS**
23-cr-00204 (BMC)

COGAN, District Judge.

Before me is defendant Isaac Foster's motion to dismiss the indictment pursuant to New York State Rifle & Pistol Ass'n v. Bruen, 597 U.S. 1 (2022). Defendant is charged with possessing a firearm after being convicted of a felony in violation of 18 U.S.C. § 922(g)(1).

The Second Circuit held in United States v. Bogle, 717 F.3d 281 (2d Cir. 2013) (per curiam) that 18 U.S.C. § 922(g)(1) does not run afoul of the Second Amendment. The question now before me is whether the Supreme Court's recent decision in Bruen disturbs that holding. I join many of my colleagues in this district in concluding that it does not. As those colleagues and many other judges across the country have explained, "[t]he Bruen majority opinion makes abundantly clear that Heller and McDonald stand as controlling precedents" and that Bruen itself is "consistent" with those precedents. United States v. Warren, No. 22-cr-231, 2023 WL 5978029, at *3 (E.D.N.Y. Sept. 14, 2023) (cleaned up).

Indeed, the McDonald majority reaffirmed Justice Scalia's comments in Heller regarding the constitutionality of felon disarmament laws such as 18 U.S.C. § 911(g)(1): "We made it clear in Heller that our holding did not cast doubt on such longstanding regulatory measures as

prohibitions on the possession of firearms by felons.” McDonald v. City of Chicago, 561 U.S. 742, 786 (2010). In addition, Justice Alito reaffirmed this principle in his Bruen concurrence, noting that the decision says “nothing about who may lawfully possess a firearm or the requirements that must be met to buy a gun,” further explaining that Bruen does not “disturb[] anything [the Court] said in Heller or McDonald, about restrictions that may be imposed on the possession or carrying of guns.” Bruen, 597 U.S. 1, 72. Justice Kavanaugh wrote a similar concurrence in Bruen, joined by Chief Justice Roberts, reaffirming Heller and McDonald on the proposition that the Second Amendment allows for “a variety of gun regulations” such as the “longstanding prohibitions on the possession of firearms by felons.” Id. at 80 (cleaned up). Thus, because multiple Supreme Court Justices have opined that felon disarmament laws do not violate the Second Amendment as interpreted by Heller and McDonald, I remain bound by Bogle.

Accordingly, defendant's motion to dismiss is denied.

SO ORDERED.

Brian M. Cogan

U.S.D.J.

Dated: Brooklyn, New York
February 22, 2024

UNITED STATES DISTRICT COURT

Eastern District of New York

UNITED STATES OF AMERICA

v.

Isaac Foster

JUDGMENT IN A CRIMINAL CASE

Case Number: 23-cr-00204-BMC-LB-1

USM Number: 58445-510

Nora K. Hirozawa, Esq.

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) 1 of a single-count Superseding 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>
18 U.S.C. § 922(g)(1), 18 U.S.C. § 924(a)(8)	Felon in Possession of a Firearm and Ammunition	3/29/2023	1s

The defendant is sentenced as provided in pages 2 through 8 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) all underlying count ☐ 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.

10/30/2024

Date of Imposition of Judgment

Brian M. Cogan

Signature of Judge

Brian M. Cogan, U.S.D.J.

Name and Title of Judge

11/1/2024

Date

DEFENDANT: Isaac Foster
CASE NUMBER: 23-cr-00204-BMC-LB-1

IMPRISONMENT

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

- ☒ The court makes the following recommendations to the Bureau of Prisons:
The Court strongly recommends designating a facility with an alcohol recovery program and parenting program; and to facilitate family visits request BOP assign defendant to a facility in the New York Area. The defendant's daughter has severe spinal bifida and he has been very involved in her care.
- ☐ 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 4/30/2025 .
- ☐ 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

Pet. App. 07a

DEFENDANT: Isaac Foster

CASE NUMBER: 23-cr-00204-BMC-LB-1

SUPERVISED RELEASE

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

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.

Pet. App. 08a

DEFENDANT: Isaac Foster
CASE NUMBER: 23-cr-00204-BMC-LB-1

STANDARD CONDITIONS OF SUPERVISION

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

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

U.S. Probation Office Use Only

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

Defendant's Signature _____

Date _____

DEFENDANT: Isaac Foster

CASE NUMBER: 23-cr-00204-BMC-LB-1

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall submit his person, property, house, residence, vehicle, papers, computers (as defined in 18 U.S.C. § 1030(e) (1)), other electronic communications or data storage devices or media, or office, to a search conducted by a United States probation officer. Failure to submit to a search may be grounds for revocation of release. 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. If they have reasonable suspicion of contraband, guns, drugs, or alcohol in your home or car or any places else you frequent to do a search in a reasonable time, place, and manner.

DEFENDANT: Isaac Foster

CASE NUMBER: 23-cr-00204-BMC-LB-1

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	\$	0.00	\$	0.00
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☐ Restitution amount ordered pursuant to plea agreement \$ _____

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

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

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

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

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

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

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

Pet. App. 11a

DEFENDANT: Isaac Foster
CASE NUMBER: 23-cr-00204-BMC-LB-1

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 to the Clerk of the Court, Eastern District of New York.

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

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

☐ Joint and Several

Case Number Defendant and Co-Defendant Names (including defendant number)	Total Amount	Joint and Several Amount	Corresponding Payee, if appropriate
---	--------------	-----------------------------	--

☐ 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:
Forfeiture property for the following: 1 Ruger model .380 caliber semi-automatic pistol, 1 .380 caliber Giulio Fiocchi Lecco (GFL) Copper Jacketed Hollow Point cartridge, & 2 .380 caliber Aguila Copper Jacketed Full Metal Jacket (cont.)

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.

Pet. App. 12a

DEFENDANT: Isaac Foster
CASE NUMBER: 23-cr-00204-BMC-LB-1

ADDITIONAL FORFEITED PROPERTY

cartridges. See attached Order of Forfeiture.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA

PRELIMINARY ORDER OF FORFEITURE

- against -

23-CR-204 (BMC)

ISSAC FOSTER,

Defendant.

-----X

WHEREAS, on or about March 28, 2024, Issac Foster (the “defendant”), entered a plea of guilty to the offense charged in the Sole Count of the above-captioned Indictment, charging a violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(8); and

WHEREAS, pursuant to 18 U.S.C. § 924(d)(1) and 28 U.S.C. § 2461(c), the defendant has consented to the forfeiture of all right, title, and interest to the United States in the following assets, all seized on or about March 29, 2023, in Brooklyn, New York (collectively, the “Seized Firearms and Ammunition”):

- (i) one .380 caliber semiautomatic Ruger pistol with a defaced serial number;
- (ii) one .380 caliber Winchester Copper Jacketed Full Metal Jacket cartridge;
- (iii) two .380 caliber Federal Copper Jacketed Full Metal Jacket cartridges;
- (iv) one .380 caliber Giulio Fiocchi Lecco (GFL) Copper Jacketed Hollow Point cartridge; and
- (v) one .380 caliber Aguila Copper Jacketed Full Metal Jacket cartridge,

as any firearm or ammunition involved or used in any knowing violation of 18 U.S.C. §§ 922 or 924, and/or substitute assets, pursuant to 21 U.S.C. § 853(p).

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, on consent, by and between the United States and the defendant as follows:

1. Pursuant to 18 U.S.C. § 924(d)(1), 21 U.S.C. § 853(p), and 28 U.S.C. § 2461(c), the defendant shall forfeit to the United States all right, title, and interest in the Seized Firearms and Ammunition.

2. Upon entry of this Preliminary Order of Forfeiture (“Preliminary Order”), the United States Attorney General or his designee is authorized to seize the Seized Firearms and Ammunition, to conduct any proper discovery, in accordance with Fed. R. Crim. P. 32.2(b)(3) and (c), and to commence any applicable proceedings to comply with statutes governing third-party rights, including giving notice of this Preliminary Order. To the extent that the Seized Firearms and Ammunition are in the custody of any state or local authority, including but not limited to the Property Clerk Division of the New York City Police Department, and are not subject to state or local forfeiture proceedings, such state or local authority is hereby directed to make the Seized Firearms and Ammunition available for seizure by federal authorities in accordance with this Order.

3. The United States shall publish notice of this Preliminary Order in accordance with the custom and practice in this district on the government website www.forfeiture.gov, of its intent to dispose of the Seized Firearms and Ammunition in such a manner as the Attorney General or his designee may direct. The United States may, to the extent practicable, provide direct written notice to any person known or alleged to have an

interest in the Seized Firearms and Ammunition as a substitute for published notice as to those persons so notified.

4. Any person, other than the defendant, asserting a legal interest in the Seized Firearms and Ammunition may, within thirty (30) days of the final publication of notice or receipt of notice or no later than sixty (60) days after the first day of publication on an official government website, whichever is earlier, petition the Court for a hearing without a jury to adjudicate the validity of his or her alleged interest in the Seized Firearms and Ammunition, and for an amendment of the order of forfeiture, pursuant to 21 U.S.C.

§ 853(n)(6). Any petition filed in response to the notice of forfeiture of the Seized Firearms and Ammunition must be signed by the petitioner under penalty of perjury and shall set forth the nature and extent of the petitioner's right, title, or interest in the property, the time and circumstances of the petitioner's acquisition of the right, title, or interest in the property, any additional facts supporting the petitioner's claim, and the relief sought.

5. The defendant shall not file a claim or petition seeking remission or contesting the forfeiture of the Seized Firearms and Ammunition in any administrative or judicial (civil or criminal) proceeding. The defendant shall not assist any person or entity in the filing of any claim or petition seeking remission or contesting the forfeiture of the Seized Firearms and Ammunition in any administrative or judicial (civil or criminal) proceeding. The defendant shall fully assist the government in effectuating the surrender and forfeiture of the Seized Firearms and Ammunition to the United States. The defendant shall take whatever steps are necessary to ensure that clear title to the Seized Firearms and Ammunition passes to the United States, including, but not limited to, the execution of any and all documents necessary to effectuate the surrender and forfeiture of the Seized Firearms and

Ammunition to the United States. Further, if any third party files a claim to the Seized Firearms and Ammunition, the defendant will assist the government in defending such claims. If the Seized Firearms and Ammunition are not forfeited to the United States, the United States may seek to enforce this Preliminary Order against any other assets of the defendant up to the value of the Seized Firearms and Ammunition, pursuant to 21 U.S.C. § 853(p). The defendant further agrees that the conditions of 21 U.S.C. § 853(p)(1)(A)-(E) have been met.

6. The defendant knowingly and voluntarily waives his right to any required notice concerning the forfeiture of the monies and/or properties forfeited hereunder, including notice set forth in an indictment, information or administrative notice. In addition, the defendant knowingly and voluntarily waives his right, if any, to a jury trial on the forfeiture of the Seized Firearms and Ammunition, and waives all constitutional, legal and equitable defenses to the forfeiture of said monies and/or properties, including, but not limited to, any defenses based on principles of double jeopardy, the *Ex Post Facto* clause of the Constitution, any applicable statute of limitations, venue, or any defense under the Eighth Amendment, including a claim of excessive fines.

7. Pursuant to Fed. R. Crim. P. 32.2(b)(4)(A) and (B), this Preliminary Order shall become final as to the defendant at the time of the defendant's sentencing and shall be made part of the defendant's sentence and included in his judgment of conviction. If no third party files a timely claim, this Preliminary Order, together with Supplemental Orders of Forfeiture, if any, shall become the Final Order of Forfeiture, as provided by Fed. R. Crim. P. 32.2(c)(2). At that time, the monies and/or properties forfeited herein shall be forfeited to the United States for disposition in accordance with the law.

8. The United States alone shall hold title to the Seized Firearms and Ammunition following the Court's disposition of all third-party interests, or, if none, following the expiration of the period provided in 21 U.S.C. § 853(n)(2) .

9. The forfeiture of the Seized Firearms and Ammunition is not to be considered a payment of a fine, penalty, restitution loss amount, or payment of any income taxes that may be due, and shall survive bankruptcy.

10. This Preliminary Order shall be binding upon the defendant and the successors, administrators, heirs, assigns and transferees of the defendant, and shall survive the bankruptcy of any of them.

11. This Preliminary Order shall be binding only upon the Court's "so ordering" of the Order.

12. The Court shall retain jurisdiction over this action to enforce compliance with the terms of this Preliminary Order and to amend it as necessary, pursuant to Fed. R. Crim. P. 32.2(e).

13. The Clerk of the Court is directed to send, by inter-office mail, three (3) certified copies of this executed Order to the United States Attorney's Office, Eastern District of New York, Attn: Melissa Thorpe, FSA Supervisory Paralegal, 271-A Cadman Plaza East, Brooklyn, New York 11201.

Dated: Brooklyn, New York
October 29, 2024

SO ORDERED:

Brian M. Cogan

HONORABLE BRIAN M. COGAN
UNITED STATES DISTRICT JUDGE
EASTERN DISTRICT OF NEW YORK