App. No. 18A-___

In the
Supreme Court of the United States

Jorge L. Medina

Petitioner,

v.

William P. Barr,

Respondent.

ON APPLICATION FOR EXTENSION OF TIME TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITIONER'S APPLICATION TO EXTEND TIME TO FILE A PETITION FOR A WRIT OF CERTIORARI

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To the Honorable John G. Roberts, Jr., Chief Justice of the United States and Circuit Justice for the United States Court of Appeals for the District of Columbia Circuit:

Petitioner Jorge L. Medina respectfully requests that the time to file a Petition for Writ of Certiorari in this matter be extended for sixty days to and including August 30, 2019. The Court of Appeals issued its opinion on January 18, 2019. *See* App. A, *infra*. On April 2, 2019, the Court of Appeals denied Petitioner's timely petition for rehearing en banc. *See* App. B, *infra*. Absent an extension of time, the petition would therefore be due on July 1, 2019. Petitioner is filing this application at least ten days before that date. See S. Ct. R. 13.5. This Court would have jurisdiction over the judgment per 28 U.S.C. § 1254(1).

Background

Jorge Medina's forthcoming petition for a writ of certiorari will ask this Court to resolve recurring questions of significant public importance on which the courts of appeals are intractably split: whether, and if so on what basis, individuals may seek as-applied Second Amendment relief from felon dispossession laws.

Approximately thirty years ago, Jorge Medina misstated his income on mortgage loan applications, resulting in a conviction on one count of making a false statement to a lending institution in violation of 18 U.S.C. § 1014.

The bank suffered no loss owing to this statement, as Medina paid back the loan in full and ahead of schedule. It would resume doing business with him, later extending Medina a $1 million home equity line of credit. The court sentenced Medina to sixty days of home detention, a fine and special assessment, and three years of probation, which was terminated early after just one year. Nonetheless, on account of this conviction, 18 U.S.C. § 922(g)(1) permanently bars Medina's possession of firearms.

Claiming that he has long since become a "law-abiding, responsible citizen" entitled to exercise Second Amendment rights, *District of Columbia* v. *Heller*, 554 U.S. 570, 635 (2008), Medina brought suit in the United States District Court for the District of Columbia on August 24, 2016, challenging Section 922(g)(1)'s application against him on Second Amendment grounds. On September 6, 2017, the District Court granted Respondent's predecessor's motion to dismiss. *Medina* v. *Sessions*, 279 F. Supp. 3d 281 (D.D.C. 2017). As noted *supra*, the D.C. Circuit affirmed that decision

on January 18, 2019, *Medina* v. *Whitaker*, 913 F.3d 152 (D.C. Cir. 2019) (App. A), and denied Medina's timely petition for rehearing en banc on April 2, 2019 (App. B).

Reasons for Granting an Extension of Time

1. The circuits are deeply divided as to what this Court meant in describing felon disarmament provisions as "presumptively lawful." *Heller*, 554 U.S. at 626-27 n.26.

While courts uniformly uphold Section 922(g)(1)'s facial validity, nearly all circuits also agree or suggest that *Heller* allows for at least some form of as-applied Second Amendment challenge to firearm dispossession laws, including Section 922(g)(1). For example, affirming the award of relief from Section 922(g)(1) in two cases, the en banc Third Circuit noted that "[u]nless flagged as irrebutable, presumptions are rebuttable." *Binderup* v. *Att'y Gen.*, 836 F.3d 336, 350 (3d Cir. 2016) (en banc); *see also United States* v. *Torres-Rosario*, 658 F.3d 110, 113 (1st Cir. 2011); *United States* v. *Williams*, 616 F.3d 685, 692 (7th Cir. 2010); *United States* v. *Woolsey*, 759 F.3d 905, 909 (8th Cir. 2014); *Fortson* v. *L.A. City Attorney's Office*, 852 F.3d 1190, 1194 (9th Cir. 2017).

Only the Tenth Circuit has categorically foreclosed all as-applied challenges to Section 922(g)(1). "We have already rejected the notion that *Heller* mandates an individualized inquiry concerning felons pursuant to § 922(g)(1)." *In re United States*, 578 F.3d 1195, 1200 (10th Cir. 2009) (citing *United States* v. *McCane*, 573 F.3d 1037 (10th Cir. 2009)) (unpublished order but attached to published dissent).

Even when relief is available, courts are fractured as to the basis for awarding it. The en banc Third Circuit, for example, divided as to whether people convicted of crimes may be disarmed for lacking virtue, *Binderup*, 836 F.3d at 348 (Ambro, J.), or whether disarmament is appropriate only where criminal records indicate dangerousness, *id.* at 357-58 (Hardiman, J.). Courts adopting the former view can take a very parsimonious approach to awarding relief. For example, the Fourth Circuit "recognized the possibility that an as-applied challenge to a felon disarmament law could succeed in rebutting the presumption [of lawfulness]," *Hamilton* v. *Pallozzi*, 848 F.3d 614, 622-23 (4th Cir. 2017) (citation omitted), but now limits relief to instances where "the felony conviction is pardoned or the law defining the crime of conviction is found unconstitutional or otherwise unlawful," *id.* at 626, or potentially, to cases where misdemeanants are swept within felon disarmament laws, *id.* n.11.

The D.C. Circuit had previously offered that absent the prospect of administrative relief, "the federal firearms ban will remain vulnerable to a properly raised as-applied constitutional challenge brought by an individual who, despite a prior conviction, has become a 'law-abiding, responsible citizen[]' entitled to 'use arms in defense of hearth and home.'" *Schrader* v. *Holder*, 704 F.3d 980, 992 (D.C. Cir. 2013) (quoting *Heller*, 554 U.S. at 635). But here, it denied Medina relief because he was convicted of a crime defined as a felony, which the court took to signal lack of virtue. App. A at 14.[1]

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[1]The court added that Medina was subsequently convicted of "misdemeanor fraud." *Id.* Medina submits that the record does not support that characterization. In

Shortly after the decision below, a divided Seventh Circuit panel turned aside an as-applied challenge to Section 922(g)(1) by a felon convicted of Medicare fraud. *Kanter* v. *Barr*, 919 F.3d 437 (7th Cir. 2019). Unlike Medina's offense, Kanter's offense caused substantial financial damage, earning him a meaningful sentence. *Id.* at 450. Nonetheless, Judge Barrett dissented at significant length on originalist grounds, and rejected the D.C. Circuit's historical treatment in this case. Like Judge Hardiman's *Binderup* concurrence for himself and four colleagues, Judge Barrett found that dangerousness, not virtue, was the historical basis for disarmament. "In 1791—and for well more than a century afterward—legislatures disqualified categories of people from the right to bear arms only when they judged that doing so was necessary to protect the public safety." *Kanter*, 919 F.3d at 451 (Barrett, J., dissenting).

Here, the D.C. Circuit claimed to find support for its "virtuousness" theory of felon disarmament by asserting that Framing Era felons were categorically dispossessed and executed. "[I]t is difficult to conclude that the public, in 1791, would have understood someone facing death and estate forfeiture to be within the scope of

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the early 1990s, Medina obtained Wyoming resident hunting licenses for use at his Wyoming ranch (with non-prohibited arms), unaware that the law had redefined the qualifications for a resident hunting license to require domicile and not merely residence. JA 11-12, ¶¶ 26-31. Upon learning that he did not qualify for resident hunting licenses, Medina ceased hunting in Wyoming on such licenses and obtained nonresident licenses. JA 12, ¶¶ 32-33. To avoid the cost of contesting the charges, which would have far exceeded the potential fines, Medina pleaded guilty to three class five misdemeanor violations of Wyo. Stat. Ann. § 23-3-403 (1989), barring false statements in procuring hunting licenses. In any event, this conviction has no impact on Medina's ability to possess firearms.

those entitled to possess arms." App. A at 11. But as Judge Barrett's survey showed, this supposition is simply erroneous. By the time of the founding, capital punishment had become relatively rare, and the concept of "civil death" attached instead to life sentences. *Kanter*, 919 F.3d at 458-61 (Barrett, J., dissenting). "Those who ratified the Second Amendment would not have assumed that a free man, previously convicted, lived in a society without any rights and without the protection of law." *Id.* at 461 (Barrett, J., dissenting).

Blackstone's account of felons' historical treatment is in accord. By his day, commoners committing their first offense were "discharged of the capital punishment of felonies within the benefit of clergy" upon receiving some alternative punishment. 5 St. George Tucker, Blackstone's Commentaries [Book Four] *373 (1803). Thereafter, a first-time felon was "restored to all capacities and credits, and the possession of his lands, as if he had never been convicted." *Id.* at *374.

2. An extension of time is needed to adequately complete this petition, in light of counsel's other pressing deadlines and obligations.

By July 3, 2019, Petitioner's counsel must file the opening brief and appendix in *United States* v. *Hunt-Irving*, Third Cir. No. 19-1636, a criminal appeal raising significant Second and Fourth Amendment issues. Two days later, July 5, 2019, is counsel's deadline for filing the reply brief in *Drummond* v. *Twp. of Robinson*, Third Cir. No. 19-1394, a land use dispute involving significant Second Amendment, equal protection, and substantive due process issues (among others). The *Hunt-Irving* deadline has already been extended, as has the deadline in *Drummond* for the brief to

which counsel would be replying, although counsel anticipates that this latter deadline would be extended as it falls in the middle of a holiday weekend.

Before this spate of July deadlines, Petitioner's counsel is responsible for preparing the opposition to the government's motion to dismiss, due June 10, 2019, in *Atlas Brew Works* v. *Barr*, U.S. Dist. Ct. D.C. No. 19-79, a First Amendment challenge to the requirement that alcoholic beverage makers obtain a federal Certificate of Label Approval to publish beverage labels in interstate commerce when such certificates are unavailable owing to government appropriation lapses. And on June 13, 2019, Petitioner's counsel is responsible for filing the opposition to the motion to dismiss in *Dolin* v. *Baer*, U.S. Dist. Ct. N.D. Ill. No. 19-1310, an Article IV, Section 2 challenge to Illinois' practice of discriminating against non-resident physicians in its medical license renewal fees.

Between July 30 and August 6, Petitioner's counsel will be away on a long-scheduled (if short) family vacation. And August 19, 2019, is the deadline for Petitioner's counsel to file the petition for certiorari from the en banc D.C. Circuit's decision in *Libertarian National Committee, Inc.* v. *FEC*, No. 18-5227, 2019 U.S. App. LEXIS 14964, 2019 WL 2180336, __ F.3d __ (D.C. Cir. May 21, 2019) (en banc). In that case, on certified constitutional questions pursuant to 52 U.S.C. § 30110, a fractured D.C. Circuit upheld recent amendments to the Federal Election Campaign Act that impose content-based restrictions on 90% of what an individual donor might legally give the national committee of a political party. The court also upheld the FEC's practice of extending contribution limits to the deceased, even in cases where

testamentary bequests are uncoordinated with political parties. Seven judges joined the majority opinion in full, with Judge Griffith dissenting as to the FECA amendments, and Judges Katsas and Henderson dissenting as to the testamentary bequests.

These are not counsel's only professional obligations, but they suffice to render the preparation of the petition for a writ of certiorari in this case unduly challenging absent the requested extension. The requested extension would not prejudice Respondent, who prevailed below and is not currently enjoined from enforcing the challenged provision.

Conclusion

For the foregoing reasons, the time to file a Petition for a Writ of Certiorari in this matter should be extended by sixty days to and including August 30, 2019.

Dated: May 30, 2019

Respectfully submitted,

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Appendix