

18-6817

No. 17A1092

Supreme Court, U.S.  
FILED

JUN 01 2018

OFFICE OF THE CLERK

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IN THE  
SUPREME COURT OF THE UNITED STATES

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United States of America,

Respondent,

v.

Michael Albert Focia,  
Petitioner.

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

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Petition for a Writ of Certiorari

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**ORIGINAL**

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## Questions Presented

① Is it facially and as applied to Petitioner an unconstitutional prior restraint under the second and fifth amendments to apply the statutory scheme of 18 USC 922(a)(1)(A) and 18 USC 922(a)(5) to a non-Federal Firearm Licensee private citizen natural person who is disposing of his private personal property of gun for sale or transfer, NOT for "wholesale or retail", on the secondary market in light of Abranski v. United States, 134 S.Ct. 2259 (2014).

2. If the answer is in the affirmative, what elements must be proven to establish wholesale or retail sales, and is it void for vagueness?

③ If negative is the answer of either questions, then did the district court commit plain or structural error, commit an ex post facto violation,

## Questions Presented

violate the separation of powers and deny Petitioner a trial by Jury by omitting from the Jury instructions the statutory text exemption of "or for a hobby" in 18 USC 921(a)(2)(C) in light of the admonishment in United States v. Hoffman 518 F.2d 808 4th Cir. Cert. Denied 1975 that it

"was necessary for the Jury to be instructed to distinguish between a hobby and a business", over Petitioner's objection?

④ Is it a violation of Petitioner's Fifth and Sixth amendment rights to deny a Pro se litigant access to law resources?

⑤ Must a Court provide any explanation to enhance a defendant's sentence by simply stating the talismanic rule that "he considered the 18 USC 3553(a) factors, no matter how

## Questions Presented

he ruled on the objections of a PSI?

⑥ Is the sentence unreasonable and violate the fifth and sixth amendments because they allow facts to be found by a Judge instead of a Jury?

⑦ Does it violate the ~~the~~ fifth and sixth amendments to allow a Judge to enhance a sentence using "obstruction of Justice", enhancement because a Pro Se litigant presented his own Case in a zealous manner without explanation?

8. If in the negative under 922(a)(5) is the element of knowledge required to be at the time of the Sale as stated in United States v. Fries, and did the evidence show that the Court of Appeals committed plain error?

## LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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## OTHER

IN THE  
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☒ reported at 15-15643 11th Circuit; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

The opinion of the United States district court appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

The opinion of the \_\_\_\_\_ court appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.



## JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 9/6/2017.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: January 31, 2018, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☒ An extension of time to file the petition for a writ of certiorari was granted to and including June 27, 2018 (date) on April 12, 2018 (date) in Application No. 17A 1092.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was \_\_\_\_\_.  
A copy of that decision appears at Appendix \_\_\_\_\_.

☐ A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. A \_\_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Second Amendment

Fifth Amendment

Sixth Amendment

fourteenth Amendment

18 USCS 922(a)(1)(A)

18 USCS 922(a)(5)

18 USC 921(a)(2)(C)

18 USCS 921(a)(22)

## STATEMENT OF THE CASE

### Statement of the facts:

The parties agree and the indiputable evidence at trial shows;

1. Petitioner sold two handguns over a fourteen (14) month period
2. Petitioner delivered the handguns by United States Postal Service
3. Petitioner lawfully owned the handguns
4. Petitioner lawfully acquired the handguns on the secondary market.
5. Petitioner has never had a Federal Firearm License (FFL)
6. Petitioner has never applied for an FFL
7. Petitioner has never worked for an FFL
8. Petitioner does not have any contract with the United States to sell firearms
9. Petitioner did not sell guns at "wholesale or retail".
10. Petitioner had no criminal record.
11. Petitioner sold guns on the secondary market
12. Petitioner was charged under the Gun Control Act of 1968, FFL scheme specifically 18 U.S.C.S. §922(a)(1)(A) and §922(a)(5)

### Course of Proceedings;

The Government brought charges of the FFL scheme of 18 USCS §922(a)(1)(A) (count 1) and 18 USCS §922(a)(5) (Count 2 and 3) against a private non-ffl natural man selling his private property. Because the Petitioner would not plead guilty to an FFL scheme that does not apply to him, the government retaliated with a superceding indictment and charged petitioner with "interference with communications system (count 4). Petitioner was found guilty of counts 1,2 and 3 and not guilty as to count 4.

Prior to trial the government succeeded in vilifying Petitioner with lies and innuendo and the court unlawfully denied bail to Petitioner acting Pro Se.

While both violating the bail reform act and denying Petitioner acces to law resources preventing the Petitioner from preparing a meaningful defense. Petitioner was provided a laptop to review the discovery of the unlawfully seized computer of his which had some law on it. Petitioner was given a standby counsel over his objection. At the arraignment Petitioner objected to Subject Matter Jurisdiction and was denied. Subsequently he was forced to pleag not

Statement of the Case continued

guilty upon proof of claim that the court had subject matter jurisdiction.

Petitioner moved to dismiss counts 1-3 because the FFL scheme was unconstitutional as applied to him. The government nor judge replied violating Haines v. Kerner 404 U.S. 519 (1972), subsequently Petitioner moved to dismiss Count 1 "because the Federal Firearms licensing Scheme is unconstitutional as applied to him as it amounts to an impermissible prior restraint and an unconstitutional compulsion for the exercise of a right guaranteed by the Constitution to dispose of a non-FFL's private natural man's property in guns.

Petitioner also moved to dismiss Counts 2 and 3, "because they charge an offense, Transfer of a Firearm to a Non-resident 18 uscs §922(a)(5), that is unconstitutional as applied to Petitioner, a non-ffl private natural mans property.

The magistrate Judge recommended the motions be denied (docs 98, 100). Petitioner timely objected (docs 105, 106) and overruling those objections, the district court adopted teh recommendations of the magistrate judge (docs 145, 147). Petitioner was found incorrectly found guilty under the FFL scheme that does not apply to non-FFL Private people selling their private propert, despite moving for judgments of acquittal on all counts and denied with minimal elaboration.

Appellate Review claims was that there was insufficient evidence to support counts 2 and 3 even if Petitioner was subject to the FFL scheme and all the elements of the crime can not be satisfied at the time of the sale under United States v. Fries 725 F. 3d 1293 (2013). Because over Petitioners objection, the jury was instructed incorrectly and the Judge violated the separation of powers and omitted the statutory text and exemption of "or for a hobby" causing a structural error and a expost facto error and denied Petitioner trial by jury. permitting a conviction not criminal under the

Statement of the Case continued

plain language of the statute if Petitioner were an FFL. Moreover it violated the admonishment of United States v. Huffman, 518 F. 2nd 808 1st Cir. cert. denied (1975). Petitioner claimed that 18 USC §922(a)(1)(A) and §922 (a)(5) was unconstitutional as applied to a private non-ffl property of guns. and that the court should have dismissed the charges because Abramski v. United States, 573 U.S. \_\_\_, \_\_\_, 134 S.Ct. 2259 139 LED 2d (2014) make clear that the FFL scheme does not apply to Private natural persons selling their private property of guns on the secondary market. Quoting Huddleston v. United States 415 U.S., 824, 94 S. Ct. 1262, 39 LED 2d 782 (1971). Moreover, it violates Article 4, section 2 privileges and immunities clause under Ward v. Maryland 2 Wall 430, 20 LED 432 (1871)

SUPREME COURT REVIEW:

Petitioner claims that the FFL scheme as applied to him is unconstitutional under the second amendment, the due process clause of the fifth amendment, and Article 4 Section 2 of the Constitution. Petitioner also claims this case is easily disposed of for want of jurisdiction and invokes the exclusive Equity jurisdiction of this court to protect his rights under the aforementioned clauses of the Constitution for the unpopular but protected conduct as Justice Kennedy stated in Obergefell v. Hodges 135 S.Ct. 2584, 192 LED 2d 609 2015. Fundamental rights may not be submitted to vote, they depend on the outcome of no elections.

## Reasons For Granting Petition

1. The case epitomizes the importance of the Supreme Court to exercise its discretionary Power and will have far reaching implications socially, Politically and racially, for both Pro Se and represented defendants. The Court should be informed of the discriminate and abusive tactics used against Pro Se litigants.
2. The first conflict the American People will suffer irreparable harm with a deprivation of liberty is if the government can prosecute a non-FFL in one case, such as this and disavow the FFL scheme does not apply to non-FFL's in LANE v. HOLDER 703 F.3d 668, 4th Cir. Appeal (2012), and the appellate court affirms that non-FFL's have standing to sue over the enforcement of a statute.
3. The way the courts are interpreting the FFL scheme against non-FFL's is prejudicial, and permits the government to chill

## Reasons for Granting Petition

the politically unpopular, but protected rights arbitrarily against its political opponents by a select militia of the BATFE, much like Lois Lerner did with the IRS against Conservatives, and the FBI against Trump.

4. The appellate opinion sanctions a lower Courts departure from the usual course of proceeding by allowing the Judge to act in Congresses stead and rewrite presumptively valid statutory text.

5. The opinion and verdict conflicts with Abramski v. United States, 134 S.Ct. 2259 (2014) "Congress chose not to pursue the goal of controlling access to guns to the nth degree, buyers can avoid the statutes background check and record keeping requirements by getting a gun second hand!"

6. The opinion conflicts with NEDEK v. United States 527 U.S. 1 (1999), because the omitting of "or for a hobby" and was

## Reasons for Granting Petition

not sufficiently covered by the Jury instructions.

- ⑦ It allows the dangerous principle of District Court Judges and appellate Court Judges to give different text different meaning in different cases and impermissibly delegates basic policy matters to judges for resolution on an ad-hoc and subjective basis and invites arbitrary enforcement by leaving Judges and Jurors free to decide without any legally fixed standards what is prohibited and what is not in each particular case.
  - ⑧ It allows a Judge at sentencing to exercise discretion in secret by enabling him to state a talismatic rule without any explanation on the enhancements by merely stating he considered the 18 USC 3553(a) factors and punishing
- 9.



## Reasons for Granting Petition

a defendant without explanation.

- ⑨ It conflicts with the Supreme Court and appellate courts settled case law that the sentencing range is the "lodestar!"
- ⑩ It allows the court (appellate) to use infamy to oppress litigants by conflating sentencing transcripts and facts not found by a Jury, with Trial transcripts.
- ⑪ It allows the appellate panel to influence the readers that a non-FFL Petitioner is obligated to perform functions of an FFL.

## Conclusion

The Framers of the Constitution established the Article III Powers of the Supreme Court to intercede on the Peoples behalf when the government overstepped its authority. The review is warranted on will prevent irreparable harm, complete miscarriage of Justice, the stigmatizing and indelibly marking those that exercise their Politically unpopular but protected rights. Failure to act would allow the government to arbitrarily seize, prey on, and prosecute, and subject their Political opponents to involuntary servitude. These that are unskilled in <sup>law</sup> to enforce their rights guaranteed by the Constitution by charging them for conduct not criminal and what

## Conclusion

Petitioner claims he is actually innocent of any crime and the whole proceeding were Coram non JUDGE and the Court should vacate the conviction and remand for Dismissal. Petitioner invokes the Exclusive Equity side of the Court and the protections guaranteed by the second, fifth, sixth and fourteenth amendments.

Codes do not change principles of the constitution or maxims of law. The right of sale and transfer is an inherent attribute of property and it is a fundamental maxim of law. When any laws are enacted that cross the laws of nature, then civil liberty is invaded and it's an affront to a man's good reason and good conscience.

## Conclusion

the law plainly allows them to do. History shows this is the modus operandi of tyrants. Equity considers done what ought to have been done. Petitioner prays the Courts review, vacates the conviction and restore Petitioner's property and compensable damages and stop the present and continuous punishment he is suffering.

This Petition for Writ of Certiorari should be granted.

Respectfully Submitted,  
*Michael Albert Focia*

Michael Albert Focia  
June 1<sup>st</sup>, 2018