

WALLACE V. UNITED STATES APPENDIX

TENTH CIRCUIT
UNPUBLISHED OPINION

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

July 6, 2026

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

PHILLIP EUGENE WALLACE, JR.,

Defendant - Appellant.

No. 25-5074
(D.C. No. 4:24-CR-00121-SEH-1)
(N.D. Okla.)

ORDER AND JUDGMENT*

Before **EID, KELLY**, and **CARSON**, Circuit Judges.**

A grand jury indicted Defendant Phillip Eugene Wallace, Jr. of possession of a firearm in violation of 18 U.S.C. § 922(g)(1), which prohibits felons from possessing firearms. Defendant moved to dismiss the indictment against him under New York State Rifle & Pistol Association, Inc. v. Bruen, 597 U.S. 1 (2022). The district court denied his motion. He pled guilty to the charge but preserved his right to appeal the

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

** After examining the briefs and appellate record, this panel has determined unanimously to honor the parties' request for a decision on the briefs without oral argument. See Fed. R. App. P. 34(f); 10th Cir. R. 34.1(G). The case is therefore submitted without oral argument.

motion to dismiss. The district court sentenced Defendant to thirty months' imprisonment and three years' supervised release.

On appeal, Defendant brings an as-applied challenge to the constitutionality of 18 U.S.C. § 922(g)(1). Prior to the grand jury indicting Defendant, we decided Vincent v. Garland, 80 F.4th 1197 (10th Cir. 2023) (“Vincent I”), in which we held that the Supreme Court’s decision in Bruen does not expressly overrule United States v. McCane, 573 F.3d 1037 (10th Cir. 2009)—which upheld § 922(g)(1)’s constitutionality. The Supreme Court later vacated Vincent I and remanded for reconsideration in light of its decision in United States v. Rahimi, 602 U.S. 680 (2024). See Vincent v. Garland, 144 S. Ct. 2708 (2024) (mem.) (“Vincent II”). On remand, we concluded that Rahimi did not undermine our earlier reasoning or result, and reiterated that under McCane and Rahimi, the Second Amendment does not render § 922(g)(1) unconstitutional. Vincent v. Bondi, 127 F.4th 1263 (10th Cir. 2025) (“Vincent III”).

Defendant acknowledges that Vincent III, Rocky Mountain Gun Owners v. Polis, 121 F.4th 96 (10th Cir. 2024), and United States v. Warner, 131 F.4th 1137 (10th Cir. 2025), foreclose his arguments but nonetheless appeals for preservation purposes. Because Supreme Court and Tenth Circuit precedent foreclose his as-applied challenge to § 922(g)(1), Defendant’s appeal lacks merit.

AFFIRMED.

Entered for the Court

Joel M. Carson III
Circuit Judge

DISTRICT COURT
OPINION AND ORDER
DENYING MOTION TO DISMISS

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

PHILLIP EUGENE WALLACE,

Defendant.

Case No. 24-CR-00121-SEH

OPINION AND ORDER

I. Background/Procedural History

A federal grand jury charged Phillip Eugene Wallace in count one of a two-count indictment with possession of firearms and ammunition as a convicted felon. [ECF No. 2 at 1–2]. Wallace moves to dismiss the charge against him; he contends that the criminal statute under which he is charged, 18 U.S.C. § 921(g)(1), is unconstitutional as applied to him. [ECF No. 41 at 1]. Because *United States v. McCane*, 573 F.3d 1037 (10th Cir. 2009) remains binding Tenth Circuit precedent, this Court is obligated to follow that decision and deny Wallace’s motion. However, even under the framework set out in *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1 (2022), the result is the same. Because this Nation’s historical tradition of firearm regulation at and around the time of the founding includes laws that are analogous to the

contemporary disarmament of convicted felons like Wallace, Section 922(g)(1) is a valid exercise of congressional authority. Therefore, Wallace’s motion to dismiss the indictment [ECF No. 41] is denied.

II. Second Amendment Jurisprudence

In *District of Columbia v. Heller*, the Supreme Court held that the Second Amendment guarantees an individual right to possess firearms. 554 U.S. 570, 595 (2008). The Court observed that “nothing in [its] opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons[.]” *Id.* at 626. The Tenth Circuit relied on this observation in *United States v. McCane* to reject a Second Amendment challenge to Section 922(g)(1)—the federal statute banning felons from possessing firearms or ammunition. 573 F.3d at 1047 (10th Cir. 2009).

In *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, the Supreme Court set out a two-step test for determining whether legislation regulating the use or possession of firearms violates the Second Amendment. 597 U.S. 1 (2022). Under *Bruen*, a court considering such a challenge must first determine whether the Amendment’s “plain text covers an individual’s conduct.” *Id.* at 24. If so, “the Constitution presumptively protects that conduct” and “[t]he government must then justify its regulation by demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation.” *Id.*;

see also id. at 17 (“To justify its regulation, the government may not simply posit that the regulation promotes an important interest.”).

Bruen offered guidance for making the historical inquiry at the second step. “[W]hen a challenged regulation addresses a general societal problem that has persisted since the 18th century, the lack of a distinctly similar historical regulation addressing that problem is relevant evidence,” although not necessarily dispositive, “that the challenged regulation is inconsistent with the Second Amendment.” *Id.* at 26. Likewise, if “earlier generations addressed th[at same] societal problem, but did so through materially different means, that also could be evidence that a modern regulation is unconstitutional.” *Id.* at 26–27. However, the historical inquiry is not a “regulatory straightjacket[.]” *Id.* at 30. It “requires only that the government identify a well-established and representative historical *analogue*, not a historical *twin*.” *Id.* at 30 (emphasis in original).

In *United States v. Rahimi*, the Supreme Court provided additional insight into how courts should approach the historical analysis laid out in *Bruen*. 602 U.S. --, 144 S. Ct. 1889 (2024). Because the Second Amendment allows “more than just those regulations identical to ones that could be found in 1791,” *id.* at 1926 (Jackson, J., concurring), the Court directed that lower courts “must ascertain whether the new law is relevantly similar to laws that our tradition is understood to permit, applying faithfully the balance struck

by the founding generation to modern circumstances.” *Id.* at 1898 (cleaned up). Contemporary laws that address problems like those addressed by the restriction need not “precisely match its historical precursors” to “pass constitutional muster.” *Id.* at 1898 (quoting *Bruen*, 597 U.S. at 30). And although it “must comport with the principles underlying the Second Amendment,” the contemporary restriction “need not be a dead ringer or a historical twin.” *Id.* (cleaned up). Finally, when drawing analogies to historical regulations, courts should consider “[w]hy and how the regulation burdens the right” to bear arms. *Id.* (citing *Bruen*, 597 U.S. at 29).

In *Vincent v. Garland*, which came after *Bruen* but before *Rahimi*, the Tenth Circuit held that *Bruen* did not “indisputably and pellucidly abrogate[]” its precedent set out in *McCane*. 80 F.4th 1197, 1202 (10th Cir. 2023), *cert. granted, judgment vacated*, 144 S. Ct. 2708 (2024) (mem). Following *Rahimi*, the Supreme Court vacated the judgment in *Vincent* and remanded the case “for further consideration in light of” *Rahimi*. *Vincent*, 144 S. Ct. 2708 (2024) (mem).

III. Analysis

A. The Parties’ Arguments.

Wallace argues that the charge against him for violation of 18 U.S.C. § 922(g)(1) should be dismissed as unconstitutional as applied to him “because the prior felonies alleged in the Indictment do not satisfy the

requirement set out in” *Bruen* on the basis that “the Nation’s historical tradition of firearms regulation does not support permanently disarming persons for crimes that do not demonstrate a propensity to engage in violent criminal conduct such that the person would pose a real and significant danger to the public if armed.” [ECF No. 41 at 2]. Therefore, Wallace argues, his non-violent prior felonies cannot serve as a basis to restrict his Second Amendment rights. [*Id.* at 10–13]. Wallace further argues that he is among “the people” protected by the Second Amendment, that the Second Amendment’s plain text covers his conduct, and that this Court should “reject *Vincent*’s approach and apply *Bruen* faithfully.” [*Id.* at 6–15].

The government responds with four main arguments: (1) the Tenth Circuit’s decision in *United States v. McCane*, 573 F.3d 1037 (10th Cir. 2009) is binding precedent and forecloses Wallace’s argument; (2) restricting most felons from possessing most firearms does not implicate the Second Amendment; (3) prohibiting firearm possession by most felons is consistent with the Nation’s tradition of firearm regulation; and (4) the federal felon-in-possession law is constitutional as applied to Wallace. [ECF No. 44].

In reply, Wallace asks the Court to ignore “extraneous facts” included in the government’s response. [ECF No. 47 at 1]. Wallace also reiterates several points made in his motion. [*Id.* at 1–5]. Wallace’s most substantial arguments developed in reply, however, are the arguments and authorities he provides

for the proposition that that Nation’s historical tradition of firearm regulation does not justify restricting his Second Amendment rights. [*Id.* at 5–10].

B. *McCane* forecloses Wallace’s motion.

The Tenth Circuit is “bound by the precedent of prior panels absent en banc reconsideration or a superseding contrary decision by the Supreme Court.” *United States v. Manzanares*, 956 F.3d 1220, 1225 (10th Cir. 2020). However, an exception exists when the Supreme Court issues an opinion contradicting or invalidating the analysis in Tenth Circuit precedent. *United States v. Brooks*, 751 F.3d 1204, 1209–10 (10th Cir. 2014). Only when intervening law “is so indisputable and pellucid” does the exception apply. *See Barnes v. United States*, 776 F.3d 1134, 1147 (10th Cir. 2015) (finding intervening caselaw not “so indisputable and pellucid” to permit a finding contrary to binding precedent).

Neither *Bruen* nor *Rahimi* abrogated *McCane*. Finding that “means-end scrutiny in the Second Amendment context” was “one step too many,” the *Bruen* Court applied a historical analysis consistent with *Heller*. *See Bruen*, 597 U.S. at 19–26 (“The test that we set forth in *Heller* and apply today requires courts to assess whether modern firearms regulations are consistent with the Second Amendment’s text and historical understanding.”). In *McCane*, the Tenth Circuit did not rely on means-end scrutiny to uphold

Section 922(g)(1). Rather, it relied on *Heller*'s explicit statement that nothing in the opinion "should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons." *United States v. McCane*, 573 F.3d at 1047 (quoting *Heller*, 554 U.S. at 626). Justice Kavanaugh's concurring opinion in *Bruen* reiterated *Heller*'s explicit statement. *Bruen*, 597 U.S. at 81 (Kavanaugh, J., concurring). Therefore, *Bruen* did not contradict or invalidate the Tenth Circuit's analysis in *McCane*.

In *Vincent*, the Tenth Circuit concluded that *Bruen* did not abrogate *McCane*, but rather inferred support for prohibiting felons from possessing firearms, noting "the six Justices' reaffirmation of the *Heller* language and the Court's apparent approval of 'shall-issue' regimes and related background checks." *Vincent*, 80 F.4th at 1201–02. Although the Supreme Court vacated the judgment in *Vincent* and remanded the case in light of *Rahimi*, it did not question the merits of *McCane* or express any doubt about the Tenth Circuit's reasoning in *Vincent* when doing so. "A GVR is appropriate when 'intervening developments ... reveal a reasonable probability that the decision below rests upon a premise that the lower court would reject if given the opportunity for further consideration, and where it appears that such a redetermination may determine the ultimate outcome' of the matter." *Wellons v. Hall*, 558 U.S. 220, 225 (2010) (quoting *Lawrence v. Chater*, 516 U.S. 163, 167 (1996) (per curiam)). However, with the GVRs for circuit decisions involving challenges

to Section 922(g)(1) that issued immediately following *Rahimi*, the Supreme Court acted consistently across all circuits, without any regard to the prevailing party below. *See* Order List, dated July 2, 2024, at 2–8, available at https://www.supremecourt.gov/orders/courtorders/070224zor_2co3.pdf (issuing GVR orders to the Second, Third, Fifth, Eighth, and Tenth circuits for further consideration in light of *Rahimi*). Therefore, the Court finds that the GVR in *Vincent* cannot show any “reasonable probability” that the Tenth Circuit will reject *McCane* and come to a different “ultimate outcome” upon reconsideration.

Further, the Tenth Circuit has recently found that *Rahimi* did not “indisputably and pellucidly abrogate” *McCane* and does not alter *Vincent*’s conclusion. *United States v. Curry*, No. 23-1047, 2024 WL 3219693 at *4 n.7 (10th Cir. June 28, 2024) (unpublished).¹ *Bruen* clarified the test for assessing Second Amendment challenges, and *Rahimi* applied *Bruen*’s test to a different federal firearm regulation than the one at issue here. *See Rahimi*, 144 S. Ct. at 1898–1902. Although *Rahimi* resolved the constitutionality of Section 922(g)(8), it did not “undertake an exhaustive analysis of the full

¹ The Court acknowledges that the Tenth Circuit has yet to decide the impact of *Rahimi* on *Vincent* and *McCane*, *see Vincent v. Garland*, No. 21-4121, (10th Cir.), [Document 116], but the Court finds persuasive the Tenth Circuit’s most recent statement on the precedential weight of *McCane* as stated in *Curry*.

scope of the Second Amendment.” *Id.* at 1903 (quotation marks and ellipsis omitted). The Court “conclude[d] only this: 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.” *Id.* The Court did not opine on Section 922(g)(1) beyond reiterating that “prohibitions, like those on the possession of firearms by ‘felons and the mentally ill,’ are ‘presumptively lawful.”’ *Id.* at 1902 (quoting *Heller*, 554 U.S. at 626 n.26). It thus did not unequivocally overrule *McCane*.

This Court is obligated to apply Tenth Circuit precedent. *United States v. Spedalieri*, 910 F.2d 707, 709 n.2 (10th Cir. 1990). Because neither *Bruen* nor *Rahimi* indisputably and pellucidly abrogated *McCane*, *McCane* remains binding authority upon this Court. Accordingly, Wallace’s motion to dismiss [ECF No. 41] is denied.

C. Even if Wallace’s motion was not foreclosed by *McCane*, Section 922(g)(1) is constitutional under *Bruen*’s framework.

1. The Second Amendment presumptively protects Wallace’s conduct.

Under *Bruen*, the Court must first determine whether the Second Amendment’s plain text covers Wallace’s conduct. If so, “the Constitution presumptively protects [his] conduct.” *Bruen*, 597 U.S. at 24. The Second Amendment states that 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.

Here, the parties do not dispute that Wallace falls within “the people” protected by the Second Amendment. Nor do they dispute that the firearms and ammunition identified in the indictment are “arms” within the Second Amendment’s meaning. So, the Court must determine whether Wallace’s possession of the firearms and ammunition is presumptively protected under the Second Amendment right to “keep and bear” arms.

Wallace is charged under a statute that criminalizes possession of a firearm or ammunition with knowledge of the possessor’s convicted status. *See* 18 U.S.C. § 922(g)(1); *see also Rahaif v. United States*, 588 U.S. 225, 237 (2019) (holding that a defendant must have knowledge that “he belonged to the relevant category of persons barred from possessing a firearm”); 10th Cir. Crim. Pattern Jury Instr. 2.44 (listing as an element of the offense, “the defendant knew he was convicted of a felony at the time he possessed a firearm [or ammunition].”). Therefore, the government contends, Wallace’s relevant conduct for Second Amendment protection is twofold: (1) possession of a firearm; (2) with knowledge of his underlying convictions. [ECF No. 44 at 15]. But this approach does not fit under *Bruen*’s first step, which requires a plain text analysis. The Second Amendment protects “keep[ing]” and “bear[ing]” arms. *Bruen*, 597 U.S. at 32. By possessing the firearms and

ammunition, Wallace “kept” them. *See Heller*, 554 U.S. at 582–83 (“[T]he most natural reading of ‘keep Arms’ in the Second Amendment is to ‘have weapons’ ... ‘[k]eep arms’ was simply a common way of referring to possessing arms, for militiamen *and everyone else*.”) (emphasis in original). Thus, when analyzing Section 922(g)(1) for constitutional protection, the relevant conduct is mere possession of the firearm and ammunition, not what *additional* conduct the defendant engaged in or the defendant’s state of mind.

The government attempts to add a historical tradition burden into *Bruen*’s first step by discussing the purported historical tradition of regulating firearm use by those engaged in certain conduct and various classes of people. [ECF No. 44 at 13–18]. “But *Bruen* makes clear that the first step is one based solely on the text of the Second Amendment to determine if it presumptively protects an individual’s conduct—a presumption that the United States can *then* rebut with history and tradition.” *United States v. Harrison*, No. CR-22-00328-PRW, 654 F. Supp. 3d 1191, 1198 (W.D. Okla. Feb. 3, 2023) (emphasis in original). By advocating a law-abiding vs. non-law-abiding distinction, the government reads text into the Second Amendment that simply does not exist. The Court cannot do that under *Bruen*’s first step.

Because the plain text of the Second Amendment covers Wallace’s conduct, his conduct is presumptively constitutionally protected. Thus, if his claims were not foreclosed by *McCane*, the government would be required to “justify

[Section 922(g)(1)] by demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation.” *Bruen*, 597 U.S. at 24.

2. Section 922(g)(1) is constitutional because it is consistent with the Nation’s historical tradition of firearm regulation.

Wallace makes an as-applied challenge to the constitutionality of Section 922(g)(1). [ECF No. 41 at 1]. The distinction between facial and as-applied challenges to a law’s constitutionality “goes to the breadth of the remedy employed by the Court.” *Citizens United v. Fed. Election Comm’n*, 558 U.S. 310, 331 (2010). “[I]t does not speak at all to the substantive rule of law necessary to establish a constitutional violation[;]” therefore, the same substantive constitutional analysis applies. *Bucklew v. Precythe*, 587 U.S. 119, 138 (2019). Considering the full measure of disability imposed on felons by Section 922(g)(1), the Court must ask whether historical analogues to contemporary laws exist that prohibit felons like Wallace from possessing firearms.

The government makes a virtually identical argument in its response to Wallace’s motion as it did in another case recently decided by the undersigned. *Compare* [ECF No. 44 at 18–27], *with United States v. Sutton*, No. 4:24-cr-00168-SEH (N.D. Okla.), [ECF No. 37 at 16–23]. But unlike in *Sutton*, the government also argues that the specific circumstances of Wallace’s arrest show he “poses an unacceptable risk of danger while armed,”

which justifies disarming him. [[ECF No. 44 at 26–27]. This appears to be a response to Wallace’s argument that the Nation’s historical tradition of firearm regulation “does not support permanently disarming persons for crimes that do not demonstrate a propensity to engage in violent criminal conduct such that the person would pose a real and significant danger to the public if armed.” [ECF No. 41 at 2].

Wallace’s request for a violent/non-violent felony analysis necessarily involves considering whether a conviction is categorically a crime of violence before assessing whether the crime was of the type that led to disarmament at the founding. The categorical “crime of violence” analysis can be counterintuitive, and the analysis for identically named crimes can differ from one jurisdiction to the next. Thus, the Court finds this approach inappropriate in the Second Amendment context. Moreover, parsing out convictions as violent/non-violent leads to due process concerns because the approach leads to individuals not being able to determine whether their conduct is prohibited under Section 922(g)(1). *See Bouie v. City of Columbia*, 378 U.S. 347, 350 (1964) (holding the Due Process Clause requires “a criminal statute give fair warning of the conduct which it prohibits.”). For these additional reasons, the Court declines to conduct a violent/non-violent felony analysis for as-applied challenges to Section 922(g)(1). Therefore, the specific factual allegations against Wallace need not be addressed.

Wallace does make several arguments regarding the Nation's historical tradition of firearm regulation that do not, however, relate to a violent/non-violent analytical framework. [ECF No. 47 at 5–10]. The Court is not persuaded by Wallace's arguments. For the same reasons explained by the Court in *United States v. Sutton*, No. 24-CR-00168-SEH, 2024 WL 3932841, at *5–9 (N.D. Okla. Aug. 23, 2024), the Court finds that Section 922(g)(1), as applied to Wallace, is a constitutional limitation on his Second Amendment rights.

IV. Conclusion

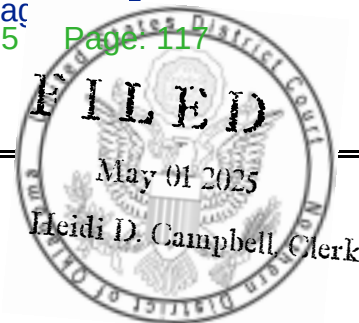
The Court denies Wallace's motion under binding precedent set out in *McCane*. However, even if *McCane* was abrogated under *Bruen* or *Rahimi*, Wallace's claims fail under *Bruen*'s framework. Because this Nation's historical tradition of firearm regulation at and around the time of the founding includes laws that are analogous to the contemporary disarmament of convicted felons like Wallace, Section 922(g)(1) is a valid exercise of congressional authority. Therefore, Wallace's motion to dismiss the indictment [ECF No. 41] is denied.

DATED this 20th day of September, 2024.



Sara E. Hill
UNITED STATES DISTRICT JUDGE

DISTRICT COURT
AMENDED JUDGMENT
AND SENTENCE



UNITED STATES DISTRICT COURT

Northern District of Oklahoma

UNITED STATES OF AMERICA

v.

PHILLIP EUGENE WALLACE, JR.

AMENDED JUDGMENT IN A CRIMINAL CASE

Case Number: 4:24CR00121-1-SEH

USM Number: 18417-509

Lindsey Hanna Holguin, Kayla Dawn Cannon, and Jared Guemmer

Defendant's Attorney

Date of Original Judgment: April 30, 2025, Dkt. # 85

(Or Date of Last Amended Judgment)

Reason for Amendment: Correction of Judgment for Clerical Mistake (Fed. R. Crim. P. 36)

THE DEFENDANT:

☒ pleaded guilty to count One 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>
18 U.S.C. §§ 922(g)(1) and 924(a)(8)	Felon in Possession of Firearms and Ammunition	12/31/23	1

The defendant is sentenced as provided in this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

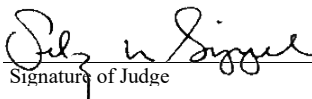
☐ The defendant has been found not guilty on count(s) _____

☐ Count(s) _____ ☐ 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.

May 1, 2025

Date of Imposition of Judgment


Signature of Judge

Rodney W. Sippel, United States District Judge

Name and Title of Judge

May 1, 2025.

Date

AO 245B (Rev. 10/17) Judgment in Criminal Case
Sheet 2 — Imprisonment

DEFENDANT: Phillip Eugene Wallace, Jr.
CASE NUMBER: 4:24CR00121-1

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: Thirty months. Said sentence shall run concurrently with the undischarged term of imprisonment in United States District Court Northern District of Oklahoma Case 20-CR-278-JFH and concurrently with the anticipated term of imprisonment in Tulsa County District Court Case CF-2024-476.

- ☒ The Court makes the following recommendations to the Bureau of Prisons:
The Court recommends the defendant be placed in a facility that will allow him the opportunity to participate in the Bureau of Prisons' 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: Phillip Eugene Wallace, Jr.
CASE NUMBER: 4:24CR00121-1

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of: Three 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: Phillip Eugene Wallace, Jr.
CASE NUMBER: 4:24CR00121-1

STANDARD CONDITIONS OF SUPERVISION

As part of your supervision, 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 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 to 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 the 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 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.
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 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, after obtaining Court approval, notify the person about the risk or 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.

AO 245B (Rev. 10/17) Judgment in a Criminal Case
Sheet 3B — Supervised Release

DEFENDANT: Phillip Eugene Wallace, Jr.
CASE NUMBER: 4:24CR00121-1

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall submit his person, property, residence, office, vehicle, cellular telephone, computer, or any other electronic communication device, to a search conducted by the United States Probation Officer at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. The defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.
2. The defendant shall successfully participate in a program of testing and treatment, to include inpatient treatment, for drug and alcohol abuse, at a treatment facility and on a schedule determined by the probation officer. The defendant shall abide by the policies and procedures of the testing and treatment program to include directions that the defendant undergo urinalysis or other types of drug testing consisting of no more than eight tests per month if contemplated as part of the testing and treatment program. The defendant shall waive any right of confidentiality in any records for drug and alcohol treatment to allow the probation officer to review the course of testing and treatment and progress with the treatment provider.
3. The defendant shall successfully participate in a program of mental health treatment and follow the rules and regulations of the program. The probation officer, in consultation with the treatment provider, will determine the treatment modality, location, and treatment schedule. The defendant shall waive any right of confidentiality in any records for mental health treatment to allow the probation officer to review the course of treatment and progress with the treatment provider. The defendant must pay the cost of the program or assist (co-payment) in payment of the costs of the program if financially able.
4. If the defendant is unemployed after the first sixty days of supervision, or if unemployed for sixty days after termination or lay-off from employment, or not employed at a regular lawful occupation, as deemed suitable by the probation officer, the defendant shall participate in workforce development programs and services for occupational and career development, to include but not limited to assessment and testing, educational instruction, training classes, career guidance, counseling, and job search and retention services, at a program and on a schedule as determined by the probation officer. Further, as directed by the probation officer, the defendant shall provide verification of daily job search results or other employment related activities. In the event the defendant fails to secure suitable employment, participate in workforce development programs or provide verification of daily job search results, the defendant may be required to perform up to twenty-four hours of community service per week until employed. 18 U.S.C. §§ 3563(b)(4) and (12) and 3583(d) and USSG §5F1.3.

U.S. Probation Officer 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 _____

AO 245B (Rev. 10/17) Judgment in a Criminal Case
 Sheet 5 — Criminal Monetary Penalties

DEFENDANT: Phillip Eugene Wallace, Jr.
 CASE NUMBER: 4:24CR00121-1

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the Schedule of Payments.

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
TOTALS	\$100	N/A	N/A	N/A	N/A

☐ 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 \$ _____ \$ _____

☐ Restitution amount ordered pursuant to Plea Agreement \$ _____

☐ The defendant must pay interest on any fine or restitution 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: Phillip Eugene Wallace, Jr.
CASE NUMBER: 4:24CR00121-1

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 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 90 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:
- Any monetary payment is due in full immediately, but payable on a schedule to be determined pursuant to the policy provision of the Federal Bureau of Prisons' Inmate Financial Responsibility Program if the defendant voluntarily participates in this program. If a monetary balance remains, payment is to commence no later than 60 days following release from imprisonment to a term of supervised release in equal monthly payments of \$50 or 10% of net income (take home pay), whichever is greater, over the duration of the term of supervised release and thereafter as prescribed by law for as long as some debt remains. Notwithstanding establishment of a payment schedule, nothing shall prohibit the United States from executing or levying upon property of the defendant discovered before or after the date of this Judgment.

Unless the Court has expressly ordered otherwise, if this Judgment imposes imprisonment, payment of criminal monetary penalties is due during 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
- Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and 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:
Firearms and ammunition are forfeited as directed in the Preliminary Order of Forfeiture, ECF No. 60.

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) JVTa assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.