Case No: _____

19-7323

IN THE SUPREME COURT OF THE UNITED STATES

ORIGINAL

LEO STOLLER,	)	
	)	
Petitioner,	)	**19 A 282**
vs.	)	**On Petition for a Writ of Certiorari from**
	)	**the United States Court of Appeals for**
UNITED STATES OF AMERICA,	)	**the Seventh Circuit**
	)	
Respondent.	)	

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

INTRODUCTION TO QUESTIONS PRESENTED FOR REVIEW

The questions presented are recurring issues of national importance that warrant this Court's immediate resolution.

The Seventh Circuit Court's unconstitutional holding (**Appendix 1**) in this case raises issues of great practical importance relating to all non violent, first time offenders, (felons) that are entitled to relief, from the longstanding federal statute prohibiting felons from possessing firearms, 18 U.S.C. § 922(g)(1), based on their as-applied Second Amendment claim that their criminal offense, and other particular circumstances do not warrant a firearms disqualification.

The Seventh Circuit Court of Appeals unconstitutionally affirmed the district court's erroneous decision which has national ramifications relating to deprivation of a non violent, first time offender, felon's right, to be free of the longstanding federal statute prohibiting felons from possessing firearms, 18 U.S.C. § 922(g)(1), based on his as-applied Second Amendment claim that his first time, non violent, criminal offense and other particular circumstances do not warrant a firearms disqualification.

Whether the Federal Statute prohibiting felons from possessing firearms 18 U.S.C. 922(g)(1) is *unconstitutional*, "void" for vagueness."

Now 78 years old a disabled person, a protected person as defined by the Americans for Disability Act (ADA)

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Rehearing was denied on **August 14, 2019 (Appendix 1(a))** . On **September 12, 2019,**

Justice Kavanagh extended the time for filing the petition for a writ of certiorari No 19A282 to **January 11, 2020.**

JURISDICTION

The decision of the court of appeals Decision (**Appendix 1**) are unreported. The judgment of the Seventh Circuit was entered on **June 28, 2019** from a decision rendered by a Northern District Court Judge on September 17, 2018 (Appendix 1(b) .

Rehearing was denied on **August 14, 2019 (Appendix 1(a))** . On **September 12, 2019**,

Justice Kavanagh extended the time for filing the petition for a writ of certiorari No 19A282 to **January 11, 2020.**

This Court's jurisdiction rests on 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Second Amendment to the United States Constitution, and 18 U.S.C. §§ 921(a)(20) and 922(g)(1)

STATEMENT OF THE CASE

Leo Stoller 73' a disabled person, a protected person, as defined by the Americans for Disability Act (ADA) respectfully petition for a writ of certiorari to review the judgment (**Appendix 1**) of the United States Court of Appeals for the Seventh Circuit in this case.

At Issue: This case involves a Second Amendment challenge to 18 U.S.C. § 922(g)(1), the federal law prohibiting gun ownership by first time offenders, people convicted of non violent felonies A majority of Third Circuit judges, sitting en banc, agreed that § 922(g)(1) is unconstitutional as applied to **Daniel Binderup** (who was convicted of corrupting a minor), and **Julio Suarez** (who was convicted of carrying an unlicensed handgun) (**Appendix 4**).

The Supreme Court's intervention is necessary because there is a division in the federal appellate courts on the permissibility of as-applied challenges to § 922(g)(1).

Petitioner's brief explains that the Third Circuit's ruling (**Appendix 4**) invalidates § 922(g)(1) in many of its applications, and is in conflict with the other circuits.

Petitioner argues the court should must accept the Petitioner's Writ of Cert to clarify that the Third Circuit's ruling (**Appendix 4**) that invalidates § 922(g)(1) in many of its applications, and will **not** allow dangerous felons to acquire firearms, contravening Congress's intent to prohibit all criminals who committed crimes with at least the specified maximum sentence from acquiring firearms and does **not** create

administrative burdens that undermine the efficacy of § 922(g)(1). and will not allow dangerous felons to acquire firearms, contravening Congress's intent to prohibit all criminals who committed crimes with at least the specified maximum sentence from acquiring firearms. We also argue that the Third Circuit's decision (**Appendix 4**) will **not** create administrative burdens that undermine the efficacy of § 922(g)(1). On the other hand if the Third Circuit's decision (**Appendix 4**) becomes the law of the land it will.

Declaring that the felon-in-possession ban of 18 USC § 922(g)(1) is unconstitutional as applied to non violent, first time offenders .

DEFINITIONS

Possession of a firearm by a "felon" is illegal. Under 18 U.S.C. § 922 (g). A felon cannot possess ship, transport or receive a firearm or ammunition that has traveled in interstate commerce.

Felon in possession 18 U.S.C. § 922(g)(1)

Felon in possession charges are considered for all individuals in possession of firearms who have been previously convicted of a felony.

18 U.S.C. § 924(a)(2) provides that the maximum penalty for felons in possession of a firearm is 10 years and $250,000.

Definition of a Firearm[2] For purposes of § 922 and § 924 violations 18 U.S.C. § 921(a)(3) is vague, in indefinite, unspecified , VOID FOR

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[2] In American **constitutional** law, a statute is void for **vagueness** and unenforceable if it is too **vague** for the average citizen to understand or if a term cannot be strictly defined and is not defined anywhere in such law, thus violating the **vagueness** doctrine. There A **constitutional** rule that requires criminal laws to state explicitly and definitely what conduct is punishable. Criminal laws that violate this requirement are said to be void
for **vagueness**. **Vagueness** doctrine rests on the due process clauses of the Fifth and

VAGUENESS "firearm" as: A. any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; B. the frame or receiver of any such weapon; C. any firearm muffler or firearm silencer; or D. any destructive device.

Possessing an unregistered silencer, short barreled rifle, short barreled shotgun, **destructive device** or a sawed-off shotgun is punishable by a fine of up to $10,000 and/or 10 years in prison. 26 U.S.C. § 5871. For the possession of a machine gun manufactured after May 19, 1986, **the statutory maximum is 10 years**

PROCLAMATION

1. Federal law prohibits the possession of firearms[3] (Destructive device(s)) by any person convicted of "a felony," Section 18 U.S.C. 922(g)(1),

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Fourteenth Amendments of the U.S. **Constitution**. SKILLING v. UNITED STATES (No. 08-1394) 554 F. 3d 529,

[3] The word "firearm" as defined here is so vague and indefinite that any penalty prescribed for their violation constitutes a denial of due process of law." 5 Champlin Ref. Co. v. Corporation Comm'n, 286 U.S. 210, 243 (1932). The definition of a firearm is so vague that it even "encompasses not only operable firearms but those that have been disassembled o or dismantled or altered in such a way that they are inoperable at the time of the offense. . For example, this definition has been found to include a firearm with the hammer filed down because it could be "readily converted" to expel a projectile. *United States v. Ruiz, 986 F.2d 905 (5th Cir. 1993).* This same justification applies for including starter guns within the definition of a firearm. "Firearm" is also defined differently for violations of 26 U.S.C. § 5861. See 26 U.S.C. § 5845(a) For the purpose of this chapter—

(a)FIREARM

The term "firearm" means (1) a shotgun having a barrel or barrels of less than 18 inches in length; (2) a weapon made from a shotgun if such

Petitioner, Leo Stoller, 73[4], a disabled and protected person as defined by the Americans for Disability Act ADA was unlawfully charged with concealment of assets in a 2005 bankruptcy proceeding in violation of 18 U.S.C. (1) and making a false declaration in a bankruptcy proceeding in violation of 18 U.S.C. Section 152(3) . On April 13, 2012. Mr. Stoller was coerced into entering a plea of guilty to Count Nine (**Appendix 2**) of the indictment pursuant to Rule 11, F.R. Crim. P.

Leo Stoller later attempted to withdraw his guilty plea, but that request was denied and Stoller was denied his day in court.

Leo Stoller 73,as such is unlawfully "branded" a felon is unlawfully prohibited from the possession of firearms[5] under Section

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weapon as modified has an overall length of less than 26 inches or a barrel or barrels of less than 18 inches in length; (3) a rifle having a barrel or barrels of less than 16 inches in length; (4) a weapon made from a rifle if such weapon as modified has an overall length of less than 26 inches or a barrel or barrels of less than 16 inches in length; (5) any other weapon, as defined in subsection (e); (6) a machinegun; (7) any silencer (as defined in section 921 of title 18, United States Code); and (8) a destructive device. The term "firearm" shall not include an antique firearm or any device (other than a machinegun or destructive device) which, although designed as a weapon, the Secretary finds by reason of the date of its manufacture, value, design, and other characteristics is primarily a collector's item and is not likely to be used as a weapon.

[4] Leo Stoller, 73, a disabled person, lives in Chicago, one of the most dangerous cities in America, that has more annual home invasions, burglaries, and murders than New York and Los Angles combine, and Stoller wants to obtain a gun to defend himself and his family within his home, but he have not attempted to do so for fear of violating § 922(g)(1).

[5] All are agreed that "18 U.S.C 922(g)(1), is so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process . . ." ;that "it will not do to hold an average man to the peril of an indictment for the unwise exercise of his . . . knowledge involving so many factors of varying effect that neither the person to decide in advance nor the jury to try him after the fact can safely and certainly judge the result." *Cline v. Frink Dairy Co.*, 274 U.S. 445, 465 (1927)

18 U.S.C 922(g)(1)[6] which is a void statute on the as to Leo Stoller[7] and it should be found unconstitutional on vagueness gorunds.,

Possessing , **destructive device** is punishable by a fine of up to $10,000 and/or 10 years in prison. 26 U.S.C. § 5871. For the possession of a machine gun manufactured after May 19, 1986, the statutory maximum is 10 years

Plaintiff/Appellan/Petitioner concerned about the government defines a "destructive device(s)" Stoller filed a post trial Motion for clarification of his rights to own BB guns, Pellet Guns and Archery equipment can be considered dangerous weapons under under 18 USC § 922(g)(1),.

18 USC § 922(g)(1) is so vague that ,Stoller who is a felon and is entitled to clarification as to what the government actually considers a "dangerous weapon" or a destructive device and if Stoller was found in possession of these weapons, would it lead to his arrest?.

On **September 17, 2018**, Judge Kendal issued her erroneous order (**Appendix 1(b)** stating "A claim is not ripe for adjudication if it

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[6] Which is a void statute on the ground that it is unconstitutionally vague ,

[7] § 922(g)(1) is unconstitutional as applied to Leo Stoller because he "distinguishe[d] himself from those individuals traditionally disarmed as the result of prior criminal conduct and demonstrate[d] that he poses no greater threat of future violent criminal activity than the average law-abiding citizen." *Binderup v. Holder*, No. 13-cv-6750, 2014 WL 4764424, at *1 (E.D. Pa. Sept. 25, 2014).(**Appendix 5)**

rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all.") (Quotations omitted). For this same reason, the relief that Stoller seeks amounts to nothing more than an advisory opinion, which, of course, this Court is prohibited from issuing."

This issue was ripe for the District Court Judge Virginia to issue a decision on Stoller Motion for Clarification of his rights under 18 USC § 922(g)(1), and to give Stoller the information as to what weapons that a felon can lawfully posses, on the grounds that Stoller's possession or ownership of BB guns, Pellet Guns and Archery equipment can be considered dangerous weapons under under 18 USC § 922(g)(1).

Stoller, a first time, non violent offender, also sought a declaration that 18 USC § 922(g)(1) was unconstitutional as it applied to Him.

When "Petitioner sought to establish standing to challenge a law or regulation (the felon-in-possession ban of 18 USC § 922(g)(1) that is not presently being enforced against him, Stoller demonstrated a realistic danger of sustaining a direct injury as a result of the statute's operation or enforcement." *LSO, Ltd. v. Stroh*, 205 F.3d 1146, 1154 (9th Cir. 2000) (internal quotations omitted). Under the law Stoller does not need to wait until he is arrested, incarcerated and actual injuries occurred as a result of Stoller's purchase and ownership of of BB guns, Pellet Guns and Archery equipment. Stoller wass entitled to obtain

relief, which would prevent injuries or prosecution from happening. "[O]ne does not have to await the consummation of threatened injury to obtain preventive relief." *Pennsylvania,* 262 U.S. at 593 (emphasis added). Ergo the filing of Stoller's Motion for Clarification before the Northern District of Illinois Judge Virginia Kendel requesting immediate relief.

Entitlement to relief before prosecution is specifically available for conduct arguably involving a constitutional interest (2nd Amendment). "When the Petitioner has alleged an intention to engage in a course of conduct arguably affected with a constitutional interest (2nd Amendment), but proscribed by a statute, the felon-in-possession ban of 18 USC § 922(g)(1), and there exists a credible threat of prosecution thereunder, Stoller should **not** be required to await, be arrested, incarcerated, and undergo a criminal prosecution as the sole means of seeking relief." *Babbitt v. United Farm Workers Nat. Union,* 442 U.S. 289, 298 (1979) (internal quotations omitted). "If the injury is certainly impending, that is enough." *Pennsylvania,* 262 U.S. at 593 (emphasis added).

On **September 17, 2018, (Appendix 1(b))** Judge Kendal issued her erroneous order **(Appendix 1(b)** stating "A claim is not ripe for adjudication if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all.") (Quotations omitted). For this same reason, the relief that Stoller seeks amounts to nothing

more than an advisory opinion, which, of course, this Court is prohibited from issuing."

The Seventh Circuit Court of Appeals denied the Petitioners request for relief, his appeal (**Appendix 1**) on **June 28, 2019**. Denied Stoller request for an en bloc hearing on **September 17, 2019**.

THE COURT SHOULD ENTERTAIN THE PETITIONER'S WRIT OF CERT

This issue is ripe for the court to entertain the Petitioner's Writ of Cert declaring that the felon-in-possession ban of 18 USC § 922(g)(1) is unconstitutional as applied to non violent first time felons,which violates of the Second Amendment to the United States Constitution, which the Seventh Circuit Court of Appeals denied in their in their decision (**Appendix 1**).

CONTEXTUAL

Leo Stoller's 73, a disable person, a protected person, as defined by the Americans for Disability Act (ADA) a first time, non violent, convicted felon (**Appendix 2** plea agreement), unsuccessful challenged[8] (Appeal 18-3112) the fel-on dispossession statute 18 USC § 922(g)(1) under the Second Amendment.

The Seventh Circuit Court of Appeals on **July 2, 2019** entered an erroneous Judgment (**Appendix 1**) denying the relief Stoller was requesting [illegible] Stoller's Appeals briefs incorporated herein by reference.

[8] See Petitioner's Opening Brief Appeal No. 18-3112 Seventh Circuit Court of Appeals (Doc 18), Reply Brief (Doc 27) and Docket Sheet for Appeal 18-3112 marked as **Group Appendix 3**

In denying Stoller's relief the Seventh Circuit Court of Appeals erroneously cited to : *Kanter v. Barr,* 919 F.3d 437, 438 (7th Cir. 2019) (nonviolent felon's unsuccessful challenge to felon dispossession statute 18 U.S.C. § 922(g)(1) under the Second Amendment); *Hatfield v. Barr*, No. 18-2385, 2019 WL 2385570, at *1 (7th Cir. June 6, 2019) (same). 2385, 2 019 WL 2385570, at *1 (7th Cir. June 6, 2019) (same), in rejecting the Petitioner's challenge to felon dispossession statute 18 U.S.C. § 922(g)(1) under the Second Amendment.

Both those 7th Circuit Court of Appeals decisions are at odds with the most recent decisions issued by the Decision by Middle District of Pennsylvania, District Court Judge Christopher C. Conner Decision in *Raymond Holloway v. Jefferson B. Sessions III* Case No. 17-cv-00081 (Doc 83 filed 09/28/18) See **Appendix 4.** And the Third Circuit Decision in *Binderrup v. Attorney General of the USA* Appeals 14-4549 & 14-4550 (**Appendix 5**) Cert denied (16-847) on June 26,2017

Because the Petitioner, Leo Stoller's personal circumstances are distinguishable from those of the class of persons historically excluded from Second Amendment protections due to their propensity for violence, Leo Stoller and those millions of other non violent, first time fall outside the proper scope of the felon dispossession statute. And their Second Amendment rights cannot be withdrawn merely because § 922(g)(1) broadly serves the public good. *id*

There is a split in the circuits as to whether a non violent, first time offender, a felon[9] can have his 2nd amendment rights restored.

See, e.g., Kanter v. Barr, 919 F.3d 437, 438 (7th Cir. 2019) (nonviolent f elon's unsuccessful challenge to felon dispossession statutes under the S econd Amendment); Hatfield v. Barr, No. 18-
2385, 2019 WL 2385570, at *1 (7th Cir. June 6, 2019) (same).

[9] See Petitioner's Plea Agreement dated April 13, 2012 (Northern District of Illinois Case Number 10-cv-01052 (Doc 58) (**Appendix 2**)

"Rickey I. Kanter pleaded guilty to one count of mail fraud under 18 U.S.C. § 1341. Due to his felony conviction, he is prohibited from possessing a firearm under both federal and Wisconsin law. At issue in this case is whether the felon dispossession statutes— 18 U.S.C. § 922(g)(1) and Wis. Stat. § 941.29(1m) —violate the Second Amendment as applied to Kanter. Even if Kanter could bring an as-applied challenge, the government has met its burden of establishing that the felon dispossession statutes are substantially related to an important government interest. We therefore affirm the district court."

"Section 922(g)(1) prohibits firearm possession by persons convicted of "a crime punishable by imprisonment for a term exceeding one year." 18 U.S.C. § 922(g)(1). State misdemeanors are included under the statute if they are punishable by more than two years in prison.*Id.* § 921(a)(20)(B). However, the statute excludes anyone convicted of "any Federal or State offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices." *Id.* § 921(a)(20)(A). Moreover, "[a]ny conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored" is not a conviction for purposes of the statute. *Id.* § 921(a)(20). By this Motion Petitioner seeks to have his "civil rights" restored."

"Although the firearms prohibition generally applies for life, the statute includes a "safety valve" that permits individuals to apply to the Attorney General for restoration of their firearms rights. *Logan v. United States,* 552 U.S. 23, 28 n.1, 128 S.Ct. 475, 169 L.Ed.2d 432 (2007). Specifically, the Attorney General may remove the prohibition on a case-by-case basis if an applicant sufficiently establishes "that the circumstances regarding the disability, and the applicant's record and reputation, are such that the applicant will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest." 18 U.S.C. § 925(c)".

"The Attorney General delegated its authority under § 925(c) to the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF"). 28 C.F.R. § 0.130(a)(1)."

"Since 1992, however, "Congress has repeatedly barred the Attorney General from using appropriated funds 'to investigate or act upon [relief] applications,' " rendering the provision "inoperative." *Logan,* 552 U.S. at 28 n.1, 128 S.Ct. 475 (quoting *United States v. Bean,* 537 U.S. 71, 74–75, 123 S.Ct. 584, 154 L.Ed.2d 483 (2002)). The Committee on Appropriations eliminated funding because the restoration procedure under § 925(c) was "a very difficult task" that required ATF officials to "spend many hours investigating a particular applicant for relief." H.R. Rep. No. 102-618, at 14 (1992). Even then, there was "no way to know with any certainty whether the applicant [was] still a danger to public safety." *Id.* Accordingly, ATF officials were effectively "required to guess whether a convicted felon ... [could] be entrusted with a firearm." *Id.* Moreover, they were "forced to make these decisions knowing that a mistake could have devastating consequences for innocent citizens." *Id.* Ultimately, the Committee determined that "the $3.75 million and the 40 man-years annually spent investigating and acting upon these applications for relief would be better utilized by ATF in fighting violent crime." *Id Kanter v. Barr 919 F.3d 437 (7th Cir. 2019)"*

Stoller argument before the Seventh Circuit Court of Appeals that his status as a nonviolent offender with no other criminal record means that 18 U.S.C. § 922(g)(1) is *unconstitutional* and should not apply to him.(See Group Appendix 3), The Seventh Circuit Court of Appeals rejects this argument, where as the Third Circuit Court of Appeals does not.(**Appendix 5**)

D. Step Two: The Felon Dispossession Statutes Survive Intermediate Scrutiny

The Seventh Circuit incorrectly holds that categorical prohibitions on the possession of firearms by felons are "presumptively lawful," even in disqualifying nonviolent felons like Kanter. *See Skoien* , 614 F.3d at 640 ("[S]uch a recent extension of [§ 922(g)(1) 's] disqualification to non-

violent felons (embezzlers and tax evaders, for example) is presumptively constitutional, as *Heller* said in note 26."). But because " *Heller* referred to felon disarmament bans only as 'presumptively lawful,' " the Seventh Circuit requires the government to "prov[e] 'the constitutionality of § 922(g)(1)... using the intermediate scrutiny framework.' " *Williams*, 616 F.3d at 692.

"To survive intermediate scrutiny at step two, the government must show that the felon dispossession statute is substantially related to an important governmental objective. Consistent with how we apply intermediate scrutiny in the First Amendment context, the "fit" between the challenged regulation and the asserted governmental objective need only "be reasonable, not perfect." *United States v. Marzzarella*, 614 F.3d 85, 98 (3d Cir. 2010) ; *cf. FTC v. Trudeau*, 662 F.3d 947, 953 (7th Cir. 2011)."

The Seventh Circuit has a " means-end review is arguably less rigorous in this case because the weight of the historical evidence summarized above suggests that felon dispossession laws do not restrict the "core right of armed defense," but rather burden "activity lying closer to the margins of the right." *Ezell II*, 846 F.3d at 892. Indeed, we have said that "the state can prevail with less evidence when, as in *Skoien,* guns are forbidden to a class of persons who present a higher than average risk of misusing a gun." *Moore*, 702 F.3d at 940. We have even gone so far as to say that "empirical evidence of a public safety concern can be dispensed with altogether when the ban is limited to obviously dangerous persons such as felons and the mentally ill." *Id."*

Kanter concedes that the government's objective in passing § 922(g)(1) was an important one. In Kanter the Seventh Circuit stated that "the government identifies its interest as preventing gun violence by keeping firearms away from persons, such as those convicted of serious crimes, who might be expected to misuse them. This formulation of the government's interest is consistent with our precedent in this area. *See Yancey*, 621 F.3d at 683 ("Congress enacted the exclusions in § 922(g) to keep guns out of the hands of presumptively risky people."); *Williams*, 616 F.3d at 693 (describing the government's objective as "keep[ing] firearms out of the hands of violent felons, who

the government believes are often those most likely to misuse firearms"); *Skoien*, 614 F.3d at 642 (describing the government's interest as "preventing armed mayhem"). And The Seventh Circuit has previously held that this interest is "without doubt an important one." *Yancey*, 621 F.3d at 684 ; *see also Meza-Rodriguez*, 798 F.3d at 673 ("[T]he government has a[ ] strong interest in preventing people who already have disrespected the law (including ... felons ...) from possessing guns.").

"Knater argues that to meet its burden the government must show "a substantial relationship between denying *Mr. Kanter* a firearm and furthering the government's objective of preventing firearm misuse and armed violence." The Seventh Circuit rejected this argument

"Kanter is mistaken. In *Skoien* the Seventh Circuit held that "Congress is not limited to case-by-case exclusions of persons who have been shown to be untrustworthy with weapons, nor need these limits be established by evidence presented in court. *Heller* did not suggest that disqualifications would be effective only if the statute's benefits are first established by admissible evidence." 614 F.3d at 641. Of course, not all nonviolent felons will later commit a violent crime with a firearm. In that sense, the statute is "somewhat over-inclusive." *United States v. Chapman*, 666 F.3d 220, 231 (4th Cir. 2012). However, that "does not undermine [the statute's] constitutionality ... because it merely suggests that the fit is not a perfect one; a reasonable fit is all that is required under intermediate scrutiny." *Id.* ; *see also Marzzarella*, 614 F.3d at 97–98 (analogizing to intermediate scrutiny in First Amendment context).Here, unlike the challengers in *Binderup*, who were convicted of "non-serious" state misdemeanors and served no prison time, Kanter was convicted of a serious federal felony for conduct broadly understood to be criminal, and he did not face a minor sentence. 836 F.3d at 353 & n.6. Instead, Kanter is more akin to the challenger in *Hamilton*, whose fraud and theft convictions were "black-letter *mala in se* felonies reflecting grave misjudgment and maladjustment." 848 F.3d at 627. Kanter's crime—defrauding the federal government out of hundreds of thousands of dollars—"reflect[s] significant disrespect for the law." *Id.* at 627 n.14 ; *see also Medina*, 913 F.3d at 160 (rejecting as-

applied challenge where plaintiff was convicted of "felony fraud—a serious crime, malum in se, that is punishable in every state"). Thus, Kanter's serious felony conviction prevents him from challenging the constitutionality of § 922(g)(1) as applied to him. However in Stoller's case, he should not be barred from challenging the constitutionality of § 922(g)(1).

"Congress previously allowed the ATF to restore a felon's gun rights under § 925(c) if the agency determined that "the applicant will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest." 18 U.S.C. § 925(c). "

The Supreme Court is urged to accept the Petitioner's Writ

The Supreme Court is urged to accept the Petitioner's Writ and to memorialize in law for all Federal Circuits that the government should be allowed to restore a felon's gun rights under ¶ 925(c) if it can be determined that the applicant will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest. The court needs to act because Congress's failed attempt to delegate this investigative task to a law enforcement agency "should have a profound impact on our tailoring analysis." *Binderup* , 836 F.3d at 403 (Fuentes, J., concurring in part, dissenting in part, and dissenting from the judgment).

There is good reason for this court to provide guidance to all the circuits regarding the restoration of e a non violent felon's gun rights.

There is a split in the Circuits, which this court is asked to resolve.The Seventh Circuit Court of Appeals decision in Kanter is entirely at odds with the 3rd Circuit' recent decision in Benderup **(Appendix 5)** The Seventh Circuit incorrectly argues that "At bottom, the fact-specific inquiry Kanter asks this Court to undertake is "a function best performed by the Executive, which, unlike courts, is institutionally equipped for conducting a neutral, wide-ranging investigation." *Bean* , 537 U.S. at 77, 123 S.Ct. 584 ; *see also Pontarelli v. U.S. Dep't of the*

Treasury, 285 F.3d 216, 231 (3d Cir. 2002) ("Unlike ATF, courts possess neither the re-sources to conduct the requisite investigations nor the expertise to predict accurately which felons may carry guns without threatening the public's safety."). Moreover, "[i]n the context of firearm regulation, the legislature is far better equipped than the judiciary to make sensitive public policy judgments (within constitutional limits) concerning the dangers in carrying firearms and the manner to combat those risks." *Schrader*, 704 F.3d at 990 (citation and internal quotation marks omitted).

In sum, the Seventh Circuit Court of Appeals argues incorrectly the government has established that the felon dispossession statutes are substantially related to the important governmental objective of keeping firearms away those convicted of serious crimes." *Kanter* .

One of the reasons that this court should consider the Petitioner's writ of Cert is that the Seventh Circuit, unlike the Third Circuit makes no distinction as between the governmental objective of keeping firearms away from those convicted of serious crimes and those non violent first time offenders who are convicted of less serious crimes.

Justice Barrett, Circuit Judge, is an important persuasion for this court to grant the Petitioner' writ of cert,

History is consistent with common sense: it demonstrates that legislatures have the power to prohibit dangerous people from possessing guns. But that power extends only to people who are *dangerous*. Founding-era legislatures did not strip felons of the right to bear arms simply because of their status as felons. Nor have the parties introduced any evidence that founding-era legislatures imposed virtue-based restrictions on the right; such restrictions applied to civic rights like voting and jury service, not to individual rights like the right to possess a gun. 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.

18 U.S.C. § 922(g)(1) and Wisconsin Statute § 941.29(1m) would stand on solid footing if their categorical bans were tailored to serve the governments' undeniably compelling interest in protecting the public from gun violence. But their dispossession of *all* felons—both violent and nonviolent—is unconstitutional as applied to Kanter, who was convicted of mail fraud for falsely representing that his company's therapeutic shoe inserts were Medicare-approved and billing Medicare accordingly. Neither Wisconsin nor the United States has introduced data sufficient to show that disarming all nonviolent felons substantially advances its interest in keeping the public safe. Nor have they otherwise demonstrated that Kanter himself shows a proclivity for violence. Absent evidence that he either belongs to a dangerous category or bears individual markers of risk, permanently disqualifying *Kanter* from possessing a gun violates the Second Amendment.

Because the federal and state statutes operate to the same effect as applied to *Kanter,* my analysis applies equally to both. For simplicity's sake, I often refer only to the federal statute. In addition, I sometimes refer to the statutes as imposing a "felon ban" or "felon dispossession" with the understanding that § 922(g)(1) also encompasses state misdemeanors punishable by more than two years in prison. *See* 18 U.S.C. § 921(a)(20)(B).

I.

At the outset, it is worth clarifying a conceptual point. There are competing ways of approaching the constitutionality of gun dispossession laws. Some maintain that there are certain groups of people—for example, violent felons—who fall entirely outside the Second Amendment's scope. *See, e.g.* , *Binderup v. Attorney Gen. U.S.* , 836 F.3d 336, 357 (3d Cir. 2016) (en banc) (Hardiman, J., concurring in part and concurring in the judgments) ("[T]he Founders understood that not everyone possessed Second Amendment rights. These appeals require us to decide who count among 'the people' entitled to keep and bear arms."). Others maintain that all people have the right to keep and bear arms but that history and tradition support Congress's power to strip certain groups of that right. *See* Eugene Volokh, *Implementing the Right to Keep and Bear Arms for Self-Defense: An Analytical*

Framework and a Research Agenda, 56 UCLA L. REV. 1443, 1497–98 (2009) (describing these competing views). These approaches will typically yield the same result; one uses history and tradition to identify the scope of the right, and the other uses that same body of evidence to identify the scope of the legislature's power to take it away.

In my view, the latter is the better way to approach the problem. It is one thing to say that certain weapons or activities fall outside the scope of the right. *See District of Columbia v. Heller*, 554 U.S. 570, 627, 128 S.Ct. 2783, 171 L.Ed.2d 637 (2008) (explaining that "the sorts of weapons protected were those 'in common use at the time' " (citation omitted)); *Ezell v. City of Chicago*, 846 F.3d 888, 892 (7th Cir. 2017) (*Ezell II*) ("[I]f ... the challenged law regulates activity falling outside the scope of the right as originally understood, then 'the regulated activity is categorically unprotected, and the law is not subject to further Second Amendment review.' " (citation omitted)); *Ezell v. City of Chicago*, 651 F.3d 684, 702 (7th Cir. 2011) (*Ezell I*) (drawing an analogy between categories of speech, like obscenity, that fall outside the First Amendment and activities that fall outside the Second Amendment). It is another thing to say that certain *people* fall outside the Amendment's scope. Arms and activities would always be in or out. But a person could be in one day and out the next: the moment he was convicted of a violent crime or suffered the onset of mental illness, his rights would be stripped as a self-executing consequence of his new status. No state action would be required.

To be sure, under this theory such a person could possess a gun as a matter of legislative grace. But he would lack standing to assert constitutional claims that other citizens could assert. For example, imagine that a legislature disqualifies those convicted of crimes of domestic violence from possessing a gun for a period of ten years following release from prison. *See United States v. Skoien*, 614 F.3d 638, 642 (7th Cir. 2010) (en banc) (holding constitutional 18 U.S.C. § 922(g)(9), which forbids those convicted of crimes of domestic violence to possess a gun). After fifteen years pass, a domestic violence misdemeanant challenges a handgun ban identical to the one that the Court held unconstitutional in *Heller*. Despite the legislative judgment

that such a person could safely possess a gun after ten years, a court would still have to determine whether the person had standing to assert a Second Amendment claim. If the justification for the initial deprivation is that the person falls outside the protection of the Second Amendment, it doesn't matter if the statutory disqualification expires. If domestic violence misdemeanants are out, they're out.

Or at least that would be true absent the unlikely event that the Second Amendment, as originally understood, imposed a very specific restriction on the length of time that such a misdemeanant was excluded from the right.

That is an unusual way of thinking about rights. In other contexts that involve the loss of a right, the deprivation occurs because of state action, and state action determines the scope of the loss (subject, of course, to any applicable constitutional constraints). Felon voting rights are a good example: a state can disenfranchise felons, but if it refrains from doing so, their voting rights remain constitutionally protected. So too with the right to keep and bear arms: a state can disarm certain people (for example, those convicted of crimes of domestic violence), but if it refrains from doing so, their rights remain constitutionally protected. In other words, a person convicted of a qualifying crime does not automatically lose his right to keep and bear arms but instead becomes *eligible* to lose it.

"Felon disenfranchisement laws have a long history, and the Fourteenth Amendment's protection of the right to vote expressly acknowledges the authority of state legislatures to enact such laws. U.S. Const. amend. XIV, § 2 (providing that a state's representation in the House will be reduced if the right to vote "is denied ... or in any way abridged, except for participation in rebellion, or other crime"). The Second Amendment contains no similar acknowledgement. Legislative power to strip the right from certain people or groups was nonetheless a historically accepted feature of the pre-existing right that the Second Amendment protects. *See Heller*, 554 U.S. at 592, 128 S.Ct. 2783 "("[T]he Second Amendment ... codified a *pre-existing* right."); *id.* at 595, 128 S.Ct. 2783 ("Of course the right was not unlimited ...."); *Skoien*, 614 F.3d at 640 ("That *some* categorical limits are proper is part of the

original meaning, leaving to the people's elected representatives the filling in of details."). Thus, such a regulation does not "infringe" the right to bear arms because the right was always qualified by the government's power to prevent the dangerous from exercising it.

"In addition to being analytically awkward, the "scope of the right" approach is at odds with *Heller* itself. There, the Court interpreted the word "people" as referring to "all Americans." 554 U.S. at 580–81, 128 S.Ct. 2783 ; *see also id.* at 580, 128 S.Ct. 2783 (asserting that "the people" "refers to a class of persons who are part of a national community or who have otherwise developed sufficient connection with this country to be considered part of that community" (citation omitted)). Neither felons nor the mentally ill are categorically excluded from our national community. That does not mean that the government cannot prevent them from possessing guns. Instead, it means that the question is whether the government has the power to disable the exercise of a right that they otherwise possess, rather than whether they possess the right at all."

"Thus, I treat *Kanter* as falling within the scope of the Second Amendment and ask whether Congress and Wisconsin can nonetheless prevent him from possessing a gun."

II.

"Heller did not "undertake an exhaustive historical analysis ... of the full scope of the Second Amendment," but it did offer a list of "presumptively lawful regulatory measures," including "longstanding prohibitions on the possession of firearms by felons and the mentally ill." *See Heller*, 554 U.S. at 626–27 & n.26, 128 S.Ct. 2783. Like the majority, I am "reluctant to place more weight on these passing references than the Court itself did." *See* Maj. Op. at 445 (quoting *United States v. Meza-Rodriguez*, 798 F.3d 664, 669 (7th Cir. 2015)). The constitutionality of felon dispossession was not before the Court in *Heller*, and because it explicitly deferred analysis of this issue, the scope of its assertion is unclear. For example, does "presumptively lawful" mean that such regulations are presumed lawful unless a historical study shows otherwise? Does it mean that as-applied

challenges are available? Does the Court's reference to "felons" suggest that the legislature cannot disqualify misdemeanants from possessing guns? Does the word "longstanding" mean that prohibitions of recent vintage are suspect? As we observed in *Skoien*, judicial opinions are not statutes, and we don't dissect them word-by-word as if they were. 614 F.3d at 640. Thus, I agree with the majority that *Heller*'s dictum does not settle the question before us."

"It does, however, give us a place to start. *Heller*'s reference endorses the proposition that the legislature can impose some categorical bans on the possession of firearms. *See id.* ("That *some* categorical limits are proper is part of the original meaning."). Our task is to determine whether *all* felons—violent and nonviolent alike—comprise one such category."

"Wisconsin and the United States advance three basic historical arguments in support of this categorical exclusion. First, they say that there is some evidence suggesting that founding-era legislatures deprived felons of the right. Second, they argue that because the states put felons to death at the time of the founding, no one would have questioned their authority to take felons' guns too. And third, they insist that founding-era legislatures permitted only virtuous citizens to have guns, and felons are not virtuous citizens."

"As I explain below, none of these rationales supports the proposition that the legislature can permanently deprive felons of the right to possess arms simply because of their status as felons. The historical evidence does, however, support a different proposition: that the legislature may disarm those who have demonstrated a proclivity for violence or whose possession of guns would otherwise threaten the public safety. This is a category simultaneously broader and narrower than "felons"—it includes dangerous people who have not been convicted of felonies but not felons lacking indicia of dangerousness."

A.

"The best historical support for a legislative power to permanently dispossess all felons would be founding-era laws explicitly imposing—or explicitly authorizing the legislature to impose—such a ban. But at

least thus far, scholars have not been able to identify any such laws. The only evidence coming remotely close lies in proposals made in the New Hampshire, Massachusetts, and Pennsylvania ratifying conventions. In recommending that protection for the right to arms be added to the Constitution, each of these proposals included limiting language arguably tied to criminality. *See, e.g.* , Don B. Kates, Jr., *Handgun Prohibition and the Original Meaning of the Second Amendment* , 82 MICH. L. REV. 204, 222, 266 (1983) ; Steven P. Halbrook, *The Right of the People or the Power of the State: Bearing Arms* , 26 VAL. U. L. REV. 131, 147, 185 (1991); *see also* C. Kevin Marshall, *Why Can't Martha Stewart Have a Gun?* , 32 HARV . J.L. & PUB. POL'Y 695, 712 (2009) ("For relevant authority before World War I for disabling felons from *keeping* firearms, then, one is reduced to three proposals emerging from the ratification of the Constitution.")."

"A majority of the New Hampshire convention recommended that a bill of rights include the following protection: "Congress shall never disarm any citizen, *unless such as are or have been in actual rebellion* ." *See* 1 JONATHAN ELLIOT, THE DEBATES IN THE SEVERAL STATE CONVENTIONS ON THE ADOPTION OF THE FEDERAL CONSTITUTION 326 (2d ed. 1891) (emphasis added). In the Massachusetts convention, Samuel Adams proposed to protect the right to arms with the following language: "And that the said Constitution be never construed to authorize Congress to ... prevent the people of the United States, *who are peaceable citizens* , from keeping their own arms." *See* 2 BERNARD SCHWARTZ, THE BILL OF RIGHTS: A DOCUMENTARY HISTORY 675, 681 (1971) (emphasis added). Finally, the influential Pennsylvania Minority suggested an addition stating: "That the people have a right to bear arms for the defense of themselves and their own State or the United States, or for the purpose of killing game; and no law shall be passed for disarming the people or any of them *unless for crimes committed, or real danger of public injury from individuals* ...." 2 SCHWARTZ , *supra* , at 662, 665 (emphasis added). On the basis of these three proposals some conclude that "[a]ll the ratifying convention proposals which most explicitly detailed the

recommended right-to-arms amendment excluded criminals and the violent." *See, e.g.*, Kates, 82 MICH. L. REV. at 266."

"Several things bear emphasis here. First, none of the relevant limiting language made its way into the Second Amendment. Second, only New Hampshire's proposal—the least restrictive of the three—even carried a majority of its convention. *See* 2 SCHWARTZ, *supra*, at 628, 675, 758. Third, proposals from other states that advocated a constitutional right to arms did not contain similar language of limitation or exclusion. *See* Kates, 82 MICH. L. REV. at 222 (citing 1 ELLIOT, *supra*, at 328, 335). And finally, similar limitations or exclusions do not appear in any of the four parallel state constitutional provisions enacted before ratification of the Second Amendment. *See* Eugene Volokh, *State Constitutional Rights to Keep and Bear Arms*, 11 TEX. REV. L. & POL. 191, 208 (2006) (North Carolina, Pennsylvania, Vermont, Massachusetts). All that said, these proposals may "indicate some common if imprecise understanding at the Founding regarding the boundaries of a right to keep and bear arms." Marshall, 32 HARV. J.L. & PUB. POL'Y at 713. And at a minimum, the fact that they are routinely invoked in support of blanket felon disarmament makes it necessary to consider them."

REASONS WHY THE COURT MUST GRANT THE PETITION

The total population with a felony in America today (2019) might equal or exceed 24 million[10] (EQUAL TO THE POPULATION OF THE STATE OF FLORIDA).

This issue is ripe for the Supreme Court to weigh in on whether the felon-in-possession ban of 18 USC § 922(g)(1) is unconstitutional as applied to first time non violent offenders and to resolve the split in the circuits as to how they are differently interpreting the felon-in-possession ban of 18 USC § 922(g)(1)

Title 18 U.S.C. § 922(g)(1) prohibits the possession of firearms by any person convicted of "a crime punishable by imprisonment for a term exceeding one year."

It is time for the court to clarify the answers for the question(s) which the different Circuits all have dissimilar answers for.

As to whether Title 18 U.S.C. § 922(g)(1) should prohibits the possession of firearms by any felon for life

Whether Title 18 U.S.C. § 922(g)(1) should not automatically prohibit the possession of firearms by a felon, a first time, non violent offender.

And how a felon should be able to apply for relief from Title 18 U.S.C. § 922(g)(1)

" The Court Supreme need to analyze the constitutionality of § 922(g)(1) under "means-ends scrutiny", meaning to evaluate the law to assess whether its purpose—the end sought—matches appropriately the means chosen to achieve it to clarify for the circuits. The court needs to ascertain for the circuits the importance of the rights involved and the nature of the burden that § 922(g)(1) places on those rights."

To determine the legitimate purpose of § 922(g)(1) and the means to achieve it rationally (called rational basis scrutiny); the purpose may

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[10] America's Invisible Felon Population: A Blind Spot in US National Statistics Dr. Nicholas Eberstadt Henry Wendt Chair in Political Economy May 22, 2019 Statement before the Joint Economic Committee On the Economic Impacts of the 2020 Census and Business Uses of Federal Data Amrican Enterprise Institute at page 3

need to be important and the means to achieve it substantially related (called intermediate scrutiny); or the purpose may need to be compelling and the means to achieve it narrowly tailored, that is, the least restrictive (called strict scrutiny).

The latter two tests for § 922(g)(1) are referred to collectively as heightened scrutiny to distinguish them from the easily met rational basis test.

The United States District Court for the Middle District of Pennsylvania applied "a two[-]prong test for Second Amendment challenges" derived from law. Suarez v. Holder, --- F. Supp. 3d ----, No. 1:14-CV-968, 2015 WL 685889, at *6–7 (M.D. Pa. Feb. 18, 2015). It found first that Suarez has Second Amendment rights notwithstanding his 1990 conviction because he demonstrated that "he is no more dangerous than a typical law-abiding citizen." Id. at *10. Then the Court applied means-ends scrutiny (in that case, strict scrutiny) and determined that § 922(g)(1) is unconstitutional as applied to him due to the severity of the burden it imposes. Id. at *7 & n.9.

If the Supreme Court were to apply intermediate scrutiny to test the validity of § 922(g)(1), the they would conclude that the statute is **not** reasonably tailored to promote the substantial government interest of suppressing armed violence. Whereas the individual circuits all have different opinions. Whenever this occurs the Supreme Court is mandated to step in to clarify for all of the Circuits just what the law is.

Congress itself previously created and then defunded an administrative regime for providing individualized exceptions to the felon-in-possession ban. When it terminated that program, it stated that the review of such applications was "a very difficult and subjective task which could have devastating consequences for innocent citizens if the wrong decision is made," and warned that "too many of these felons whose gun ownership rights were restored went on to commit violent crimes with firearms." These congressional judgments stand in stark contrast to the plaintiffs' arguments. Congress has already experimented with a system of what were, in effect, as-applied challenges and concluded that it was unworkable and dangerous.

Now the Supreme Court is asked to determine for the entire land as to whether a felon has Second Amendment rights notwithstanding his conviction, if the felon can demonstrate that he " no more dangerous than a typical law abiding citizen".

It is essential that the court answer these questions for the 24 million felons in this country.

As the following survey[11] of cases demonstrates, why the U.S. Supreme Court should be compelled to accept the Petitioner's Writ of Cert.

Federal judges face an almost complete absence of guidance from the Supreme Court about the scope of the Second Amendment right. Even so, only four Federal Courts of Appeals have clearly stated that as-applied challenges to § 922(g)(1) are even permissible. The Third Circuit is the only Circuit that has taken the further step of upholding such a challenge.

The Current State of the Law Regarding Challenges to § 922(g)(1) is total chaos

No federal appellate court has yet upheld a challenge, facial or as-applied, to the felon-in-possession statute. It may therefore be helpful to begin by summarizing the Supreme Court's limited guidance on this issue and to explore how our sister circuits have applied that guidance in the context of § 922(g)(1).

A. The Meaning of *Heller*

[11] *DANIEL BINDERUP v ATTORNEY GENERAL UNITED STATES OF AMERICA; DIRECTOR BUREAU OF ALCOHOL TOBACCO FIREARMS & EXPLOSIVES* Appellant Nos 14-4549 (No. 14-4550) UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

The Second Amendment 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." The touchstone in any Second Amendment case is *District of Columbia v. Heller*, the Supreme Court decision holding that the Second Amendment protects the "right of law-abiding, responsible citizens to use arms in defense of hearth and home." While *Heller* recognized an individual right to bear arms, it also explained that, "[l]ike most rights, the right secured by the Second Amendment is not unlimited." The Court went on to provide us with important guidance about the Second Amendment's scope:

The Court also stated that people have the right to keep a loaded firearm in their homes for self-defense, provided that that they are "not disqualified from the exercise of Second Amendment rights." *Heller,* 554 U.S. at 635.

Two interpretive questions about *Heller* therefore arise again and again. First, what does it mean to say that the felon-in-possession ban is "presumptively lawful"? Second, what does it mean to say that a person may only possess a firearm if he or she has not been "disqualified from the exercise of Second Amendment rights"? As we shall see, our sister circuits have already done yeoman's work exploring these questions and suggesting possible answers.

B. Four Circuits Have Rejected As-Applied Challenges Altogether

Four circuits—the Fifth, Ninth, Tenth, and Eleventh— have concluded that as-applied challenges to § 922(g)(1) are not permissible, at least with respect to felons.

To begin with the Fifth Circuit, which held years before *Heller* that the Second Amendment protects an individual right to bear arms. In another pre-*Heller* case, *United States v. Everist,* the Fifth Circuit held that the felon in-possession ban was constitutional with respect to both violent and nonviolent threaten the security of his fellow citizens." The issue of the constitutionality of § 922(g)(1) arose again after *Heller* in *United States. v. Scroggins* 599 F.3d 433 (5th Cir. 2010). The Fifth Circuit there said that nothing in *Heller* caused it to question its prior

conclusion in *Everist* that § 922(g)(1) is constitutional even as applied to non-violent felons[12]. offenders. In the Fifth Circuit's view, "[i]rrespective of whether his offense was violent in nature, a felon has shown manifest disregard for the rights of others" and "[h]e may not justly complain of the limitation on his liberty when his possession of firearms would otherwise threaten the security of his fellow citizens." The issue of the constitutionality of § 922(g)(1) arose again after *Heller* in *United States. v. Scroggins.*[13] The Fifth Circuit there said that nothing in *Heller* caused it to question its prior conclusion in Everist that § 922(g)(1) is constitutional even as applied to non-violent felons.[14]

The Ninth Circuit addressed the issue of as-applied challenges in *United States v. Vongxay.*[15] The defendant there raised both a facial and an as-applied challenge to § 922(g)(1). With respect to the defendant's facial challenge, the Ninth Circuit concluded that "[n]othing in *Heller* can be read legitimately to cast doubt on the constitutionality of § 922(g)(1)."[16] With respect to the defendant's as-applied challenge, *Vongxay* concluded that § 922(g)(1) is constitutional even as applied to non-violent felons. The Ninth Circuit articulated several rationales for this conclusion. First, it noted that the right to bear arms could be restricted at common law. Second, it observed "that to date no court that has examined *Heller* has found 18 U.S.C. § 922(g) constitutionally suspect."[17] Third, it stated that "[d]enying felons the right to bear arms is . . . consistent with the explicit purpose of the Second Amendment to

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[12] Id. at 451; see also *United States v. Anderson*, 559 F.3d 348, 352 (5th Cir. 2009) (stating that "*Heller* provides no basis for reconsidering" whether § 922(g) is constitutional) (citing *United States v. Darrington*, 351 F.3d 632, 634 (5th Cir. 2003) was 'inextricably . . . tied to' the concept of a 'virtuous citizen[ry]'" and that "'the right to bear arms does not preclude laws disarming the unvirtuous citizens,'" including criminals.

[13] 599 F.3d 433 (5th Cir. 2010).

[14] 599 F.3d 433 (5th Cir. 2010). . at 451; see also *United States v. Anderson*, 559 F.3d 348, 352 (5th Cir. 2009) (stating that "*Heller* provides no basis for reconsidering" whether § 922(g) is constitutional) (citing *United States v. Darrington*, 351 F.3d 632, 634 (5th Cir. 2003) ("Section 922(g)(1) does not violate the Second Amendment.")).

[15] 594 F.3d 1111 (9th Cir. 2010).

[16] Id. at 1114.

[17] Id. at 1117 (internal quotation marks omitted).

maintain 'the security of a free State.'"[18] To that end, "[f]elons are often, and historically have been, explicitly prohibited from militia duty."[19] Lastly, it stated that "most scholars of the Second Amendment agree that the right to bear arms was 'inextricably . . . tied to' the concept of a 'virtuous citizen[ry]'" and that "'the right to bear arms does not preclude laws disarming the unvirtuous citizens,'" including criminals.[20]

A recent Ninth Circuit decision, *United States v. Phillips*,[21] re-affirmed *Vongxay,* although with some skepticism. The defendant there argued that his prior criminal conviction could not support disarmament under § 922(g)(1) because his crime, which consisted of concealing an ongoing felony from federal officials, was "a non-violent, passive crime of inaction."[22] The Ninth Circuit said that "there may be some good reasons to be skeptical about the correctness of the current framework of analyzing the Second Amendment rights of felons,"[23] but it nonetheless concluded that Heller and *Vongxay* foreclosed the defendant's argument.[24]

The Tenth Circuit rejected a constitutional challenge to § 922(g)(1) in *United States v. McCane*.[25] It focused on the fact that the Supreme Court "explicitly stated in Heller that 'nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of

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[18] Id. (quoting U.S. Const. amend. II).
[19] id
[20] Id. at 1118 (alteration in original) (quoting Don B. Kates, Jr., The Second Amendment: A Dialogue, 49 Law & Contemp. Probs. 143, 146 (1986)). As discussed infra, the strength of this historical interpretation has since been challenged by other scholars. See, e.g., Carlton F.W. Larson, Four Exceptions in Search of a Theory: *District of Columbia v. Heller* and Judicial Ipse Dixit, 60 Hastings L.J. 1371, 1374–75 (2009) (analyzing sources cited by earlier scholars); C. Kevin Marshall, Why Can't Martha Stewart Have a Gun?, 32 Harv. J.L. & Pub. Pol'y 695, 714 (2009). 25
[21] Id. at 1047 (quoting *Heller*, 554 U.S. at 626).
[22] Id. at *2 (internal quotation marks omitted).
[23] Id. at *5
[24] Id. at *4 ("[A]ssuming the propriety of felon firearm bans—as we must under Supreme Court precedent and our own—there is little question that Phillips's predicate conviction . . . can constitutionally serve as the basis for a felon ban."); see also Van Der Hule v. Holder, 759 F.3d 1043, 1050–51 (9th Cir. 2014) ("We addressed whether § 922(g)(1) violates the Second Amendment in [Vongxay] and determined that it did not."). But see United States v. Duckett, 406 F. App'x 185, 187 (9th Cir. 2010) (Ikuta, J., concurring) (stating that it might be constitutionally problematic to prevent non-violent felons from possessing firearms).
[25] 573 F.3d 1037 (10th Cir. 2009).

firearms by felons.'"[26] While Judge Tymkovich complained in concurrence that "[t]he Court's summary treatment of felon dispossession in dictum forecloses the possibility of a more sophisticated interpretation of § 922(g)(1)'s scope,"[27] the Tenth Circuit has not revisited the issue. To the contrary, it said in a later case that it had "already rejected the notion that *Heller* mandates an individualized inquiry concerning felons pursuant to § 922(g)(1)."[28]

Lastly, the Eleventh Circuit upheld the constitutionality of § 922(g)(1) in United *States v. Rozier*.[29] That opinion focused on the Supreme Court's language in *Heller* regarding "disqualifi[cation] from the exercise of Second Amendment rights."[30] Interpreting this language, the Eleventh Circuit concluded that one of *Heller's* implied premises was that certain persons can be permissibly disqualified from exercising their Second Amendments rights altogether. The court went on to say that *Heller's* list of "longstanding prohibitions" indicated that "statutes disqualifying felons from possessing a firearm under any and all circumstances do not offend the Second Amendment."[31] As a result, it concluded that "statutory restrictions of firearm possession, such as § 922(g)(1), are a constitutional avenue to restrict the Second Amendment right of certain classes of people," and that "Rozier, by virtue of his felony conviction, falls within such a class."[32]

The Supreme Court needs to accept the Petitioner's Writ of Cert to Resolve Three Circuits confusion over-Applied Challenges to the Second "Amendment

The First Circuit has expressed skepticism about as applied challenges to the federal firearms laws, although it has not foreclosed such challenges. In United States v. Torres-Rosario,[33] the First Circuit considered a defendant's as-applied challenge to his conviction under §

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[27] Id. at 1049.

[28] In re United States, 578 F.3d 1195, 1200 (10th Cir. 2009).

[29] 598 F.3d 768 (11th Cir. 2010).

[30] Id. at 770 (quoting Heller, 554 U.S. at 635).

[31] Id. at 771 (emphasis added)

[32] Id.

[33] 658 F.3d 110 (1st Cir. 2011).

922(g)(1). The defendant's prior convictions were for possession with intent to distribute and distribution of controlled substances, and the court concluded that the defendant's challenge failed because "drug dealing is notoriously linked to violence."[34] In reaching that conclusion, the First Circuit stated that the "Supreme Court may be open to claims that some felonies do not indicate potential violence and cannot be the basis for applying a categorical ban," and likewise "might even be open to highly fact-specific objections."[35] Even so, the court observed that permitting "such an approach, applied to countless variations in individual circumstances, would obviously present serious problems of administration, consistency and fair warning."[36] The First Circuit thus suggested that defendants could bring as-applied challenges, even while recognizing the difficulties that considering such challenges would create.

The Second Circuit upheld the constitutionality of § 922(g)(1) in *United States v. Bogle*.[37] It did not analyze the issue in great depth. Instead, it pointed to *Heller*'s language about "longstanding prohibitions" and "join[ed] every other circuit to consider the issue in affirming that § 922(g)(1) is a constitutional restriction on the Second Amendment rights of convicted felons."[38] The court did not distinguish between facial and as-applied challenges.[39]

Meanwhile, the jurisprudence of the Sixth Circuit appears to be in flux. That court dealt with challenges to § 922(g)(1) in two non-precedential opinions. In one, *United States v. Frazier*,[40] the court rejected a challenge to § 922(g)(1) on the view that "congressional regulation of firearms [remained] constitutional" even post-*Heller*.[41] In

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[34] Id. at 113
[35] Id.
[36] Id.
[37] 717 F.3d 281 (2d Cir. 2013).
[38] Id. at 281–82.
[39] Bogle did not raise an as-applied challenge to § 922(g)(1) on the basis of the Second Amendment. Even so, the Second Circuit's broad language and its citations to numerous courts that have considered such challenges suggest that it intended to broadly approve restrictions on the Second Amendment rights of individuals who are not law-abiding.
[40] 314 F. App'x 801 (6th Cir. 2008).
[41] Id. at 807

another, *United States v. Khami*,[42] the court recognized the theoretical possibility of an as-applied challenge to § 922(g)(1) but said that, on the facts before it, "[e]ven an as applied challenge would be difficult . . . to mount."[43] A later precedential opinion, *United States v. Carey*,[44] stated flatly that "prohibitions on felon possession of firearms do not violate the Second Amendment."[45] And most recently, the Sixth Circuit has considered the issue of whether the federal statute making it unlawful to possess a firearm after having been committed to a mental institution, 18 U.S.C. § 922(g)(4), permits as-applied challenges. That issue, which raises a doctrinal conundrum similar to the one we confront here, has also triggered en banc review.[46]

The Fourth,[47] Seventh,[48] Eighth,[49] and D.C. Circuits[50] have left the door open to a successful as-applied challenge. Even so, none of these courts has yet upheld one.

In many instances, these courts have also narrowed the universe of as-applied challenges that are permissible. The Fourth Circuit, which has repeatedly said that it might affirm an as-applied challenge in the right circumstances, has rejected the proposition that Congress may disarm only persons who commit violent crimes. In *United States v. Pruess*, the court considered a challenge to § 922(g)(1) brought by a firearms dealer and collector who also had over twenty prior convictions for failing to comply with various gun laws, although none of those

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[42] 362 F. App'x 501 (6th Cir. 2010).
[43] Id. at 508
[44] 602 F.3d 738 (6th Cir. 2010).
[45] Id. at 741
[46] Tyler v. Hillsdale Cty. Sheriff's Dep't, 775 F.3d 308 (6th Cir. 2014), reh'g en banc granted, opinion vacated (Apr. 21, 2015).
[47] *United States v. Moore*, 666 F.3d 313, 320 (4th Cir. 2012) ("We do not foreclose the possibility that a case might exist in which an as-applied Second Amendment challenge to § 922(g)(1) could succeed.").
[48] Baer v. Lynch, 636 F. App'x 695, 698 (7th Cir. 2016) ("We have not decided if felons historically were outside the scope of the Second Amendment's protection and instead have focused on whether § 922(g)(1) survives intermediate scrutiny. As to violent felons, the statute does survive intermediate scrutiny, we have concluded, because the prohibition on gun possession is substantially related to the government's interest in keeping those most likely to misuse firearms from obtaining them." (internal citations omitted)); *United States v. Williams*, 616 F.3d 685, 692 (7th Cir. 2010) ("Heller referred to felon disarmament bans only as 'presumptively lawful,' which, by implication, means that there must exist the possibility that the ban could be unconstitutional in the face of an as-applied challenge.").
[49] United States v. Woolsey, 759 F.3d 905 (8th Cir. 2014).
[50] Schrader v. Holder, 704 F.3d 980, 991–92 (D.C. Cir. 2013) (rejecting as-applied challenge to § 922(g)(1) brought by common-law misdemeanants as a class).

convictions were for violent crime. *Pruess* held "that application of the felon-in possession prohibition to allegedly non-violent felons . . . does not violate the Second Amendment."[51]

There is also some ambiguity in the jurisprudence of the Eighth Circuit. That court upheld the facial constitutionality of § 922(g)(1) in *United States v. Seay*.[52] It also addressed as-applied challenges to § 922(g)(1) in *United States v. Woolsey*,[53] where it cited one of its prior non precedential opinions, United States v. Brown,[54] that in turn relied on our decision in United States v. Barton[55]. Following Barton's logic, Woolsey rejected a defendant's as-applied challenge to § 922(g)(1) because he had not "presented 'facts about himself and his background that distinguish his circumstances from those of persons historically barred from Second Amendment protections.'"[56]

Even so, another Eighth Circuit decision, *United States v. Bena*,[57] suggests that as-applied challenges might rest on shaky ground. *Bena* involved a facial challenge to § 922(g)(8), which bars possession of firearms by those subject to a restraining order. In addressing that challenge, *Bena* stated that the Heller's list of "longstanding prohibitions" suggested that the Supreme Court "viewed [those] regulatory measures . . . as presumptively lawful because they do not infringe on the Second Amendment right."[58] In support of that conclusion, the court cited our own analysis in *United States v. Marzzarella*.[59] The Eighth Circuit also pointed to the fact that, as a historical matter, several states viewed the right to bear arms as limited to peaceable, responsible citizens. The court expressly declined

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[51] Id. at 247.

[52] 620 F.3d 919 (8th Cir. 2010). Seay technically addressed § 922(g)(3), which prohibits gun possession by drug users. In reviewing the Eighth Circuit's precedents, Seay stated that a prior non-precedential opinion upholding the constitutionality of § 922(g)(1) was correct. See id. at 924 (citing United States v. Irish, 285 F. App'x 326 (8th Cir. 2008)). The Eighth Circuit rejected a facial challenge to § 922(g)(1) a second time in United States v. Joos, 638 F.3d 581, 586 (8th Cir. 2011).

[53] 759 F.3d 905

[54] Id. at 909 (citing Brown, 436 F. App'x 725 (8th Cir. 2011)).

[55] 633 F.3d 168 (3d Cir. 2011).

[56] *Woolsey*, 759 F.3d at 909 (quoting Brown, 436 F. App'x at 726).

[57] 664 F.3d 1180 (8th Cir. 2011).

[58] Id. at 1183

[59] 614 F.3d 85, 91 (3d Cir. 2010).

to consider the question of "whether § 922(g)(8) would be constitutional as applied to a person who is subject to an order that was entered without evidence of dangerousness." [60]

Meanwhile, the D.C. Circuit considered the issue of as-applied challenges in *Schrader v. Holder*.[61] In that case, the court concluded that the plaintiffs had brought, at most, a challenge to § 922(g)(1) "as applied to common-law misdemeanants as a class," not as applied to *Shrader* individually.[62] The court easily rejected that challenge. It stated that the "plaintiffs [had] offered no evidence that individuals convicted of [common-law misdemeanors] pose an insignificant risk of future armed violence."[63] It also adopted the view that even if "some common-law misdemeanants . . . may well present no such risk . . . 'Congress is not limited to case-by-case exclusions of persons who have been shown to be untrustworthy with weapons, nor need these limits be established by evidence presented in court.'"[64]

It is absolutely apparent from the record that the U.S. Supreme Court has an obligation for the 24 million felons in the U.S. to accept the Petitioner's Writ of Cert and to give guidance to the Circuits in order to clarify a felons rights regarding as-applied challenges to § 922(g)(1).

U.S. Supreme Court is required to accept the the Petitioner's Writ of Cert

Since Federal judges face an almost complete absence of guidance from the Supreme Court about the scope of the Second Amendment rights, the U.S. Supreme Court is required to accept the the Petitioner's Writ of Cert to give guidance to the Federal Courts regarding the scope of the

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[60] Bena, 664 F.3d at 1185.

[61] 704 F.3d 980 (D. C. Cir. 2013).

[62] Id. at 991

[63] Id. at 990.

[64] Id. at 990–91 (quoting *United States v. Skoien*, 614 F.3d 638, 641 (7th Cir. 2010) (en banc)) (emphasis in original). Schrader suggested that, had the plaintiffs properly raised an as-applied challenge by arguing "that the statute is invalid as applied to Schrader specifically," then "Heller might well dictate a different outcome" than the decision the court reached with respect to the class-wide challenge. Id. at 991.

Second Amendment as it applies to non violent first time offenders 2nd amendment rights.

1. Petitioner makes a good faith argument for a change in the law which should correct the unconstitutional provisions which lead Judges to deprive non violent, first time offenders, felons from possessing fire arms,.

2. All parts of a statute, case law court judgment(s), decree(s) or order(s) that U.S. District Courts and Federal Courts of Appeals use to deprive non violent, first time offenders (Felons) of their civil rights, their 2nd Amendment Rights, use to cite for their authority to deny the civil rights, Second Amendment Rights of the non violent first time offender(s), they should be declared unconstitutional, they should be declared null and void or at least voidable by this Court and should be set aside and/or repealed by this court.

CLOSE

The issue(s) here is ripe for review: has been carefully considered by courts across the country.

The court's decision(s) in this case, will effect over 24 million Americans, (felons) and the 2nd Amend issue is now squarely presented in this case.

The court should decide"

Whether the Federal Statute prohibiting non violent felons from possessing firearms 18 U.S.C. 922(g)(1) should be held *unconstitutional*, "void", for vagueness."

The Supreme Court is urged to accept the Petitioner's Writ and to memorialize in law for all Federal Circuits that the government should be allowed to restore a felon's gun rights under ¶ 925(c) if it can be determined that the applicant will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest.

The court needs to act because Congress's failed attempt to delegate this investigative task to a law enforcement agency "should have a profound impact on

our tailoring analysis." *Binderup* , 836 F.3d at 403 (Fuentes, J., concurring in part, dissenting in part, and dissenting from the judgment).

CONCLUSION

Because of the reasons Petitioner has put forth, in this Petition for certiorari, this Court should set aside the Seventh Circuit Court of Appeals Judgment (**Appendix 1**) against Petitioner. The Court should also wipe the slate clean set aside all Orders and Judgments which prohibit all first time, *non violent* felons, from possessing firearms in their homes to protect themselves and their families.

This Court should resolve the issue now.

For the foregoing reasons, Petitioner respectfully requests that the Petition for Wirt of Certiorari be granted[65].

Respectfully submitted,

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Petitioner
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Chicago, Illinois 60660
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[65] **Alternate relief requested. In the event that the court should decide not to accept the Petitioner's Writ of Certiorari, then at a minimum, the Petitioner prays that it will enter the attached Order**

APPENDIX

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