APPENDIX

TABLE OF APPENDICES

APPENDIX A

UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF SOUTH CAROLINA

GREENVILLE DIVISION

* * * * * * * * * * * * * * * * *

UNITED STATES OF AMERICA, * CRIMINAL NO. 6:20-cr-0471
* AUGUST 30, 2022 2:01 P.M.
Plaintiff, * RESENTENCING HEARING
*
vs. *
*
ZAVIEN LENOY CANADA, * Before:
* HONORABLE HENRY M. HERLONG, JR.
* UNITED STATES DISTRICT JUDGE
Defendant. * DISTRICT OF SOUTH CAROLINA

* * * * * * * * * * * * * * * * *

APPEARANCES:

For the Plaintiff: JUSTINE WILLIAM HOLLOWAY, AUSA
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55 Beattie Place, Suite 700
Greenville, SC 29601

For Defendant Zavien Canada:

LOUIS H. LANG, ESQUIRE
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Court Reporter: Michele E. Becker, RMR, CRR, RPR
201 Magnolia Street
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Proceedings recorded by mechanical stenography, transcript produced by computer.

(Court convened at 8:45 p.m.)

(Proceedings were held but not transcribed at this time.)

THE CLERK: The next matter before the Court is the United States of America versus Zavien Canada. Case No. 6:2471. The Defendant is represented by Mr. Louis H. Lang. The Government is represented by Mr. Justin Holloway.

Sir, raise your right hand to be sworn.

(Whereupon, the Defendant is duly sworn on oath.)

THE DEFENDANT: Yes.

THE CLERK: Thank you.

THE COURT: Mr. Lang, nice to see you again. It's been a while.

MR. LANG: It has, Your Honor. Thank you, very much. It's a pleasure to be back.

THE COURT: Mr. Lang, nice to see you again.

This is on remand from the Fourth Circuit as it relates to the previous sentence and as it relates -- although it's -- will be treated as a resentencing, but it was sent back because the Court imposed -- in addition to the incarceration sentence, the Court imposed a provision for five years supervised release, and the transcript didn't reflect that. Although upon inquiry the Clerk of Court had written down that the Court had said that, the Court's law clerk had written it down that it was said, but it was not in the transcript. So, the transcript is what the Fourth Circuit

dealt with, so it was sent back for a complete resentencing. And I need to address Mr. Canada.

And Mr. Canada, have you satisfied thus -- have you discussed this matter fully with your attorney?

THE DEFENDANT: Yes, sir.

THE COURT: And are you satisfied with your attorney's representation?

THE DEFENDANT: I mean, yes, sir.

THE COURT: "You mean, yes, sir?" What do you mean? Are you satisfied or not?

THE DEFENDANT: Yes, sir.

THE COURT: Now, do you have any complaints of your attorney or anyone else in connection with this case?

THE DEFENDANT: Yes, sir. I mean, I just want to state, like, for the Court for the record, like, it just -- like, I don't feel like -- I don't feel like justice has been served in my case. Like, I mean, of course I went to jury trial and they found me guilty without no proper evidence of my fingerprints on the firearm that was locked in the man's glove compartment after he already confessed that it was his and he didn't want me to take a charge for a gun. They come back eight months later, hit me with an indictment for it, okay, with no fingerprint, no nothing. Take me to trial. Find me guilty. You know what I'm saying? And it's like -- they never, like -- the lawyer that I had, he never

cross-examined the man like I asked him to. And I always feel like I've just been getting a bad deal the whole time. And it's like, I try to address issues through the Courts. I wrote you several times. I wrote other people on different occasions trying to, you know, it's really get some closure and get some justice on my behalf because I feel like it's all in retaliation for a previous letter that I wrote, you know, that concern, you know, Your Honor, previous counsel, ATF Agent Goad, several other officers and peoples of the court, you know, the probation officer, his chief supervisor, and her supervisor and his supervisor. But, you know, I feel like it's just a retaliation, you know what I'm saying?

I was found guilty by a jury and I never even possessed a gun. It was in the glove compartment under lock and key, which is legal in the state of South Carolina to have. He told him he didn't want me to take a charge. But when you got a officer, a task force officer slash ATF officer go up there and coerce him into making a statement and then he come to my trial and say, oh, well, I confess to the gun but I only said that because he was facing ten years of prison, he's a convicted felon just like me. He had the keys. He had total possession of everything in that vehicle. Then they take my words out of context because I say --

THE COURT: Well, what you're arguing to me is what was argued to the jury. And a jury of 12 -- let me finish.

THE DEFENDANT: Okay, sir.

THE COURT: Don't interrupt me again. You've interrupted me many times in the past you've appeared before me, and I don't appreciate the fact that you interrupt me because I listened there a long time without interrupting you.

What I'm saying is, you're arguing the facts of the case which were presented to the jury. And you heard the law of the case, which I told the jury all about possession, how it can be actual and constructive, and joint, sole, and all of that. And the jury made the decision, and they were charged to find you not guilty unless the jury believed that they, the Government, had proven its case beyond a reasonable doubt. So the jury apparently thought the Government had proven its case beyond a reasonable doubt and you were convicted. So, as a result of being convicted, you were sentenced. And what happened was, when the Court imposed the sentence, the Fourth Circuit found the transcript did not have in it the provision of five years supervised release. And the Fourth Circuit found that it was not in the transcript. So, as a result they directed that you be resentenced. And that's what we're here for.

And in connection with you said your attorney didn't cross-examine like you would want him to, the record reflects that because of disagreements or whatever with your first attorney, that attorney had to be relieved. So you were

appointed another fine attorney. And that attorney said that you had such irreconcilable differences with you, you wanted another attorney. So you were then given a third attorney. And he represented you at trial. And this Court -- all of the attorneys are fine attorneys. They've been before me many times. And your last attorney, your trial attorney, is one of the finest attorneys in this state. He's appeared before me many times. He appeared before me in a rare federal death penalty case and did an outstanding job. And apparently you had an outstanding attorney who represented you on your appeal. And so you're back here for sentencing. And I've heard your complaint that you don't think the jury should have found you guilty. But they did, and that's settled law in the case.

Now, I think I asked you whether you had any complaints of your attorney or anyone else in the case, and that's what you said. Do you have any other complaints?

THE DEFENDANT: No, sir.

THE COURT: And have you and your attorney thoroughly reviewed this presentence report?

THE DEFENDANT: Yes, sir.

THE COURT: And Mr. Lang, I'll hear from you on your objections to the presentence report.

MR. LANG: May it please the Court, Your Honor. There are three objections that have no effect on the

guideline calculations. That's objections 1, 2 and 3, but they are submitted though.

THE COURT: Do you wish to be heard on those?

MR. LANG: I don't think particularly, Your Honor. I just want to make sure the record is clear for Bureau of Prisons purposes in terms of calculating time served and things of that nature while he was in the state court custody.

THE COURT: Is it something the Court needs to deal with?

MR. LANG: I don't believe so, Your Honor, frankly.

THE COURT: Okay.

MR. LANG: In terms of the substantive objections, Your Honor, those would be Objections 4 and 5. And in regard to those objections they concern paragraphs 41, 51, 75 and 102 of the presentence report. And those objections concern whether or not Mr. Canada's CDV 3rd state court offense is an ACCA predicate offense. In that regard, Your Honor, I've submitted a brief to Your Honor.

THE COURT: And you did, and it's a very fine brief, seriously. And you argued points that had been made by others and whatever, and it's well argued. The Court -- the U.S. Attorney responded also. The Court considered it, but the Court denies that objection.

MR. LANG: All right. Thank you, Your Honor. I don't have anything to add to that other than what my brief

was, as well as response to the Government's sentencing memorandum legal analysis which I submitted I think yesterday, Your Honor.

THE COURT: Right.

MR. LANG: The other objection, Your Honor, has to do with acquitted conduct. And that is Objection Number 6 and paragraphs 69, 74 and 75. And that has to do with the guideline calculations, Your Honor. When Your Honor first sentenced Mr. Canada, Your Honor did not tag him with the acquitted conduct of the PWID charge of which he was acquitted.

THE COURT: And in that connection the Court having reviewed that, and I realize this is for complete resentencing, and the Court could -- the Government's urging the other way from which way I ruled, but I ruled in his -- in the Defendant's favor.

MR. LANG: Yes, sir.

THE COURT: And what you're doing is objecting to the report as it's written, as I understand it.

MR. LANG: That's correct, Your Honor.

THE COURT: And asking -- I think you're asking me to rule the same way I did before in that connection.

MR. LANG: That is correct, Your Honor.

THE COURT: And I will do so over that objection, which what it amounts to, right now the way it's written -- as

I said before -- and by the way, let me say now as far as his sentencing, I do adopt the findings and comments that I made before as far as this sentencing also. And in that connection during that sentencing, I believe the Court said and I believe now that the guideline calculations are the 34 -- a total offense level of 34, and a criminal history category six are appropriately placed, and that is correct.

However, to bend over backwards to then give the Defendant the benefit as I ruled before, and I'm willing to rule now in your favor, I will not count that and it would make him a total offense level of 33, and a criminal history category of four instead of a six. And then that would put his range at 188 to 235, which is what I ruled last time.

MR. LANG: That's correct, Your Honor. The only other matter, Your Honor, is I submitted a objection or motion to dismiss the indictment under the 18 U.S.C. 922(g)(1) based upon the new Supreme Court case of *Bruen*, which I have also briefed rather length-ally, Your Honor.

THE COURT: Well, very well too.

MR. LANG: Well, thank you, Your Honor. I can't take credit for all of that.

THE COURT: Well, I figured you looked at some other sources too.

MR. LANG: I did, Your Honor.

THE COURT: But argument is argument. Whether it's

yours originally or not, it's still a good argument. But, I mean, it's an interesting argument.

MR. LANG: Yes, sir. And I know Your Honor reviewed that. I'm prepared to argue it. I will tell Your Honor that I argued a similar motion two weeks ago, or two-and-a-half weeks ago in front of Judge Lewis in Columbia, and she denied my motion to dismiss. At that point in time that was actually before trial. I would suggest that in this circumstance I know the Government has raised the issue of 12(b)(3), Federal Rule of Criminal Procedure 12(b)(3), which indicates that I should -- or the motion should have been made prior to trial. But in this --

THE COURT: Well, you're correct, and excuse me for interrupting you. That's a valid objection here, but I'm not going to rule that way that you had to -- that it had to have been made prior to trial.

MR. LANG: Thank you, Your Honor. I think it was available.

THE COURT: I'm ruling in your favor that it can be made now.

MR. LANG: Thank you, sir. I'll be happy argue it if Your Honor --

THE COURT: I've considered fully your argument. I can say it's very well argued, but I do deny that objection.

MR. LANG: Thank you, Your Honor.

The only thing remaining then, Your Honor, in terms of matters I've submitted is a motion for a downward departure. I know Your Honor has ruled that or the Court denied or determined that my client is subject to the ACCA. And but Your Honor is not going to tag him with the acquitted conduct by the jury. That leaves him with a guideline imprisonment range of 188 to 235 months. I've asked for a downward departure, Your Honor.

I know my client has had a rocky relationship with the Court as well as other prior attorneys. Your Honor, my client is very bright. He's very engaged with his defense. I submitted, Your Honor, his prior BOP record which demonstrates that he -- over the years that he was in federal prison under his prior charges, which were both PWIDs, that he engaged in any number of BOP educational opportunities, as well as vocational opportunities. So, he certainly was engaged in those things.

He only finished the ninth -- I don't think he finished the ninth grade. I think he attended the ninth grade but finished the eighth grade. But in spite of the fact that he lacked a formal education, he did get a GED on his own, not through BOP. He has a significant amount of family support here in Greenville. You know, frankly, Your Honor, I don't know Mr. Canada as well as I would know someone who I represented from the first indictment through sentencing, but

I have spoken with his sister who is very engaged, very concerned about Mr. Canada. I did submit a couple of character letters. Late last night -- I didn't get them until late last night. But they spoke highly of Mr. Canada, in particular his relationship with his two children.

Lastly, Your Honor --

THE COURT: And I received those too.

MR. LANG: I'm sorry?

THE COURT: I received those.

MR. LANG: Thank you, Your Honor. I appreciate that. And Mr. Canada, in my dealings with him, I know, like I said, he's had a rocky relationship with some other counsel. He's always been very respectful to me. He's done what I've asked him to. He, as I said, is very engaged. And while he disagrees and gets frustrated with me when I tell him what the Court might do, he's never been at all disrespectful and been very cooperative and very helpful, frankly, in his defense. It's always good to have a client who is well engaged with you rather than a client who is not.

Your Honor, you first sentenced Mr. Canada to 220 months, which is just 20 months short of 20 years. That is an incredibly long time, Your Honor. I would suggest to the Court and ask the Court to consider a downward departure or variance. You know, be a hard sell, frankly, Your Honor, to get below the 15-year mandatory minimum. But even 15 years is

a very long time, a decade and a half away from his children, away from his family. You know, BOP prison we don't know where -- he was actually in a penitentiary rather than an FCI federal correctional institute, so I would suggest to the Court and ask the Court to consider that kind of downward departure or variance to the bottom of the advisory guidelines.

In addition, Your Honor, and I know this is another somewhat of a tough sell, but in terms of looking at his prior record, he does have a prior record, obviously. But if you study those, many of those prior convictions are for relatively minor offenses, and his federal offenses he's got two. They were for PWID quantity amounts. They weren't conspiracies, they weren't drug conspiracies, they weren't guns involved in either of those two offenses, I don't believe. So, I would ask the Court to take that into consideration as well in determining whether or not a downward departure is appropriate in this circumstance.

THE COURT: Before I ask Mr. Canada if he'd like to speak, since I went through the objections and ruled on those --

MR. LANG: Yes, sir.

THE COURT: -- I do need to make these findings because -- and I will state that I have considered the objections and I ruled on those. And the Court has reviewed

the presentence report and every accompanying submission as it relates to it. It is the finding of the Court that the statute provides a minimum sentence of 15 years, maximum sentence of life. The provisions are for supervised release not more than five years. He is therefore instead of the 34 total offense level, I find that as I've ruled before, his total offense level is 33, and a criminal history category of four. His guideline range is 188 to 235 months imprisonment. Two to five years supervised release. He does not have the financial ability to pay a fine, and the special assessment requirement is $100. That's my finding on what the statutes and guidelines provide.

And as far as sentencing, Mr. Canada, if there's anything further you'd like to say, I'll be glad to hear from you.

THE DEFENDANT: I just wanted to say, basically, I know you say you didn't go along with it, the objections that me and my attorney objected to, but I thought like when Supreme Court cases come into court like they have to follow -- the Courts have to follow Supreme Court precedent and sentence you accordingly to the Supreme Court ruling on the case that you applying towards your case at sentencing. So, like, I was told, like, the *Boynton* case was a Supreme Court case. The ruling -- the ruling on it was the Supreme Court ruling. And they found that a CDV -- what they found

that *mens rea*, the recklessness of committing, you know, the *mens rea* is like they can't, like, CDV 3rd it can be -- it's something. It's a misdemeanor. And I feel like they careered me out on a misdemeanor charge according to the *Boynton* case, which is a Supreme Court case. And like I think it's too excessive for me to be careered out 15 years or 20 years for a misdemeanor case when I don't even feel like my other charge -- I don't even feel like the drug charges are serious drug charges under the ACCA, which will require me to do an excessive amount of time under ACCA sentence. I don't even feel like the drug -- my prior drug charges that I have are serious drug offenses which meets the criteria under the ACCA, and the CDV 3rd offense is a misdemeanor. I don't feel like that's a violent felony now according the *Boynton* case which came through the Supreme Court.

THE COURT: I've already ruled on those. Anything else you care to say before I impose sentence?

THE DEFENDANT: No, sir.

THE COURT: I have considered the request for a downward departure or a variance, and I decline to do so based on the totality of the circumstances. And I've also considered the request to reconsider his prior record. I think as stated in the presentence report it is appropriate in the guidelines according to the statute applied appropriately, and I decline to make any adjustments in that regard.

It is the Court having considered the advisory sentencing guidelines and having also considered the relevant statutory sentencing factors contained in 18 -- and in that connection as far as my sentence, I would state for the record that I've considered all of the statements and evidence including any evidence presented in mitigation. And it is therefore the judgment of the Court having considered those factors contained in 18 U.S.C. § 3553(a), it is the judgment of the Court that the Defendant is hereby committed to the custody of the Bureau of Prisons to be imprisoned 220 months pursuant to U.S.C. -- U.S. Sentencing Guideline 5G1.3(d) and application note 4C. This sentence shall be consecutive to the sentence imposed for the revocation of Dockets 6:09-cr-415 and 6:08-cr-920.

Furthermore, there will be a mandatory 100-dollar special assessment fee is imposed which is due immediately. He's then placed on supervised release for a term of five years. I'm sure she got that. While on supervised release the Defendant shall comply with the mandatory conditions of supervision outlined in 18 U.S.C. § 3583(d) and U.S. Sentencing Guidelines 5D1.3(a), and the standard which are discretionary conditions outlined in USSG § 5D1.3(C) as noted in paragraphs 108 and 111 of the presentence report. Standard conditions of supervision one through nine and 13 serve the statutory sentencing purposes of public protection and

rehabilitation pursuant to 18 U.S.C. §~3553(a)(2)(C) and (D). Standard conditions of supervision 10 and 11 serve the statutory sentencing purposes of public protection pursuant to 18 U.S.C. § 3553(a)(2)(C). Standard condition of supervision 11 ensures that the Defendant does not engage in activities that may potentially conflict with the other conditions of supervision and that may pose risk to the Defendant's probation officer.

The Defendant shall also comply with the following special conditions for the reasons set forth in the presentence report which has been previously adopted by the Court as the findings of fact for the purpose of sentencing. Number one, special condition, he must participate in a mental health treatment program and follow the rules and regulations of that program. The probation officer in consultation with the treatment provider will supervise this Defendant's participation in the program as it relates to provider, location, modality, duration and intensity. The Defendant must contribute to the cost of such program not to exceed the amount determined reasonable by the Court's U.S. Probation Office's sliding scale for services. And he will cooperate in securing any applicable third-party payment such as insurance or Medicaid. This is ordered based upon the Defendant's previous diagnosis for mental health related issues. And he must submit to substance abuse testing to determine if he has

a prohibited -- has used a prohibitive substance. He must contribute to the cost of such program not to exceed the amount determined reasonable by the court-approved U.S. Probation Office's sliding scale for services. And he will cooperate in securing any applicable third-party payment such as insurance or Medicaid. This is based upon the Defendant's history of drug involvement. Random drug testing is ordered to help encourage the Defendant's abstinence from the use of illegal drugs.

I do believe that I have calculated the advisory guideline range properly and correctly addressing the points raised by the parties. If however it is determined that I have not, I will state for the record that I would have imposed this same sentence as an alternant variance sentence in light of 18 U.S.C. § 3553(a) factors, and in light of the totality of the circumstances present in this case.

That is all. You have a right to appeal this sentence. If you cannot afford an attorney or cost to apply to have an attorney to represent you, I will appoint an attorney to represent you. That's all. Thank you.

MR. LANG: Your Honor, one thing if Your Honor, please.

THE COURT: Yes, sir.

MR. LANG: I believe that if I'm not mistaken at the prior sentencing you -- and I wasn't involved in the

supervised release aspect of the case, Your Honor sentenced Mr. Canada to the supervised release sentence was to run concurrently with his 220-month sentence. And I think Your Honor said consecutive at this point in time, and I think I'm correct in that, but I'm not certain of that.

THE COURT: You may be. Does anyone recall that?

MR. LANG: I've got the transcript actually here, Judge.

PROBATION OFFICER: Your Honor, I believe that is correct.

THE COURT: I will make it concurrent.

MR. LANG: Thank you, Your Honor.

THE COURT: Thank you for pointing that out.

MR. LANG: Thank you, Your Honor, very much. Good to see you again, Judge.

THE COURT: Good seeing you. Come back.

(Proceedings were held but not transcribed at this time.)

(Court adjourned at 11:06 a.m.)

CERTIFICATE

I, Michele E. Becker, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/s/ Michele E. Becker Date: 10/20/2022

APPENDIX B

PUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-4519

UNITED STATES OF AMERICA,

Plaintiff – Appellee,

v.

ZAVIEN LENOY CANADA,

Defendant – Appellant.

Appeal from the United States District Court for the District of South Carolina, at Greenville. Henry M. Herlong, Jr., Senior District Judge. (6:20-cr-00471-HMH-1)

Argued: December 5, 2023 Decided: June 3, 2024

Before DIAZ, Chief Judge, and HARRIS and HEYTENS, Circuit Judges.

Vacated and remanded by published opinion. Judge Heytens wrote the opinion, which Chief Judge Diaz and Judge Harris joined.

ARGUED: Cullen Oakes Macbeth, OFFICE OF THE FEDERAL PUBLIC DEFENDER, Greenbelt, Maryland; Louis H. Lang, CALLISON, TIGHE & ROBINSON, LLC, Columbia, South Carolina, for Appellant. Kathleen Michelle Stoughton, OFFICE OF THE UNITED STATES ATTORNEY, Columbia, South Carolina, for Appellee. **ON BRIEF:** Adair F. Boroughs, United States Attorney, Columbia, South Carolina, Andrew R. de Holl, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Charleston, South Carolina, for Appellee.

TOBY HEYTENS, Circuit Judge:

A jury convicted Zavien Lenoy Canada of violating 18 U.S.C. § 922(g)(1), which creates what is often called the "felon-in-possession" offense. *Greer v. United States*, 593 U.S. 503, 506 (2021). Canada makes two arguments on appeal: (1) that Section 922(g)(1) is facially unconstitutional; and (2) that the district court erred in imposing an enhanced sentence under the Armed Career Criminal Act. We disagree with the first argument but agree with the second. We thus vacate the district court's judgment and remand for resentencing.

First, we reject Canada's assertion that Section 922(g)(1) is "unconstitutional, root and branch." *United States v. Gay*, 98 F.4th 843, 846 (7th Cir. 2024).[*] The law of the Second Amendment is in flux, and courts (including this one) are grappling with many difficult questions in the wake of *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022). But the facial constitutionality of Section 922(g)(1) is not one of them. Indeed, no federal appellate court has held that Section 922(g)(1) is facially unconstitutional, and we will not be the first.

Our decision is narrow. Because Canada has expressly disclaimed any sort of as-applied challenge, we "may"—like the Seventh Circuit in *Gay*—simply "assume for the

[*] We need not answer some surprisingly intricate questions about whether Canada's Second Amendment claim triggers the mandate rule or how this case's procedural history impacts our standard of review. The mandate rule is "merely a specific application of the law of the case doctrine," *United States v. Pileggi*, 703 F.3d 675, 679 (4th Cir. 2013), and the law of the case doctrine is not jurisdictional, see *American Canoe Ass'n v. Murphy Farms, Inc.*, 326 F.3d 505, 515 (4th Cir. 2003). We thus assume without deciding that Canada's Second Amendment claim is properly before us and that we review it de novo, unconstrained by Federal Rule of Criminal Procedure 52(b)'s plain-error standard.

sake of argument that there is *some* room for as-applied challenges" to Section 922(g)(1). *Gay*, 98 F.4th at 846. We also need not—and thus do not—resolve whether Section 922(g)(1)'s constitutionality turns on the definition of the "people" at step one of *Bruen*, a history and tradition of disarming dangerous people considered at step two of *Bruen*, or the Supreme Court's repeated references to "law-abiding citizens" and "longstanding prohibitions on the possession of firearms by felons." See, *e.g.*, *Bruen*, 597 U.S. at 9, 38 n.9; *District of Columbia v. Heller*, 554 U.S. 570, 625, 626 (2008). We likewise do not decide whether *Bruen* sufficiently unsettled the law in this area to free us from our otherwise-absolute obligation to follow this Court's post-*Heller* but pre-*Bruen* holdings rejecting constitutional challenges to this same statute. See, *e.g.*, *United States v. Moore*, 666 F.3d 313, 318 (4th Cir. 2012).

No matter which analytical path we choose, they all lead to the same destination: Section 922(g)(1) is facially constitutional because it "has a plainly legitimate sweep" and may constitutionally be applied in at least *some* "set of circumstances." *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 449 (2008) (quotation marks removed). Take people who have been convicted of a drive-by-shooting, carjacking, armed bank robbery, or even assassinating the President of the United States. See 18 U.S.C. §§ 36, 2119, 2113, 1751(a). Whether the proper analysis focuses on the definition of the "people," the history of disarming those who threaten the public safety, *Heller*'s and *Bruen*'s assurances about "longstanding prohibitions," or circuit precedent, the answer remains the same: the government may constitutionally forbid people who have

been found guilty of such acts from continuing to possess firearms. That ends this facial challenge.

Second, we hold that the district court erred in sentencing Canada under the ACCA. That statute requires at least a 15-year sentence if the defendant "has three previous convictions . . . for a violent felony or a serious drug offense . . . committed on occasions different from one another." 18 U.S.C. § 924(e)(1). Here, one of the three convictions identified by the district court was for criminal domestic violence in violation of South Carolina law.

Although this Court previously held that offense constitutes a violent felony under the ACCA, see *United States v. Drummond*, 925 F.3d 681, 696 (4th Cir. 2019), the parties agree that decision has been abrogated by later ones we are bound to follow. In *Borden v. United States*, 593 U.S. 420 (2021), the Supreme Court of the United States held that "a criminal offense" may not "count as a 'violent felony'" under the ACCA "if it requires only a *mens rea* of recklessness." *Id.* at 423 (plurality op.); see *id.* at 446 (Thomas, J., concurring in the judgment). And in response to a certified question from this Court, the Supreme Court of South Carolina—which gets "the last word about what state law means," *Grimmett v. Freeman*, 59 F.4th 689, 693 (4th Cir. 2023)—has advised that Canada's offense *can* "be committed with general criminal intent, including a mental state of recklessness." *United States v. Clemons*, No. 2022-001378, 2024 WL 1900632, at *4 (S.C. May 1, 2024). For that reason, we conclude that *Drummond* has been "abrogate[d]" by a "superseding contrary decision" and is no longer good law on this point. *Gibbons v. Gibbs*, 99 F.4th 211, 215 (4th Cir. 2024) (quotation marks removed). We thus vacate the district

court's judgment and remand for resentencing. See *United States v. Hope*, 28 F.4th 487, 492 (4th Cir. 2022) (vacating sentence and remanding where the defendant was improperly sentenced under the ACCA).

* * *

The judgment is vacated and the case is remanded for further proceedings consistent with this opinion.

SO ORDERED

APPENDIX C

1. The Second Amendment to the U.S. Constitution provides:

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

2. 18 U.S.C. § 922(g) provides:

(g) It shall be unlawful for any person—

> **(1)** who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year . . .

to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.