

N.D.N.Y.
24-cr-475
Sannes, C.J.

United States Court of Appeals
FOR THE
SECOND CIRCUIT

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 1st day of July, two thousand twenty-six.

Present:

Richard J. Sullivan,
Steven J. Menashi,
Beth Robinson,
Circuit Judges.

United States of America,

Appellee,

v.

25-2655

Terry Ball,

Defendant-Appellant.

The Government moves for summary affirmance. Upon due consideration, it is hereby ORDERED that the motion is GRANTED. *See Zherka v. Bondi*, 140 F.4th 68, 74–96 (2d Cir. 2025).

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk of Court

 

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA

v.

8:24-cr-475 (BKS)

TERRY BALL,

Defendant.

Appearances:

For the United States of America:

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For Defendant Terry Ball:

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Hon. Brenda K. Sannes, Chief United States District Judge:

MEMORANDUM-DECISION AND ORDER

I. INTRODUCTION

On December 4, 2024, Defendant Terry Ball was charged with possession of a firearm and ammunition by a prohibited person in violation of 18 U.S.C. § 922(g)(1) and § 924(a)(2). (Dkt. No. 16). Defendant moves to dismiss the indictment for failure to state an offense under

Rule 12(b)(3)(B)(v) of the Federal Rules of Criminal Procedure on the grounds that § 922(g)(1) is unconstitutional as applied to Defendant, (Dkt. No. 23). The motion is fully briefed. (Dkt. Nos. 23-1, 25, 28) For the following reasons, Defendant's motion is denied.

II. FACTS

There is no dispute regarding Defendant's prior felony convictions. (Dkt. No. 1, ¶ 2, at 3; Dkt. No. 23-1, at 2; Dkt. No. 25 at 4). Defendant was previously convicted of two felonies: an April 18, 2007 conviction for Engaging in Organized Criminal Activity in violation of Texas Penal Code 71.02(a) and a later conviction for Assault of a Public Servant in violation of Texas Penal Code 22.01(b)(1). (Dkt. No. 23-1, at 2; Dkt. No. 1, ¶ 2, at 3).¹

The affidavit of Homeland Security Investigations Special Agent Dennis Dzubinski, in support of the criminal complaint, states the following. On October 3, 2024, Defendant presented himself in his vehicle for entry into Canada at the Canadian Border Services Agency (CBSA) Dundee border crossing. (Dkt. No. 1, ¶ 1, at 3). Upon inspection, Defendant disclosed that he possessed a Taurus 9mm handgun and a Stevens 320 12-gauge shotgun in addition to ammunition for the firearms. (*Id.*). CBSA located and confiscated the firearms and ammunition, and denied Defendant entry into Canada. (*Id.*). Special Agents for the United States Department of Homeland Security were contacted and subsequently arrived to interview Defendant. (*Id.* ¶¶ 2–3, at 3–4). After waiving his *Miranda* rights, Defendant stated he resided in Hamilton, Texas and drove from Hamilton enroute to Quebec, Canada to meet a Canadian citizen after they developed a relationship through an online platform. (*Id.* ¶¶ 3–4, at 4). Defendant said that he spent approximately two years in prison for each of his felony convictions. (*Id.* ¶ 4, at 4).

¹ The parties differ as to whether the latter conviction occurred in 2011 or 2012, but that dispute is irrelevant for the purposes of this decision.

Defendant claimed he was unaware that he was prohibited from entering Canada with the firearms and ammunition. (*Id.*).

On December 4, 2024, Defendant was charged with possession of a firearm and ammunition by a prohibited person in violation of 18 U.S.C. § 922(g)(1) and § 924(a)(2). (Dkt. No. 16). Specifically, Count One of the indictment reads:

On or about October 3, 2024, in Franklin County in the Northern District of New York, . . . [Defendant], knowing he had previously been convicted of a crime punishable by imprisonment for a term exceeding one year, knowingly possessed firearms, namely, a Taurus 9mm handgun, serial number 1C020388, and a Stevens 320 12-gauge shotgun, serial number 202576U, and ammunition, and the firearms and ammunition were in and affecting interstate commerce, in violation of Title 18, United States Code, Sections 922(g)(1) and 924(a)(2).

(*Id.* at 1).

III. MOTION TO DISMISS

A. STANDARD OF REVIEW

Under Rule 12(b)(1) of the Federal Rules of Criminal Procedure, “[a] party may raise by pretrial motion any defense, objection, or request that the court can determine without a trial on the merits.” Such motions include pretrial motions alleging “a defect in the indictment or information[,] including . . . failure to state an offense.” Fed. R. Crim. Pro. 12(b)(3)(B)(v). A pretrial motion to dismiss the indictment under Rule 12(b)(3)(B)(v) is the proper vehicle to raise a constitutional challenge to the charging statute. *See United States v. Rampersant*, 704 F. Supp. 3d 373, 377 (E.D.N.Y. 2023) (citing *United States v. Louper-Morris*, 672 F.3d 539, 562 (8th Cir. 2012)).

In evaluating a motion to dismiss the indictment under Rule 12(b), a court generally “accept[s] as true all of the allegations of the indictment.” *See United States v. Greenberg*, No. 21-cr-92, 2022 WL 827304, at *1, 2022 U.S. Dist. LEXIS 47993, at *1 (S.D.N.Y. Mar. 9, 2022)

(alteration in original) (quoting *United States v. Goldberg*, 756 F.2d 949, 950 (2d Cir. 1985)).

Where a motion “necessarily implicate[s] facts beyond the confines of the . . . indictment,” a court “is permitted to consider facts extrinsic to the indictment.” *See id.*, 2022 WL 827304, at *1, 2022 U.S. Dist. LEXIS 47993, at *2 (citing *United States v. Cuervelo*, 949 F.2d 559, 567 (2d Cir. 1991); *United States v. Regan*, 103 F.3d 1072, 1082 (2d Cir. 1997)).

IV. ANALYSIS

A. Charging Statute

Defendant was indicted under 18 U.S.C. § 922(g)(1). (Dkt. No. 14.) Under § 922(g)(1):

It shall be unlawful for any person . . . who has been convicted in any court of[] a crime punishable by imprisonment for a term exceeding one year . . . to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.²

B. Discussion

Defendant argues that under *New York State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1 (2022) and *United States v. Rahimi*, 602 U.S. 680 (2024), § 922(g)(1) is unconstitutional as-applied to him, because he is “among ‘the people’ whose rights are protected by the Second Amendment.” (Dkt. No. 23-1, at 13). The Government argues that the Court is bound by Second Circuit precedent—namely, *United States v. Bogle*, 717 F.3d 281 (2d Cir. 2013) (per curiam)—holding that § 922(g)(1) does not violate the Second Amendment. (Dkt. No. 25, at 11–13.)

² Excluded from the term “crime punishable by imprisonment for a term exceeding one year” as used in § 922(g)(1) are “[a]ny conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored,” *id.* § 921(a)(20), “any Federal or State offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices,” *id.* § 921(a)(20)(A), and “any State offense classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of two years or less,” *id.* § 921(a)(20)(B).

Defendant argues that *Bogle* is no longer binding in light of *Bruen* and *Rahimi*. (Dkt. No. 23-1, at 10–12; Dkt. No. 28, at 1–2).

1. Second Amendment

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. In *District of Columbia v. Heller*, the Supreme Court held that “the Second Amendment confer[s] an individual right to keep and bear arms.” 554 U.S. 570, 595 (2008). The Court made clear, however, that “the right secured by the Second Amendment is not unlimited” and cautioned that “nothing in [*Heller*] should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms”—an inexhaustive list of prohibitions that the Court identified as “presumptively lawful.” *See id.* at 626–27 & n.26. In *McDonald v. City of Chicago*, while holding that the Second Amendment is “fully applicable to the States,” 561 U.S. 742, 750 (2010), the Court “repeated th[e] assurances” that the Court’s “holding did not cast doubt on such longstanding regulatory measures as ‘prohibitions on the possession of firearms by felons and the mentally ill,’ ‘laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms,’” *see id.* at 786 (plurality opinion) (quoting *Heller*, 554 U.S. at 626–27).

With those decisions in hand, the Second Circuit held in *Bogle* that “§ 922(g)(1) is a constitutional restriction on the Second Amendment rights of convicted felons.” *See* 717 F.3d at 281–82. The Second Circuit reasoned that the Supreme Court “clearly emphasized that [*Heller*

and *McDonald*] should not ‘be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons.’” *See id.* at 281 (quoting *Heller*, 554 U.S. at 626).

Nearly a decade later, the Supreme Court decided *Bruen*. In *Bruen*, the Court held, “consistent with *Heller* and *McDonald*, that the Second and Fourteenth Amendments protect an individual’s right to carry a handgun for self-defense outside the home.” 597 U.S. at 10. *Bruen* set out a “test rooted in the Second Amendment’s text, as informed by history.” *Antonyuk v. James*, 120 F.4th 941, 964 (2d Cir. 2024) (per curiam) (quoting *Bruen*, 597 U.S. at 19). Under *Bruen*, courts “consider whether ‘the Second Amendment’s plain text covers an individual’s conduct,’” and if it does, “the Constitution presumptively protects that conduct.” *Id.* (quoting *Bruen*, 597 U.S. at 24). “To overcome that presumption, ‘[t]he government must . . . justify its regulation by demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation.’” *Id.* (first alteration in original) (quoting *Bruen*, 597 U.S. at 24). That is, “*Bruen* . . . sets out a two-step framework, with the first step based on text and the second step based on history.” *Id.* (citations omitted). In reaching its conclusion, the Supreme Court disapproved the second step of a two-step framework around which the Courts of Appeals had “coalesced” for examining Second Amendment challenges “that combines history with means-end scrutiny.” *See Bruen*, 597 U.S. at 17; *see also Antonyuk*, 120 F.4th at 964.

Most recently, in *United States v. Rahimi*, 602 U.S. 680 (2024), the Supreme Court upheld the constitutionality of 18 U.S.C. § 922(g)(8), which “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.” *Rahimi*, 602 U.S. at 684f (quoting 18 U.S.C. § 922(g)(8)). The Court held that § 922(g)(8) could be enforced against *Rahimi* “consistent with the Second Amendment.” *Id.*

It explained that “[s]ince the founding, our Nation’s firearm laws have included provisions preventing individuals who threaten physical harm to others from misusing firearms” and held that “[a]s applied to the facts of this case, Section 922(g)(8) fits comfortably within this tradition.” *Id.* at 690. It rejected Rahimi’s argument that *Heller* required his conviction to be vacated because “Section 922(g)(8) bars individuals subject to restraining orders from possessing guns in the home, and in *Heller* [the Court] invalidated an ‘absolute prohibition of handguns . . . in the home.’” *Id.* at 699 (quoting *Heller*, 554 U.S. at 636). The Court explained that “*Heller* never established a categorical rule that the Constitution prohibits regulations that forbid firearm possession in the home” and noted that there, the Court “stated that many such prohibitions, like those on the possession of firearms by ‘felons and the mentally ill,’ are ‘presumptively lawful.’” *Id.* (quoting *Heller*, 554 U.S. at 626, 627 & n.26).

2. Second Circuit Precedent

This Court is bound by published decisions of panels of the Second Circuit. *See Packer ex rel. 1-800-Flowers.Com, Inc. v. Raging Cap. Mgmt., LLC*, 105 F.4th 46, 54–56 (2d Cir. 2024). In general, only where such a decision is overruled by the Second Circuit en banc or by the Supreme Court does it lose its binding precedential value. *See id.* (quoting *Medunjanin v. United States*, 99 F.4th 129, 135 (2d Cir. 2024)). However, there is an exception to this general rule “when an ‘intervening Supreme Court decision . . . casts doubt on . . . controlling [Second Circuit] precedent,” such that there is a “conflict, incompatibility, or inconsistency between [the Second Circuit] precedent and the intervening Supreme Court decision.” *United States v. Afriyie*, 27 F.4th 161, 168 (2d Cir. 2022) (first alteration in original) (quoting *In re Arab Bank, PLC Alien Tort Statute Litig.*, 808 F.3d 144, 154–55 (2d Cir. 2015)). This exception applies even where “the intervening decision [did] not address the precise issue already decided by [the Second Circuit].” *See id.* (quoting *In re Arab Bank*, 808 F.3d at 155).

Here, the Court cannot find that *Bruen* or *Rahimi* overruled or otherwise cast doubt on binding Second Circuit precedent. In *Bruen*, the Supreme Court repeatedly and explicitly reaffirmed *Heller* and *McDonald*. See 597 U.S. at 10 (describing its holding as “consistent with *Heller* and *McDonald*”), 26 (characterizing the new historical analysis “appl[ied] today” as the same “test . . . we set forth in *Heller*”), 31 (recognizing that the Court is making “the constitutional standard endorsed in *Heller* more explicit” and “apply[ing] that standard to New York’s proper-cause requirement”). The Court again reaffirmed *Heller* and *McDonald* in *Rahimi*. See *Rahimi*, 602 U.S. at 702 (explaining that the Court “did not ‘undertake an exhaustive historical analysis . . . of the full scope of the Second Amendment’ in *Heller*, *McDonald*, and *Bruen*, and that it did not “do so” in there, either, as it was concluding only that “[a]n individual found by a court to pose a credible threat to the physical safety of another may be temporarily disarmed consistent with the Second Amendment”) (quoting *Bruen*, 597 U.S. at 31). Furthermore, the Court in *Bruen* again recognized that the Second Amendment is “subject to certain reasonable, well-defined restrictions.” 597 U.S. at 70 (citing *Heller*, 554 U.S. at 581). Thus, neither *Bruen* nor *Rahimi* abrogated either *Heller* or *McDonald*. See *United States v. Young*, No. 20-cr-391, 2024 WL 3184709, at *4, 2024 U.S. Dist. LEXIS 112222, at *9 (S.D.N.Y. June 25, 2024) (concluding “that *Heller* and *McDonald* still apply in full force after *Bruen* and *Rahimi*”) (quotation marks omitted).

Given this jurisprudential backdrop, the Court is unconvinced by Defendant’s argument that *Bogle* is no longer binding in light of *Bruen* and *Rahimi*. Though Defendant suggests that the language in *Heller* and *McDonald* on which the Second Circuit drew in *Bogle* is dicta, (Dkt. No. 23-1, at 3–6; Dkt. No. 28, at 2), it “became binding on this Court when the Second Circuit adopted” it in those decisions. See *United States v. Davila*, 688 F. Supp. 3d 81, 84 (S.D.N.Y.

2023). And although *Bruen* clearly invalidated the use of a means-end analysis in the context of a Second Amendment challenge, *see* 597 U.S. at 17–19; *Antonyuk*, 120 F.4th at 964, as Defendant points out, the Second Circuit did not apply means-end scrutiny in *Bogle*. (Dkt. No. 25, at 11–12); *see also Bogle*, 717 F.3d at 281. Because the Second Circuit did not rely on means-end scrutiny in *Bogle* but instead “reasoned purely from language in *Heller* and *McDonald* expressly affirming ‘longstanding prohibitions,’” *see United States v. Hampton*, 676 F. Supp. 3d 283, 301 (S.D.N.Y. 2023) (quoting *Bogle*, 717 F.3d at 281), neither *Bruen* nor *Rahimi*, invalidated—either explicitly via overruling or implicitly through conflict, incompatibility, or inconsistency—*Bogle*. *See United States v. Fayton*, 704 F. Supp. 3d 449, 454–56 (S.D.N.Y. 2023).³

At bottom, given *Bogle*’s reliance on reasoning from *Heller* and *McDonald* and *Bruen*’s unflagging reaffirmance of those decisions, it is clear that *Bruen* and *Rahimi* did not overrule *Bogle*. And the Court does not find that *Bruen* or *Rahimi* casts doubt on *Bogle* such that there is a

³ Nearly every in-circuit district court decision of which the Court is aware that has considered whether *Bogle* remains binding in the wake of *Bruen* has reached the conclusion that *Bogle* remains binding law. *See, e.g., United States v. Pickett*, No. 22-cr-486, 2024 WL 779209, at *3, 2024 U.S. Dist. LEXIS 32573, at *6–7 (E.D.N.Y. Feb. 26, 2024) (collecting cases); *see also Vincent v. Garland*, 80 F.4th 1197, 1202 (10th Cir. 2023) (holding that “*Bruen* did not indisputably and pellucidly abrogate” binding Tenth Circuit precedent analogous to *Bogle*), *aff’d*, --- F.4th ---, 2025 WL 453999, 2025 U.S. App. LEXIS 3179 (10th Cir. Feb. 11, 2025). In one in-circuit case, the court found that *Bogle*’s “underlying reasoning ha[d] been sufficiently called into question to warrant evaluation of the constitutional challenge to Section 922(g) under the analytical framework set forth in *Bruen*,” and after conducting such analysis, found Section 922(g)(1) facially constitutional. *United States v. Gonzalez*, No. 23-cr-6210, 2024 WL 5336649, *6–7, 2024 U.S. Dist. LEXIS 237600, at *17–20 (W.D.N.Y. Nov. 13, 2024), *report and recommendation adopted*, 2025 WL 219112, 2025 U.S. Dist. LEXIS 8799 (W.D.N.Y. Jan. 16, 2025). *But see Range v. Att’y Gen.*, 69 F.4th 96, 98, 106 (3d Cir. 2023) (en banc) (finding § 922(g)(1) unconstitutional under *Bruen* as applied to a defendant previously convicted of making a false statement to obtain food stamps, a misdemeanor punishable by up to five years in prison under Pennsylvania law), *aff’d*, 124 F.4th 218 (2024) and *United States v. Williams*, 113 F.4th 637, 647–48 (6th Cir. 2024) (holding that pre-*Bruen* precedent is not binding, because those decisions “omitted any historical analysis” and “are therefore inconsistent with *Bruen*’s mandate to consult historical analogs”).

conflict, incompatibility, or inconsistency between *Bruen* and *Bogle*. Thus, this Court is bound by *Bogle*. Under *Bogle*, § 922(g)(1) is facially constitutional.⁴

“Because *Bogle* is undisturbed, the Court need not analyze the nation’s history of regulation of firearms with respect to convicted felons.” *United States v. Sanders*, 707 F. Supp. 3d 239, 243 (E.D.N.Y. 2023) (quoting *United States v. Alston*, No. 22-cr-178, 2023 WL 6977055, at *3 n.4, 2023 U.S. Dist. LEXIS 189989, at *6 n.4 (E.D.N.Y. Oct. 23, 2023)); *see also United States v. Sternquist*, 692 F. Supp. 3d 19, 26 (E.D.N.Y. 2023) (collecting cases). The Court notes, however, that courts within the Second Circuit that have undertaken such a historical analysis have found § 922(g)(1) constitutional. *See, e.g., Rampersant*, 704 F. Supp. 3d at 380 n.6 (collecting cases).

C. As-Applied Challenge

Defendant argues that § 922(g)(1) is unconstitutional as applied to him, (Dkt. No. 23-1, at 14–16). There is no precedent requiring the Court “to conduct an individualized inquiry by felony” with respect to an as-applied challenge of § 922(g)(1). *See United States v. Mitchell*, No. 23-cr-198, 2023 WL 8006344, at *7, 2023 U.S. Dist. LEXIS 207861, at *19 (S.D.N.Y. Nov. 17, 2023); *see also Hampton*, 676 F. Supp. 3d, at 298 (“Given *Bruen*’s recency, the case law has not yet developed the parameters of an as-applied Second Amendment challenge.” (quoting *United States v. Rowson*, 652 F. Supp. 3d 436, 455 n.12 (S.D.N.Y. 2023))); *United States v. Craft*, No. 23-cr-178, 2023 WL 6215326, at *3, 2023 U.S. Dist. LEXIS 170483, at *7 (S.D.N.Y. Sept. 25, 2023) (“[W]hile the Second Circuit has not addressed whether Section 922(g)(1) is subject to an as-applied challenge, the Eighth Circuit found Section 922(g)(1) constitutional in all of its

⁴ Although Defendant’s motion only moves to dismiss on the ground that § 922(g)(1) violates the Second Amendment as applied to him, (Dkt. No. 23), Defendant’s briefs argue that § 922(g)(1) is also facially unconstitutional, (Dkt. No. 23-1, at 16; Dkt. No. 28, at 13).

applications and thus foreclosed as-applied challenges.” (citing *United States v. Jackson*, 69 F.4th 495, 502 (8th Cir. 2023), *aff’d*, 110 F.4th 1120 (8th Cir. 2024)⁵); *United States v. Nelson*, No. 22-cr-436, 2023 WL 6520378, at *3, 2023 U.S. Dist. LEXIS 179538, at *7 (S.D.N.Y. Oct. 4, 2023) (“[T]here is nothing in *Heller*, *McDonald*, or *Bogle* to suggest that the validity of a restriction on a felon possessing a firearm turns on the severity of the felony that triggers the restriction.”).

In any event, Defendant’s as-applied challenge fails. Defendant misconstrues *Rahimi*, arguing that it does not apply here because Defendant has been permanently, not temporarily, disarmed and because Defendant has “never been explicitly found by a court to pose a credible threat to the physical safety of another.” (Dkt. No. 23-1, at 15). In *Rahimi*, the Supreme Court did hold that an “individual found by a court to pose a credible threat to the physical safety of another may be temporarily disarmed consistent with the Second Amendment.” 602 U.S. at 702. However, “the Supreme Court did not suggest that is the only permissible restriction” and “expressly mentioned that felon-in-possession statutes are presumptively lawful.” *United States v. Ramos*, No. 23-cr-554, 2024 WL 4979204, at *5, 2024 U.S. Dist. LEXIS 220577, at *12–13 (S.D.N.Y. Dec. 4, 2024).

Here, “Defendant has two felony convictions, both of which are crimes ‘punishable by imprisonment for a term exceeding one year,’ and fall squarely within 18 U.S.C. Section 922(g)(1).” *See United States v. King*, 634 F. Supp. 3d 76, 83 (S.D.N.Y. 2022) (quoting 18 U.S.C. § 922(g)(1)). Defendant’s argument that the convictions “occurred over a decade ago,” (Dkt. No. 23-1, at 16), is “unavailing” because “Defendant cites no support for the suggestion

⁵ The Eighth Circuit in *Jackson* rejected “felony-by-felony litigation regarding the constitutionality of § 922(g)(1).” 69 F.4th at 502.

that the application of Section 922(g)(1) changes based on the temporal proximity of the felony conviction to the unlawful possession of a firearm.” *Craft*, 2023 WL 6215326, at *3, 2023 U.S. Dist. LEXIS 170483, at *7–8. Defendant’s argument that the assault felony for which he was convicted could be “committed through ‘offensive’ or ‘provocative’ contact with no credible threat to the physical safety of another,” (Dkt. No. 23-1, at 15) is similarly unavailing because the underlying indictment for that charge states that Defendant “knowingly[] or recklessly cause[d] bodily injury to [a peace officer] by striking [him] with [D]efendant’s hand and by kicking [him],” (Dkt. No. 25-1). Defendant’s conviction “falls squarely within the constitutionally-sound prohibition on felons possessing firearms and ammunition.” *Ramos*, 2024 WL 4979204, at *5, 2024 U.S. Dist. LEXIS 220577, at *13 (rejecting as-applied challenge to § 922(g)(1) by a defendant who had previously been convicted of assault).⁶

Accordingly, Defendant’s motion to dismiss on the grounds that § 922(g)(1) is unconstitutional as applied to him is denied.

⁶ The principal case cited by Defendant that involved an as-applied challenge to § 922(g)(1), *Range v. Attorney General*, does not compel a different result. In *Range*, the Third Circuit, relying on *Bruen*, held that § 922(g)(1) was unconstitutional as applied to a defendant previously convicted of making a false statement to obtain food stamps, a misdemeanor punishable by up to five years in prison under Pennsylvania law. *See* 69 F.4th at 98, 106. As an initial matter, *Range*, by which the Court is not bound, is inconsistent with *Bogle*, by which the Court is bound. And in any event, Defendant has not shown that his circumstances are sufficiently similar to those of the defendant in *Range*: Defendant has two prior felony convictions as compared to the misdemeanor conviction at issue in *Range*. *See Mitchell*, 2023 WL 8006344, at *8, 2023 U.S. Dist. LEXIS 207861, at *21 (“Unlike the food stamp fraudster [in *Range*] who [pleaded] guilty to an unusual state law *misdemeanor*, [Defendant’s] prior misconduct [here] involves . . . actual . . . felon[ies].” (first, third, fourth, and fifth alterations in original) (quoting *United States v. Harrison*, 683 F. Supp. 3d 184, 195 (N.D.N.Y. 2023))).

V. CONCLUSION

For these reasons, it is hereby

ORDERED that Defendant's motion to dismiss the indictment, (Dkt. No. 23), is

DENIED.

IT IS SO ORDERED.

Dated: February 21, 2025
Syracuse, New York


Brenda K. Sannes
Chief U.S. District Judge