No.

IN THE

Supreme Court of the United States

BLAIR COOK,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The underlying question presented is: Whether § 922(g)(3) is unconstitutionally vague under the Fifth Amendment's Due Process Clause.

This involves a threshold question: Whether a statute that impinges on the Second Amendment right to bear arms is subject to facial vagueness challenge the same as statutes that impinge on other individual constitutional rights.

If this Court declines to consider these constitutional questions, there is an additional question: Should the Court hold this petition in abeyance pending the resolution of *Rehaif v. United States* (17-9560) and/or *N.Y. State Rifle & Pistol Ass'n v. City of New York* (18-280)?

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

Petitioner is Blair Cook. Respondent is the United States of America. No party is a corporation.

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Constitutional Provisions and Statutes

Other Authorities

PETITION FOR A WRIT OF CERTIORARI

Petitioner Blair Cook respectfully petitions for a writ of certiorari to review the decision of the U.S. Court of Appeals for the Seventh Circuit

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Seventh Circuit (App., *infra*, 1a-21a) is reported at 914 F.3d 545. The opinion of the district court (App., *infra*, 22a-24a) is unreported.

JURISDICTION

The Seventh Circuit issued its decision on January 28, 2019. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Constitution's Fifth Amendment provides in relevant part: "No person shall . . . be deprived of life, liberty, or property, without due process of law . . ."

The Second Amendment to the Constitution provides: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."

18 U.S.C. § 922(g)(3) provides in relevant part: "It shall be unlawful for any person . . . who is an unlawful user of or addicted to any controlled substance . . . to . . . possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce."

INTRODUCTION

18 U.S.C. § 922(g) defines nine categories of persons who are prohibited from possessing a firearm or ammunition. Petitioner was convicted under § 922(g)(3), which covers any person "who is an unlawful user of or addicted to any controlled substance." (Specifically, petitioner was convicted of being an "unlawful user of marijuana.") Among § 922(g)'s nine categories, sub. (g)(3) is the only one in which a person's inclusion in the category is not ascertainable with reference to public or medical records. Also, it is the only category that is mutable. Further, § 922(g)(3)'s "unlawful user" clause is not statutorily defined.[1]

The chief question presented here is whether § 922(g)'s "unlawful user" clause is unconstitutionally vague. The statute restricts a fundamental right, so this question raises a threshold question that is important in its own right: whether a litigant can raise a facial vagueness challenge to a statute that restricts Second Amendment rights just as with statutes that restrict other individual constitutional rights?

The Seventh Circuit Court of Appeals rejected petitioner's vagueness challenge to § 922(g)(3) out of hand based on the notion that he was not permitted to challenge that statute on its face. App. 16a. Petitioner had primarily argued that a facial vagueness challenge was permissible because § 922(g)(3)

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[1] In contrast, "addicted to any controlled substance" is statutorily defined. § 922(g).

restricts Second Amendment rights—indeed, it extinguishes them for persons that fall within it. Thus, petitioner argued, the same facial vagueness analysis that applies to statutes that restrict First Amendment and substantive due process rights must apply here. Brief of Defendant-Appellant, *United States v. Cook*, 2018 WL 1718533, at **12–13 (7th Cir. Mar. 26, 2018); Reply Brief, *United States v. Cook*, 2018 WL 2837475, at **2–3 (7th Cir. June 8, 2018). The Seventh Circuit ignored this line of argument completely. App. 9a–16a. It addressed only an alternative argument based on *Johnson v. United States*, __ U.S. __, 135 S. Ct. 2551 (2015), in which this Court noted that facial vagueness challenges are sometimes possible even with statutes that do not restrict other constitutional rights. The Seventh Circuit reasoned that *Johnson* did not liberalize the vagueness doctrine (at least, not outside of the "residual clause" context); thus, it held that a facial vagueness challenge is not permissible here, and it denied relief. App. 14a–16a.

The Seventh Circuit's refusal even to contemplate a facial vagueness challenge to a statute that restricts Second Amendment rights "treat[s] the right recognized in *Heller* as a second-class right." *McDonald v. City of Chicago*, 561 U.S. 742, 780 (2010) (referencing *District of Columbia v. Heller*, 554 U.S. 570 (2008)). This is not unique—individual jurists, at least, have sounded the alarm in recent years regarding the lower courts' disdain for the *Heller* right. *See, e.g., Silvester v. Becerra*, __ U.S. __, 138 S. Ct. 945, 950 (2018) (Thomas, J., dissenting from the denial of certiorari) ("As I have previously explained, the lower courts are resisting this Court's decisions in *Heller* and *McDonald* and are failing to protect the

Second Amendment to the same extent that they protect other constitutional rights."); *Kanter v. Barr*, 919 F.3d 437, 469 (7th Cir. 2019) (Barrett, J., dissenting) (complaining that the majority opinion "treats the Second Amendment as a 'second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees'").

This Court recently accepted review of a case that will permit the Court to address this double-standard. *N.Y. State Rifle & Pistol Ass'n Inc. v. City of New York*, No. 18-280. *N.Y. State Rifle & Pistol Ass'n* involves a challenge to restrictions on gun rights that apply to people who undoubtedly retain Second Amendment rights. The present case would make a useful companion to *N.Y. State Rifle & Pistol Ass'n* in that it deals with the double-standard regarding the Second Amendment in a distinct context: a challenge to a statute extinguishing Second Amendment rights for a category of persons. The two cases cover the two circumstances in which Second Amendment questions generally arise and, together, they would go a long way toward clearing up confusion in the lower courts.

This case is unusual in that in addition to raising a cert-worthy issue in its own right, it may be impacted by not one but two cases pending before this Court: *Rehaif v. United States*, No. 17-9560, and also *N.Y. State Rifle & Pistol Ass'n*. Therefore, if the Court declines to grant review on the important questions presented here, petitioner asks the Court to hold his petition in abeyance until one or both of those cases is resolved, then grant the petition, vacate the judgment, and remand for reconsideration in light of new precedent.

STATEMENT OF THE CASE

A. Underlying facts

In 2017, petitioner purchased a handgun from a licensed firearm dealer. As part of the process, petitioner filled out an ATF form certifying that, among other things, he was not an unlawful user of any controlled substance. The instructions for filling out the form did not attempt to define the relevant terms. Cook was not a felon at the time, and he had a state "concealed carry" permit.

Around two months later, Cook was subject to a traffic stop at which officers confiscated a handgun. Officers who conducted the stop smelled the odor of marijuana in the car, and they later confiscated what was presumed to be marijuana from Cook's person. Officers questioned Cook; he said that he used, but did not sell, marijuana; he'd smoked marijuana that day; and he had "been smoking weed since [he] was like 14"—about 10 years.

B. District court proceedings

Petitioner was indicted in federal court for being an "unlawful user of marijuana" in possession of a firearm and ammunition. He was also indicted for making a false statement—saying that he was not an unlawful user of marijuana—when he bought the firearm and ammunition, in violation of 18 U.S.C. § 924(a)(1)(A). A jury would convict Cook only of the former offense.

Before trial, petitioner filed a motion to dismiss the indictment on the ground that 18 U.S.C. § 922(g)(3) is unconstitutionally vague. The statute does not provide any definition of "unlawful user."

Petitioner explained to the district court (as he discusses below) that the federal circuit courts have generally held that in order to come within the terms of the statute, a person must be a regular user, around the time of the firearm possession. But petitioner argued that the courts had not been able to define precisely when a person becomes an unlawful user, such that his right to possess a firearm disappears; when a person ceases to be an unlawful user, such that his right reappears; how frequently a person must use a controlled substance; and how recent the use must be. Thus, petitioner argued, the statute does not allow citizens to determine whether they come within the prohibition, and it invites arbitrary enforcement. The district court denied the motion. App. 22a–24a.

That settled, the most significant dispute running up to trial was whether or how the district court would define "unlawful user" to the jury. The court told the jury that the petitioner was an "unlawful user of marijuana" if he used marijuana "for a period of time that began before and continued through the date of the charged offense. The government is not required to prove that the defendant was under the influence of marijuana when he filled out the Firearms Transaction Record or when he possessed the firearm. The government is not required to prove that the defendant used marijuana on any particular day, or within a certain number of days of when he committed the charged offenses."

Petitioner objected that this definition did not come from the statute and that it remained unclear when a person becomes a user and stops being a user. Petitioner also asked the court to define "regular and

ongoing." But the court said that the appellate courts would have to decide "what is regular and ongoing and when does one stop being a user."

In closing arguments, defense counsel argued that when Cook filled out the ATF form at the firearm purchase, he was left to guess at what "user" meant, and thus jurors couldn't find that he'd lied on the form. On the § 922(g)(3) count, counsel argued that Cook's statement, alone, was insufficient to establish regular and ongoing marijuana use.

The jury convicted Cook of being an unlawful user of marijuana in possession of a firearm and ammunition, but it deadlocked on the false-statement count. On the government's motion, the district court later dismissed the false-statement count. The court ultimately sentenced Cook to probation on the count of conviction.

C. Appellate proceedings

Petitioner appealed his conviction on the ground raised here, that § 922(g)(3) is unconstitutionally vague on its face. (He also raised two other issues that are not pressed in this Court.) In a published opinion dated January 28, 2019, the Seventh Circuit held that petitioner was not permitted to raise a facial vagueness challenge regarding § 922(g)(3) and thus because petitioner could not prevail on an as-applied challenge (that he did not make), his due process vagueness claim failed. App. 5a–15a. It affirmed the conviction and judgment. *Id.* at 21a.

The Seventh Circuit's holding that petitioner could not challenge § 922(g)(3) on its face relied on opinions of this Court holding that generally, facial vagueness challenges are only permitted where the

potentially vague statute restricts First Amendment rights. App. 6a. In briefing, petitioner had explained that this Court considers facial vagueness challenges not just in the First Amendment context but also in the context of statutes that restrict substantive due process rights (generally related to abortion). From this, petitioner argued that his facial challenge to § 922(g)(3) was proper primarily because § 922(g)(3) restricts Second Amendment rights, so it must be treated the same as statutes that restrict the other affirmative, fundamental rights. Brief of Defendant-Appellant, *United States v. Cook*, 2018 WL 1718533, at **12–13 (7th Cir. Mar. 26, 2018); Reply Brief, *United States v. Cook*, 2018 WL 2837475, at **2–3 (7th Cir. June 8, 2018). The Seventh Circuit in its opinion did not mention this line of argument, declining to wrestle with the question why the vagueness doctrine would distinguish between statutes that restrict Second Amendment rights versus other fundamental rights.

The Seventh Circuit addressed only petitioner's alternative argument, based on this Court's holding in *Johnson v. United States*, __ U.S. __, 135 S. Ct. 2251 (2015), that the general rule against facial vagueness challenges is somewhat flexible even in cases not involving fundamental rights. The court said that "*Johnson* deals with a statute that is *sui generis*," and in any event, *Johnson* only permits a facial challenge to be raised in a non-First-Amendment case dealing with a statute that has no "core." App. 12a–14a. The Court held that § 922(g)(3) has a "core" and petitioner fit within that core. *Id.* at 14a–16a. Thus, the court found that although § 922(g)(3) may be vague as applied to other circumstances, it is not vague as applied to the petitioner. *Id.*

REASONS FOR GRANTING THE PETITION

I. This Court should grant review to resolve two important, recurring questions of law: Can a litigant make a facial vagueness challenge to a statute that restricts Second Amendment rights? And is § 922(g)(3) unconstitutionally vague?

Since this Court decided *Heller*, the lower courts have struggled to understand how the Second Amendment fits into the pantheon of fundamental rights. There are many unresolved questions, but this Court has clearly held that the individual right to bear arms recognized in *Heller* is not a "second-class right." *McDonald*, 561 U.S. at 780.

The petitioner in this case is not raising a free-standing Second Amendment claim in this Court. But the question of whether § 922(g)(3) is unconstitutionally vague has significant Second Amendment implications. By accepting review of this case, this Court will be able to clarify the relationship between the Second Amendment and other fundamental rights and also protect a potentially staggering number of Americans from uncertainty about whether their Second Amendment rights have been, or could be, extinguished—a question that § 922(g)(3) leaves to be answered by law enforcement and the courts, on a case-by-case basis.

A. The Seventh Circuit's refusal to consider a facial challenge to a vague statute that extinguishes Second Amendment rights treats the Second Amendment like a second-class right.

Although this Court has occasionally said that facial challenges can only be raised against statutes that restrict First Amendment rights, *see, e.g., Maynard v. Cartwright*, 486 U.S. 356, 361 (1988), this is just shorthand. The Court has repeatedly held that facial challenges are also appropriate when assessing statutes that restrict substantive due process rights. *City of Chicago v. Morales*, 527 U.S. 41, 55 (1999) (explaining that because a loitering ordinance restricted "the 'liberty' protected by the Due Process Clause, it was particularly "subject to facial attack"); *Akron v. Akron Center for Reproductive Health, Inc.,* 462 U.S. 416, 451 (1983) (holding that an abortion-related law was unconstitutionally vague on its face); *Kolendar v. Lawson*, 461 U.S. 352, 358 (1983) (holding that a loitering law that "implicates consideration of the constitutional right to freedom of movement" is void for vagueness); *Colautti v. Franklin,* 439 U.S. 379, 391 (1979) (explaining in the context of holding that an abortion-related law was unconstitutionally vague that a facial challenge is appropriate in the context of a law that "threatens to inhibit the exercise of *constitutionally protected rights*") (emphasis added); *Aptheker v. Secretary of State*, 378 U.S. 500, 515–517 (1964) (holding that "since freedom of travel is a constitutional liberty closely related to rights of free speech and association," a law restricting that freedom was unconstitutionally vague on its face).

There are three constitutional amendments that protect affirmative individual rights: the First Amendment, the Second Amendment, and the substantive component of the Due Process Clause (Fifth and Fourteenth Amendments).[2] These are the rights that could be restricted by a law or regulation that would be subject to a vagueness challenge. And just one of these rights, according to the Seventh Circuit, may be restricted by a vague statute: the Second Amendment right to bear arms.

This treats the Second Amendment as a "second-class right." *McDonald*, 561 U.S. at 780. And it is just the latest example of a trend in which "the lower courts are resisting this Court's decisions in *Heller* and *McDonald* and are failing to protect the Second Amendment to the same extent that they protect other constitutional rights," *Silvester*, 138 S. Ct. at 950 (Thomas, J., dissenting from the denial of certiorari).

Thus, the threshold question of whether the vagueness doctrine interacts with the right to bear arms the same as it does with other constitutional rights presents an opportunity for this Court to address this imbalance. In that sense, this case is closely related to *N.Y. State Rifle & Pistol Ass'n*, 18-280, currently pending before this Court, in which the petition for certiorari review focused on this imbalance. Here, the issue arises in a different context—restriction on *who* may exercise Second

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[2] Other rights (for example, to a jury trial or against unreasonable seizures), in contrast, are about government, not individual, action.

Amendment rights, rather than *how* a person with Second Amendment rights may exercise them. Thus, this case would be a good companion for *N.Y. State Rifle & Pistol Ass'n*; together, the cases would cover the two circumstances in which Second-Amendment-related claims generally arise.

Moreover, the specific question of whether a statute that restricts Second Amendment rights is subject to a facial challenge, is worth certiorari review because that it is a pure legal question of constitutional law that this Court has never considered. And post-*Heller*, this specific question is almost certain to arise again, given the myriad of state and federal laws dealing with firearms.

B. Section 922(g)(3)'s vagueness gives law enforcement sweeping discretion to choose which of the nation's many millions of occasional drug users have Second Amendment rights.

Section 922(g)(3) does not define what is an "unlawful user" of drugs, and there is no legal or common definition for that term. With all of § 922(g)'s other categories of prohibited persons, a person can ascertain whether they fit within it using official documents. *See* § 922(g)(1)–(9) (covering, *inter alia*, felons, unlawful aliens, and persons who have been "adjudicated as a mental defective"). Only § 922(g)(3) requires a citizen to gauge whether she is a prohibited person based on "wholly subjective judgments without statutory definitions, narrowing context, or settled legal meanings." *United States v. Williams*, 553 U.S. 285, 306 (2008) (noting that the Court has struck down statutes criminal based on such judgments).

Certainly, a "user" is one who uses something, so it is possible that anyone who uses any of the 150-plus substances on the federal schedule, at any point, is a "user." This would give rise to a free-standing Second Amendment problem, so the federal circuit courts that have considered § 922(g)(3) have limited the application of the "unlawful user" clause to cover only regular, recent drug use, although not on the basis of any statutory language. *United States v. Augustin*, 376 F.3d 135, 139 (3d Cir. 2004) (collecting circuit cases holding that to be an unlawful user, "one needed to have engaged in regular use over a period of time proximate to or contemporaneously with the possession of the firearm."). In a Fifth Circuit case where the majority accepted the government's concession that an unlawful user would have to use "with regularity and over an extended period of time," a dissenting judge argued that "only Congress can define what constitutes 'regular use' and what constitutes 'an extended period of time'; and neither the prosecutor nor the jury should be permitted to determine those matters on an ad hoc case by case basis." *United States v. Herrera*, 313 F.3d 882, 889 (5th Cir. 2002) (DeMoss, J., dissenting). The dissent complained that "the term 'user' is so open-ended that the ordinary citizen cannot know when his conduct in using a controlled substance may result in forfeiture of his rights under the Second Amendment." *Id.*

Judge DeMoss was right: the circuit cases do not cure the vagueness problem. They just raise new questions—in the context of drug use, what is habitual, or regular, or contemporaneous? Several federal circuit courts have held that § 922(g)(3) is not unconstitutionally vague as applied to particular defendants (in addition to the Seventh Circuit in this

case); but the courts have uniformly refused to consider a facial vagueness challenge. *See United States v. Bramer*, 832 F.3d 908, 909 (8th Cir. 2016); *United States v. Patterson*, 431 F.3d 832, 836 (5th Cir. 2005); *United States v. Bennett*, 329 F.3d 769, 777 (10th Cir. 2003); *United States v. Purdy*, 264 F.3d 809, 811 (9th Cir. 2001); *United States v. Edwards*, 182 F.3d 333, 335–36 (5th Cir. 1999). Thus, no circuit court has attempted to answer the questions raised above or suggested that there could even be answers. Instead, in every single case, the court has held that whatever "unlawful user" means, it covered the individual defendant.

The Ninth Circuit attempted to provide a bit of guidance by saying what the statute does *not* cover: "Had Ocegueda used a drug that may be used legally by laymen in some circumstances, or had his use of heroin been infrequent and in the distant past, we would be faced with an entirely different [as-applied] vagueness challenge to the term 'unlawful user.'" *United States v. Ocegueda*, 564 F.2d 1363, 1366 (9th Cir. 2001). The defendant in that case was a heroin addict. *Id.* But between the polar opposites of a person who took some controlled substance "infrequent[ly]" in the "distant past" and someone who is a heroin addict is a vast spectrum of Americans, most of whom no doubt believe that they retain Second Amendment rights, and should not be left to wonder about the matter. This is precisely the sort of situation in which facial examination of a statue's vagueness is appropriate.

According to PBS's *Frontline*, more than 14 million Americans admit to being "current illicit drug users, meaning that they had used some illicit drug

during the month prior to the survey."[3] A 2015 Gallup Poll revealed that more than 4-in-10 Americans have used marijuana; about 10% "currently smoke pot."[4] And marijuana is increasingly socially acceptable, such that celebrities talk about smoking it regularly.[5] Is Bill Maher prohibited from possessing a firearm? What about the other 14-plus million Americans who've used drugs in the past month?

There is no principled way to answer these questions, and this presents a huge enforcement concern. A vague statute like § 922(g)(3) gives police and prosecutors immense power to interpret and apply the law according to their "personal predilections." *Kolender*, 461 U.S. at 358. Bill Maher, who is open about both his marijuana use and his gun

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3 *Who Are America's Drug Users*, Frontline, https://www.pbs.org/wgbh/pages/frontline/shows/drugs/buyers/whoare.html.

4 Justin McCarthy, *More Than Four in 10 Americans Say They Have Tried Marijuana*, Gallup (July 22, 2015) *available at* https://www.gallup.com/poll/ 184298/four-americans-say-tried-marijuana.aspx.

5 Bill Maher, *The New Stoned Age: Bill Maher on the Greening of America*, Rolling Stone (June 10, 2013), https://www.rollingstone.com/culture/news/the-new-stoned-age-bill-maher-on-the-greening-of-america-20130610; *see also, e.g.,* Whoopi Goldberg, *My vape pen and I, a love story*, The Cannabist (Apr. 17, 2014), https://www.thecannabist.co/2014/04/17/whoopi-vape-pen-love-story-column/9571/.

ownership,[6] is not likely to be prosecuted. Because it is unknown what is an "unlawful user," police and prosecutors can make a subjective call about whom they consider "unlawful users" in need of a felony conviction. And a felony conviction, of course, has the effect of *permanently* extinguishing Second Amendment rights. *See* § 922(g)(1) (prohibiting felons from possessing firearms or ammunition).

C. This case presents an ideal vehicle for deciding the important questions presented here.

The questions presented here were fully preserved and litigated in the lower courts. Moreover, petitioner was not a felon until he was convicted in this federal case, nor was there any allegation that he was otherwise prohibited from possessing a firearm or ammunition. Thus, if this Court holds that § 922(g)(3) is unconstitutionally vague, it undoubtedly will establish that his conviction under 18 U.S.C. §§ 922(g) & 924(a) is invalid.

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6 Douglas Ernst, *Bill Maher urges liberals to 'learn more about guns,' says issue is a loser for Democrats*, The Washington Times (June 10, 2019), https://www.washingtontimes.com/news/2019/jun/10/bill-maher-urges-liberals-to-learn-more-about-guns/.

II. At a minimum, this Court should hold this petition while other cases are pending that may impact the judgment under review.

A. This Court should hold the petition in abeyance until it decides *Rehaif v. United States*, No. 17-9560.

In *Rehaif v. United States*, No. 17-9560, this Court is considering whether the "knowingly" provision of 18 U.S.C. § 924(a)(2) applies to both the possession and status elements of a § 922(g) crime, or whether it applies only to the possession element. *Rehaif* presents this question in the context of a conviction under § 922(g)(5), prohibiting unlawful aliens from possessing firearms. Nonetheless, the Court's holding in *Rehaif* will also govern § 922(g)(3)—the subsection of conviction in this case—prohibiting unlawful drug users from possessing firearms.

To be clear, *Rehaif* is not relevant to the questions presented for review that are discussed above. However, if this Court decides *Rehaif* in that petitioner's favor, the decision would undermine the judgment in this case on a separate, alternative ground.

If this Court rules for the petitioner in *Rehaif*, it would establish that in a prosecution under § 922(g)(3), the government must prove that the putative "unlawful user of . . . any controlled substance" knew that he had this status. Cook did not raise such an argument in the courts below because under now-binding circuit law, which may be abrogated by *Rehaif*, that argument was not previously available. *See, e.g., United States v. Stein*, 712 F.3d 1038, 1041 (7th Cir. 2013) (regarding

§ 922(g)(9)); *see also United States v. Lane*, 267 F.3d 715, 720 (7th Cir. 2001) (regarding § 922(g)(1))); *Pattern Criminal Jury Instructions of the Seventh Circuit* 234 (2012 ed.) (as updated through Apr. 12, 2019).

Moreover, the record of this case shows that Cook's knowledge of his status as an "unlawful user" within the meaning of § 922(g) was a matter of some controversy. Cook went to trial on two charges; in addition to the charge under § 922(g)(3), Cook was also charged with knowingly making a false statement to a firearm dealer (the statement that he was not an unlawful drug user) when he purchased his firearm, under 18 U.S.C. § 924(a)(1)(A). Cook's defense to the "false statement" count was that he would not have known that he would be considered an unlawful drug user within the meaning of the federal definition of that class of prohibited persons. And although the jury convicted Cook of the § 922(g)(3) count, it could not reach agreement on the "false statement" count.

Therefore, if this Court declines to accept certiorari review of this case in order to determine the significant constitutional raised here, it should minimally hold this petition until *Rehaif* is resolved. Then, if the Court rules for the petitioner in *Rehaif*, abrogating circuit law, the Court should grant Cook's petition for a writ of certiorari, vacate the judgment, and remand his case for further proceedings related to its decision in *Rehaif*.

B. Alternatively, the Court should hold this petition in abeyance until it decides *N.Y. State Rifle & Pistol Ass'n Inc. v. City of New York*, No. 18-280.

In *N.Y. State Rifle & Pistol Ass'n Inc. v. City of New York*, No. 18-280, the question presented is "whether New York City's ban on transporting a licensed, locked and unloaded handgun to a home or shooting range outside city limits is consistent with the Second Amendment, the commerce clause and the constitutional right to travel." At first blush, this question would not seem to be relevant to the present case. But as discussed above, the petition for certiorari review shows that the case is indeed relevant to the questions presented for review in this case.

First, *N.Y. State Rifle & Pistol Ass'n* addresses the interaction of the Second Amendment right to bear arms with another constitutional right: the due process right to travel. This case presents a question regarding the interaction of the Second Amendment right to bear arms with the due process vagueness doctrine. More importantly, the petitioner in *N.Y. State Rifle & Pistol Ass'n* presented its case as worthy of this Court's review in part because the need for the Court to halt of a general trend among the lower courts of treating the right to bear arms as a "second-class right." So although *N.Y. State Rifle & Pistol Ass'n* addresses a question that is distinct from the one presented in this case, there is good reason to think that this Court, in deciding that case, will provide guidance on adjudicating Second Amendment questions more generally.

In discussing the questions presented for this Court's review, above, petitioner has explained that the present case would make an appropriate companion case for *N.Y. State Rifle & Pistol Ass'n*. It is only if this Court declines to accept certiorari review of this case, and also does not grant, vacate, and remand the case in light of *Rehaif* (which is expected to be decided long before *N.Y. State Rifle & Pistol Ass'n)*, that the petitioner asks the Court to hold his petition for *N.Y. State Rifle & Pistol* Ass'n. Then once that case is decided, the petitioner would ask the Court to grant his petition, vacate the judgment, and remand this case for further proceedings consistent with *N.Y. State Rifle & Pistol Ass'n*.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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