No. 19-864

IN THE

Supreme Court of the United States

BRADLEY BEERS,

Petitioner,

v.

WILLIAM P. BARR, ATTORNEY GENERAL OF THE UNITED STATES OF AMERICA, *et al.*,

Respondents.

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

SUPPLEMENTAL BRIEF FOR PETITIONER

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April 3, 2020

QUESTION PRESENTED

May the government permanently deny a mentally healthy, responsible, and law-abiding citizen of the United States the opportunity to recover his Second Amendment rights solely because of a long-ago involuntary commitment?

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

The statement included in the petition for a writ of certiorari remains accurate.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

SUPPLEMENTAL BRIEF FOR PETITIONER

Petitioner Bradley Beers respectfully submits this supplemental brief under Rule 15.8 to apprise the Court of a recent development relevant to his Petition.

ARGUMENT

The Petition identified an irreconcilable split between the Third and Sixth Circuits on a question of the Second Amendment's scope. In a recent decision, the Ninth Circuit deepened this split yet further. See *Mai* v. *United States*, 952 F.3d 1106, 2020 WL 1161771 (9th Cir. 2020).

As noted in the Petition, lower courts have generally employed a two-part test for as-applied challenges to a law under the Second Amendment. See Pet. at 11 & n.4. First, courts determine whether the law in question governs conduct that falls within the Second Amendment's protections. In this step, courts pay heed to certain "longstanding prohibitions" on the right to bear arms that this Court has explained are "presumptively lawful." See *District of Columbia* v. *Heller*, 554 U.S. 570, 626, 627 n.26 (2008); *McDonald* v. *City of Chicago*, 561 U.S. 742, 786 (2010). Second, courts examine the government's justification for the law under a heightened form of scrutiny.

The Ninth Circuit's opinion implicates splits on both parts of this test.

In *Mai*, the Ninth Circuit "assum[ed], without deciding" that § 922(g)(4) "burdens" Mr. Mai's "Second Amendment rights." 2020 WL 1161771, at *7. The Ninth Circuit explained that under its precedent, "[a] law does not burden Second Amendment rights 'if it either falls within one of the 'presumptively lawful

regulatory measures' identified in *Heller* or regulates conduct that historically has fallen outside the scope of the Second Amendment.'" *Id.* at *6. The court noted that the Third Circuit mustered some "historical evidence" for "the view that society did not entrust the mentally ill with the responsibility of bearing arms." *Id.* (quoting *Beers* v. *Att'y Gen.*, 927 F.3d 150, 157–58 (3d Cir. 2019)). And it acknowledged the Sixth Circuit's contrary holding "that 'historical evidence . . . does not directly support the proposition that persons who were once committed due to mental illness are forever ineligible' to possess a firearm." *Id.* (quoting *Tyler* v. *Hillsdale Cty. Sheriff's Dep't*, 837 F.3d 678, 689 (6th Cir. 2016) (en banc)).

The Ninth Circuit declined to endorse either historical argument. Instead it stated it would "follow the 'well-trodden and judicious course'" of assuming, without deciding, that § 922(g)(4) burdens a person's Second Amendment rights. See *id.* at *7.

The Ninth Circuit proceeded to analyze § 922(g)(4) under intermediate scrutiny, noting that the lead opinion for the en banc Sixth Circuit had done the same. See *id.* The Ninth Circuit, however, reached a different result, concluding that the government had satisfied its burden to show a reasonable fit between the government's objectives and its chosen means. See *id.* at *9–12. This conclusion conflicts with *Tyler*, where the lead opinion concluded that the government had not satisfied intermediate scrutiny in justifying § 922(g)(4)'s regulation of the Second Amendment right. See *Tyler*, 837 F.3d at 699 (plurality opinion).[1]

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[1] Five judges issued or joined opinions concurring in the result. *See Tyler*, 837 F.3d at 699 (McKeague, J., concurring); *id.* at 702 (Boggs, J., concurring in most of the judgment); *id.* at 702

As noted in the Petition, the Third Circuit concluded that Petitioner was not among the class of citizens protected by the Second Amendment. It therefore did not address the applicable level of scrutiny or whether § 922(g)(4) passes muster under any type of heightened scrutiny. Nevertheless, this question has also divided lower courts, as exemplified by the divide between the Sixth and Ninth Circuits. Accordingly, after *Mai*, the Third, Sixth, and Ninth Circuits have each taken different—and inherently conflicting—paths at both steps of the framework lower courts apply to determine whether a person who was formerly involuntarily committed retains any rights under the Second Amendment.

The Court should grant certiorari to provide guidance on this important issue concerning a core constitutional right. And, as between this case and *Mai*, the Court should review the Third Circuit's opinion, because it conducted a clear (though wrong) analysis of the core question: whether a person who was long ago involuntarily committed loses his core Second Amendment rights. The Ninth Circuit's analysis merely assumed the answer to this question, and the Third Circuit's opinion therefore provides a better vehicle for addressing the core doctrinal question presented.

(Batchelder, J., concurring in most of the judgment); *id.* at 707 (Sutton, J., concurring in most of the judgment). These opinions, among other things, questioned whether intermediate scrutiny was the proper analytical approach or whether a tiers-of-scrutiny approach is appropriate at all in the Second Amendment context. *Cf.* Pet. at 14–16.

CONCLUSION

For the foregoing reasons, the Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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