

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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ORDER

July 9, 2026

Before

MICHAEL B. BRENNAN, *Chief Judge*
DORIS L. PRYOR, *Circuit Judge*
REBECCA TAIBLESON, *Circuit Judge*

No. 26-1431	UNITED STATES OF AMERICA, Plaintiff - Appellee v. RICHARD BARGE, Defendant - Appellant
Originating Case Information:	
District Court No: 1:25-cr-00006-1 Northern District of Illinois, Eastern Division District Judge Sunil R. Harjani	

The following is before the court: **GOVERNMENT'S MOTION FOR SUMMARY AFFIRMANCE**, filed on July 7, 2026, by counsel for the appellee.

The only issue presented by this appeal has been resolved, adversely to appellant, by *United States v. Prince*, 171 F.4th 1009 (7th Cir. 2026), and *United States v. Watson*, 171 F.4th 1012 (7th Cir. 2026). Accordingly,

IT IS ORDERED that the government's motion is **GRANTED**, and the district court's judgment is **AFFIRMED**.

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS**

United States of America,	)	
	)	
	)	Case No. 25 CR 6
v.	)	
	)	Judge Sunil R. Harjani
Richard Barge	)	
	)	

ORDER

Defendant Richard Barge has moved to dismiss the indictment charging him with violations of Title 18, United States Code, Sections 922(o)(1) (Count I) and 922(g)(1) (Count II). Defendant claims the charges violate the Second Amendment in light of the Supreme Court's decision in *New York State Rifle & Pistol Association v. Bruen*, 597 U.S. 1 (2022) on both a facial and as applied basis.

I. Section 922(g)(1)

As an initial matter, the constitutionality of Section 922(g)(1) is a matter on appeal to the Seventh Circuit Court of Appeals in *United States v. Prince*, No. 23-3155 (7th Cir.). The Court notes that there are many cases that are stayed on appeal pending the decision in *Prince*, and this case likely will also receive the same treatment if *Prince* is not issued before a judgment in this matter and a notice of appeal is filed.

Given that this Court will adhere to the binding precedent of the court of appeals from *Prince*, which will be decided any day now, this Court will summarize its reasons for denying defendant's motion to dismiss rather than provide a full and detailed historical review of the nation's laws on firearms regulation and the Second Amendment jurisprudence established in *District of Columbia v. Heller*, 554 U.S. 570 (2008), *Bruen*, and *United States v. Rahimi*, 602 U.S. 680 (2024), as other courts have done. The Court notes that the Seventh Circuit has recently upheld the constitutionality of an Illinois law forbidding licensees from carrying firearms on public transportation under the *Bruen* test. *Schoenthal v. Raoul*, 150 F.4th 889 (7th Cir. 2025). The Seventh Circuit also recently held that Section 922(g)(5)(A) prohibiting noncitizens from possessing a firearm while illegally or unlawfully in the United States did not violate the Second Amendment. *United Staes v. Carbajal-Flores*, 143 F.4th 877 (7th Cir. 2025). Similarly, the Seventh Circuit also held that Section 922(g)(3), which prohibits users of unlawful drugs and those addicted to such drugs from possessing a weapon, did not violate the strictures of the Second Amendment as applied to that defendant. *United States v. Seiwert*, 2025 WL 2627468 (7th Cir. 2025). While in different contexts, these decisions indicate to this Court that the court of appeals is likely to uphold the constitutionality of Section 922(g)(1) as well under the *Bruen* test.

A. Facial challenge

First, applying the current precedent to date, the Court finds that Section 922(g)(1) is constitutional under binding precedent. In *United States v. Gay*, 98 F.4th 843, 846 (7th Cir. 2024), the defendant challenged his conviction under Section 922(g)(1) on appeal by arguing that the Second Amendment permitted persons with felony convictions like himself to possess firearms. *Id.* The Seventh Circuit noted that Gay’s argument was “hard to square” with *Heller*’s language that “long standing prohibitions on the possession of firearms by felons” are valid. *Id.* (quoting *Heller*, 554 U.S. at 626, 635). The Seventh Circuit further noted that the Supreme Court had reiterated that all of the reservations and provisos in *Heller* remain valid post-*Bruen*. *Id.*; see also *McDonald v. City of Chicago*, 561 U.S. 742 (2010). *Gay* also noted that multiple Justices had written separately in *Bruen* to explain that the decision “did not change anything about *Heller*.” *Id.* (first citing *Bruen*, 597 U.S. at 72 (Alito, J., concurring), and then citing *Bruen*, 597 U.S. at 80–81 (Kavanaugh J., concurring)). *Rahimi* made the same point. *Rahimi*, 602 U.S. at 699 (“[O]ur opinion [in *Heller*] stated that many such prohibitions, like those on the possession of firearms by ‘felons and the mentally ill,’ are ‘presumptively lawful.’” (quoting *Heller*, 554 U.S. at 626, 627 & n.26)); see also *id.* at 735–36 (Kavanaugh, J., concurring). The analysis in *Gay* is therefore entirely consistent with *Rahimi*. *Gay* essentially foreclosed facial challenges to Section 922(g)(1).

Even if it did not, the Court finds that Section 922(g)(1) satisfies the *Bruen* test. To prevail on a facial challenge, Defendant must show that the statute is unconstitutional in all applications. See *City of Los Angeles v. Patel*, 576 U.S. 409, 418 (2015). As the Supreme Court noted in *Rahimi*, “[t]his is the ‘most difficult challenge to mount successfully,’ because it requires a defendant to ‘establish that no set of circumstances exists under which the Act would be valid.’” 602 U.S. at 693 (quoting *United States v. Salerno*, 481 U.S. 739, 745 (1987)). Thus, “to prevail, the Government need only demonstrate that [the challenged provision] is constitutional in some of its applications.” *Id.* As many courts have done, to expedite the analysis, this Court will assume without deciding that felons are within the class of “people” covered by the Second Amendment, and thus will skip step one of the *Bruen* analysis and proceed directly to the step two history and tradition test. See, e.g., *Seiwert*, 2025 WL 2627468, at *4; *United States v. Donald*, 732 F. Supp. 3d 937, 938 n.1 (N.D. Ill. 2024). The Court finds that the government has met its burden in showing that Section 922(g)(1) is consistent with “this Nation’s historical tradition of firearm regulation” and does not violate the Second Amendment. *Bruen*, 597 at 4. After *Bruen*, the Seventh Circuit clarified that a district court must engage in a “proper, fulsome analysis of the historical tradition supporting § 922(g)(1)” to determine if “modern and historical regulations impose a comparable burden on the right of armed self-defense and whether that burden is justified.” *Atkinson v. Garland*, 70 F.4th 1018, 1021–22 (7th Cir. 2023) (quoting *Bruen*, 597 U.S. at 29). Here, this means that the government must present historical analogues to show there is a tradition of limiting the right to keep and bear arms that is aligned with Section 922(g)(1).

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.” The government analogizes Section 922(g)(1) with two types of historical laws: (i) laws that categorically disqualified groups who were untrustworthy adherents to the law from possessing firearms, and (ii) laws that authorized capital punishment and estate forfeiture for felonies.

Laws prohibiting untrustworthy individuals from possessing firearms have existed since at least late 17th-century England. *Bruen*, 597 U.S. at 20. The government points out, for example, how in 1689, the English government passed a law disarming Catholics who refused to make declarations renouncing their faith. 1 W. & M., an. 1, sess. 1, c. 15, in 6 *The Statutes of the Realm* 71–73 (1688); [64] at 29–30. This law was based on a theory that Catholics were disobedient of the sovereign, not that they were necessarily dangerous. *Range v. Att’y Gen. of the U.S.*, 69 F.4th 96, 121–22 (3d Cir. 2023) (Krause, J., dissenting) (explaining that disarmament laws were not “based on the notion that every single Catholic was dangerous” but rather “the disarmament of Catholics in 1689 reflects Protestant fears that Catholics could not be trusted to obey the law”), *vacated*, *Garland v. Range*, 144 S. Ct. 2706, *remanded to*, *Range v. Att’y Gen. of the U.S.*, 124 F.4th 218 (3d Cir. 2024). The government also cites other laws in which untrustworthiness, as opposed to demonstrated danger, served as a basis for disarming a person. *See* [64] at 30–31; *United States v. Jackson*, 110 F.4th 1120, 1128 (8th Cir. 2024). Further, in 18th-century England, one “arousing ‘suspicion of an intention to commit any act of violence or disturbance of the peace’” was often prohibited from possessing a firearm. C. Kevin Marshall, *Why Can’t Martha Stewart Have A Gun?*, 32 Harv. J.L. & Pub. Pol’y 695, 716 (2009).

The government points out that Colonial Americans then continued the English tradition of disarming those “perceived as dangerous.” [64] at 31–34; Joseph G.S. Greenlee, *The Historical Justification for Prohibiting Dangerous Persons from Possessing Arms*, 20 Wyo. L. Rev. 249, 262 (2020). “Like English laws, colonial laws were sometimes discriminatory and overbroad—but even those were intended to prevent danger.” Greenlee, *Historical Justification*, *supra*. As the government explains, the Continental Congress recommended, in 1776, that colonial governments disarm those who were “notoriously disaffected to the cause of America” or who simply “have not associated” with the colonial governments in the war effort. [64] at 34; 4 Journals of the Continental Congress 1774-1789, at 205 (1906) (resolution of March 14, 1776). Similarly, Section 922(g)(1) addresses a “general societal problem that has persisted since the 18th century” in that the statute categorically disarms untrustworthy individuals—namely, felons. *See Atkinson*, 70 F.4th at 1023. Accordingly, the government has demonstrated a history and tradition of disarming untrustworthy people in this country.

Next, the government also provides support that, historically, laws went much further than Section 922(g)(1)—by authorizing capital punishment and estate forfeiture for felons. [64] at 20. Before the founding, the standard penalty for a felony was death. *See* 4 William Blackstone, *Commentaries on the Laws of England* 98 (1769). Additionally, the government points out that upon conviction a felon’s estate would escheat to the state, and he would be required to forfeit all his goods and chattels—including his arms. *Id.* at 378–82. Similarly, in early America “death was

‘the standard penalty for all serious crimes’ at the time of the founding.” *Bucklew v. Precythe*, 587 U.S. 119 (2019) (citation omitted). This also explains why disarmament laws were not even more prevalent. *Range*, 69 F.4th at 126–27 (Krause, J., dissenting) (“[T]he ubiquity of the death penalty suggests that the Founding generation would have had no objection to imposing on felons the comparatively lenient penalty of disarmament.”).

The *Rahimi* Court highlighted the throughline between historical laws punishing felonies with death or estate forfeiture and modern laws that prohibit felons from possessing arms. The Court wrote that “the Second Amendment permits more than just those regulations identical to ones that could be found in 1791” and that “a challenged regulation [need] not precisely match its historical precursors” to be constitutional. *Rahimi*, 602 U.S. at 691–92. In this vein, the Court elaborated, “if imprisonment was permissible to respond to the use of guns to threaten the physical safety of others, then the lesser restriction of temporary disarmament that Section 922(g)(8) imposes is also permissible.” *Id.* at 699. Thus, the capital punishment and estate forfeiture laws for felons are “relevantly similar” to Section 922(g)(1). *Id.* at 692 (quoting *Bruen*, 597 U.S. at 29).

Defendant cites to *United States v. Prince*, 700 F.Supp.3d 663, 667–76 (N.D. Ill. 2023) and *United States v. Neal*, 715 F. Supp. 3d 1084, 1096–98 (N.D. Ill. 2024)—cases in which district courts found that Section 922(g)(1) was not consistent with the nation's historical tradition. Neither case is binding on the Court. Reasonable minds can disagree, and in any event, the Seventh Circuit will decide the matter for our circuit.

While the English and colonial laws discussed above may not perfectly align with Section 922(g)(1), they are sufficiently analogous with Section 922(g)(1) to show the statute is consistent with the nation's history and tradition. And further, *Bruen* only “requires only that the government identify a well-established and representative historical analogue, not a historical twin.” 597 U.S. at 30. The government has met this burden.

B. As-Applied Challenge

The Seventh Circuit did not hold that all as-applied challenges to Section 922(g)(1) are inappropriate, noting that for “the sake of argument that there is some room for as-applied challenges.” *Gay*, 98 F.4th at 846 (emphasis omitted). However, the Seventh Circuit rejected such a challenge from *Gay*. *Id.* at 846–847. The Court concluded that *Gay* did not fit the description of a “law-abiding, responsible citizen[,]” as he had been convicted of twenty-two felonies and was on parole when he was arrested for having a firearm in violation of Section 922(g)(1). *Id.* These felonies were not of a minor nature and included aggravated battery of a peace officer and possessing a weapon while in prison. *Id.* Therefore, the Seventh Circuit found that *Gay* is not a “law-abiding, responsible” person who has a constitutional right to possess firearms. *Id.*

As for Defendant’s as-applied argument, he has not presented historical evidence to support it. In *Gay*, the Seventh Circuit recognized that the U.S. Supreme Court has not considered “the question whether non-violent offenders may wage as-applied challenges to § 922(g)(1).” *Id.*

at 846. Besides the fact that the Seventh Circuit has never upheld an as-applied Second Amendment challenge to Section 922(g)(1), Defendant also offers inadequate support for his proposition that the statute’s constitutionality turns on individualized assessments. In *Atkinson*, the Seventh Circuit explained that if a defendant calls for a distinction between violent and non-violent crimes under Section 922(g)(1), the defendant must present historical evidence to justify a different outcome. 70 F.4th at 1024. Defendant has not presented any historical evidence to support such an individualized assessment or a carveout for non-violent felonies. *See id.* at 1023 (“[Atkinson] does not provide much historical basis for individualized assessments or for delineating between individuals who committed violent versus non-violent crimes.”). Instead, Defendant attacks the government’s historical evidence as insufficient because regulations prohibiting felons from possessing firearms did not appear in any form until the twentieth century, long after the time of the Second Amendment’s ratification. However, the absence of such regulations does not equate to the absence of a historical tradition. Defendant’s cited source for “earlier legal traditions” undermines his argument, because it explains that gun possession was “the ultimate expression of virtuous citizenry” and was stripped from felons, who were thought of as dishonorable citizens and civilly dead, “permissibly [as] part of their civil death.” [54] at 12 & n.5; Conrad Khan, *Challenging the Federal Prohibition on Gun Possession by Nonviolent Felons*, 55 S. Tex. L. Rev. 113, 129–30 (2013). Thus, Defendant has not undermined the government’s historical evidence, which points to an opposite conclusion—laws in American colonies and 17th-century England suggest that felons, both violent and non-violent, were targeted for firearm dispossession. [*See supra*].

But even assuming such a challenge is possible, Defendant’s motion never discusses his own criminal background in depth and whether it contradicts that he is “law-abiding,” the phrase or a variant that *Gay* notes *Bruen* uses repeatedly. *Gay*, 98 F.4th at 846. Defendant has been convicted of the felony theft twice. Moreover, like in *Gay*, defendant did not contest the constitutionality through a declaratory judgment – but instead he is alleged to have “violated the law in secret and tried to avoid detection[,]” which diminishes any law-abiding claim on his part. *Id.* at 847. Defendant’s reply brief does not respond to any of these arguments. His as-applied argument is undeveloped and waived. And even if not waived, and an individualized assessment challenge is possible, the Court finds that Defendant is the sort of individual that the statute constitutionally prevents from possessing a firearm as a two-time convicted felon.

II. Section 922(o)

Defendant also brings a facial and as-applied challenge to Section 922(o). The Court finds that binding precedent warrants denial of the motion as machine guns are not “arms” within the meaning of the Second Amendment

A. Facial Challenge

In *United States v. Miller*, 307 U.S. 174 (1939), the Supreme Court held that the National Firearms Act of 1934 that banned sawed-off shotguns did not violate the Second Amendment. In

so doing, the Court held that the possession of a shotgun had no “reasonable relationship” to the “right to keep and bear” arms. *Id.* at 178. The Court stated that “language employed” in the Second Amendment might lead to “somewhat variant conclusions concerning the scope of the right guaranteed,” but no matter the disagreements, “none of them . . . afford[ed] any material support for” the defendants’ argument that he had a right to keep a sawed-off shotgun. *Id.* at 182.

Heller expressly adopted *Miller*’s holding. The Court explained that none of its “precedents foreclose[d] the conclusions . . . reached about the meaning of the Second Amendment.” *Heller*, 554 U.S. at 619–26. *Miller* turned on “the type of weapon at issue.” *Id.* at 622 (quoting *Miller*, 307 U.S. at 178). According to *Heller*, that case “stands . . . for the proposition that the Second Amendment right, whatever its nature, extends only to certain types of weapons.” *Id.* at 623. As *Heller* stated, it would be a “startling reading” of *Miller* to suggest that the “the National Firearms Act’s restrictions on machineguns . . . might be unconstitutional.” *Id.* at 624. The Court went further and stated: “We therefore read *Miller* to say only that the Second Amendment does not protect those weapons not typically possessed by law-abiding citizens for lawful purposes, such as short-barreled shotguns.” *Id.* at 625; *see also Friedman v. City of Highland Park*, 784 F.3d 406, 408 (7th Cir. 2015) (“The Court took from *Miller* the rule that the Second Amendment does not authorize private persons to possess weapons such as machine guns and sawed-off shotguns that the government would not expect (or allow) citizens to bring with them when the militia is called to service.”).

Bruen is consistent with *Miller*. The law at issue was New York’s proper-cause requirement for carrying a handgun outside the home. *Bruen*, 597 U.S. at 11. In rejecting the lower court’s two-step approach, the Court relied heavily on *Heller*. *Id.* at 19–24. The text of the Second Amendment, it explained, “protects the possession and use of weapons that are ‘in common use at the time.’” *Id.* at 21 (quoting *Heller*, 554 U.S. at 627). The challengers sought to carry weapons “in common use” in public, so their conduct was protected. *Id.* at 31–32. But that same protection would not extend to dangerous and unusual weapons. *Id.* at 47. Writing for himself, Justice Alito emphasized the majority had not changed anything said in *Heller* or *McDonald* about “restrictions that may be imposed on the possession or carrying of guns.” *Id.* at 72 (Alito, J., concurring). Justice Kavanaugh, joined by Chief Justice Roberts, added: “*Miller* said, as we have explained, that the sorts of weapons protected were those in common use at the time. We think that limitation is fairly supported by the historical tradition of prohibiting the carrying of dangerous and unusual weapons.” *Id.* at 81 (quoting *Heller*, 554 U.S. at 626–27) (Kavanaugh, J., concurring). *Rahimi* even recognized this: “At the founding, the bearing of arms was subject to regulations” and “[s]ome jurisdictions banned the carrying of ‘dangerous and unusual weapons.’” 602 U.S. at 691 (quoting *Heller*, 554 U.S. at 627).

Even more recently, the Seventh Circuit addressed whether assault weapons constituted “arms” under the Second Amendment in *Bevis v. City of Naperville, Illinois*, 85 F.4th 1175 (2023). The Seventh Circuit concluded that they were not when examining the historical antecedents on which the Second Amendment was based. *Id.* at 1197–1202. While this decision was in the context

of deciding whether there was a likelihood of success to enter a preliminary injunction on Illinois' assault weapons ban, the Seventh Circuit explicitly reaffirmed its decision in *Friedman* and determined that nothing in *Heller* or *Bruen* changed the outcome. *Friedman* upheld Highland Park's ordinance banning the possession of assault weapons or large capacity magazines, and explicitly concluded that machine guns were not covered under the Second Amendment as they were not in common use at the founding and that they were dangerous and unusual weapons. *Friedman*, 784 F.3d 406 (7th Cir. 2015). As a result, in reviewing the Seventh Circuit's decision in *Bevis*, this Court concludes that *Friedman* continues to remain the law of this Circuit. *See Bevis*, 85 F.4th at 1189 (“[W]e see *Friedman* as basically compatible with *Bruen*, insofar as *Friedman* anticipated the need to rest the analysis on history, not on a free-form balancing test.”); *see also United States v. Rush*, 130 F.4th 633, 639, 644 & n.12 (7th Cir. 2025) (relying on *Bevis*, which “[n]o intervening Supreme Court case has called . . . into doubt, and this court has not overruled,” and *Friedman*, which was “basically compatible with *Bruen*,” to find constitutional the ban on short-barreled rifles in Section 5861(d) of the National Firearms Act); *Viramontes v. Cook County*, 2025 WL 1553896, at *2 (7th Cir. June 2, 2025) (affirming dismissal of facial challenge to Cook County's assault weapons ban because appellant had “not developed the arguments or record necessary to justify overruling” *Bevis*). For all of the above reasons, Supreme Court and Seventh Circuit binding precedent warrants denial of the Defendant's facial challenge to Section 922(o)(1), which bans the private possession of machine guns. *See also United States v. Williams*, 2024 WL 308460 (N.D. Ill. Jan 26, 20254) (concluding that binding precedent from *Heller*, *Bevis*, and *Friedman* demonstrates that machine guns are not protected under the Second Amendment).

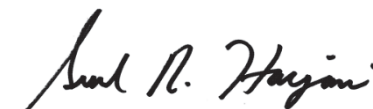
B. As-applied

Besides using the words “as-applied,” Defendant does not explain why the challenged statute is unconstitutional based on the specific facts of his case. Defendant is charged with possessing a Glock with a switch that can fire more than one round with a single function of the trigger, which is a machine gun under 26 U.S.C. § 5845(b). Defendant does not dispute this conclusion. Defendant does not provide any evidence that such a weapon is not a dangerous or unusual weapon, or that it was in common use for self-defense, such that an as-applied change should prevail. As a result, Defendant's as-applied challenge is undeveloped and thus waived. *See e.g. United States v. Morgan*, 150 F.4th 1339, 1346 (10th Cir. 2025) (defendant failed to demonstrate that a Glock switch firearm was in common use). Even if not waived, it fails for the reasons described above, namely that the Second Amendment does not protect the possession of machine guns.

Accordingly, Defendant's motion to dismiss the indictment [54] is denied.

SO ORDERED.

Dated: October 6, 2025



Sunil R. Harjani
United States District Judge