APPENDIX A

NOT FOR PUBLICATION

FILED

JAN 10 2020

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. ISRAEL TORRES, Defendant-Appellant.	No. 18-10076 D.C. No. 2:17-cr-00265-JAT-1 MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
James A. Teilborg, District Judge, Presiding

Argued and Submitted November 12, 2019
San Francisco, California

Before: BEA and LEE, Circuit Judges, and PIERSOL,** District Judge.

Israel Torres ("Torres") appeals the district court's denial of his motion to dismiss the indictment charging him with two counts of possessing firearms after having been twice convicted of felonies in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). In 2004 and 2010, Torres pleaded guilty to aggravated driving-under-the-

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The Honorable Lawrence L. Piersol, United States District Judge for the District of South Dakota, sitting by designation.

influence offenses, each of which was designated as a felony offense under Arizona law, and was punishable by a term of imprisonment exceeding one year. We have jurisdiction pursuant to 28 U.S.C. § 1291 and affirm.

On appeal, Torres argues that the district court erred in concluding that his as-applied Second Amendment challenge to 18 U.S.C. § 922(g)(1) was foreclosed under Ninth Circuit precedent.

We review de novo the constitutionality of a statute, *United States v. Jones*, 231 F.3d 508, 513 (9th Cir. 2000), and constitutional challenges to a district court's denial of a motion to dismiss, *United States v. Palmer*, 3 F.3d 300, 305 (9th Cir. 1993).

In *District of Columbia v. Heller*, the United States Supreme Court held that while the Second Amendment conferred an individual right to keep and bear arms, such right was not unlimited. 554 U.S. 570, 595, 626 (2008). Although the Court declined to undertake an "exhaustive historical analysis" of the full scope of the Second Amendment, it stated that "nothing in [its] opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill . . . ." *Id.* at 626. The Court referred to these regulatory measures as "presumptively lawful." *Id.* at 627 n.26.

In *United States v. Vongxay*, we concluded that the Supreme Court's language in *Heller* regarding the presumptive lawfulness of long-standing restrictions on gun

possession by felons served to limit the scope of the Court's holding that the Second Amendment conferred an individual right to keep and bear arms. 594 F.3d 1111, 1115 (9th Cir. 2010). We held that under *Heller*, "felons are categorically different from individuals who have a fundamental right to bear arms" and rejected Vongxay's argument that § 922(g)(1) was unconstitutional as-applied to him because it bars him and other citizens who have been convicted of non-violent felonies from exercising all Second Amendment rights. *Id.* at 1115-16. Vongxay had three previous non-violent felony convictions: two for car burglary and one for drug possession. *Id.* at 1114.

In *United States v. Phillips*, we again rejected a claim by a defendant that § 922(g)(1) violated his Second Amendment rights as-applied. 827 F.3d 1171, 1173 (9th Cir. 2016). There, Phillips argued that his felony conviction for misprision was non-violent and passive and could not constitutionally serve as a basis for depriving him of his right to possess a firearm. *Id.* We reiterated our holding in *Vongxay* that "felons are categorically different from individuals who have a fundamental right to bear arms" and concluded that we were "foreclosed" under *Vongxay* and *Heller* from considering the defendant's as-applied challenge. *Id.* at 1173-74.

We stated in *Phillips* that while we were bound under *Vongxay* and *Heller* to assume the propriety of felon firearm bans, there was "little question that Phillips's predicate conviction for misprision of felony [could] constitutionally serve as the

basis for a felon ban" because the statute under which he was convicted was functionally identical to its predecessor, enacted prior to the ratification of the Second Amendment, and which made misprision a felony. *Id.* at 1175-76. We stated that we were "hard pressed to conclude that a crime that has always been a federal felony [could] not serve as the basis of a felon firearm ban, simply because its actus reus may appear innocuous." *Id.* at 1176.

Mr. Torres argues that the district court erred in concluding that Ninth Circuit precedent foreclosed his as-applied challenge to the constitutionality of § 922(g)(1) on the basis that his predicate felony convictions were not considered felonies at the founding. We disagree. Like the court in *Phillips* and other courts in this Circuit that have rejected as-applied challenges to the constitutionality of § 922(g)(1) under the Second Amendment, this court is bound under *Vongxay* and *Heller* to assume the propriety of felon firearm bans.[1]

AFFIRMED.

[1] This court notes as well that even the plurality opinion in *Binderup v. Attorney General*, 836 F.3d 336, 351 (3d Cir. 2016) (en banc), which Torres relies on heavily in his argument for applying intermediate scrutiny in this case stated that "exclusions need not mirror limits that were on the books in 1791 to comport with the Second Amendment. Rather, we will presume the judgment of the legislature is correct and treat any crime subject to § 922(g)(1) as disqualifying unless there is a strong reason to do otherwise."

United States v. Israel Torres, No. 18-10076

LEE, Circuit Judge, concurring:

I agree that Israel Torres's felon-in-possession conviction under 18 U.S.C. § 922(g)(1) must be affirmed under this court's precedent in *United States v. Vongxay*, 594 F.3d 1111, 1116 (9th Cir. 2010) (stating that this circuit "declined to make a distinction between violent and non-violent felons" for purposes of analyzing Second Amendment challenges to § 922(g)(1)).

I write separately, however, because I do not believe either the Supreme Court or the Ninth Circuit has explicitly held that felons are categorically barred from bringing as-applied Second Amendment challenges to § 922(g)(1). While facial challenges to § 922(g)(1) are foreclosed, the door appears to remain ajar on whether someone can pursue an as-applied Second Amendment challenge in circumstances where the underlying felony is so minor or regulatory in nature and has no analogue in the Founding era.

The Supreme Court's decision in *District of Columbia v. Heller* does not appear to prohibit as-applied challenges. The opinion notes that "longstanding prohibitions" like § 922(g)(1) are "*presumptively* lawful regulatory measures." 554 U.S. 570, 626–27 n.26 (2008) (emphasis added). Presumptions require an actor "[t]o take for granted as being true in the absence of proof to the contrary" the matter presumed. American Heritage Dictionary (5th ed. 2016) (definition of

"presume"). In other words, presumptions may be rebuttable. While words in a judicial opinion — as opposed to a statute — should not be scrutinized with a gimlet eye, the Supreme Court's use of the word "presumptively" in *Heller* at least suggests that as-applied challenges based on the Second Amendment may be permissible. And indeed, many of our sister circuits have cited that language to consider as-applied Second Amendment challenges.[1]

Further, neither *Vongxay* nor *Phillips* appear to expressly foreclose as-applied challenges within the Ninth Circuit. The *Vongxay* court held that "felons are *categorically different* from the individuals who have a fundamental right to bear arms." 594 F.3d at 1115 (emphasis added). The district court here cited that sentence as an indication that the Ninth Circuit has categorically barred as-applied challenges. But that sentence merely indicates that longstanding prohibitions like § 922(g)(1) are "presumptively" lawful because felons are "categorically

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[1] *See United States v. Torres-Rosario*, 658 F.3d 110, 113 (1st Cir. 2011); *Binderup v. Attorney Gen. U.S.*, 836 F.3d 336, 343 (3d Cir. 2016) (en banc); *United States v. Moore*, 666 F.3d 313, 316 (4th Cir. 2012); *United States v. Williams*, 616 F.3d 685, 692 (7th Cir. 2010); *Schrader v. Holder*, 704 F.3d 980, 988 (D.C. Cir. 2013); *see also United States v. Woolsey*, 759 F.3d 905, 909 (8th Cir. 2014) (hearing as-applied challenge to § 922(g)(1) but making no reference to *Heller*). *But cf. United States v. Chovan*, 735 F.3d 1127, 1147 n.4 (9th Cir. 2013) (Bea, J., concurring) (noting that federal courts are split on the meaning of "presumption" and stating that "perhaps" the better reading is that the presumption is irrebuttable).

different." That unremarkable observation does not say as-applied challenges are categorically banned.

Six years later, this court in *Phillips* suggested that it is far from settled whether someone can mount an as-applied Second Amendment challenge where the underlying felony is so minor and does not have a historical analogue in the Founding era. The *Phillips* court held that it "does not address . . . the question of whether there are limits on Congress's and the States' ability to define any old crime as a felony and thereby use it as the basis for a § 922(g)(1) conviction, consistent with the Second Amendment." 827 F.3d 1171, 1176 n.5 (noting that misprision was a felony prior to the enactment of the Second Amendment). The court then wryly offered a seemingly fanciful hypothetical of whether a felony conviction over "stealing a lollipop" could serve as a proper predicate for purposes of § 922(g)(1). The court concluded that "remains to be seen." *Id.*

But we may not have to wait for Godot for an answer because that hypothetical in *Phillips* may not be as fanciful as we may think. As many legal commentators across the spectrum have noted, there has been a recent trend of so-called "overcriminalization" under both federal and state laws. *See, e.g.*, Stephen F. Smith, *Overcoming Overcriminalization*, 102 J. Crim. L. & Criminology 537 (2013). For example, West Virginia law states that a person who shoplifts merchandise of any amount on three separate occasions within seven years will

face a felony charge on her third offense. W. Va. Code Ann. § 61-3A-3 (West 2019).[2]

So can the government effectively extinguish the Second Amendment right of a serial stealer of lollipops, even though such a right is fundamental and "necessary to our system of ordered liberty"? *McDonald v. City of Chicago*, 561 U.S. 742, 778 (2010).

Perhaps — but we can only be confident in the answer by subjecting that question through the exacting scrutiny of judicial review. *See Gonzales v. Carhart*, 550 U.S. 124, 168 (2007) (noting that "[a]s-applied challenges are the basic building blocks of constitutional adjudication") (internal quotation marks and citation omitted). The merit of such as-applied challenges may be minimal in many, most, or even nearly all cases. But that should not mean that the government can strip a citizen of her fundamental constitutional right that is "deeply rooted in this Nation's history and tradition" (*McDonald*, 561 U.S. at 768) — without a meaningful opportunity to challenge the law as it applies to her.

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[2] Other states appear to have similarly expansive felony laws. In Utah, for example, illicitly recording in a movie theater on two occasions can earn the camera operator a third-degree felony conviction. Utah Code Ann. § 13-10b-201 (West 2019). In Florida, a man was reportedly charged with a felony for releasing a dozen heart-shaped balloons in a misguided romantic gesture. *See* Erika Pesantes, *Love Hurts: Man Arrested for Releasing Helium Balloon with His Girlfriend*, Sun Sentinel (Feb. 22, 2013), https://www.sun-sentinel.com/news/fl-xpm-2013-02-22-fl-helium-balloon-environmental-crime-20130222-story.html.

APPENDIX B

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

United States of America,

Plaintiff,

v.

Israel Torres,

Defendant.

No. CR-17-00265-001-PHX-JAT

ORDER

Pending before the Court is Defendant's Motion to Dismiss the Indictment (Doc. 25). The Court now rules on the motion.

I. BACKGROUND

On February 21, 2017, Israel Torres ("Defendant") was indicted on two counts of being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1). (Doc. 6). Defendant was previously convicted for felony Aggravated DUI in both 2004 and 2010. (Doc. 25 at 2). Count one of the instant Indictment (Doc. 6) alleges that Defendant possessed a Colt .45 caliber pistol between January 5, 2017 and January 10, 2017 based on visual evidence obtained through Facebook and Instagram posts. (*See* Doc. 25 at 2). Count two of the Indictment (Doc. 6) alleges that Defendant possessed 10 total firearms seized from Defendant's residence during the execution of a search warrant on February 17, 2017. (*See* Doc. 25 at 2). Here, Defendant moves to dismiss arguing that "the charged statute, 18 U.S.C. § 922(g)(1), unconstitutionally burdens his right under the Second Amendment to keep and bear arms." (*Id*. at 1). Specifically, Defendant argues that—

while he satisfied the elements of being a felon in possession of firearms—the categorical prohibition on felon possession contained in 18 U.S.C. § 922(g)(1) is unconstitutional as applied to those convicted of only non-violent felonies, which were not contemplated at the time of the ratification of the Second Amendment. (Doc. 25 at 4).

II. ANALYSIS

In *McDonald v. City of Chicago*, the United States Supreme Court provided that the individual right recognized by the Second Amendment to keep and bear arms is "fundamental to the American scheme of ordered liberty and deeply rooted in this Nation's history and traditions." 561 U.S. 742, 746 (2010) (internal quotation marks and citation omitted). The Supreme Court, however, has also observed that "[l]ike most rights, the Second Amendment right is not unlimited." *D.C. v. Heller*, 554 U.S. 570, 626 (2008). The Second Amendment right may be restricted by "presumptively lawful regulatory measures," including "longstanding prohibitions on the possession of firearms by felons and the mentally ill[.]" *Id*. at 626-27 n.26.

Here, Defendant concedes "that a facial challenge to 18 U.S.C. § 922(g)(1) is likely foreclosed by *Heller*," but seeks to mount an as-applied Second Amendment challenge to the law.[1] (Doc. 25 at 4). Defendant argues that the Supreme Court's decision in *Heller* implies that the prohibition on felon possession is a rebuttable presumption and, therefore, subject to an as-applied challenge. (*Id*.). While several U.S. Courts of Appeal have permitted as-applied challenges in this context,[2] the Ninth Circuit has not. *See United States v. Vongxay*, 594 F.3d 1111, 1115 (9th Cir. 2010) (holding that the

[1] This Court agrees that *Heller* forecloses the possibility of a facial challenge by explicitly listing the prohibition on felon possession as an example of a "presumptively lawful" regulation. 554 U.S. 570, 626-27 n.26.

[2] *See, e.g.*, *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."); *United States v. Torres-Rosario*, 658 F.3d 110, 113 (1st Cir. 2011) ("given the 'presumptively lawful' reference in *Heller*—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"); *United States v. Pruess*, 703 F.3d 242, 244-47 (4th Cir. 2012) (entertaining but rejecting an as-applied challenge to § 922(g)(1) by a felon).

prohibition on felon possession in 18 U.S.C. § 922(g)(1) does not violate the Second Amendment because, in part, "felons are categorically different from the individuals who have a fundamental right to bear arms"); *see also United States v. Phillips*, 827 F.3d 1171, 1174 (9th Cir. 2016) (holding that the Ninth Circuit's decision in *Vongxay* "forecloses" a defendant's argument that his non-violent felony conviction cannot constitutionally serve as a predicate for a conviction under §922(g)(1)). Although the Ninth Circuit did explain that "there are good reasons to be skeptical of the constitutional correctness of categorical, lifetime bans on firearm possession by *all* 'felons,'" binding precedent forecloses Defendant's argument before this Court. *Phillips*, 827 F.3d at 1174 (emphasis in original).[3]

Defendant further "contends that [*Vongxay* and *Phillips*] are wrongly decided" to the extent that they foreclose an as-applied challenge to 18 U.S.C. § 922(g)(1) because those cases effectively apply rational basis scrutiny regulations burdening the Second Amendment right, which *Heller* rejected as an insufficiently low level of scrutiny. (Doc. 25 at 9 (citing *Heller*, 554 U.S. at 628 n.27)). Defendant also argues that those cases effectively deem the presumption that a prohibition on felon possession is constitutionally valid to be irrebuttable, which contradicts the Supreme Court's reasoning in *Heller*. (*Id*. (citing *Heller*, 554 U.S. at 626-27 n.26)). This Court need not and may not fully resolve those arguments because "a district court [is] bound to follow the reasoning of prior circuit authority unless it ha[s] been 'effectively overrule[d]' or [is] 'clearly irreconcilable' with higher authority[.]" *Lopez v. Ryan*, CV-97-224-TUC-CKJ, 2015 WL 5817642, at *17 (D. Ariz. Oct. 6, 2015) (citing *United States v. Gonzalez-Zotelo*, 556 F.3d 736, 740–41 (9th Cir. 2009). Rather, "a decision by a panel of [the Ninth Circuit] is binding unless it is overruled by the court en banc or by the U.S. Supreme Court."

[3] In *Phillips*, the Ninth Circuit also observed that *Heller* only endorsed "longstanding" regulations limiting the individual right to firearm possession and named prohibition of felon possession in the process, but "courts and scholars are divided over how 'longstanding' these bans really are." 827 F.3d at 1174; *see also* C. Kevin Marshall, *Why Can't Martha Stewart Have a Gun?*, 32 HARV. J.L. & PUB. POL'Y 695, 708 (2009) (arguing that "one can with a good degree of confidence say that bans on convicts possessing firearms were unknown before World War I.").

Rodriguez-Martinez v. Holder, 498 Fed. Appx. 713, 714 (9th Cir. 2012) (citations omitted).

The Court observes that Defendant noted, in all candor, that "this Court may likely find that [Defendant's argument] is barred by current Ninth Circuit precedent," but Defendant "nevertheless files this motion to preserve his claims for appeal." (Doc. 25 at 1). That is precisely what this Court finds, as current Ninth Circuit precedent prevents this Court from entertaining an as-applied challenge to 18 U.S.C. § 922(g)(1) at this time. *See, e.g.*, *Vongxay*, 594 F.3d at 1114 ("Nothing in *Heller* can be read legitimately to cast doubt on the constitutionality of § 922(g)(1)"). The Ninth Circuit may, if it is so inclined, re-examine its holdings in *Vongxay* and *Phillips* en banc, in light of Defendant's arguments, but it is not the function of this Court to do so. Accordingly, this Court will not consider the merits of Defendant's as-applied challenge.

III. CONCLUSION

For the reasons stated above,

IT IS ORDERED that Defendant Israel Torres' Motion to Dismiss the Indictment (Doc. 25) is hereby **DENIED**.

Dated this 26th day of September, 2017.

James A. Teilborg
Senior United States District Judge

APPENDIX C

FILED

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MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. ISRAEL TORRES, Defendant-Appellant.	No. 18-10076 D.C. No. 2:17-cr-00265-JAT-1 District of Arizona, Phoenix ORDER

Before: BEA and LEE, Circuit Judges, and PIERSOL,* District Judge.

Judge Lee has voted to deny the petition for rehearing en banc. Judge Bea and Judge Piersol have recommended denial of the petition for rehearing en banc. The full court has been advised of the petition for rehearing en banc, and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35. The petition for rehearing en banc is DENIED.

* The Honorable Lawrence L. Piersol, United States District Judge for the District of South Dakota, sitting by designation.

APPENDIX D

Survey of State Offenses for DUI with minor in vehicle and DUI with suspended license

I. Driving Under the Influence with a Minor in the Vehicle

A. States that specifically criminalize this conduct as a felony

1. Arizona. Ariz. Rev. State. Ann. § 28-1383(A)(3), (O)(2) (Westlaw, current through February 18, 2020)
2. Indiana. Ind. Code § 9-30-5-3(a)(2)(c) (Westlaw, current through February 12, 2020)
3. New York. N.Y. Veh. & Traf. § 1192(2-a)(b) (Westlaw (McKinney), current through L.2019, Ch. 758 and L.2020, Ch. 21)
4. Texas. Tex. Penal Code Ann. § 49.045 (Westlaw, current through 2019 Reg. Sess.)

B. States that specifically criminalize this conduct as a misdemeanor

1. Connecticut. Conn. Gen. Stat. Ann. § 14-227(m) (Westlaw, current through 2020 Supp., Rev. of 1958)
2. Florida. Fla. Stat. Ann. § 316.193(4) (Westlaw, current through 2019 First Reg. Sess.)
3. Georgia. Ga. Code. Ann. §§ 16-12-1(d.1)(2), 40-6-391(l) (Westlaw, current through Laws 2020, Act 322)
4. Illinois. 625 Ill. Comp. Stat. 5/11-501(c)(3) (Westlaw, current through P.A. 109-629)
5. Maryland. Md. Code. Ann. Transp. § 21-902(a)(2) (Westlaw, current through 2019 Reg. Sess.)
6. Massachusetts. Mass. Gen. Laws. Ann. ch. 90, § 24V, 272 § 1 (Westlaw, current through Ch. 16 of 2020 2nd Ann. Sess.)
7. Michigan. Mich. Comp. Laws Ann. § 257.625(7)(a) (Westlaw, current through P.A.2020, No. 32, of 2020 Reg. Sess.)

8. Mississippi. Miss. Code Ann. § 63-11-30(12) (Westlaw, current through 2019 Reg. Sess.)
9. Missouri. Mo. Rev. Stat. § 577.010(2) (Westlaw, current through end of 2019 First Reg. Sess.)
10. Nebraska. Neb. Rev. Stat. Ann. § 28-1254 (Westlaw, current through February 13, 2020)
11. New Jersey. N.J. Stat. Ann. § 39:4-50.15 (Westlaw, current with laws through L.2019, c. 424 and J.R. No. 22)5
12. North Dakota. N.D. Cent. Code § 39-08-01.4 (Westlaw, current through January 1, 2020)
13. Pennsylvania. 75 Pa. Stat. and Cons. Stat. Ann. §§ 3802, 3803(5) (Westlaw, current through 2020 Reg. Sess. Act 8)
14. Rhode Island. 1956 R.I. Gen. Laws Ann. § 31-27-2(d)(5)(ii) (Westlaw, current through Ch. 310 of 2019 Reg. Sess.)
15. South Carolina. S.C. Code Ann. §§ 56-5-2947(A)-(D), 56-5-2930 (Westlaw, current through 2019 Sess.)
16. Utah. Utah Code Ann. § 41-6a-503(1)(b)(ii) (Westlaw, current through Ch. 1 of 2020 Gen. Sess.)
17. West Virginia. W. Va. Code Ann. §17C-5-2(k) (Westlaw, current through February 9, 2020)
18. Wisconsin. Wis. Stat. Ann. § 346.65(2)(f) (Westlaw, current through 2019 Act. 76)
19. Wyoming. Wyo. Stat. Ann. § 31-5-233(m) (Westlaw, current through 2019 Gen. Sess.)

C. States that use this conduct to enhance a DUI sentence

1. Alabama. Ala. Code § 32-5A-191(j) (Westlaw, current through Act 2019-540).
2. Arkansas. Ark. Code. Ann. § 5-65-111(a)(1)(B) (Westlaw, current through 2019 Reg. Sess.)

3. California. Cal. Veh. Code § 23572(a)(1) (Westlaw, current through Ch. 1 of 2020 Reg. Sess.)[1]
4. Delaware. See Del. Code Ann. tit. 21, § 4177(d)(10) (Westlaw, current through Ch. 232 of the 150th Gen. Ass. (2019-2020))
5. District of Columbia. D.C. Code Ann. § 50-2206.18. (Westlaw, current through January 29, 2020)
6. Hawaii. Haw. Rev. Stat. Ann. § 291E-61(b)(3) (Westlaw, current through end of 2019 Reg. Sess.)
7. Kansas. Kan. Stat. Ann. § 8-1567(c) (Westlaw, current through laws effect. July 1, 2019)
8. Kentucky. Ky. Rev. Stat. Ann. § 189A.010(5), (11)(f) (Westlaw, current through Ch. 1 of 2020 Reg. Sess.)
9. Louisiana. La. Stat. Ann. § 14:98(J) (Westlaw, current through 2019 Reg. Sess.)
10. Maine. Me. Rev. Stat. Ann. tit. 29, § 2411(5)(A)(3)(a)(iv) (Westlaw, current through 2019 First Reg. Sess.)
11. Minnesota. Minn. Stat. Ann. §§ 169A.26, 609.02 (Westlaw, current through January 1, 2020)
12. Montana. Mont. Code Ann. § 61-8-7465(2)(b) (Westlaw, current through 2019 Sess.)
13. New Hampshire. N.H. Rev. Stat. Ann. § 265-A:18(VIII) (Westlaw, current through Ch. 4 of 2020 Reg. Sess.)
14. North Carolina. N.C. Gen. Stat. Ann. §§ 20-179(c)(4), (g) (Westlaw, current through end of 2019 Reg. Sess.)
15. Oregon. Or. Rev. Stat. Ann. § 813.010(7) (Westlaw, current through legislation eff. January 1, 2020)

[1] Cal. Veh. Code § 23572 implies that this conduct may also be a violation of Cal. Pen. Code § 273(a), Child Endangerment.

16. Tennessee. Tenn. Code Ann. § 55-10-402(b)(1) (Westlaw, current with laws eff. through January 24, 2020)
17. Virginia. Va. Code Ann. § 18.2-270(D) (Westlaw, current through 2019 Reg. Sess.)
18. Washington. Wash. Rev. Code Ann. §46.61.5055(6) (Westlaw, current with Ch. 2 of 2020 Reg. Sess.)

D. State that uses this conduct as an aggravating factor in sentencing

1. Nevada. Nev. Rev. Stat. Ann. § 484C.410(5) (Westlaw, current through end of 80th Reg. Sess. (2019))

E. States that address this conduct under felony child endangerment statutes

1. Colorado. Colo. Rev. Stat. § 18-6-401(1)(a), (b)(I), (b)(II) (Westlaw, current through end of 2019 Reg. Sess.)
2. Iowa. Iowa Code Ann. §726.6 (Westlaw, current through 2019 Reg. Sess.)
3. New Mexico. N.M. Stat. Ann. § 30-6-1 (Westlaw, current through Ch. 2 of Second Reg. Sess. 2020)
4. Oklahoma. Okla. Stat. Ann. tit. 21 § 852.1 (Westlaw, current through First Reg. Sess. 2019)

F. States that address this conduct under misdemeanor child endangerment statutes

1. Alaska. Alaska Stat. § 11.51.100(b)(e) (Westlaw, current through 2019 First Reg. Sess.)
2. Idaho. Idaho Code Ann. § 18-1501 (Westlaw, current through 2020 Second Reg. Sess.)
3. Ohio. Ohio Rev. Code. Ann. § 2919.22 (Westlaw, current through File 27 of 133rd Gen. Ass. (2019-2020))

II. Driving Under the Influence with a Suspended License

A. States that specifically criminalize this conduct as a felony

1. Arizona. Ariz. Rev. State. Ann. § 28.15.291(a)(1), (b)(1) (Westlaw, current through February 18, 2020)
2. New York. See N.Y. Veh. & Traf. § 511(3) (Westlaw (McKinney), current through L.2019, ch. 758 and L.2020, chp. 21)

B. States that specifically criminalize this conduct as a misdemeanor

1. Kentucky. Ky. Rev. Stat. Ann. §§ 189A.090(2)(a) (Westlaw, current through Ch. 1 of 2020 Reg. Sess.)
2. Massachusetts. Mass. Gen. Laws. Ann. ch. 90 § 23, 272 § 1 (Westlaw, current through Ch. 16 of the 2020 2nd Ann. Sess.)
3. Pennsylvania. 75 Pa. Stat. and Cons. Stat. Ann. § 1543(b)(1.1) (Westlaw, current through 2020 Reg. Sess. Act 8)
4. Texas. Tex. Transp. Code Ann. Transportation Code § 521.457(f-1) (Westlaw, current through end of 2019 Reg. Sess.)

C. States that address this conduct under driving with suspended license statute

1. Alabama. Ala. Code § 32-6-19(a)(1) (Westlaw, current through Act 2019-540)
2. Alaska. Alaska Stat. § 28.15.291(a)(1), (b)(1) (Westlaw, current through 2019 First Reg. Sess. And 2019 First Special Sess.)
3. Arkansas. Ark. Code. Ann. § 5-65-105 (Westlaw, current through 2019 Reg. Sess.)
4. California. Cal Veh. Code § 14601.2(a), (d)(1) (Westlaw, current through Ch. 1 of 2020 Reg. Sess.)

5. Colorado. Colo. Rev. Stat. § 42-2-138(d)(I) (Westlaw, current through end of 2019 Reg. Sess.)
6. Connecticut. Conn. Gen. Stat. Ann. § 14-215(c)(1) (Westlaw, current through 2020 Supp., Rev. of 1958)
7. Delaware. Del. Code Ann. tit. 21, § 4177(d)(10) (Westlaw, current through Ch. 232 of 150th Gen. Ass. (2019-2020))
8. District of Columbia. D.C. Code Ann. § 50-1403.01(e) (Westlaw, current through January 29, 2020)
9. Florida. Fla. Stat. Ann. §§ 322.34 (Westlaw, current through 2019 First Reg. Sess.)10
10. Georgia. Ga. Code. Ann. § 40-5-121(a) (Westlaw, current through Laws 2020, Act 322)
11. Hawaii. Haw. Rev. Stat. Ann. § 291E-62(a), (c)(1)(A) (Westlaw, current through end of 2019 Reg. Sess.)
12. Idaho. Idaho Code Ann. § 18-8001 (Westlaw, current through 2020 Second Reg. Sess.)
13. Illinois. 625 Ill. Comp. Stat. 5/6-303(a), (c)(1) (Westlaw, current through P.A. 101-629)
14. Indiana. Ind. Code § 9-24-19-3 (Westlaw, current through February 12, 2020)
15. Iowa. Iowa Code Ann. § 321J.21 (Westlaw, current through 2019 Reg. Sess.)
16. Kansas. Kan. Stat. Ann. § 8-262 (Westlaw, current through laws effect. July 1, 2019)
17. Louisiana. La. Stat. Ann. § 32:415(C), (D)(1) (Westlaw, current through 2019 Reg. Sess.)
18. Maine. Me. Rev. Stat. Ann. tit. 29, §2412-A (Westlaw, current through 2019 First Reg. Sess.)
19. Maryland. Md. Code. Ann. Transp. § 16-303 (Westlaw, current through 2019 Reg. Sess.)
20. Michigan. Mich. Comp. Laws Ann. § 257.904) (Westlaw, current through P.A.2020, No. 32, of the 2020 Reg. Sess.)

21. Minnesota. Minn. Stat. Ann. §§ 171.24(1), 609.02 (Westlaw, current through January 1, 2020)
22. Mississippi. Miss. Code Ann. § 63-11-40 (Westlaw, current through 2019 Reg. Sess.)
23. Missouri. Mo. Rev. Stat. §§ 302.321.2 (Westlaw, current through end of 2019 First Reg. Sess.)
24. Montana. Mont. Code Ann. § 61-5-212(b)(ii) (Westlaw, current through 2019 Sess.)
25. Nebraska. Neb. Rev. Stat. Ann. § 60-4,108 (Westlaw, current through February 13, 2020)
26. Nevada. Nev. Rev. Stat. Ann. § 483.560(2) (Westlaw, current through end of 80th Reg. Sess. (2019))
27. New Hampshire. N.H. Rev. Stat. Ann. § 263:64 (Westlaw, current through Ch. 4 of 2020 Reg. Sess.)
28. New Jersey. N.J. Stat. Ann. § 39:3-40(a) (Westlaw, current with laws through L.2019, c. 424 and J.R. No. 22)
29. New Mexico. N.M. Stat. Ann. § 66-5-39(A) (Westlaw, current through Ch. 2 of Second Reg. Sess. 2020)
30. North Carolina. N.C. Gen. Stat. Ann. § 20-28(a1) (Westlaw, current through end of 2019 Reg. Sess.)
31. North Dakota. N.D. Cent. Code § 39-06-42(1) (Westlaw, current through January 1, 2020)
32. Ohio. Ohio Rev. Code. Ann. § 4510.1 (Westlaw, current through File 27 of 133rd Gen. Ass. (2019-2020))
33. Oklahoma. Okla. Stat. Ann. tit. 47 § 6-303(C) (Westlaw, current through First Reg. Sess. 2019)
34. Oregon. Or. Rev. Stat. Ann. § 811.182(4) (Westlaw, current through legislation eff. January, 2020)
35. Rhode Island. 1956 R.I. Gen. Laws Ann. § 31-11-18.1, 31-27-13 (Westlaw, current through Ch. 310 of 2019 Reg. Sess.)
36. South Carolina. S.C. Code Ann. 1976 § 56-1-460(A)(2) (Westlaw, current through 2019 Sess.)

37. South Dakota. S.D. Codified Laws § 32-12-65 (Westlaw, current through 2019 Sess. Laws)
38. Tennessee. Tenn. Code Ann. § 55-50-504(a)(1) (Westlaw, current with laws eff. through January 24, 2020)
39. Utah. Utah Code Ann. § 53-3-227(3)(a) (Westlaw, current through Ch. 1 of 2020 Gen. Sess.)
40. Vermont. Vt. Stat. Ann. tit. 21 § 674(b) (Westlaw, current through 2019-2020 Reg. Sess.)
41. Virginia. Va. Code Ann. § 18.2-272 (Westlaw, current through 2019 Reg. Sess.)
42. Washington. Wash. Rev. Code Ann. § 46.20.342(1) (Westlaw, current with Ch. 2 of 2020 Reg. Sess.)
43. West Virginia. W. Va. Code Ann. § 17B-4-3(b) (Westlaw, current through February 9, 2020)
44. Wisconsin. Wis. Stat. Ann. § 343.44(2)(ar)(2) (Westlaw, current through 2019 Act 76)
45. Wyoming. Wyo. Stat. Ann. §31-7-134(c) (Westlaw, current through 2019 Gen. Sess.)