

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

DEONTA LOWE,
PETITIONER-APPELLANT,

v.

UNITED STATES OF AMERICA,
RESPONDENT-APPELLEE.

**Appendix 1 - Decision of the U.S. Court of Appeals
for the Eleventh Circuit**
United States v. Lowe, No. 22-13251, 2024 WL 3649527 (11th Cir. Aug. 5, 2024)

[DO NOT PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 22-13251

Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

DEONTA LOWE,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Georgia
D.C. Docket No. 5:21-cr-00032-TES-CHW-1

Before ROSENBAUM, ABUDU, and ANDERSON, Circuit Judges.

PER CURIAM:

Deonta Lowe appeals his conviction for possession of a firearm by a convicted felon, in violation of 18 U.S.C. § 922(g)(1). Lowe argues that § 922(g)(1) is unconstitutional, in light of *New York State Rifle & Pistol Association v. Bruen*, 597 U.S. 1, 17 (2022), because he says the statute proscribes conduct protected by the Second Amendment to the United States Constitution and is not consistent with the nation's tradition of firearm regulations.

We disagree. As we recently held in *United States v. Dubois*, *Bruen* did not abrogate our prior precedent holding that § 922(g)(1) does not violate the Second Amendment. *Dubois*, 94 F.4th 1284, 1293 (11th Cir. 2024). We are bound to follow that prior precedent. *United States v. Archer*, 531 F.3d 1347, 1352 (11th Cir. 2008). Accordingly, we affirm Lowe's conviction.

I. BACKGROUND

In 2022, Lowe pled guilty to possession of a firearm by a convicted felon—in violation of 18 U.S.C. §§ 2, 922(g)(1), and 924(a)(1)—in exchange for the dismissal of all other charges on a fourteen-count superseding indictment. The district court accepted Lowe's plea and sentenced him to 120 months' imprisonment, followed by three years of supervised release. Lowe then appealed and argued that, based on a plain reading of the Second Amendment, his conviction should be vacated because § 922(g)(1) is unconstitutional.

22-13251

Opinion of the Court

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II. STANDARD OF REVIEW

We review *de novo* the constitutionality of a statute. *United States v. Wright*, 607 F.3d 708, 715 (11th Cir. 2010). But when a defendant failed to raise the issue of the statute’s constitutionality in the district court, we review the issue for plain error only. *Id.* “Plain error occurs if (1) there was error, (2) that was plain, (3) that affected the defendant’s substantial rights, and (4) that seriously affected the fairness, integrity, or public reputation of judicial proceedings.” *Id.* (quotation marks omitted). “[T]here can be no plain error where there is no precedent from the Supreme Court or this Court directly resolving” the issue. *United States v. Bolatete*, 977 F.3d 1022, 1036 (11th Cir. 2020) (quotation marks omitted).

Under the prior-precedent rule, we are required to follow a prior binding precedent unless the precedent is overruled by this Court *en banc* or by the Supreme Court. *United States v. White*, 837 F.3d 1225, 1228 (11th Cir. 2016). “To constitute an overruling for the purposes of this prior panel precedent rule, the Supreme Court decision must be clearly on point.” *United States v. Kaley*, 579 F.3d 1246, 1255 (11th Cir. 2009) (quotation marks omitted). “In addition to being squarely on point, the doctrine of adherence to prior precedent also mandates that the intervening Supreme Court case actually abrogate or directly conflict with, as opposed to merely weaken, the holding of the prior panel.” *Id.*

III. DISCUSSION

The Second Amendment 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.” U.S. Const. amend. II.

The right to keep and bear arms presumptively “belongs to all Americans,” but is not unlimited. *District of Columbia v. Heller*, 554 U.S. 570, 581, 626 (2008). One such limitation, recognized in *Heller*, is the “longstanding prohibition[] on the possession of firearms by felons.” *Id.* at 626.

In the aftermath of *Heller*, courts of appeals adopted a two-step test for Second Amendment challenges: (1) Determine whether the law in question regulates activity within the scope of the right to bear arms based on its original historical meaning and (2) if so, apply means-end scrutiny to test the law’s validity. *Bruen*, 597 U.S. at 19.

Bruen scrapped the old two-step test courts of appeals had been applying. Instead, the Court explained, a historical inquiry governs Second Amendment challenges. 597 U.S. at 19. First, a court must ask whether the firearm regulation at issue governs conduct that falls within the plain text of the Second Amendment. *Id.* If so, the court then will uphold the regulation so long as the government “affirmatively prove[s] that its firearms regulation is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms.” *Id.*

But even though *Bruen* explained the correct analysis of a Second Amendment challenge, it did not abrogate our previous holding that § 922(g)(1) does not violate the Second Amendment. *Dubois*, 94 F.4th at 1293. In *United States v. Rozier*, we held that §

922(g)(1) does not violate the Second Amendment. 598 F.3d 768, 770 (11th Cir. 2010). Although we relied on *Heller*, we did not rely on means-end scrutiny to determine that 922(g)(1) is constitutional. *Rozier*, 598 F.3d at 770–71. Rather, we held that felons who fit the criteria of § 922(g)(1) are not “qualified to possess a firearm” in the first place. *Id.* (emphasis in original).

Then, in *Dubois*, we heard another challenge to the constitutionality of § 922(g)(1) in the aftermath of *Bruen* and we again upheld the statute, relying on *Rozier*. *Dubois*, 94 F.4th at 1293. Because *Rozier* upheld § 922(g)(1) “on the threshold ground that felons are categorically ‘disqualified’ from representing their Second Amendment right under *Heller*,” *Bruen*’s rebuke of the old two-step test was not “both ‘clearly on point’ and ‘clearly contrary to’ our earlier decision” to the extent necessary to abrogate our previous holding. *Dubois*, 94 F.4th at 1293 (quoting *Edwards v. U.S. Att’y Gen.*, 56 F.4th 951, 965 (11th Cir. 2022)). As the holding in *Rozier* bound us in *Dubois*, the holding in *Dubois* now binds us in the current case. *See id.*

The Supreme Court’s subsequent decision in *United States v. Rahimi* did not abrogate our prior precedent, either. *See* 144 S. Ct. at 1901–02. In *Rahimi*, the Supreme Court upheld 18 U.S.C. § 922(g)(8), which prohibits the possession of a firearm by a person subject to a restraining order that “includes such a finding that such a person represents a credible threat to the physical safety of such intimate partner or child,” because surety and going armed laws of the 18th century similarly “restrict[ed] gun use to mitigate

demonstrated threats of physical violence.” *Id.* at 1901. Nothing in *Rahimi*—which upheld a limitation on possession of firearms—squarely abrogates our precedent in *Rozier* or *Dubois*.

Finally, Lowe refers in his reply brief to an as-applied challenge, but he did not make that argument in his initial brief and has therefore abandoned that challenge. *See United States v. Oakley*, 744 F.2d 1553, 1556 (11th Cir. 1984) (“Arguments raised for the first time in a reply brief are not properly before the reviewing court.”). So we do not consider any argument that § 922(g)(1) is unconstitutional as applied to Lowe.

IV. CONCLUSION

The district court did not err when it accepted Lowe’s guilty plea because *Dubois* and *Rozier* foreclose his constitutional challenge. *See Dubois*, 94 F.4th at 1293. Neither *Bruen* nor *Rahimi* squarely abrogates *Rozier* or *Dubois*. Accordingly, we affirm.

AFFIRMED.

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

DEONTA LOWE,
PETITIONER-APPELLANT,

v.

UNITED STATES OF AMERICA,
RESPONDENT-APPELLEE.

**Appendix 2 - Decision of the U.S. Court of Appeals
for the Eleventh Circuit Order Denying Rehearing En Banc
United States v. Lowe, No. 22-13251, dkt. 36 (11th Cir. Oct. 2., 2024)**

In the
United States Court of Appeals
For the Eleventh Circuit

No. 22-13251

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

DEONTA LOWE,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Georgia
D.C. Docket No. 5:21-cr-00032-TES-CHW-1

ON PETITION FOR REHEARING AND PETITION FOR
REHEARING EN BANC

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Order of the Court

22-13251

Before ROSENBAUM, ABUDU, and ANDERSON, Circuit Judges.

PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. FRAP 35. The Petition for Panel Rehearing also is DENIED. FRAP 40.

NO. _____

IN THE
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DEONTA LOWE,
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v.

UNITED STATES OF AMERICA,
RESPONDENT-APPELLEE.

**Appendix 3 – United States District, Middle District of Georgia, Judgment
United States v. Lowe, No. 5:21-CR-32-TES-CHW, dkt. 115 (M.D. Ga. Sep. 12,
2022)**

UNITED STATES DISTRICT COURT

Middle District of Georgia

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

V.

DEONTA LOWE

Case Number: 5:21-CR-00032-TES-CHW(1)

USM Number: 51066-509

CATHERINE M. WILLIAMS,
FEDERAL DEFENDERS MIDDLE DISTRICT OF GEORGIA
Defendant's Attorney

THE DEFENDANT:

- pleaded guilty to count(s) 3ss

- 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 / Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. 922(g)(1) and 924(a)(2) Possession of a Firearm by a Convicted Felon	06/17/2021	3ss

The defendant is sentenced as provided in pages 2 through 7 of 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.

September 6, 2022
Date of Imposition of Judgment

s/ Tilman E. Self, III
Signature of Judge

TILMAN E. SELF, III
UNITED STATES DISTRICT JUDGE

Name and Title of Judge

9/12/2022
Date

DEFENDANT: DEONTA LOWE
CASE NUMBER: 5:21-CR-00032-TES-CHW(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: one hundred twenty (120) months as to count 3ss Terms to run consecutively to any term of imprisonment imposed in Houston County State Court Case No. 2021-C-107269.

- The court makes the following recommendations to the Bureau of Prisons:

- 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: DEONTA LOWE
CASE NUMBER: 5:21-CR-00032-TES-CHW(1)

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of: three (3) 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: DEONTA LOWE
CASE NUMBER: 5:21-CR-00032-TES-CHW(1)

STANDARD CONDITIONS OF SUPERVISION

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 must 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 must 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 your 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 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 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.
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 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.

U.S. Probation Office 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 _____
USPO Officer’s Signature _____

Date _____
Date _____

DEFENDANT: DEONTA LOWE
CASE NUMBER: 5:21-CR-00032-TES-CHW(1)

SPECIAL CONDITIONS OF SUPERVISION

- You shall participate in a mental health treatment program and comply with the treatment regimen of your mental health provider. The U.S. Probation Office shall administratively supervise your participation in the program by approving the program and monitoring your participation in the program. You shall contribute to the costs of such treatment not to exceed an amount determined reasonable by the court approved “U.S. Probation Office’s Sliding Scale for Services”, and shall cooperate in securing any applicable third-party payment, such as insurance or Medicaid.
- You shall participate in a program of drug and alcohol testing and treatment. The U.S. Probation Office shall administratively supervise your participation in the program by approving the program, administering the testing, and supervising the treatment. You shall contribute to the costs of such treatment not to exceed an amount determined reasonable by the court approved “U.S. Probation Office’s Sliding Scale for Services”, and shall cooperate in securing any applicable third-party payment, such as insurance or Medicaid.
- You shall submit your person, property, house, residence, vehicle, papers, computers (as defined in 18 U.S.C. § 1030(e)(1)), other electronic communications or data storage devices or media, or office, to a search conducted by a United States Probation Officer. Failure to submit to a search may be grounds for revocation of release. You shall warn any other occupants that the premises may be subject to searches pursuant to this condition.
- You are prohibited from possessing or using alcoholic beverages while enrolled in treatment such as mental health, sex offender or substance abuse treatment.
- You shall make child support payments.

DEFENDANT: DEONTA LOWE
CASE NUMBER: 5:21-CR-00032-TES-CHW(1)

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
TOTALS	\$100.00	\$.00	\$.00	\$.00	\$

- The determination of restitution is deferred until _____ An Amended Judgment in a Criminal Case (AO245C) 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.

- Restitution amount ordered pursuant to plea agreement \$
- The defendant must pay interest on restitution and a fine 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: DEONTA LOWE
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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 \$ _____ 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 60 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 criminal monetary penalty ordered by the court shall be due and payable in full immediately. Present and future Assets are subject to enforcement and may be included in the treasury offset program allowing qualified federal benefits to be applied to the balance of criminal monetary penalties.

Payment during the term of supervised release will commence within 60 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. (fine/restitution) payment shall be due during the period of imprisonment at the rate of not less than \$25 per quarter and pursuant to the bureau of prisons’ financial responsibility program. The value of any future assets may be applied to offset the balance of criminal monetary penalties. The defendant may be included in the treasury offset program, allowing qualified benefits to be applied to offset the balance of any criminal monetary penalties.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of 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:

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.