No.

IN THE

Supreme Court of the United States

CHEVON GRANT,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

Is a member of "the people" to be automatically and permanently stripped of their constitutional right to keep and carry a handgun for self-defense upon entry of a felony conviction?

Is a member of "the people" whose constitutionally protected conduct - asleep in an automobile late at night with a handgun under the seat - to suffer incarceration for exercising their constitutionally guaranteed right to possess and carry a handgun in violation of 18 U.S.C. § 922(g)(1)?

Can a status-based statutory firearm prohibition with origins dating back only to the 1960s serve as its own historical analogue?

Does the "nuanced" approach established by this court for determining historical analogue permit a statutory provision dating back only to the 1960's to serve as its own historical analogue, rather than the founding-era remedies implemented in response to conduct engaged in during the founding era as held by this court?

Is a person who has suffered a felony conviction entitled to due process to establish dangerousness before being divested of ther Second Amendment rights and imprisoned for exercising them?

Is a member of "the people" constitutionally subject to any more than a temporary deprivation of their constitutional right to keep and carry a handgun for self-defense following a due process determination of dangerousness?

LIST OF PARTIES

1. United States of America, Respondent, Plaintiff in USDC, District of Connecticut; Appellee in Second Circuit Court of Appeals

2. Chevon Grant, Petitioner; Defendant in USDC, District of Connecticut; Appellant in Second Circuit Court of Appeals

No party is a corporation or has a stock ticker symbol.

RELATED CASES

This case arises from the following proceedings in the District of Connecticut and Second Circuit.

United States v. Grant, No. 3:22cr179 (KAD), United States District Court for the District of Connecticut

United States v. Grant, No 25-1699, United States Court of Appeals for the Second Circuit

No other proceedings directly relate to this case.

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OPINIONS BELOW

On April 25, 2024 Hon. Kari A. Dooley denied Petitioner's *Bruen* (see footnote 1, below) Motion to Dismiss the indictment against him for possessing a handgun, citing *U.S. v. Bogle*, 717 F.3d 281 (2d Cir. 2013) App 17a, et seq.

On June 29, 2026, the Second Circuit issued a Summary Order denying Petitioner's appeal of Judge Dooley's ruling, basing its ruling on its opinion in *Zherka v. Bondi*, 140 F.4th 68 (2d Cir. 2025), cert. denied, No. 25-269, 2026 WL 135708 (U.S. Jan. 20, 2026). App 11a.

On August 4, 2026, the Second Circuit denied the Petition of Defendant Grant for rehearing en banc.

STATEMENT OF JURISDICTION

This Court's jurisdiction is invoked under 28 U.S.C § 1254(1).

On August 4, 2026, the United States Court of Appeals for the Second Circuit denied the Defendant Grant's petition for rehearing en banc.

CONSTITUTIONAL SECTIONS AND STATUTES

U.S. Constitution, Amendment II:

> 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.

18 U.S.C, §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 possess in or affecting commerce, any firearm or ammunition.

STATEMENT OF THE CASE

Late at night on May 7, 2022, in a dark neighborhood behind a house, Petitioner was alone, asleep, in an automobile, with a handgun under the seat. App 13a.

He was charged by indictment in the U.S. District Court of Connecticut with violating 18 U.S.C. § 922(g)(1), felon in possession of a firearm. He moved to dismiss based on *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1; 142 S. Ct. 2111, 2022 U.S. LEXIS 3055. Hon. Kari A. Dooley denied the motion based on *U.S v. Bogle*, 717 F.3d 281 (2d Cir. 2013) App 17a, et seq. Petitioner then entered a plea, reserving the right to appeal on the issue to the Second Circuit, which he did.

June 29, 2026, the Second Circuit issued a Summary Order denying his appeal based on its opinion in *Zherka v. Bondi*, 140 F.4th 68 (2d Cir. 2025), cert. denied, No. 25-269, 2026 WL 135708 (U.S. Jan. 20, 2026). App 11a.

On August 4, 2026, the Second Circuit denied Petitioner's request for en banc review for the same reasons. App. 20a.

REASONS FOR ALLOWANCE OF THE WRIT

The U.S. Court of Appeals for the Second Circuit in *Zherka v. Bondi*, 140 F.4th 68, 2025 decided an important question of federal law that has not been, but should be, settled by this court, and decided it in a way that conflicts with relevant decisions of this court.

In *Zherka*, the court also entered a decision in conflict with the decision(s) of another United States court of appeals on the same important matter.

I. *ZHERKA* DECIDED AN IMPORTANT QUESTION OF FEDERAL LAW THAT HAS NOT BEEN, BUT SHOULD BE, SETTLED BY THIS COURT, AND DECIDED IT IN A WAY THAT CONFLICTS WITH RELEVANT DECISIONS OF THIS COURT.

In a series of seven opinions spanning 18 years[1] this court clearly established the criteria for determining the appropriate analogue to be applied to any firearm legislation seeking to infringe Second Amendment rights. This court directed that founding-era history be reviewed to best determine the founders' intent.

Bruen held that if a particular analogue is not a perfect match, a "nuanced approach" can be applied. Id., 27. *Bruen* also held, however, that: " ... when 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*** that the challenged regulation is ***inconsistent*** with the Second Amendment." Id., 26. Emphasis Added. *Bruen* observed: " ... when it comes to interpreting the Constitution, not all history is created equal. Constitutional rights are enshrined with the scope they were understood to have when the people adopted them". Id., 42. *Bruen* held that " ... we must also guard against giving post enactment history more weight than it can rightly bear." Id., 43.

In Zherka, the Second Circuit appears to have inverted that analysis. It first searched the founding era for a status-based permanent infringement statute akin to 18 U.S.C. § 922(g)(1). Not finding one, *Zherka* concluded that there was no relevantly similar founding era analogue to 18 U.S.C. § 922(g)(1) and that it should implement the "nuanced" approach, which it further

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[1] *District of Columbia v. Heller*, 554 U.S. 570, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008); *McDonald v. Chicago*, 561 U. S. 742, 130 S. Ct. 3020, 177 L. Ed. 2d 894 (2010); *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1; 142 S. Ct. 2111, 2022 U.S. LEXIS 3055; *United States v. Rahimi*, 219 L. Ed. 2d 351, 2024 U.S. LEXIS 2714; *United States v. Hemani*, 608 U.S. 772 (2026); *Wolford v. Lopez,* 609 U.S. 185 (2026)

concluded would warrant moving forward through the centuries in search of an analogous statute. Id., 80. The only one it found, however, was the very statute being challenged, which only came into existence in the 1960s.

The court concluded that the challenged statute served as the appropriate analogue and upheld the statute. It did not embrace the founding-era remedies recognized by this court (e.g., going armed, surety, etc.) as the appropriate, realistic analogue, instead allowing the recently enacted statutory provision to serve as its own analogue.

In short, *Zherka* gave post enactment history more weight than it can rightly bear, contrary to *Bruen's* command.

Petitioner respectfully submits that the correct analogue consists of the same founding era temporary remedies identified in *Rahimi*, which prompted this court in *Rahimi* to sustain the temporary remedies provided for in 18 USC § 922(g)(8)(C)(i). Id. 367-368.

Moreover, *Hemani*, the first of the gun cases to address class-wide deprivation, rejected the government's proffered dangerousness-based support for 18 U.S.C.S. § 922(g)(3)'s class-wide deprivation. It found founding-era analogues addressing societal problems (substance abuse) by different means, as did *Rahimi* (gun violence). Neither case produced permanent, non-due process-based deprivations.

II. IN *ZHERKA*, THE SECOND CIRCUIT ENTERED A DECISION IN CONFLICT WITH THE DECISION(S) OF ANOTHER UNITED STATES COURT OF APPEALS ON THE SAME IMPORTANT MATTER.

On October 13, 2026, in *Williams v. Att'y Gen. United States of Am*., No. 24-1091, 2026 WL 3059230 (3d Cir. Oct. 13, 2026), the U.S. Court of Appeals for the Third Circuit found 18 U.S.C. § 922(g)(1) unconstitutional as applied to Mr. Williams, who was burdened with a felony

conviction. That finding was made based on an extensive review of this court's leading gun cases as identified in footnote 1 herein.

Notably, in its opening paragraphs, the *Williams* court observed: "The practice of permanently disarming felons ***only*** dates back to the 1960s.": Id. Emphasis Added.

The Third Circuit opinion in *Williams* directly conflicts with the Second Circuit opinion in *Zherka*, supra.

CONCLUSION

Petitioner Grant respectfully requests that this honorable court issue a writ of certiorari to review the constitutionality of 18 U.S.C. § 922(g)(1)'s status based, permanent infringement on his rights guaranteed by the Second Amendment to the United States Constitution**.**

Dated: November 2, 2026

PETITIONER-DEFENDANT
CHEVON GRANT

By: /s/ Robert J. Sullivan, Jr.
Robert J. Sullivan, Jr.
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25-1699
United States v. Grant

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

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

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 29th day of June, two thousand twenty-six.

PRESENT:

GUIDO CALABRESI,
GERARD E. LYNCH,
RICHARD J. SULLIVAN,
Circuit Judges.

UNITED STATES OF AMERICA,

Appellee,

v. No. 25-1699

CHEVON GRANT,

Defendant-Appellant.

For Defendant-Appellant:	ROBERT J. SULLIVAN, JR., Law Offices of Robert Sullivan, Bridgeport, CT.
For Appellee:	ROBERT S. DEARINGTON (Conor M. Reardon, *on the brief*), Assistant United States Attorneys, *for* David X. Sullivan, United States Attorney for the District of Connecticut, New Haven, CT.

Appeal from a judgment of the United States District Court for the District of Connecticut (Kari A. Dooley, *Judge*).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the June 26, 2025 judgment of the district court is **AFFIRMED**.

Chevon Grant appeals from a judgment of conviction following his plea of guilty to unlawfully possessing a firearm after having previously been convicted of a felony, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2), for which he was sentenced to thirty-seven months' imprisonment.[1] On appeal, Grant argues that section 922(g)(1) is unconstitutional both facially and as applied to him in light of the Supreme Court's decision in *New York State Rifle & Pistol Ass'n v. Bruen*,

[1] Although Congress moved the penalty provision for violations of section 922(g) from section 924(a)(2) to section 924(a)(8) in 2022, *see* Pub. L. No. 117–159, § 12004, 136 Stat. 1313, 1329, the indictment correctly charged Grant pursuant to the prior statute since his relevant conduct occurred before the 2022 amendment.

597 U.S. 1 (2022), and *United States v. Rahimi*, 602 U.S. 680 (2024). We assume the parties' familiarity with the underlying facts, procedural history, and issues on appeal, to which we refer only as necessary to explain our decision.

We review challenges to the constitutionality of a statute *de novo*. *See United States v. Concepcion*, 139 F.4th 242, 248 (2d Cir. 2025). Applying that standard, we reject Grant's argument. In *Zherka v. Bondi*, 140 F.4th 68 (2d Cir. 2025), *cert. denied*, No. 25-269, 2026 WL 135708 (U.S. Jan. 20, 2026), we held that section 922(g)(1) does not violate the Second Amendment and is not subject to as-applied challenges, *see id.* at 91–96. And since issuing *Zherka* last year, we have consistently rebuffed challenges like Grant's. *See, e.g.*, *United States v. Gonzalez*, No. 24-1539, 2025 WL 2327335, at *1 (2d Cir. Aug. 13, 2025); *United States v. Dancy*, No. 25-257, 2026 WL 1076903, at *1 (2d Cir. Apr. 21, 2026).

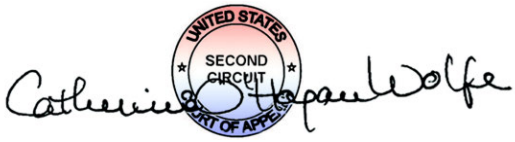
Though Grant contends that *Zherka* "should not determine the outcome of this case," Br. for Appellant at 2, he offers no meaningful basis for distinguishing between his case and that one. He merely argues that *Zherka* was both wrongly decided and premised on a misreading of the Supreme Court's prior holdings in *Bruen* and *Rahimi*. But Grant's dissatisfaction with the panel's reasoning in *Zherka* is of no moment, since "[p]ublished panel decisions like [*Zherka*] are binding on

future panels unless they are reversed *en banc* or by the Supreme Court." *United States v. Afriyie*, 27 F.4th 161, 168 (2d Cir. 2022) (internal quotation marks omitted). Consequently, Grant's challenge fails for the same reasons as those set forth in *Zherka*.[2]

* * *

We have considered Grant's remaining arguments and find them to be without merit. Accordingly, we **AFFIRM** the judgment of the district court.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court



[2] Just last week, the Supreme Court's decided *United States v. Hemani*, which held that 18 U.S.C. § 922(g)(3)'s categorical prohibition on the possession of firearms by unlawful users of controlled substances was unconstitutionally broad. *See* No. 24-1234, 2026 WL 1751710, at *6 (U.S. June 18, 2026). But that decision does not abrogate *Zherka*, which remains good law. Indeed, contrary to Grant's argument that *Hemani* undermines *Zherka*, the Supreme Court expressly noted that "nothing in our opinion should be taken to cast doubt" on the constitutionality of section 922(g)(1). *Id*. at *10 n.6 (internal quotation marks omitted).

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	)	**JUDGMENT IN A CRIMINAL CASE**
	)	
v.	)	Case Number: **3:22-CR-00179-KAD(1)**
	)	USM Number: 18654-510
CHEVON GRANT	)	
	)	**Robert S. Dearington**
	)	Assistant United States Attorney
	)	
	)	**Robert J. Sullivan**
	)	Defendant's Attorney

THE DEFENDANT: pled guilty to Count 1 of the Indictment.

Accordingly, the defendant is adjudicated guilty of the following offense(s):

Title & Section	Nature of Offense	Offense Ended	Count
Unlawful Possession of a Firearm by A Felon, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2)		May 7, 2022	1

The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of 37 months on Count One of the Indictment. This sentence is effective as of the date of the Judgment and shall run concurrently to any state court sentence yet to be imposed.

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 3 years. The Mandatory and Standard Conditions of Supervised Release as attached, are imposed. In addition, the following Special Conditions are imposed:

(1) You must participate in a gambling addiction treatment program and follow the rules and regulations of that program. The probation officer will supervise your participation in the program. You must pay all or a portion of costs associated with treatment based on your ability to pay as recommended by the probation officer and approved by the Court.

(2) You must not engage in any form of gambling (including, but not limited to, lotteries, online wagering, sports betting) and you must not enter any casino or

other establishment where gambling is the primary purpose (e.g., horse racetracks, off-track betting establishments.)

(3) You must participate in a program recommended by the Probation Office and approved by the Court for mental health treatment. You must follow the rules and regulations of that program. The probation officer, in consultation with the treatment provider, will supervise your participation in the program. You must pay all or a portion of costs associated with treatment based on your ability to pay as recommended by the probation officer and approved by the Court.

(4) The defendant shall not possess a firearm or other dangerous weapon.

(5) You must submit your person, residence, office or vehicle to a search, conducted by a 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; you must inform any other residents that the premises may be subject to searches pursuant to this condition.

(6) You must participate in a program recommended by the Probation Office and approved by the Court for inpatient or outpatient substance abuse treatment and testing. You must follow the rules and regulations of that program. The probation officer will supervise your participation in the program. You must pay all or a portion of costs associated with treatment based on your ability to pay as recommended by the probation officer and approved by the Court.

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments as follows:

Special Assessment:	$100.00
Fine:	$.00
Restitution:	$.00

It is further ordered that the defendant will 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 paid.

The following counts have been dismissed: N/A

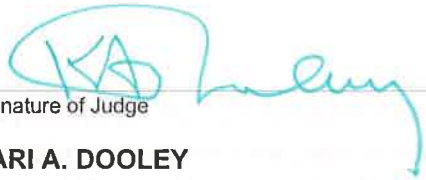
JUDICIAL RECOMMENDATION(S) TO THE BUREAU OF PRISONS

The Court makes the following recommendations to the Bureau of Prisons:

The Court recommends that the defendant be designated to FCI Danbury. If not an available or appropriate designation, then the Court recommends that the defendant be designated to a facility closest to Connecticut to facilitate family visitation.

DEFENDANT: CHEVON GRANT
CASE NUMBER:3:22-CR-00179-KAD(01)

June 26, 2025
Date of Imposition of Judgment



Signature of Judge

KARI A. DOOLEY
UNITED STATES DISTRICT JUDGE
Name and Title of Judge

6/26/2025
Date

DEFENDANT: CHEVON GRANT
CASE NUMBER:3:22-CR-00179-KAD(01)

CONDITIONS OF SUPERVISED RELEASE

In addition to the Standard Conditions listed below, the following Mandatory Conditions are imposed as set forth by U.S.S.G. §5D1.3(a):

MANDATORY CONDITIONS
(select all that apply)

(1) ■ You shall not commit another federal, state or local offense (see 18 U.S.C. § 3583(d)).

(2) ■ You shall not unlawfully possess a controlled substance (see 18 U.S.C. § 3583(d)).

(3) ☐ You shall attend a public, private, or private non-profit offender rehabilitation program that has been approved by the court, in consultation with a State Coalition Against Domestic Violence or other appropriate experts, if an approved program is available within a 50-mile radius of your legal residence (see 18 U.S.C. § 3583(d)).

(4) ■ You shall refrain from any unlawful use of a controlled substance and submit to one drug test within 15 days of release on supervised release and at least two periodic drug tests thereafter, as determined by the court, for use of a controlled substance.

☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse (see 18 U.S.C. § 3583(d)).

(5) ☐ If a fine is imposed and has not been paid upon release to supervised release, you shall adhere to an installment schedule to pay that fine (see 18 U.S.C. § 3624(e)).

(6) ■ You shall ☐ (A) make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A, or any other statute authorizing a sentence of restitution; and ■ (B) pay the assessment imposed in accordance with 18 U.S.C. § 3013. If there is a court-established payment schedule for making restitution or paying the assessment (see 18 U.S.C. § 3572(d)), you shall adhere to the schedule.

(7) ☐ You shall comply with the requirements of the Sex Offender Registration and Notification Act (see 18 U.S.C. § 3583(d)).

(8)■ You shall submit to the collection of a DNA sample at the direction of the United States Probation Office if the collection of such a sample is authorized pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000 (34 U.S.C. § 40702).

STANDARD CONDITIONS

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

(1) You shall report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
(2) After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you to report to the probation officer, and you shall report to the probation officer as instructed.
(3) You shall 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 shall answer truthfully the questions asked by your probation officer.
(5) You shall 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 shall 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 shall notify the probation officer within 72 hours of becoming aware of a change or expected change.
(6) You shall allow the probation officer to visit you at any time at your home or elsewhere, and you shall 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 shall 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 shall 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 shall 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 shall notify the probation officer within 72 hours of becoming aware of a change or expected change.
(8) You shall not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you shall 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 shall notify the probation officer within 72 hours.

DEFENDANT: CHEVON GRANT
CASE NUMBER:3:22-CR-00179-KAD(01)

(10) You shall 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 shall 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) You shall follow the instructions of the probation officer related to the conditions of supervision.

Upon a finding of a violation of supervised release, I understand that the court may (1) revoke supervision and impose a term of imprisonment, (2) extend the term of supervision, and/or (3) modify the conditions of supervision.

These conditions have been read to me. I fully understand the conditions and have been provided a copy of them.

(Signed) _____ _____
Defendant Date

_____ _____
U.S. Probation Officer/Designated Witness Date

CERTIFIED AS A TRUE COPY ON THIS DATE: _____
By: _____
Deputy Clerk

RETURN
I have executed this judgment as follows:

Defendant delivered on _____ to _____ at _____, with a certified copy of this judgment.

Lawrence Bobnick
Acting United States Marshal

By _____
Deputy Marshal

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	)	3:22-CR-00179 (KAD)
	)	
v.	)	
	)	
CHEVON GRANT	)	
	)	
	)	APRIL 25, 2024

MEMORANDUM OF DECISION RE: MOTION TO DISMISS THE INDICTMENT (ECF NO. 32)

Kari A. Dooley, United States District Judge:

Defendant Chevon Grant ("Grant" or the "Defendant") was charged by indictment on August 23, 2022 with one count of unlawful possession of a firearm by a convicted felon, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). The Indictment alleges that on or about May 7, 2022, Grant, having been previously convicted of two felonies, knowingly and intentionally possessed a firearm. ECF No. 1. Pending before the Court is Grant's motion to dismiss the Indictment based on the holdings in *Franks v. Delaware*, 438 U.S. 154 (1978), and *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111, 2126 (2022). Alternatively, Grant seeks suppression of evidence, to include the firearm at issue, obtained in violation of *Franks*. For the reasons set forth below, the motion is DENIED.

Legal Standard

"The dismissal of an indictment is an extraordinary remedy reserved only for extremely limited circumstances implicating fundamental rights." *United States v. Raniere*, 384 F. Supp. 3d 282, 299 (E.D.N.Y. 2019) (quoting *United States v. De La Pava*, 268 F.3d 157, 165 (2d Cir. 2001)). The Federal Rules of Criminal Procedure permit a defendant to file a pretrial motion to dismiss based upon a defect in an indictment or in the initiation of the prosecution, provided "the basis for

the motion is then reasonably available and the motion can be determined without a trial on the merits." Fed. R. Crim. P. 12(b)(3). "[A]n indictment is sufficient if it, first, contains the elements of the offense charged and fairly informs a defendant of the charge against which he must defend, and, second, enables him to plead an acquittal or conviction in bar of future prosecutions for the same offense." *United States v. Calhelha*, 456 F. Supp. 2d 350, 356–57 (D. Conn. 2006) (quoting *Hamling v. United States,* 418 U.S. 87, 117 (1974)). "[A]n indictment need do little more than to track the language of the statute charged and state the time and place (in approximate terms) of the alleged crime." *United States v. Levine*, 249 F. Supp. 3d 732, 738 (S.D.N.Y. 2017) (quoting *United States v. Alfonso*, 143 F.3d 772, 776 (2d Cir. 1998)). "When deciding a motion to dismiss an indictment pursuant to Fed. R. Crim. Pro. 12(b), a court must accept all factual allegations in the indictment as true." *United States v. Kogan*, 283 F. Supp. 3d 127, 134 (S.D.N.Y. 2017) (quotation marks and citation omitted).

Factual Background[1]

On April 18, 2022, several dozen people gathered at a memorial event for an individual who had unexpectedly passed away a few weeks earlier. Gov't. Opp. to Mot. to Dismiss ("Gov't. Opp.") at 1, ECF No. 33. The venue, known as the Party House, was a private rental space located on Main Street in Hartford, Connecticut. The Government has provided to the Court surveillance footage from the venue that depicts the relevant events, and identifies Grant in the footage as the individual wearing a shirt that reads "RIP BRA BRA" on the back. Gov't. Opp. at 2. As people inside the venue were socializing and dancing, an unidentified individual began firing a gun in the

[1] While the Court takes the Indictment as a whole and assumes its factual allegations to be true for purposes of deciding a motion to dismiss under Fed. R. Crim. P. 12(b)(1), *United States v. Litvak*, No. 3:13-CR-19 (JCH), 2013 WL 5740891, at *2 (D. Conn. 2013), the parties have provided additional background information as to events leading up to the Defendant's indictment. These facts are largely undisputed and to the extent any disputes exist, they need not be resolved on this motion.

parking lot outside the venue. Gov't. Opp. at 2. While most attendees immediately ducked for cover, some individuals returned fire. Mot. to Dismiss at 2, ECF No. 32. In an affidavit subsequently submitted seeking an arrest warrant for Grant, the affiant identified one of these individuals as Grant. In the video footage, Grant can be seen retrieving a firearm from underneath a nearby table, tucking it into his waistband, and then rushing back outside. Gov't. Ex. ("GX 1") at 18:28:30. In the vestibule just outside the inner area of the venue, Grant can be additionally seen brandishing a weapon, stepping outside, and appearing to begin taking aim while also taking cover. Gov't. Ex. ("GX 2") at 18:28:54-18:29:10. He then returns to the vestibule, dons a facemask, and returns outside. *Id.* at 18:29:14-18:29:34. He does not appear again in the surveillance footage and the video footage does not include Grant actually firing his weapon. The Government does not argue otherwise.

On May 7, 2022, Grant was arrested by the Hartford Police Department on the warrant sought and obtained at least in part on the affidavit which had averred that Grant fired his weapon in the parking lot of the Party House. Gov't. Opp. at 3. On the same date and at the same time, Grant was arrested on two additional outstanding arrest warrants. *Id.* Responding to information from a confidential informant, officers located Grant in the driver's seat of a parked vehicle, at which time the police effectuated the arrest on all three outstanding warrants. At the time of his arrest, a loaded firearm was observed jutting out from underneath the driver's seat where Grant had been located. *Id.* The firearm was seized and thereafter, Grant was indicted on August 23, 2022, and charged with unlawful possession of the firearm seized on May 7, 2022. Grant seeks dismissal of the Indictment on the ground that the Affidavit submitted in support of the arrest warrant stemming from the Party House shooting included false and misleading statements, specifically, that the video footage revealed Grant to have returned fire in the parking lot. He relies

upon *Franks v. Delaware,* 438 U.S. 154 (1978). Alternatively, relying upon *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111, 2126 (2022), Grant argues that 18 U.S.C. § 922(g) is unconstitutional.

Discussion

Franks established that if a search warrant was the product of false or misleading information, under certain circumstances, a defendant may seek suppression of the evidence seized under the warrant and may be entitled to an evidentiary hearing on his claims. "If a defendant makes a substantial preliminary showing that an affidavit included a false statement knowingly and intentionally, or with reckless disregard for the truth, and that the allegedly false statement is necessary to the finding of probable cause, then the Fourth Amendment requires that a hearing be held at the defendant's request." *United States v. Best*, 2022 WL 136461, at *1 (D. Conn., 2022) (citing *Franks*, 438 U.S. at 154–56) (internal quotations omitted). Grant seeks not only suppression of the firearm in this case but dismissal of the indictment insofar as the Indictment is constitutionally tainted by the false affidavit submitted in support of the arrest warrant stemming from the Party House shooting.

Grant's arguments under *Franks* are misplaced. Grant is not charged in this matter with possession of a firearm on April 18, 2022, the date of the Party House shooting. Nor was the affidavit at issue relied upon in bringing the instant charges. Indeed, the affidavit in support of the arrest warrant, on state charges, arising from the events of April 18, 2022, has no bearing on the validity of the present Indictment, which derives from his possession of a firearm on May 7, 2022.

Notwithstanding, Grant argues that insofar as the arrest warrant arising from the Party House events was invalid under *Franks,* reliance upon that warrant on May 7, 2022, when he was allegedly found in possession of a firearm, renders the seizure of the firearm and the subsequent

Indictment based thereupon tainted by the Party House arrest warrant. The Court need not decide whether *Franks* would be extended to such a situation, or the appropriate remedy even if so extended.[2] Grant had two additional outstanding arrest warrants, both of which were executed on May 7, 2022. The validity of these warrants is not challenged. Accordingly, even without the purportedly tainted warrant, Grant would have been lawfully arrested and the gun which forms the basis of the Indictment would have been located in plain view and seized.[3] *See United States v. Heath,* 455 F.3d 52, 60 (2d Cir. 2006) (under the inevitable discovery exception to the exclusionary rule, where each of the contingencies necessary to the legal discovery of the contested evidence is present, the motion to suppress is resolved in the government's favor); *United States v. Cancel,* 167 F. Supp. 3d 584, 597 (S.D.N.Y. 2016) (even though search incident to arrest of defendant's backpack was unauthorized, suppression was not warranted where evidence would have been inevitably discovered during inventory search following arrest); *see also Herring v. United States,* 555 U.S. 135, 145 (2009) (suppression of items seized incident to arrest not warranted where arrest warrant, unbeknownst to arresting officers, had been recalled and did not authorize arrest).[4]

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[2] *See United States v. Powell*, 634 F. Supp. 3d 48, 53 (E.D.N.Y. 2022) ("It remains an open question in this circuit whether the *Franks* doctrine applies to arrest warrants at all"); *United States v. Awadallah*, 349 F.3d 42, 64 n.17 (2d Cir. 2003) (noting that "[t]he *Franks* doctrine arose in the context of a search warrant, and neither the Supreme Court nor this Court has extended it to arrest warrants" and assuming, without deciding, that *Franks* applied to warrant affidavit for the arrest of a material witness); *see also United States v. Broward*, 594 F.2d 345, 350 (2d Cir. 1979) (declining to decide whether district court correctly applied *Franks* to arrest warrant); *Dupree v. United States*, No. 10-CR-0627, 2020 WL 3960512, at *10 (E.D.N.Y. July 13, 2020) (noting that "[i]t is not clear whether *Franks* is applicable to false statements in an arrest warrant affidavit," but assuming it applied).

[3] Grant argues that the impetus for locating him was the Party House warrant. While this may well be the case, the officers' motivation to execute the Party House warrant does not render invalid the two other warrants executed at the same time.

[4] Although not necessary, the Court concludes that the arrest warrant for the Party House shooting was amply supported by probable cause even without the concededly inaccurate statement regarding Grant firing his weapon. The video established that Grant possessed a firearm and brandished the firearm at a crowded event where many people and even children were present. The arrest warrant that was issued charged Grant not just with unlawful discharge of a firearm, but also with criminal possession of a firearm and reckless endangerment, neither of which required proof that Grant discharged the firearm at issue. *See United States v. Osborne*, 739 F. App'x 11, 16–17 (2d Cir. 2018) (summary order) (affirming denial of *Franks* hearing concerning wiretap and search warrant applications where affidavit included "numerous other statements, text messages, and evidence establishing probable cause" and erroneous information within affidavit "was neither material nor necessary to an ultimate finding of probable cause"); *United States v. Aguiar*, 737 F.3d 251, 263 (2d Cir. 2013) (same; pen register and trap and trace warrant).

Grant next argues that his possession and/or use of firearms is constitutionally protected by the Second Amendment, and any attempt to criminalize his possession and/or use violates the Supreme Court's holding in *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111, 2126 (2022). Grant brings both as applied and facial challenges to 18 U.S.C. § 922(g)(1). Grant argues that under *Bruen*, the Government must demonstrate that the statute "is consonant with the limits the Founding generation understood to be permissible when they ratified the Second Amendment." Mot. to Dismiss at 5. The Government argues in response that the Supreme Court's Second Amendment jurisprudence does not require it to prove historical tradition in the context of challenges to § 922(g).

The Second Amendment provides 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. In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court held that the Amendment enshrines an individual right to bear arms and "elevates above all other interests the right of law-abiding, responsible citizens to use arms in defense of hearth and home." *Id.* at 635. Subsequently, the Court extended *Heller's* holding to the states in *McDonald v. City of Chicago*, 561 U.S. 742 (2010). In both cases, the Court emphasized that its Second Amendment jurisprudence "did not cast doubt on such longstanding regulatory measures as prohibitions on the possession of firearms by felons…" *Id.* at 786 (quoting *Heller*, 554 U.S. at 626) (internal quotations omitted). A decade later, in *Bruen,* the Supreme Court clarified the test required for assessing Second Amendment challenges. Noting that lower courts had improperly "coalesced around" a "two-step" analysis for disposing of Second Amendment challenges that combined "history with means-end scrutiny," the Court held that the correct test must be "rooted in the Second Amendment's text, as informed by history" and that the government "must affirmatively

prove that its firearms regulation is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms." *Bruen*, 597 U.S. at 19.

After *Heller* and *McDonald*, but before *Bruen*, the Second Circuit Court of Appeals considered whether § 922(g)(1) violated the Second Amendment rights of a convicted felon who had been convicted under the statute for possessing a firearm and body armor. *United States v. Bogle*, 717 F.3d 281 (2d Cir. 2013). The *Bogle* Court held that while *Heller* and *McDonald* had developed more expansive interpretations of the Second Amendment, both opinions specified that they should not be interpreted to disturb existing prohibitions on the use of firearms by felons, and accordingly § 922(g) is a constitutional restriction on the Second Amendment rights of convicted felons. *Id.*

The Government argues that nothing in *Bruen* undermined *Bogle's* core holding rendering that decision binding upon this Court. Grant argues that *Bogle* has been sufficiently thrown into question by *Bruen* as well as post-*Bruen* decisions by the Third and Fifth Circuit Courts of Appeals. The Court agrees with the Government. *Bogle* did not incorporate the means-end test that was rejected by the *Bruen* Court. Indeed, *Bogle* expressly and exclusively relies on language from *Heller* and *McDonald* in upholding § 922(g), stating that "the Supreme Court clearly emphasized that recent developments in Second Amendment jurisprudence should not be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons." *Id.* (citing *Heller*, 554 U.S. at 626; *McDonald*, 561 U.S. at 786). Moreover, nothing in *Bruen*'s majority opinion suggests that it intended to abrogate or cabin those cases in any fashion. In fact, *Bruen* emphasizes that it is endorsing and reasserting the reasoning in *Heller* and *McDonald*. *See e.g., Bruen*, 597 U.S. at 8-9 ("In … *Heller* … and *McDonald*, we recognized that the Second and Fourteenth Amendments protect the right of an **ordinary, law-abiding citizen** to possess a handgun in the home for self-

defense"); 10 ("We too agree, and now hold, **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") (emphases added). *Bruen* did not disturb the precedents upon which *Bogle* relies and *Bogle* therefore remains binding upon this Court. The Court now joins the chorus of other district courts in this Circuit which have so held.[5] *See United States v. Gaskin*, No. 3:22-CR-98 (SRU), 2024 WL 381009, at *4 (D. Conn. Feb. 1, 2024) ("This Court remains bound under *Bogle* to hold that Section 922(g)(1) is constitutional"); *United States v. Hairston*, No. 3:23-CR-00020-SVN, 2024 WL 326667, at *4 (D. Conn. Jan. 29, 2024) (finding § 922(g) constitutional because "*Bogle* remains good law after *Bruen*"); *United States v. Jakups*, No. 3:21-CR-00216 (VAB), 2024 WL 361428, at *3 (D. Conn. Jan. 31, 2024) (same) (collecting cases).[6]

Grant also raises an as-applied challenge to the statute, arguing that "the record contained no evidence that any alleged possession or use by Defendant Grant was other than self protective." Mot. to Dismiss at 5. He relies principally on the video footage which demonstrates that Grant's possession was in response to someone firing into the crowd at the Party House. However, as discussed above, the Indictment does not charge Grant with possessing a firearm on April 18, 2022, the day of the Party House shooting. The Indictment only charges Grant with illegal possession of a firearm on May 7, 2022, when law enforcement observed a firearm jutting out from his driver's seat in plain view as they were arresting him on three active warrants. Gov't. Opp. at 3. As there is no basis upon which to conclude, and Grant does not argue, that his

[5] Because the Court is bound under *Bogle* to find § 922(g) constitutional on its face, the Court does not undertake the historical analysis required under *Bruen* for assessing Second Amendment challenges to firearm regulations.
[6] Grant points the Court to cases in the Third and Fifth Circuits that that have "called into question" the constitutionality of § 922(g) under *Bruen*. Def.'s Resp. to Gov't. Opp. at 5, ECF No. 38. As *Bogle* remains binding Second Circuit precedent, the Court does not address these cases.

possession of a firearm on May 7 was undertaken in self-defense, the as-applied challenge fails as well.[7]

Conclusion

For the reasons stated above, the Court rejects Grant's request for a *Franks* hearing, as well as his facial and as-applied constitutional challenges to § 922(g). Accordingly, the motion to dismiss the Indictment is DENIED.

SO ORDERED at Bridgeport, Connecticut, this 25th day of April 2024.

/s/ Kari A. Dooley
KARI A. DOOLEY
UNITED STATES DISTRICT JUDGE

[7] The "as applied" challenge to the constitutionality of the statute is denied without prejudice. Grant may yet develop the factual record as to the circumstances of his prior convictions, possession of the firearm, or other matters which would suggest re-assessment of this issue. The Court also observes that the contours of Second Amendment protections are being actively litigated throughout the country and additional guidance from the Supreme Court or the Second Circuit may shed new and clarifying light on these issues.

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 4th day of August, two thousand twenty-six.

United States of America,

Appellee,

v.

Chevon Grant,

Defendant - Appellant.

ORDER

Docket No: 25-1699

Appellant, Chevron Grant, has filed a petition for rehearing *en banc*. The active members of the Court have considered the request for rehearing *en banc*.

IT IS HEREBY ORDERED that the petition is denied.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk

