APPENDIX

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. AARON CHRISTOPHER LINDSEY, Defendant.	)))))))))	Case No. 4:22-cr-00138-SMR-HCA-1 ORDER ON MOTION TO SUPPRESS

Defendant Aaron Christopher Lindsey was indicted by a grand jury on three charges—false statements to a financial institution, possession of device-making equipment, and felon in possession of a firearm. He moves to dismiss the felon in possession charge, arguing it violates his rights protected by the Second Amendment to the United States Constitution. Defendant relies on the United States Supreme Court's recent decision in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S. Ct. 2111 (2022) to support his position that the Constitution prohibits Congress from criminalizing his possession of a firearm.

A. Legal Background

The Second Amendment to the United States Constitution 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*, the Supreme Court found that a District of Columbia law that "generally prohibit[ed] the possession of handguns" violated the Second Amendment. 554 U.S. 570, 574–75 (2008). The *Heller* Court determined that the Second Amendment protects an individual's right to keep and bear arms for the purpose of self-defense and the "city's total ban on handguns" contravened that constitutional

provision. *Id*. at 576. Two years later, the Supreme Court incorporated the Second Amendment against the states in *McDonald v. City of Chicago*, 561 U.S. 742 (2010).[1] Under *Heller* and *McDonald*, "law-abiding, responsible citizens" were permitted to possess a firearm "in defense of hearth and home." *Heller*, 554 U.S. at 635.

In a case decided this past term, the Court held that a firearm licensing provision under New York State law violated the Second Amendment because it vested authorities with discretion when issuing the license. *Bruen*, 142 S. Ct. at 2156 (holding "New York's proper-cause requirement violates the Fourteenth Amendment in that it prevents law-abiding citizens with ordinary self-defense needs from exercising their right to keep and bear arms."). In the process of invalidating the New York discretionary licensing regime, the *Bruen* Court rejected the two-step framework that lower courts had been using since *Heller* and *McDonald*, which combined history with means-end scrutiny, to analyze Second Amendment challenges. *Bruen*, 142 S. Ct. at 2125.

The two-step framework developed by the lower courts first asked whether "the government may justify its regulation by establishing that the challenged law regulates activity falling outside the scope of the right as originally understood." *Id*. at 2126 (citation and internal quotations omitted). If the Government was successful at that step, "the analysis can stop there[.]" *Id*. (quoting *United States v. Greeno*, 679 F.3d 510, 518 (6th Cir. 2012)). If the historical evidence did not provide a conclusive answer, the analysis proceeded to a second step which required courts to consider "how close the law comes to the core of the Second Amendment right and the severity of the law's burden on that right." *Id*. This inquiry is essentially the traditional "tiers of scrutiny"

[1] The plurality opinion incorporated the Second Amendment against the States under the Due Process Clause, *see McDonald*, 561 U.S. at 791 (Alito, J., opinion), whereas the concurrence found that the right applies to the States pursuant to the Privileges or Immunities Clause of the same Amendment, *see id*. 561 U.S. at 806 (Thomas, J., concurring).

analysis utilized by courts when assessing the scope of other constitutional rights. The "core" of the Second Amendment right under this analysis, pursuant to the Supreme Court's holding in *Heller*, was "limited to self-defense in the home." *Id*. at 2126 (quoting *Gould v. Morgan*, 907 F.3d 659, 671 (1st Cir. 2018)) (emphasis omitted). *Bruen* described the application of scrutiny:

> [i]f a core Second Amendment right is burdened, courts apply strict scrutiny and ask whether the Government can prove that the law is narrowly tailored to achieve a compelling governmental interest. Otherwise, they apply intermediate scrutiny and consider whether the Government can show that the regulation is substantially related to the achievement of an important governmental interest.

Id. at 2126 (internal quotations and citations omitted).

The Court held that "[d]espite the popularity" of the two-step approach, it was "one step too many." *Id*. at 2127. Reasoning that *Heller* "demands a test rooted in the Second Amendment's text, as informed by history," the *Bruen* Court concluded that to defend a law regulating the Second Amendment, "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." *Id*. Thus, "when the Second Amendment's plain text covers an individual's conduct," that conduct is presumed to be protected by the Constitution. *Id*. at 2126. The *Bruen* Court held that it is not enough for the Government to argue that a regulation promotes an important interest, it must demonstrate that the regulation has a historical lineage or "analogue." *Id*. at 2132–34. *Bruen* explained that such "analogical reasoning requires only that the government identify a well-established and representative historical *analogue*, not a historical *twin*. So even if a modern-day regulation is not a dead ringer for historical precursors, it still may be analogous enough to pass constitutional muster." *Id*. at 2133 (emphasis in original). If a firearm regulation is consistent

with historical tradition, only then "may a court conclude that the individual's conduct falls outside the Second Amendment's 'unqualified command.'" *Id*. at 2126 (citation omitted).

B. Analysis

Defendant was indicted by a grand jury on three criminal charges, one of which is felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1). He filed a motion to dismiss the felon in possession charge, arguing that the United States Supreme Court's decision in *Bruen* renders the statute unconstitutional on its face, and as applied to him. The Government opposes the motion, arguing that the statute is constitutional in both respects.

1. Facial Challenge

"A facial challenge is really just a claim that the law or policy at issue is unconstitutional in all its applications." *Bucklew v. Precythe*, 139 S. Ct. 1112, 1127 (2019). "A plaintiff can only succeed in a facial challenge by 'establish[ing] that no set of circumstances exists under which the Act would be valid.'" *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 449 (2008) (quoting *United States v. Salerno*, 481 U.S. 739, 745 (1987)). However, "facial challenges 'run contrary to the fundamental principle of judicial restraint that courts should neither anticipate a question of constitutional law . . . nor formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied." *TCF Nat'l Bank v. Bernanke*, 643 F.3d 1158, 1163 (8th Cir. 2011) (quoting *Wash. State Grange*, 552 U.S. at 450)).

Defendant argues that at the time of the country's founding, although certain specified groups were barred from possessing firearms, there is no historical tradition of firearm regulation for felons or others based solely on their criminal history. He asserts that laws at the time barred criminals from participating in other civic aspects of life, but no laws limited possession of firearms by "criminals" at the time of the country's founding. Thus, defendant argues that there is no

"historical analogue" for the prohibition against felons possessing firearms, as found in 18 U.S.C. § 922(g)(1), and that this prohibition, on its face and as applied to him, violates the Second Amendment. Defendant argues the Court should dismiss the indictment against him.

The Government responds that *Bruen* does not call into question the constitutional validity of laws that prohibit felons from possessing firearms. It cites statements made by three justices to support its stance that the Second Amendment applies only to "ordinary, law-abiding" and "responsible" citizens. The Government emphasizes that the Court has reiterated in *Heller*, *McDonald*, and *Bruen* that Second Amendment rights are protected for the aforementioned citizens and not to those who have a criminal record. This position has been upheld by other district courts which have considered challenges to § 922(g)(1) since *Bruen*, including in the Southern District of Iowa. *United States v. Doss*, No. 4:21-cr-00074-RGE-HCA (S.D. Iowa Aug. 2, 2022); *see also United States v. Daniels*, --- F. Supp, 3d ---, 2022 WL 2654232 (S.D. Miss. 2022); *United States v. Willis*, Criminal Case No. 22-cr-00186-RMR, 2022 WL 17177470 (D. Colo. Nov. 23, 2022); *United States v. Jackson*, Criminal No. 21-51 (DWF/TNL), 2022 WL 4226229 (D. Minn. Sept. 13, 2022). A panel for the United States Court of Appeals for the Third Circuit found that the statute passes constitutional scrutiny.[2] *Range v. Atty. General United States*, 53 F.4th 262 (3d Cir. 2022). In an unreported decision, the United States Court of Appeals for the Seventh Circuit referred to a § 922(g)(1) challenge under *Bruen* as "frivolous" as-applied to one defendant. *United States v. Gonzalez*, No. 22-1242, 2022 WL 4376074, at *2 (7th Cir. Sept. 22, 2022).

Multiple Justices in *Bruen* appear to have anticipated some of the legal issues that have been raised by Defendant. The concurrences by Justice Kavanaugh, Chief Justice Roberts, and

[2] The panel's opinion has been vacated and a rehearing *en banc* has been granted. *Range v. Att'y Gen. United States of Am.*, 56 F.4th 992 (3d Cir. 2023).

Justice Alito clarified the consequences of *Bruen* by emphasizing *Heller*'s exhortation that "longstanding prohibitions," such as felon-in-possession laws, continue to be presumptively lawful. 142 S. Ct. at 2157 (Alito, J., concurring); 2161–62 (Kavanaugh, J., concurring). No less than six justices warned that the *Bruen* decision should not cast doubt on the validity of certain firearms regulations, including those identified in *Heller*. Along with Justice Alito, Justice Kavanaugh, and Chief Justice Roberts, the three dissenting justices all emphasized that *Heller*'s lawful firearm restrictions remain in place and that *Bruen* did not challenge these restrictions. *Id.* at 2189 (Breyer, J., dissenting). In light of the Justices' repeated admonition that *Bruen* does not undermine the "longstanding prohibitions" in *Heller*, Defendant's facial challenge is denied.

2. As-Applied Challenge

Defendant has two prior felony convictions for forgery under Iowa state law. He first insists that his criminal convictions "do not suggest that [Defendant] would have been grouped with those deemed dangerous" when the Second Amendment was adopted. [ECF No. 23-1 at 9]. Defendant further argues that he is "no more dangerous than a typical law abiding citizen," so the felon-in-possession statute is unconstitutional as-applied to him. *Id.*

However, no circuit has ever held 18 U.S.C. § 922(g)(1) unconstitutional as applied to fraud or any other offense that the relevant jurisdiction has designated a felony. *Medina v. Whitaker*, 913 F.3d 152, 155 (D.C. Cir. 2019). The Seventh Circuit has suggested that "even nonviolent felons" are outside the scope of the Second Amendment because the right to bear arms previously belonged only to virtuous citizens. *United States v. Yancey*, 621 F.3d 681, 684–85 (7th Cir. 2010) (citations omitted); *but see Kanter v. Barr*, 919 F.3d 437, 451 (7th Cir. 2019) (Barrett, J., dissenting). Furthermore, the Government points out that the First Congress, and some states, treated forgery as a capital crime—a far harsher punishment than the loss of the right to bear arms.

Folajtar v. Atty. General, 980 F.3d 897, 904–05 (3rd Cir. 2020); *see also* Thomas Herty, *A Digest of the Laws of Maryland* 255–56 (1799); 2 *Laws of the State of New York* 74 (1791) (forgery); 1 *The Laws of the Commonwealth of Massachusetts* 250, § 5 (1807) (bank forgery).

Even post-*Bruen*, multiple courts have denied claims that § 922(g)(1) is unconstitutional as applied to a defendant whose predicate felony is non-violent, rejecting the premise that a person with such a conviction does not present a danger. *Doss*, No. 4:21-cr-00076; *Willis*, 2022 WL 17177470, at *2; *Jackson*, 2022 WL 4226229, at *2.

In summary, considering the nature of Defendant's prior convictions, courts have consistently upheld Section 922(g)(1) as facially constitutional and denied as-applied challenges based on non-violent offenses. This Court will do the same. For the foregoing reasons, Defendant's Motion to Dismiss Count 3 is DENIED. [ECF No. 23].

IT IS SO ORDERED.

Dated this 10th day of March, 2023.

STEPHANIE M. ROSE, CHIEF JUDGE
UNITED STATES DISTRICT COURT

AO 245B (Rev. 09/19) Judgment in a Criminal Case
v1 Sheet 1

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF IOWA

UNITED STATES OF AMERICA
v.
Aaron Christopher Lindsey

JUDGMENT IN A CRIMINAL CASE

Case Number: 4:22-cr-00138-001

USM Number: 25623-510

Melanie S. Keiper
Defendant's Attorney

THE DEFENDANT:

☑ pleaded guilty to count(s) One and Three of the Indictment filed on September 22, 2022.

☐ 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:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. § 1014	False Statements to a Financial Institution	09/04/2021	One
18 U.S.C. §§ 922(g)(1), 924(a)(2)	Felon in Possession of Firearms	09/30/2021	Three

☐ See additional count(s) on page 2

The defendant is sentenced as provided in pages 2 through 8 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) Two ☑ 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.

August 1, 2023
Date of Imposition of Judgment

Signature of Judge

Stephanie M. Rose, Chief U.S. District Judge
Name of Judge Title of Judge

August 1, 2023
Date

DEFENDANT: Aaron Christopher Lindsey
CASE NUMBER: 4:22-cr-00138-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

48 months as to each of Counts One and Three of the Indictment filed on September 22, 2022, to be served concurrently.

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

That the defendant be placed at FCI Bastrop if commensurate with his security and classification needs. The Court further recommends that the defendant be made eligible to participate in the 500-hour Residential Drug Abuse Treatment Program (RDAP) as well as vocational training in welding and information technology.

☐ 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 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 _____

a _____ , with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Aaron Christopher Lindsey
CASE NUMBER: 4:22-cr-00138-001

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of :

Five years as to Count One and three years as to Count Three of the Indictment filed on September 22, 2022, to be served concurrently.

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 which 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: Aaron Christopher Lindsey
CASE NUMBER: 4:22-cr-00138-001

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 _____ Date _____

DEFENDANT: Aaron Christopher Lindsey
CASE NUMBER: 4:22-cr-00138-001

SPECIAL CONDITIONS OF SUPERVISION

You must maintain full-time, legitimate employment and not be unemployed for a term of more than 30 days unless excused for schooling, training, or other acceptable reasons. Further, you must provide documentation including, but not limited to pay stubs, contractual agreements, W-2 Wage and Earnings Statements, and other documentation requested by the U.S. Probation Officer. You must not terminate any employment without prior approval from the U.S. Probation Office. If separated from employment for any reason, you must notify the U.S. Probation Officer within 48 hours.

You must participate in a program of testing and/or treatment for substance abuse, as directed by the Probation Officer, until such time as the defendant is released from the program by the Probation Office. At the direction of the probation office, you must receive a substance abuse evaluation and participate in inpatient and/or outpatient treatment, as recommended. Participation may also include compliance with a medication regimen. You will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment. You must not use alcohol and/or other intoxicants during the course of supervision.

You will submit to a search of your person, property, residence, adjacent structures, office, vehicle, papers, computers (as defined in 18 U.S.C. § 1030(e)(1)), and other electronic communications or data storage devices or media, conducted by a U.S. Probation Officer. Failure to submit to a search may be grounds for revocation. You must warn any other residents or occupants that the premises and/or vehicle may be subject to searches pursuant to this condition. An officer may conduct a search pursuant to this condition only when reasonable suspicion exists that you have violated a condition of your release and/or that the area(s) or item(s) to be searched contain evidence of this violation or contain contraband. Any search must be conducted at a reasonable time and in a reasonable manner. This condition may be invoked with or without the assistance of law enforcement, including the U.S. Marshals Service.

DEFENDANT: Aaron Christopher Lindsey
CASE NUMBER: 4:22-cr-00138-001

CRIMINAL MONETARY PENALTIES

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

☐ Pursuant to 18 U.S.C. § 3573, upon the motion of the government, the Court hereby remits the defendant's Special Penalty Assessment; the fee is waived and no payment is required.

	Assessment	Restitution	Fine	AVAA Assessment*	JVTA Assessment**
TOTALS	**$** 200.00	$0.00	**$** 0.00	**$** 0.00	**$** 0.00

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss***	Restitution Ordered	Priority or Percentage
TOTALS	$0.00	$0.00	

☐ 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: Aaron Christopher Lindsey
CASE NUMBER: 4:22-cr-00138-001

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 $ 200.00 due immediately, balance due

☐ not later than _____ , or
☑ in accordance ☐ 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:

All criminal monetary payments are to be made to:
Clerk's Office, United States District Court, P.O. Box 9344, Des Moines, IA 50306-9344.

While on supervised release, you shall cooperate with the United States Probation Office in developing a monthly payment plan, which shall be subject to the approval of the Court, consistent with a schedule of allowable expenses provided by the United States Probation Office.

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 crimnal 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

Case Number Defendant and Co-Defendant Names *(including defendant number)*	Total Amount	Joint and Several Amount	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:

See next page.

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.

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

Scott S. Harris
Clerk of the Court
(202) 479-3011

November 4, 2024

Clerk
United States Court of Appeals for the Eighth Circuit
Thomas F. Eagleton Courthouse
111 S. 10th Street, Room 24.329
St. Louis, MO 63102-1125

Re: Aaron Christopher Lindsey
v. United States
No. 24-5328
(Your No. 23-2871)

Dear Clerk:

The Court today entered the following order in the above-entitled case:

The motion of petitioner for leave to proceed *in forma pauperis* and the petition for a writ of certiorari are granted. The judgment is vacated, and the case is remanded to the United States Court of Appeals for the Eighth Circuit for further consideration in light of *United States* v. *Rahimi*, 602 U. S. ___ (2024).

The judgment or mandate of this Court will not issue for at least thirty-two days pursuant to Rule 45. Should a petition for rehearing be filed timely, the judgment or mandate will be further stayed pending this Court's action on the petition for rehearing.

Sincerely,

Scott S. Harris, Clerk

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 23-2871

United States of America

Plaintiff - Appellee

v.

Aaron Christopher Lindsey

Defendant - Appellant

Appeal from U.S. District Court for the Southern District of Iowa - Central
(4:22-cr-00138-SMR-1)

JUDGMENT

Before COLLOTON, Chief Judge, GRUENDER, and KELLY, Circuit Judges.

This appeal from the United States District Court was submitted on the record of the district court and briefs of the parties.

After consideration, it is hereby ordered and adjudged that the judgment of the district court in this cause is affirmed in accordance with the opinion of this Court.

December 16, 2024

Order Entered in Accordance with Opinion:
Acting Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Maureen W. Gornik

Adopted April 15, 2015
Effective August 1, 2015

Revision of Part V of the Eighth Circuit Plan to Implement the Criminal Justice Act of 1964.

V. Duty of Counsel as to Panel Rehearing, Rehearing En Banc, and Certiorari

Where the decision of the court of appeals is adverse to the defendant in whole or in part, the duty of counsel on appeal extends to (1) advising the defendant of the right to file a petition for panel rehearing and a petition for rehearing en banc in the court of appeals and a petition for writ of certiorari in the Supreme Court of the United States, and (2) informing the defendant of counsel's opinion as to the merit and likelihood of the success of those petitions. If the defendant requests that counsel file any of those petitions, counsel must file the petition if counsel determines that there are reasonable grounds to believe that the petition would satisfy the standards of Federal Rule of Appellate Procedure 40, Federal Rule of Appellate Procedure 35(a) or Supreme Court Rule 10, as applicable. *See Austin v. United States,* 513 U.S. 5 (1994) (per curiam); 8th Cir. R. 35A.

If counsel declines to file a petition for panel rehearing or rehearing en banc requested by the defendant based upon counsel's determination that there are not reasonable grounds to do so, counsel must so inform the court and must file a written motion to withdraw. The motion to withdraw must be filed on or before the due date for a petition for rehearing, must certify that counsel has advised the defendant of the procedures for filing *pro se* a timely petition for rehearing, and must request an extension of time of 28 days within which to file pro se a petition for rehearing. The motion also must certify that counsel has advised the defendant of the procedures for filing *pro se* a timely petition for writ of certiorari.

If counsel declines to file a petition for writ of certiorari requested by the defendant based on counsel's determination that there are not reasonable grounds to do so, counsel must so inform the court and must file a written motion to withdraw. The motion must certify that counsel has advised the defendant of the procedures for filing *pro se* a timely petition for writ of certiorari.

A motion to withdraw must be accompanied by counsel's certification that a copy of the motion was furnished to the defendant and to the United States.

Where counsel is granted leave to withdraw pursuant to the procedures of *Anders v. California,* 386 U.S. 738 (1967), and *Penson v. Ohio*, 488 U.S. 75 (1988), counsel's duty of representation is completed, and the clerk's letter transmitting the decision of the court will notify the defendant of the procedures for filing pro se a timely petition for panel rehearing, a timely petition for rehearing en banc, and a timely petion for writ of certiorari.

United States Court of Appeals
For the Eighth Circuit

No. 23-2871

United States of America

Plaintiff - Appellee

v.

Aaron Christopher Lindsey

Defendant - Appellant

Appeal from United States District Court
for the Southern District of Iowa - Central

Submitted: December 6, 2024
Filed: December 16, 2024
[Unpublished]

Before COLLOTON, Chief Judge,[1] GRUENDER, and KELLY, Circuit Judges.

PER CURIAM.

Aaron Lindsey pleaded guilty to one count of making false statements to a financial institution and conditionally pleaded guilty to one count of being a felon in

[1]Judge Melloy took inactive senior status on October 4, 2024. Chief Judge Colloton was assigned to replace Judge Melloy on the panel pursuant to Eighth Circuit Rule 47E.

possession of a firearm, preserving his right to appeal the district court's[2] denial of his motion to dismiss the felon-in-possession charge. He was sentenced to 48 months' imprisonment. Lindsey appeals, arguing that the felon-in-possession statute, 18 U.S.C. § 922(g)(1), violates the Second Amendment both on its face and as applied to him.

We affirmed the district court's judgment in May 2024. *United States v. Lindsey*, No. 23-2871, 2024 WL 2207445 (8th Cir. May 16, 2024). The case is now on remand from the Supreme Court for further consideration in light of *United States v. Rahimi*, 602 U.S. 680 (2024).

We again conclude that precedent forecloses Lindsey's contentions. Following the Supreme Court's decision in *Rahimi*, we held that "[t]he longstanding prohibition on possession of firearms by felons is constitutional," *United States v. Cunningham*, 114 F.4th 671, 675 (8th Cir. 2024), and that there is "no need for felony-by-felony litigation regarding the constitutionality of § 922(g)(1)," *United States v. Jackson*, 110 F.4th 1120, 1125 (8th Cir. 2024). Accordingly, Lindsey's facial and as-applied constitutional challenges to § 922(g)(1) fail.

Affirmed.

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[2]The Honorable Stephanie M. Rose, Chief Judge, United States District Court for the Southern District of Iowa.