

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

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 21 CR 54
	)	
NAQUON PHILLIPS,	)	
	)	Judge John J. Tharp, Jr.
Defendant.	)	
	)	

CORRECTED ORDER

For the reasons stated below, defendant Phillips’ Motion to Dismiss the Indictment on Second Amendment Grounds [143] is denied.

STATEMENT

Defendant Naquon Phillips moves to dismiss the indictment against him, arguing that the felon in possession statute, 18 U.S.C. §922(g)(1), violates the Second Amendment.¹ Many defendants around the country have made similar motions in the wake of the Supreme Court’s decision in *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022), and in this district in particular, the Seventh Circuit’s decision in *Atkinson v. Garland*, 70 F.4th 1018 (7th Cir. 2023). The vast majority of courts to consider this issue,² and almost all of the courts within this district that have considered the question after the Seventh Circuit’s guidance in *Atkinson*,³ have

¹ Mr. Phillips filed his motion *pro se* on November 21, 2023, six days before trial in this case was scheduled to begin and well after the deadline set by the Court for the filing of pretrial motions. ECF No. 129 (extending deadline to July 28, 2023). In light of the age of the case and the number of prior trial continuances, the Court declined to defer the trial date. Rather than bar Mr. Phillips’ motion as untimely, however, the Court set a briefing schedule on the motion that would follow the trial if the defendant were convicted. The jury returned a verdict of guilty on the § 922(g)(1) charge (the only charge in the indictment) on November 29, 2023. Briefing was completed on January 2, 2023.

² The government’s response brief (Exhibit B) catalogs more than 360 post-*Bruen* rulings by district courts upholding the constitutionality of § 922(g)(1).

³ The exception is Judge Gettleman’s ruling in *United States v. Prince*, 2023 WL 7220127 (N.D. Ill. Nov. 2, 2023). In *Prince*, Judge Gettleman concluded, consistently with the rulings of the other courts in this district, that “the text, history, and tradition of firearm-dispossession statutes demonstrates that the legislature has the authority to categorically regulate firearm possession by individuals who have demonstrated that they cannot be trusted to obey the law, or pose some other danger to the political community if armed.” *Id.* at *8. Nevertheless, Judge Gettleman took the view that § 922(g)(1) is facially unconstitutional because there is no relevant analog supporting

concluded that § 922(g)(1) does not violate the Second Amendment. This Court is among them. *See United States v. Brooks*, 22 CR 655 (N.D. Ill.) (ECF No. 47); *United States v. Haywood*, 23 CR 3 (ECF No. 38).

The arguments advanced by Mr. Phillips and the government in this case echo those addressed in other cases (indeed, both the government’s response brief and the defendant’s reply brief reveal that they are based on template documents).⁴ Here, as in other cases, the government offers three principal arguments to uphold the constitutionality of § 922(g)(1): (1) that the plain text of the amendment excludes felons from “the people” who enjoy the right to keep and bear arms; (2) that firearms laws in England and America in the 17th and 18th centuries categorically denied the right to possess firearms to certain groups then-considered dangerous, violent, or untrustworthy adherents to the rule of law; and (3) that many, if not most, felonies were capital offenses and therefore permanently dispossessed felons of firearms.

I see no need to repeat the specifics of the debate on these issues yet again when I am persuaded by the reasoning of courts that have considered the same arguments already and have concluded that § 922(g)(1) is consistent with the Nation’s historical tradition of firearms regulation—specifically, *United States v. Agee*, 2023 WL 6443924 (N.D. Ill. October 3, 2023) (Chang, J.); *United States v. Johnson*, 2023 WL 6690388, at *1 (N.D. Ill. Oct. 12, 2023) (Durkin, J.); *United States v. Jackson*, 2023 WL 7160921 (N.D. Ill. Oct. 31, 2023) (Bucklo, J.); *United States v. Ball*, 2023 WL 8433981 (N.D. Ill. Dec. 5, 2023) (Valderrama, J.).⁵ These cases reach the same conclusion that Judge Wood set forth in her opinion in *Atkinson* dissenting as to the majority’s decision to remand the case to the district court for further consideration of the *Bruen* issue. In concluding that § 922(g)(1) is consistent with the Second Amendment, Judge Wood found that:

permanent disarmament of felons. *Id.* As the government has pointed out, however, felon dispossession under § 922(g) is not necessarily permanent and, in any event, dispossession for felons in the colonial eras was permanent for felons facing capital punishment. *See* Government’s Response to Defendant’s Notice of Supplemental Authority, ECF No. 37. *See also United States v. King*, 2023 WL 7936754, *1 (N.D. Ill. Nov. 17, 2023) (Bucklo, J.) (given possible expungement or pardon, “there is no incongruity in the burdens imposed by § 922(g)(1) and the historical examples the government brings forth”).

⁴ In addition, the defendant’s motion refers to the defendant as “Mr. Myles” (at 11) and the Court notes that his motion largely repeats the motion to dismiss filed by the defendant in *United States v. Myles*, 22 CR 354 (N.D. Ill.) (see ECF No. 42). In *Myles*, Judge Kennelly denied the defendant’s motion to dismiss. ECF No. 49.

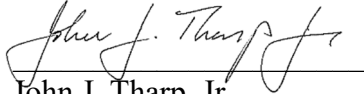
⁵ Notably, these cases uniformly reject the government’s plain text argument and I agree with that assessment. As Judge Bucklo explained in *Jackson*, to the extent that the government’s plain text argument rests on *dicta* in *Heller*, *McDonald*, and *Bruen* describing felon dispossession as presumptively lawful, in the Seventh Circuit confirmed that “more is needed to establish the meaning of ‘the people’ in the Second Amendment.” 2023 WL 7160921, at *5. Further, I agree with Judge Chang’s assessment that “the plain text of the Second Amendment” provides “no reason to think that the word ‘people’ does not cover, on its face, all persons—including a person convicted of a felony.” *Agee*, 2023 WL 6443924 at *5.

text, history, and tradition all point in the same direction: firearms have always been regulated in precisely the ways that concern us in the third decade of the 21st century. That includes what types of weapons may be owned privately; what formalities may or must accompany the purchase of weapons; and which groups of people are categorically restricted from firearm ownership and use, on account of such disqualifying factors as mental health, criminal record, loyalty, and character.

Atkinson, 70 F.4th at 1033. I find Judge Wood’s analysis to be highly persuasive.

Mr. Phillips brings only a facial challenge to the constitutionality of § 922(g)(1), so there is no need to consider why § 922(g)(1) would not apply to him even if it applied to others. In any event, I discern no basis to conclude that individualized assessments of untrustworthiness or dangerousness were part of the historical tradition; as Judge Chang noted in *Agee*, “the historical analogs provided by the government support a legislative authority to disarm persons convicted of felonies, regardless of whether the conviction involved a use (or attempted use) of force.” *Agee*, 2023 WL 6443924 at *11. History does not support an individualized assessment of ‘violent’ versus ‘non-violent’ offenses in determining who should be disarmed, but rather establishes that categorical bans based on membership in a ‘dangerous’ or ‘untrustworthy’ group were authorized.⁶ And finally, Mr. Phillips does not dispute that he has prior felony convictions for narcotics offenses and resisting a police officer, both indicative of dangerous and violent conduct. *See United States v. Bullock*, 632 F.3d 1004, 1016 (7th Cir. 2011) (drug crimes are “associated with dangerous and violent behavior,” warranting “a higher degree of precaution”). Thus, even if an individualized assessment of dangerousness were appropriate, Mr. Phillips would not pass muster.

Dated: January 22, 2024


John J. Tharp, Jr.
United States District Judge

⁶ In *United States v. Griffin*, 2023 WL 8281564 (November 30, 2023), Judge Coleman granted an as applied challenge to a § 922(g)(1) charge on the basis that the defendant had no violent prior convictions despite his prior conviction for robbery. 2023 WL 8281564, * 9. Respectfully, I cannot agree with the assessment that robbery is a non-violent offense if it doesn’t involve a firearm, but in any event and as noted above, I am not persuaded that firearms regulation during the relevant historical periods was based on individualized, non-categorical, assessments of an individual’s dangerousness.