

## APPENDIX

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

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

JOSHUA MICHAEL FAUST,  
Defendant.

Case No. 23-cr-2005-LTS-MAR

**REPORT AND RECOMMENDATION  
ON DEFENDANT’S MOTION TO  
DISMISS INDICTMENT WITH  
PREJUDICE**

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***I. INTRODUCTION***

On March 22, 2023, the Grand Jury charged Defendant with one count of Possession of a Firearm by a felon in violation of 18 U.S.C. Sections 922(g)(1) and 924(a)(2). (Doc. 3.) Specifically, the indictment charges, “Defendant was previously convicted of the following crime punishable by imprisonment for a term exceeding one year: Theft Second Degree, in the Iowa District Court for Clayton County, on or about November 12, 2003.” (*Id.*)

The matter before the Court is Defendant’s Motion to Dismiss Indictment Under [*Rifle & Pistol Association, Inc. v. Bruen*, [142 S. Ct. 2111 (2022)]]. (Doc. 21.) The Government timely filed a resistance. (Doc. 22.) The Honorable Leonard T. Strand, United States District Court Chief Judge, referred the motion to me for a Report and Recommendation. I offered to hold a hearing for arguments or to hear evidence, but counsel for both parties declined. Because of the rapidly shifting law, as discussed below, I held a status conference to determine whether the parties wished to submit additional

briefing or otherwise supplement the record. They declined. The matter is fully submitted.

For the following reasons, I respectfully recommend that the District Court **deny** Defendant's Motion to Dismiss.

## ***II. DISCUSSION***

### ***A. The Parties' Arguments***

Defendant argues alternatively that 18 United States Code Section 922(g)(1) is facially unconstitutional or is unconstitutional as applied to him following the United States Supreme Court decision in *Bruen*. (Doc. 21-1 at 2.) Defendant first asserts that his conduct, possessing a firearm, is protected because he is part of "the people" as that term is used in the Second Amendment, "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. Defendant argues that felons are not excepted from the definition of "the people," unlike illegal aliens under Eighth Circuit precedent. *United States v. Stitladeen*, 64 F. 4th 979 (8th Cir. 2023).

Defendant next asserts the Government cannot meet its burden under *Bruen* to show Section 922(g)(1)'s prohibition against possession of firearms by felons has "a well-established and representative historical analogue." 142 S. Ct. 2133. Defendant acknowledges but dismisses as dicta the warnings from *District of Columbia v. Heller* (as echoed in *Bruen*) that "nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons." 554 U.S. 570, 626 (2008); *Bruen*, 142 S. Ct at 2162.

Defendant then recounts certain history from the nation's founding he believes shows the prohibition on possession of firearms by enslaved persons, persons subject to racial or religious discrimination, and those who threatened public safety or who were

disloyal, but does not show that people who had been convicted of felonies were prohibited from possessing firearms.

Finally, Defendant argues that Section 922(g)(1) is unconstitutional as applied to him because his only felony conviction is for a nonviolent theft in the second degree in 2003.

In response, the Government points to statements in *Heller*, *Bruen*, and *McDonald v. City of Chicago*, 561 U.S. 742, 786 (2010) that emphasize the Supreme Court’s assurances that these recent cases regarding firearm possession do not disturb “longstanding prohibitions on the possession of firearms by felons.” The Government points to the Eighth Circuit’s repeated rejection of both facial and as-applied challenges to Section 922(g)(1)—although all the cited cases predate *Bruen*, of course.

The Government then argues that the text of the Second Amendment and the historical regulation of firearms do not prevent legislatures from prohibiting firearms by felons. The Government points to the Supreme Court’s emphasis in *Heller*, *Bruen* and *McDonald* that the right to bear arms is limited to law-abiding citizens. The Government undertakes its own review of the historical regulation of firearms that it believes support upholding Section 922(g)(1)’s prohibition of possession of firearms by felons. Finally, the Government asserts that that Defendant’s “as-applied” challenge must fail because he has not shown, under *United States v. Adams*, 914 F.3d 602 (8th Cir. 2019), that the Second Amendment protects his particular conduct and that his prior felony conviction does not justify regulation of his Second Amendment rights.

### **III. DISCUSSION**

Despite the reassurances of *Heller*, *McDonald*, and *Bruen* that these decisions should not cast doubt on such longstanding prohibitions on firearms possession by felons and other groups, litigants remain determined to exploit the doubt they perceive in the Supreme Court’s holdings.

After *Bruen*, the Eighth Circuit has recently held that to resolve Second Amendment challenges, a court must first ask “whether the firearm regulation at issue governs conduct that falls within the plain text of the Second Amendment.” *Sitladeen*, 64 F.4th at 985. If the conduct falls within the plain text, the Government must “‘identify an American tradition justifying’ the regulation.” *Id.* (quoting *Bruen*, 142 S. Ct. at 2138). Even more recently (i.e., after the parties had submitted their briefs) an Eighth Circuit panel has taken the assurances of *Heller*, *McDonald*, and *Bruen* to heart and concluded, “Given these assurances by the Supreme Court, and the history that supports them, we conclude that there is no need for felony-by-felony litigation regarding the constitutionality of § 922(g)(1).” *United States v. Jackson*, No. 22-2870, 2023 WL 3769242, at \*4 (8th Cir. June 2, 2023). Then, eleven days later, a different panel of the Eighth Circuit cited *Jackson* and declined to address an as-applied challenge to Section 922(g)(1) stating:

Cunningham asserts that the Second Amendment guaranteed his right to possess a firearm, despite his status as a twice-convicted felon, because neither of his prior offenses qualified as a “violent” offense based on the elements of the crime. This contention is foreclosed by *United States v. Jackson*, No. 22-2870, --- F.4th ----, ----, 2023 WL 3769242, at \*4 (8th Cir. June 2, 2023), where we concluded that there is no need for felony-by-felony determinations regarding the constitutionality of § 922(g)(1) as applied to a particular defendant. The longstanding prohibition on possession of firearms by felons is constitutional, and the district court properly denied the motion to dismiss.

*United States v. Cunningham*, No. 22-1080, 2023 WL 3960829, at \*3 (8th Cir. June 13, 2023).

In *Jackson*, the defendant, who had two felony convictions for the sale of a controlled substance, challenged the constitutionality of Section 922(g)(1). After examining “the nation’s historical tradition of firearms regulation” as required by *Bruen*, *Jackson* held,

In sum, we conclude that legislatures traditionally employed status-based restrictions to disqualify categories of persons from possessing firearms. Whether those actions are best characterized as restrictions on persons who deviated from legal norms or persons who presented an unacceptable risk of dangerousness, Congress acted within the historical tradition when it enacted § 922(g)(1) and the prohibition on possession of firearms by felons. Consistent with the Supreme Court’s assurances that recent decisions on the Second Amendment cast no doubt on the constitutionality of laws prohibiting the possession of firearms by felons, we conclude that the statute is constitutional as applied to Jackson.

2023 WL 3769242, at \*5. Although *Jackson* expressly addressed only an as-applied challenge, under this reasoning, the analysis of both Defendant’s challenges could end here. *Jackson* is the first Eighth Circuit panel to address the second part of the *Bruen* test as it relates to Section 922(g)(1).

Although the *Jackson* defendant apparently raised both facial and as-applied challenges to Section 922(g) in the district court, *Jackson*’s holding addresses only the as-applied challenge and precludes any “felony-by-felony litigation” of its constitutionality. 2023 WL 3769242, at \*4. I conclude this decision is binding, notwithstanding the possibility of shifting sand in this area of Second Amendment litigation.<sup>1</sup>

Particularly with respect to as-applied challenges, there may be some uncertainty about the effect of *Bruen* on preexisting Eighth Circuit precedent. Prior to *Jackson*, for example, one district court expressed the possible implications of precedents surviving *Bruen* as follows:

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<sup>1</sup> For example, the Third Circuit recently reversed a decision *Jackson* relied upon. *Range v. Att’y Gen.*, 53 F.4th 262, 269 (3d Cir. 2022) (per curiam), vacated, reh’g en banc granted, 56 F.4th 992 (3d Cir. 2023). *En banc*, the Third Circuit held that a felon convicted of a false statement on a food stamp application remained one of “the people” protected by the Second Amendment and Section 922(g)(1) was unconstitutional as applied to him. *Range v. Att’y Gen. U.S. of Am.*, No. 21-2835, 2023 WL 3833404, at \*8 (3d Cir. June 6, 2023)

In at least one respect, *Bruen* may have abrogated Eighth Circuit precedent. *United States v. Adams* placed the burden on the defendant to prove the Second Amendment protected his conduct, whereas *Bruen* places the burden of proof on the Government to show historical evidence supporting the regulation in question. 142 S. Ct. at 2127. Beyond the placement of the burden of proof, however, it is not clear whether or to what extent *Bruen* abrogated cases like *Adams* and *United States v. Bena*. For example, although *Bruen* eschewed “two-step” tests insofar as the second step engages in means-end scrutiny of a firearm regulation, there are nonetheless still two parts to the *Bruen* analysis: first, courts must determine whether “the Second Amendment’s plain text covers an individual’s conduct,” and, if so, second, the Government must provide historical evidence to show the regulation is sufficiently analogous to Founding-era restrictions. *Bruen*, 142 S. Ct. at 2129–30. Apart from who bears the burden of proof, this is not necessarily different than the two-part test in *Adams*, 914 F.3d at 605 (although it might be), nor does it necessarily mean the no-set-of-circumstances standard set forth in *Salerno*, 481 U.S. at 745, 107 S.Ct. 2095, for facial constitutional challenges never applies to firearms regulations.

*United States v. Hammond*, No. 4:22-cr-00177-SHL-HCA, 2023 WL 2319321, at \*2 (S.D. Iowa Feb. 15, 2023). Another district court has expressed concerns about the effect of *Bruen* on prior Eighth Circuit precedent. See *United States v. Lowry*, No. 1:22-CR-10031-CBK, 2023 WL 3587309 (D.S.D. May 5, 2023), report and recommendation adopted, 1:22-CR-10031-CBK, 2023 WL 3587292 (D.S.D. May 22, 2023). In *Lowry*, a felon made a facial challenge to Section 922(g)(1). *Id.* *Lowry* stated,

After *Heller* and *McDonald*, federal courts coalesced around a two-step framework that combined history with means-end scrutiny. The Eighth Circuit, however, seems to have avoided directly adopting this framework when addressing constitutional challenges to firearm laws, although it has applied means-end scrutiny when evaluating the constitutionality of 18 U.S.C. § 922(g)(8).

*Id.* at \*1 (citations omitted.) *Lowry* continued:

So even if the Supreme Court's statements are not precedential, the Eighth Circuit's rulings are. It would require a leap of faith to say that *Bruen* overruled the Eighth Circuit's application of *Heller* and *McDonald*'s dicta when the *Bruen* Court repeatedly declared that its decision was consistent with both cases. [The appellants]'s motion should be denied on that basis alone.

*Id.* As in *Lowry*, the Court could deny Defendant's facial challenge based solely on pre-*Bruen* precedent.

My concerns are similar to those in *Hammond* and *Lowry* and are enhanced by Chief Judge Smith's concurrence in *Jackson* which stated, economically, if not cryptically, "I concur as to the judgment in Part III and agree that § 922(g)(1) is not unconstitutional as applied to Jackson and that *Heller* remains the relevant precedent we are bound to apply." *Jackson*, 2023 WL 3769242, at \*8 (Smith, C.J., concurring). This might echo the concern raised in *Lowry*. See *Lowry*, 2023 WL 3587309, at \*1. Judge Stras's dissent in *Cunningham* stated, in its entirety, "I dissent. More to come. See *United States v. Jackson*, --- F.4th ----, 2023 WL 3769242 (8th Cir. 2023)." 2023 WL 3960829, at \*4 (Stras, J., dissenting). This dissent is even more cryptic.

*Jackson* implicitly precludes any facial challenge to Section 922(g)(1) under *Bruen*. *Jackson* does not explain how "the firearm regulation at issue governs conduct that falls within the plain text of the Second Amendment," but it does review the history supporting the limitations on the right to bear arms as required by *Bruen*. *Jackson* concluded that Congress acted in the "historical tradition" when it prohibited possession of firearms by any felon "[w]hether those actions are best characterized as restrictions on persons who deviated from legal norms or persons who presented an unacceptable risk of dangerousness." 2023 WL 3769242, at \*7. Given *Jackson*'s broad support for legislative prohibitions against all felons, it is difficult to see how any facial challenge to



the constitutionality of Section 922(g) is viable. Thus, I recommend the Court deny Defendant’s motion with respect to his facial challenge.

As discussed above, whether any as-applied challenge survives *Bruen* and *Jackson* is not perfectly clear. If pre-*Bruen* precedent is not cast in doubt (as perhaps Chief Judge Smith’s concurrence suggested in *Jackson*) then the prior panel’s decision controls.

District courts in the Eighth Circuit—like this one—are duty bound to follow precedential decisions of the Eighth Circuit Court of Appeals. *See Hood v. United States*, 342 F.3d 861, 864 (8th Cir. 2003) (district courts are “bound . . . to apply the precedent of [the Eighth] Circuit”) (citing *United States v. Collins*, 321 F.3d 691, 698 n.5 (8th Cir. 2003)); *Valspar Corp. v. PPG Indus., Inc.*, No. 16-cv-1429 (SRN/SER), 2017 WL 3382063, at \*3 (D. Minn. Aug. 4, 2017) (district courts are bound by circuit court decisions “until and unless the Supreme Court (or the circuit court sitting en banc) says otherwise,” including even if it appears the circuit court decision “conflicts with Supreme Court precedent”) (collecting cases); *Suiter v. Gen. Baptist Nursing Home*, 2013 WL 656916, at \*2 (E.D. Mo. Feb. 22, 2013) (recognizing that “in the absence of clear Supreme Court precedent, this Court is bound to follow Eighth Circuit precedent”); *see also Kohlbeck v. Wyndham Vacation Resorts, Inc.*, 7 F.4th 729, 734 (8th Cir. 2021) (recognizing that “even if the Supreme Court’s more recent decisions call the precedents treating the requirements of Rule 3(c) as jurisdictional into doubt, we are bound to follow [Supreme Court precedent] and later precedents on this issue until the Supreme Court overrules them”) (cleaned up); *United States v. Wade*, 792 F. App’x 417 (8th Cir. 2020) (per curiam) (the Eighth Circuit itself is “bound by a prior panel’s decision” “[e]ven though there has been recent discussion about the lasting viability [of Eighth Circuit precedent] in light of recent Supreme Court precedent”); *Pereida v. Barr*, 916 F.3d 1128, 1133 (8th Cir. 2019) (Eighth Circuit is “bound by [circuit] precedent absent en banc reconsideration or a superseding contrary decision by the Supreme Court regarding this unique situation”). And particularly applicable here, the Eighth Circuit has recognized the principle that “where a precedent . . . has direct application in a case, [the court] should follow it, even if a later decision arguably undermines some of its reasoning.” *Bierman v. Dayton*, 900 F.3d 570, 574 (8th Cir. 2018) (citing *Agostini v. Felton*, 521 U.S. 203, 237 (1997)).

*Barakat v. Frontier J. KCMO, LLC*, No. 4:21-CV-00934-RK, 2022 WL 3269942, at \*3 (W.D. Mo. Aug. 10, 2022).

Perhaps we will learn one day what remains of pre-*Bruen* precedent in this area, but *Jackson* seems to have proceeded on the basis that *Bruen* superseded prior Eighth Circuit authority:

In *United States v. Adams*, we said that a defendant raising an as-applied challenge to § 922(g)(1) must show “(1) that the Second Amendment protects his particular conduct, and (2) that his prior felony conviction is insufficient to justify the challenged regulation of Second Amendment rights.” 914 F.3d at 605. *Jackson* argues that his particular conduct of carrying a concealed weapon was constitutionally protected. We need not address that question, because we conclude that the prohibition is constitutional as applied to *Jackson* regardless of his particular conduct.

*Jackson*, 2023 WL 3769242, at \*7 n.4. Indeed, the District of Nebraska recently interpreted *Jackson* to dispose of claims like the one before this Court:

Thus, *Jackson* expressly rejected Mr. Hansen’s claim that § 922(g)(1) is facially unconstitutional under the *Bruen* framework. And his as-applied challenge based on the “non-violent” nature of his prior conviction is likewise foreclosed by *Jackson*. While Congress could have concluded that only those convicted of certain “violent” felonies pose an increased threat of danger when armed, or required an individual assessment of dangerousness before dispossession, it did not. Instead, Mr. Hansen falls squarely within the category of persons that Congress dispossessed under § 922(g)(1). *See id.* at \*13. And the Court is not at liberty to override the statute’s application based on his individual characteristics and circumstances when the categorical ban was reasonably and lawfully adopted.

*United States v. Hansen*, No. 4:18-CR-3140, 2023 WL 4134002, at \*7 (D. Neb. June 22, 2023).

Here, Defendant’s as-applied challenge should also be denied under *Jackson*. In the case at bar, Defendant’s only argument is that his felony was nonviolent. He has not

attempted to allege “facts about himself and his background that distinguish his circumstances from those of persons historically barred from Second Amendment protections.” *United States v. Barton*, 633 F.3d 168, 174 (3d Cir.2011). Nor has he attempted to show that he is “no more dangerous than a typical law-abiding citizen.” *Id.* It remains unclear after *Bruen*, *Jackson*, and pre-*Bruen* precedent such as *United States v. Adams*, 914 F.3d 602 (8th Cir. 2019) what attacks convicted felons can mount to as-applied challenges, if any. In the instant case, the only challenge asserted is foreclosed by *Jackson*.

#### IV. CONCLUSION

For the reasons set forth above, I respectfully recommend the District Court **deny** Defendant’s Motion to Dismiss. (Doc. 21.)

Objections to this Report and Recommendation in accordance with 28 U.S.C. § 636(b)(1) and Fed. R. Crim. P. 59(b) must be filed within fourteen (14) days of the service of a copy of this Report and Recommendation. Objections must specify the parts of the Report and Recommendation to which objections are made, as well as the parts of the record forming the basis for the objections. *See* Fed. R. Crim. P. 59. Failure to object to the Report and Recommendation waives the right to *de novo* review by the district court of any portion of the Report and Recommendation as well as the right to appeal from the findings of fact contained therein. *United States v. Wise*, 588 F.3d 531, 537 n.5 (8th Cir. 2009).

**DONE AND ENTERED** at Cedar Rapids, Iowa, this 30th day of June, 2023.



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Mark A. Roberts, United States Magistrate Judge  
Northern District of Iowa

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSHUA MICHAEL FAUST,

Defendant.

No. CR23-2005-LTS-MAR

**ORDER**

This matter is before me on a Report and Recommendation (R&R) in which the Honorable Mark A. Roberts, United States Magistrate Judge, recommends that I deny defendant Joshua Michael Faust's motion (Doc. 21) to dismiss the indictment under *Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022). Doc. 33. Neither party has filed objections.

**I. BACKGROUND**

On March 22, 2023, the grand jury returned an indictment (Doc. 2) charging Faust with possession of a firearm by a felon in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). On May 8, 2023, Faust filed a motion (Doc. 21) to dismiss the indictment based on *Bruen*. The Government filed a resistance (Doc. 22) on May 15, 2023. The next day, Faust filed his notice (Doc. 23) of intent to plead guilty. Judge Roberts held a plea hearing on May 24, 2023, during which Faust entered his plea of guilty to the indictment pursuant to a plea agreement.<sup>1</sup> Doc. 26. I accepted the plea on June 9, 2023. Judge Roberts filed his R&R on Faust's motion to dismiss on June 30, 2023,

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<sup>1</sup> The plea agreement provides that Faust's plea is conditional such that he may withdraw his plea in the event the court grants his motion to dismiss.

recommending that I deny the motion. Neither party filed objections and the time for doing so has passed.

## II. APPLICABLE STANDARDS

A district judge must review a magistrate judge's R&R under the following standards:

Within fourteen days after being served with a copy, any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court. A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge may also receive further evidence or recommit the matter to the magistrate judge with instructions.

28 U.S.C. § 636(b)(1); *see also* Fed. R. Crim. P. 59(b). Thus, when a party objects to any portion of an R&R, the district judge must undertake a de novo review of that portion.

Any portions of an R&R to which no objections have been made must be reviewed under at least a "clearly erroneous" standard. *See, e.g., Grinder v. Gammon*, 73 F.3d 793, 795 (8th Cir. 1996) (noting that when no objections are filed "[the district court judge] would only have to review the findings of the magistrate judge for clear error"). As the Supreme Court has explained, "[a] finding is 'clearly erroneous' when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *Anderson v. City of Bessemer City*, 470 U.S. 564, 573 (1985) (quoting *United States v. U.S. Gypsum Co.*, 333 U.S. 364, 395 (1948)). However, a district judge may elect to review an R&R under a more-exacting standard even if no objections are filed:

Any party that desires plenary consideration by the Article III judge of any issue need only ask. Moreover, while the statute does not require the judge to review an issue *de novo* if no objections are filed, it does not preclude

further review by the district judge, sua sponte or at the request of a party, under a *de novo* or any other standard.

*Thomas v. Arn*, 474 U.S. 140, 150 (1985).

### **III. DISCUSSION**

Because none of the parties objected to the R&R, I have reviewed it for clear error. I agree with Judge Roberts' analysis that a facial or as-applied challenge under *Bruen* fails based on *United States v. Jackson*, 69 F.4th 495 (8th Cir. 2023). Based on my review of the record, I find no error – clear or otherwise – in Judge Roberts' recommendation. As such, I adopt the R&R in its entirety.

### **IV. CONCLUSION**

For the reasons set forth herein:

1. I **accept** the Report and Recommendation (Doc. 33) without modification. *See* 28 U.S.C. § 636(b)(1).
2. Pursuant to the Report and Recommendation (Doc. 33), Faust's motion (Doc. 21) to dismiss the indictment is **denied**

**IT IS SO ORDERED.**

**DATED** this 19th day of July, 2023.



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Leonard T. Strand, Chief Judge

UNITED STATES DISTRICT COURT

Northern District of Iowa

UNITED STATES OF AMERICA

v.

JOSHUA MICHAEL FAUST

) JUDGMENT IN A CRIMINAL CASE

)

) Case Number: 0862 6:23CR02005-001

)

) USM Number: 50675-510

)

ORIGINAL JUDGMENT

AMENDED JUDGMENT

Date of Most Recent Judgment:

Zachary D. Crowdes

Defendant's Attorney

THE DEFENDANT:

pleaded guilty to count(s) 1 of the Indictment filed on March 22, 2023

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 &amp; Section</u>	<u>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 Felon	12/2020	1

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.

**Leonard T. Strand**  
**Chief United States District Court Judge**

Name and Title of Judge

**December 21, 2023**

Date of Imposition of Judgment

Signature of Judge

Date

DEFENDANT: **JOSHUA MICHAEL FAUST**  
CASE NUMBER: **0862 6:23CR02005-001**

**PROBATION**

The defendant is hereby sentenced to probation for a term of:

**IMPRISONMENT**

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of: **84 months on Count 1 of the Indictment. The defendant’s sentence has not been adjusted and reduced by 2 days to account for time the defendant served for the case set forth in paragraph 41 of the presentence report (Clayton County, Iowa, Case No. AGCR016413), pursuant to USSG §5K2.23. It is ordered that the term of imprisonment for the instant offense be served consecutively to any term of imprisonment that may be imposed for the cases set forth in paragraph 49 (Delaware County, Iowa, Case No. AGCR014774); paragraph 50 (Delaware County, Iowa, Case No. SMCR014775); paragraph 51 (Delaware County, Iowa, Case No. SMCR014793); paragraph 52 (Delaware County, Iowa, Case No. SRCR014792); paragraph 53 (Delaware County, Iowa, Case No. FECR014808); paragraph 54 (Delaware County, Iowa, Case No. SMCR014849); and paragraph 55 (Delaware County, Iowa, Case No. SMCR014850) of the presentence report, pursuant to 18 U.S.C. § 3584.**

The court makes the following recommendations to the Federal Bureau of Prisons:  
**It is recommended that the defendant be designated to a Bureau of Prisons facility as close to the defendant’s family as possible, commensurate with the defendant’s security and custody classification needs.**

**It is recommended that the defendant participate in the Bureau of Prisons’ 500-Hour Comprehensive Residential Drug Abuse Treatment Program or an alternate substance abuse treatment program.**

The defendant is remanded to the custody of the United States Marshal.

The defendant must surrender to the United States Marshal for this district:

at \_\_\_\_\_  a.m.  p.m. on \_\_\_\_\_.

as notified by the United States Marshal.

The defendant must surrender for service of sentence at the institution designated by the Federal Bureau of Prisons:

before 2 p.m. on \_\_\_\_\_.

as notified by the United States Marshal.

as notified by the United States 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: **JOSHUA MICHAEL FAUST**  
CASE NUMBER: **0862 6:23CR02005-001**

### SUPERVISED RELEASE

- Upon release from imprisonment, the defendant will be on supervised release for a term of:  
**3 years on Count 1 of the Indictment.**

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### MANDATORY CONDITIONS OF SUPERVISION

- 1) The defendant must not commit another federal, state, or local crime.
- 2) The defendant must not unlawfully possess a controlled substance.
- 3) The defendant must refrain from any unlawful use of a controlled substance.  
The defendant 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 the defendant poses a low risk of future controlled substance abuse. *(Check, if applicable.)*
- 4)  The defendant must cooperate in the collection of DNA as directed by the probation officer. *(Check, if applicable.)*
- 5)  The defendant 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 the defendant resides, works, and/or is a student, and/or was convicted of a qualifying offense. *(Check, if applicable.)*
- 6)  The defendant must participate in an approved program for domestic violence. *(Check, if applicable.)*

The defendant 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: JOSHUA MICHAEL FAUST  
CASE NUMBER: 0862 6:23CR02005-001

### STANDARD CONDITIONS OF SUPERVISION

As part of the defendant's supervision, the defendant must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for the defendant's 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 the defendant's conduct and condition.

- 1) The defendant must report to the probation office in the federal judicial district where the defendant is authorized to reside within 72 hours of the time the defendant was sentenced and/or released from imprisonment, unless the probation officer instructs the defendant to report to a different probation office or within a different time frame.
- 2) After initially reporting to the probation office, the defendant will receive instructions from the court or the probation officer about how and when the defendant must report to the probation officer, and the defendant must report to the probation officer as instructed. The defendant must also appear in court as required.
- 3) The defendant must not knowingly leave the federal judicial district where the defendant is authorized to reside without first getting permission from the court or the probation officer.
- 4) The defendant must answer truthfully the questions asked by the defendant's probation officer.
- 5) The defendant must live at a place approved by the probation officer. If the defendant plans to change where the defendant lives or anything about the defendant's living arrangements (such as the people the defendant lives with), the defendant 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, the defendant must notify the probation officer within 72 hours of becoming aware of a change or expected change.
- 6) The defendant must allow the probation officer to visit the defendant at any time at the defendant's home or elsewhere, and the defendant must permit the probation officer to take any items prohibited by the conditions of the defendant's supervision that he or she observes in plain view.
- 7) The defendant must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses the defendant from doing so. If the defendant does not have full-time employment, the defendant must try to find full-time employment, unless the probation officer excuses the defendant from doing so. If the defendant plans to change where the defendant works or anything about the defendant's work (such as the defendant's position or the defendant's job responsibilities), the defendant 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, the defendant must notify the probation officer within 72 hours of becoming aware of a change or expected change.
- 8) The defendant must not communicate or interact with someone the defendant knows is engaged in criminal activity. If the defendant knows someone has been convicted of a felony, the defendant must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
- 9) If the defendant is arrested or questioned by a law enforcement officer, the defendant must notify the probation officer within 72 hours.
- 10) The defendant 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) The defendant 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) As directed by the probation officer, the defendant must notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and must permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 13) The defendant must follow the instructions of the probation officer related to the conditions of supervision.

DEFENDANT: JOSHUA MICHAEL FAUST  
CASE NUMBER: 0862 6:23CR02005-001

**SPECIAL CONDITIONS OF SUPERVISION**

*The defendant must comply with the following special conditions as ordered by the Court and implemented by the United States Probation Office:*

1. **The defendant must not have contact during the defendant’s term of supervision with the individual(s) set forth in paragraph 126 of the presentence report, in person or by a third party. This includes no direct or indirect contact by telephone, mail, email, or by any other means. The United States Probation Office may contact the aforementioned individual(s) to ensure the defendant’s compliance with this condition.**
2. **The defendant must submit the defendant’s 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. The defendant must warn any other occupants that the premises may be subject to searches pursuant to this condition. The United States Probation Office may conduct a search under this condition only when reasonable suspicion exists that the defendant has violated a condition of supervision and that the areas to be searched contain evidence of this violation. Any search must be conducted at a reasonable time and in a reasonable manner.**
3. **The defendant must participate in a mental health evaluation. The defendant must complete any recommended treatment program, and follow the rules and regulations of the treatment program. The defendant must take all medications prescribed to the defendant by a licensed medical provider.**
4. **The defendant must participate in a cognitive behavioral program that addresses anger and/or assaultive conduct, and the defendant must comply with the rules and regulations of the program.**
5. **The defendant must participate in a substance abuse evaluation. The defendant must complete any recommended treatment program, which may include a cognitive behavioral group, and follow the rules and regulations of the treatment program. The defendant must participate in a program of testing for substance abuse. The defendant must not attempt to obstruct or tamper with the testing methods.**
6. **The defendant must not use or possess alcohol. The defendant is prohibited from entering any establishment that holds itself out to the public to be a bar or tavern without the prior permission of the United States Probation Office.**
7. **If not employed at a lawful type of employment as deemed appropriate by the United States Probation Office, the defendant must participate in employment workshops and report, as directed, to the United States Probation Office to provide verification of daily job search results or other employment related activities. In the event the defendant fails to secure employment, participate in the employment workshops, or provide verification of daily job search results, the defendant may be required to perform up to 20 hours of community service per week until employed.**

These conditions have been read to me. I fully understand the conditions and have been provided a copy of them. Upon a finding of a violation of supervision, I understand the Court may: (1) revoke supervision; (2) extend the term of supervision; and/or (3) modify the condition of supervision.

\_\_\_\_\_  
Defendant

\_\_\_\_\_  
Date

\_\_\_\_\_  
United States Probation Officer/Designated Witness

\_\_\_\_\_  
Date

DEFENDANT: **JOSHUA MICHAEL FAUST**  
CASE NUMBER: **0862 6:23CR02005-001**

**CRIMINAL MONETARY PENALTIES**

The defendant must pay the total criminal monetary penalties under the schedule of payments on the following page.

	<u>Assessment</u>	<u>AVAA Assessment<sup>1</sup></u>	<u>JVTA Assessment<sup>2</sup></u>	<u>Fine</u>	<u>Restitution</u>
<b>TOTALS</b>	<b>\$ 100</b>	<b>\$ 0</b>	<b>\$ 0</b>	<b>\$ 0</b>	<b>\$ 0</b>

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.

<u>Name of Payee</u>	<u>Total Loss<sup>3</sup></u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
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**TOTALS**    \$ \_\_\_\_\_    \$ \_\_\_\_\_

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 the following page 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:

<sup>1</sup>Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

<sup>2</sup>Justice for Victims of Trafficking Act of 2015, 18 U.S.C. § 3014.

<sup>3</sup>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: **JOSHUA MICHAEL FAUST**  
CASE NUMBER: **0862 6:23CR02005-001**

### SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A  \$ 100 due immediately;
- 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:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during 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 will 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 must pay the cost of prosecution.
- The defendant must pay the following court cost(s):
- The defendant must 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) JVTVA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

**UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT**

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No: 24-1042

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United States of America

Plaintiff - Appellee

v.

Joshua Michael Faust

Defendant - Appellant

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Appeal from U.S. District Court for the Northern District of Iowa - Eastern  
(6:23-cr-02005-LTS-1)

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**JUDGMENT**

Before SMITH, GRUENDER, and STRAS, 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.

January 10, 2025

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

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/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 petition for writ of certiorari.

United States Court of Appeals  
For the Eighth Circuit

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No. 24-1042

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United States of America

*Plaintiff - Appellee*

v.

Joshua Michael Faust

*Defendant - Appellant*

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Appeal from United States District Court  
for the Northern District of Iowa - Eastern

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Submitted: December 16, 2024

Filed: January 10, 2025

[Unpublished]

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Before SMITH, GRUENDER, and STRAS, Circuit Judges.

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PER CURIAM.

Joshua Faust pleaded guilty to being a felon in possession of a firearm, *see* 18 U.S.C. § 922(g)(1), preserving his right to appeal the district court's<sup>1</sup> denial of his motion to dismiss the felon-in-possession charge. He was sentenced to 84 months'

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<sup>1</sup>The Honorable Leonard T. Strand, Chief Judge, United States District Judge for the Northern District of Iowa.



imprisonment. Faust appeals, arguing that the felon-in-possession statute, § 922(g)(1), violates the Second Amendment both on its face and as applied to him.

Precedent forecloses Faust’s arguments. Following the Supreme Court’s decision in *United States v. Rahimi*, 602 U.S. 680 (2024), 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, Faust’s facial and as-applied constitutional challenges to § 922(g)(1) fail.<sup>2</sup>

Affirmed.

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<sup>2</sup>Even if Faust could bring an as-applied challenge, he would not succeed. His lengthy criminal record includes over fifteen convictions, including four assaults (two with a dangerous weapon), disorderly conduct, and violation of a protective order. That record, combined with his history of noncompliance while incarcerated and while subject to probation, demonstrates that Faust “pose[s] a credible threat to the physical safety of others.” *See Rahimi*, 602 U.S. at 700; *see also United States v. Jackson*, 85 F.4th 468, 470-72 (8th Cir. 2023) (Stras, J., dissenting from denial of reh’g en banc) (explaining that, based on Founding-era history, the government can strip “dangerous” individuals of their firearms).