APPENDIX A

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

19-11433

D.C. Docket No. 1:18-cv-01531-TCB

KENNETH E. FLICK,

Plaintiff-Appellant,

versus

ATTORNEY GENERAL,
DEPARTMENT OF JUSTICE,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Georgia

(July 20, 2020)

Before WILSON and JILL PRYOR, Circuit Judges, and CORRIGAN,* District Judge.

PER CURIAM:

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* Honorable Timothy J. Corrigan, United States District Judge for the Middle District of Florida, sitting by designation.

Kenneth Flick appeals the district court's grant of the government's motion to dismiss his complaint alleging that 18 U.S.C. § 922(g)(1)—which prohibits felons from possessing firearms—violates the Second Amendment as applied to him.[1]

In 1987, Flick pled guilty to (1) copyright infringement, in violation of 17 U.S.C. § 506(a) (1982) and 18 U.S.C. § 2319(b)(1)(A) (1982), and (2) smuggling goods into the United States, in violation of 18 U.S.C. § 545 (1954). At the time, both crimes were felonies punishable by imprisonment of up to five years. 18 U.S.C. §§ 2319(b)(1)(A) (1982), 545 (1954) (amended in 2005 to make smuggling punishable by imprisonment of up to 20 years). Flick was sentenced to four months in a halfway house on the smuggling charge and five years' probation on the copyright charge and was ordered to pay $184,549 in restitution to the Recording Industry Association of America. Flick's sentence was later reduced to two years' probation and $60,000 in restitution. Flick contends he has led an exemplary life following his guilty plea, and he now seeks to purchase a firearm. He claims that given his law-abiding history

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[1] As an initial matter, we determine that Flick has standing to challenge the constitutionality of § 922(g)(1) even though he has not yet been prosecuted under that statute. Flick has an injury in fact because he is prohibited from possessing a firearm without being subject to prosecution by § 922(g)(1). *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992). Moreover, that injury is caused by § 922(g)(1) because Flick's home state of Georgia restored his civil and political rights, including the right to bear arms, and the injury would be redressed by a holding that § 922(g)(1) is unconstitutional as applied to Flick. *See id.*

since his conviction, § 922(g)(1) violates the Second Amendment as applied to him.

In *United States v. Rozier*, this Court affirmed the rejection of a constitutional challenge to § 922(g)(1), concluding that "statutes disqualifying felons from possessing a firearm under any and all circumstances do not offend the Second Amendment." 598 F.3d 768, 771 (11th Cir. 2010). Flick contends that because *Rozier* was a facial constitutional challenge rather than an as-applied challenge, it does not apply to his as-applied challenge. We disagree.

In *Rozier*, we specifically addressed Rozier's individual circumstances as a felon before holding that § 922(g)(1) was a permissible restriction on his Second Amendment right. *See id.* at 770, 772 (assuming that Rozier "possessed the handgun for self-defense" but concluding that "[t]he circumstances surrounding Rozier's possession . . . are irrelevant" because of his status as a felon). Our reasoning in *Rozier* applies equally to Flick's as-applied challenge and thus forecloses it. *See United States v. Vega-Castillo*, 540 F.3d 1235, 1236 (11th Cir. 2008) ("[W]e are bound to follow a prior binding precedent unless and until it is overruled by this court en banc or by the Supreme Court." (internal quotation marks omitted)). The district court correctly applied *Rozier* and dismissed Flick's complaint. Accordingly, we affirm the dismissal.

AFFIRMED.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

KENNETH E. FLICK, Plaintiff, v. JEFFERSON B. SESSIONS, III, Attorney General, U.S. Department of Justice in his official capacity as well as his successors and assigns, Defendant.	CIVIL ACTION FILE NO. 1:18-cv-1531-TCB (Filed Feb. 12, 2019)

ORDER

This case comes before the Court on Defendant Jefferson Sessions's motion [19] to dismiss Plaintiff Kenneth Flick's complaint.[1]

I. Factual Background

In 1986, Flick pleaded guilty to copyright violation under then 18 U.S.C. § 2319(b)(1)(A) and smuggling pursuant to 18 U.S.C. § 545, both of which are felonies. He was sentenced to four months in a halfway house on the smuggling charge and five years (later reduced to two) of probation on the copyright charge. The

[1] Also before the Court is Plaintiff's motion [24] for oral argument; this motion is denied.

crimes are punishable by imprisonment of up to twenty and five years, respectively.

Flick contends that following his guilty plea he has led an exemplary life. Now, he seeks to purchase a firearm. He filed this lawsuit, pleading that 18 U.S.C. § 922(g)(1),[2] which prohibits felons from possessing firearms, violates the Second Amendment as applied to him.

Flick filed his complaint in the United States District Court for the District of Columbia, but that court transferred the case to this Court. [12]. Sessions has moved to dismiss Flick's complaint, arguing that Flick fails to state a claim upon which relief can be granted.

II. Legal Standard

To survive a Rule 12(b)(6) motion, a plaintiff must plead "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007); *see also Chandler v. Sec'y of Fla. Dep't of Transp.*, 695 F. 3d 1194, 1199 (11th Cir. 2012). The Supreme Court has explained this standard as follows:

> A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that

[2] Section 922(g) provides in relevant part: "It shall be unlawful for any person—(1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year; . . . to . . . possess in or affecting commerce, any firearm or ammunition. . . ."

> the defendant is liable for the misconduct alleged. The plausibility standard is not akin to a "probability requirement," but it asks for more than a sheer possibility that a defendant has acted unlawfully.

Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citation omitted); *see also Resnick v. AvMed, Inc.*, 693 F.3d 1317, 1324–25 (11th Cir. 2012).

Thus, a claim will survive a motion to dismiss only if the factual allegations in the complaint are "enough to raise a right to relief above the speculative level. . . ." *Twombly*, 550 U.S. at 555–56 (citations omitted). "[A] formulaic recitation of the elements of a cause of action will not do." *Id.* at 555 (citation omitted). While all well-pleaded facts must be accepted as true and construed in the light most favorable to the plaintiff, *Powell v. Thomas*, 643 F.3d 1300, 1302 (11th Cir. 2011), the Court need not accept as true the plaintiff's legal conclusions, including those couched as factual allegations, *Iqbal*, 556 U.S. at 678.

III. Legal Standard

Flick brings an as-applied challenge to 18 U.S.C. § 922(g)(1), which "addresses whether 'a statute is unconstitutional on the facts of a particular case or to a particular party.'" *Harris v. Mexican Specialty Foods, Inc.*, 564 F.3d 1301, 1308 (11th Cir. 2009) (quoting BLACK'S LAW DICTIONARY (7th ed. 1999)).

Second Amendment challenges involve a two-step analysis: (1) whether the subject or conduct restricted

by the relevant statute or regulation falls within the Second Amendment's protections; and (2) if so, application of the appropriate level of scrutiny. *See*, *e.g.*, *Medina v. Sessions*, 279 F. Supp. 3d 281, 289 (D.D.C. 2017), *aff'd sub nom. Medina v. Whitaker*, 913 F.3d 152 (D.C. Cir. 2019); *see also United States v. Rozier*, 598 F.3d 768, 770 (11th Cir. 2010) ("[T]he first question to be asked is not whether the handgun is possessed for self-defense or whether it is contained within one's home, rather the initial question is whether one is *qualified* to possess a firearm.").[3]

Flick's claim fails at the first step. Although "the Second Amendment guarantees an individual right, that right is not without its limits." *United States v. Focia*, 869 F.3d 1269, 1285 (11th Cir. 2017). One such limit is the "longstanding prohibition[] on the possession of firearms by felons. . . ." *Rozier*, 598 F.3d at 771 (quoting *Dist. of Columbia v. Heller*, 554 U.S. 570, 626 (2008)). The holding of *Heller* assumed "that Heller [was] not disqualified from the exercise of Second Amendment rights. . . ." *Id.* at 770 (quoting *Heller*, 554 U.S. at 635 (emphasis omitted)).

Here, "the most relevant modifier, as to the question of qualification, is 'felon.'" *Id.* Flick's "status as [a

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[3] Flick argues that only a one-step analysis is required: that of applying the appropriate level of scrutiny to the challenged statute. However, the authority he cites for this proposition does not support a single-step analysis for a claim under § 922(g)(1). The Court is not aware of any § 922(g)(1) case in which a court skipped over the critical first step of determining whether an individual falls within the protections of the Second Amendment.

felon] substantially affects the level of protection those rights are accorded" such that he is "disqualified from the exercise of Second Amendment rights." *Id.* at 71 (quoting *Heller*, 554 U.S. at 635). "Thus, 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. [Flick], by virtue of his felony conviction, falls within such a class." *Id.* at 771. As the Eleventh Circuit explicitly held, "statutes disqualifying felons from possessing a firearm under any and all circumstances do not offend the Second Amendment." *Id.*; *see also Focia*, 869 F.3d at 1285–86 (holding that felon dispossession laws "comport with the Second Amendment because they affect individuals or conduct unprotected by the right to keep and bear arms").

Flick argues that *Rozier* is distinguishable because it involved a facial challenge, not an as-applied challenge. The Court is not persuaded. There, the plaintiff argued that "his possession of a handgun was in the home and for the purposes of self-defense[.]" 598 F.3d at 770. Flick similarly argues that he is "entitled to use arms in defense of hearth and home." [22] at 23. Even if *Rozier*'s holding was construed as explicitly barring only facial challenges, other courts within the Eleventh Circuit have held that § 922(g)(1) does not violate the Second Amendment either on its face or as applied. *See*, *e.g.*, *United States v. Jones*, 673 F. Supp. 2d 1347, 1352 (N.D. Ga. 2009).[4] Courts in

[4] Flick points to the statement from *Jones* that "[w]hile Defendant frames his argument as an as-applied challenge, it

different circuits have reached similar conclusions. *See*, *e.g.*, *Hamilton v. Pallozzi*, 848 F.3d 614, 626 (4th Cir. 2017); *United States v. Scroggins*, 599 F.3d 433, 451 (5th Cir. 2010).

The Court concludes that, based on Eleventh Circuit precedent, § 922(g)(1) does not violate the Second Amendment as applied to Flick. *Accord United States v. Dowis*, 644 F. App'x 882, 883 (11th Cir. 2016) (holding that plaintiff's challenge to the constitutionality of § 922(g)(1) was foreclosed by the Eleventh Circuit's prior precedent).

Flick's argument that his underlying felony convictions were nonviolent does not change the analysis. *See United States v. White*, 593 F.3d 1199, 1206 (11th Cir. 2010) ("[B]oth an armed robber and tax evader lose their right to bear arms on conviction under § 922(g)(1)."). Further, Flick's argument that he has been rehabilitated does not alter the outcome. *See Hamilton*, 848 F.3d at 626–27 (holding that evidence of

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appears in fact to be a facial challenge to the statute. . . ." 673 F. Supp. 2d at 1351. However, the court nonetheless held that neither had merit. *Id*. at 1351. ("Defendant has cited no case authority for his position that the Second Amendment right recognized in *Heller* extends to felons, or to certain sub-categories of felons, and the undersigned has found none. . . . Nor has the Defendant provided the court with any authority or persuasive reason for distinguishing himself from the class of 'felons' to which the Supreme Court refers in *Heller* as being lawfully prohibited from possessing firearms."). Just as the Defendant in *Jones* failed to distinguish himself from the class of felons that are lawfully prohibited from possession firearms, Flick, as discussed *infra*, also has failed to distinguish himself from that class.

rehabilitation is not a basis upon which a challenger might remain in the class of law-abiding citizens).

Accordingly, the Court finds that Flick has failed to show that he is qualified to possess a firearm under the two-step analysis. The Court therefore declines to address the appropriate level of scrutiny for Second Amendment challenges. The cardinal principle of judicial restraint is that "if it is not necessary to decide more, it is necessary not to decide more." *Morse v. Frederick*, 551 U.S. 393, 431 (2007) (Breyer, J., concurring in part and dissenting in part) (quoting *PDK Labs., Inc. v. DEA*, 362 F.3d 786, 799 (D.C. Cir. 2004) (Roberts, J., concurring in part and concurring in judgment).

III. Conclusion

For the foregoing reasons, Defendant's motion [19] to dismiss is granted. The Clerk is directed to close this case.

IT IS SO ORDERED this 12th day of February, 2019.

/s/ Timothy C. Batten, Sr.
Timothy C. Batten, Sr.
United States District Judge

APPENDIX C

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

KENNETH E. FLICK, *Plaintiff*, v. JEFFERSON B. SESSIONS III, Attorney General, U.S. Department of Justice, in his Official Capacity, *Defendant*.	Civil Action No. 17-529 (TJK)

MEMORANDUM OPINION AND ORDER

(Filed Mar. 30, 2018)

Plaintiff resides in Douglasville, Georgia, located in the Northern District of Georgia. ECF No. 1 ("Compl.") ¶ 7. In 1987, he pleaded guilty in the U.S. District Court for the Northern District of Georgia to federal copyright-infringement and smuggling charges. *Id.* ¶¶ 11, 13. As a result of these felony convictions, Plaintiff is prohibited by federal statute, 18 U.S.C. § 922(g)(1), from possessing firearms or ammunition. Compl. ¶ 7. Plaintiff claims that this prohibition, as applied to him, violates his rights under the Second Amendment to the U.S. Constitution, because his crimes occurred long ago and did not involve violence, and because he is now a responsible and law-abiding citizen. *Id.* ¶¶ 64-66.

Defendant has moved to transfer the case to the Northern District of Georgia pursuant to 28 U.S.C. § 1404(a) or, alternatively, to dismiss it. ECF No. 8 ("Def.'s Br."); *see also* ECF No. 10 ("Pl.'s Opp'n"); ECF No. 11 ("Def.'s Reply"). As explained below, the motion will be granted, and the case will be transferred to the Northern District of Georgia.

I. Legal Standard

Section 1404(a) provides that any case may be transferred "[f]or the convenience of parties and witnesses, in the interest of justice, . . . to any other district or division where it might have been brought." 28 U.S.C. § 1404(a). The moving party bears the heavy burden of making a decisive showing that transfer is proper. *Thayer/Patricof Educ. Funding, L.L.C. v. Pryor Res., Inc.*, 196 F. Supp. 2d 21, 31 (D.D.C. 2002). "In evaluating a motion to transfer, a court may weigh several private- and public-interest factors." *Mazzarino v. Prudential Ins. Co. of Am.*, 955 F. Supp. 2d 24, 28 (D.D.C. 2013). "If the balance of private and public interests favors a transfer of venue, then a court may order a transfer." *Id.*

II. Analysis

A. Potential Prejudice to Plaintiff from Proceeding under the Law of the Transferee Court

Before turning to the familiar private- and public-interest factors that govern a transfer-of-venue

analysis, the Court must address a threshold issue that Plaintiff has raised. He argues that this case cannot be transferred to the Northern District of Georgia because he would suffer prejudice if he had to proceed under the law of the Eleventh Circuit. He claims that D.C. Circuit law is favorable to him, and specifically, he relies on dictum in *Schrader v. Holder*, 704 F.3d 980 (D.C. Cir. 2013). *See* Pl.'s Opp'n at 6. The *Schrader* court considered—and rejected—a classwide challenge to § 922(g)(1)'s ban on firearm possession as applied to misdemeanants. *See* 704 F.3d at 991. The court noted that the plaintiff in that case had not brought a challenge to the law as it applied to him individually, and opined that Congress might consider funding an existing mechanism for relief from § 922(g)(1) lest the statute "remain vulnerable to a properly raised as-applied constitutional challenge." *Id.* at 992. Plaintiff argues that similarly "favorable" case law is lacking in the Eleventh Circuit, and that courts in the Northern District of Georgia have dismissed as-applied challenges by felons. *See* Pl.'s Opp'n at 8-9.

Plaintiff's threshold objection fails. As an initial matter, his reference to *Schrader*'s dictum notwithstanding, Plaintiff has not identified a difference in law between the two jurisdictions. Plaintiff points to no binding authority in the D.C. Circuit or the Eleventh Circuit that controls the sort of as-applied challenge he seeks to bring. *See* Pl.'s Opp'n at 6-9.

And even if there were differences in circuit law, they would not prevent a transfer of venue under § 1404(a) here. Certainly, Plaintiff cites no authority

actually supporting that proposition. To the contrary, "[i]n federal-question cases, transfer is permissible even when the transferee forum is in a circuit that has interpreted a federal law differently than the circuit of the transferor forum." *Sierra Club v. Flowers*, 276 F. Supp. 2d 62, 69 n.4 (D.D.C. 2003). That is because "the federal courts comprise a single system in which each tribunal endeavors to apply a single body of law." *Id.* (quoting *In re Korean Air Lines Disaster of Sept. 1, 1983*, 829 F.2d 1171, 1175 (D.C. Cir. 1987)).

Therefore, the Court proceeds to the well-recognized framework for analyzing a motion to transfer venue. The parties agree that this action might have been brought in the Northern District of Georgia. Def.'s Br. at 6; Pl.'s Opp'n at 10; *see also* 28 U.S.C. § 1391(e)(1). The Court will therefore weigh the private- and public-interest factors to determine if they justify a transfer.

B. Private-Interest Factors

The private-interest considerations that a court may weigh in evaluating a motion to transfer venue include: "(1) the plaintiff's choice of forum; (2) the defendant's preferred forum; (3) the location where the claim arose; (4) the convenience of the parties; (5) the convenience of witnesses; and (6) ease of access to sources of proof." *Mazzarino*, 955 F. Supp. 2d at 28.

The first factor, the plaintiff's choice of forum, weighs slightly against transfer. The plaintiff's choice usually receives deference, especially when the plaintiff brings suit in his home district. *Id.* at 29. But the

plaintiff's choice is entitled to little or no deference where "the parties, facts, and claims . . . lack any significant connection to the District of Columbia." *Id.* at 30. The mere fact that the defendant can be sued in the forum is not enough, particularly where the defendant is subject to suit nationwide. *See id.* Plaintiff argues that his choice of forum is due extra deference because the law in this Circuit is, he claims, more favorable to him. Pl.'s Opp'n at 10. But this does not weigh against transfer. To the contrary, "a court should be vigilant to possible forum shopping, especially when the underlying case has little or no connection to the district in which it sits." *Mazzarino*, 955 F. Supp. 2d at 30. And that is doubly true where a plaintiff, by "naming high government officials as defendants," seeks to "bring a suit here that properly should be pursued elsewhere." *Cameron v. Thornburgh*, 983 F.2d 253, 256 (D.C. Cir. 1993). Given the lack of any meaningful connection between the case and this District, as well as Plaintiff's apparent forum shopping, this factor is arguably neutral. Nonetheless, the Court will assume for purposes of its analysis that this factor weighs slightly against transfer.

The second factor, the defendant's preferred forum, slightly favors transfer, as Plaintiff concedes. Pl.'s Opp'n at 11. While this factor does not weigh strongly here, "the weight of a defendant's choice of forum may be strengthened when the weight of the plaintiff's choice is comparatively weak." *Mazzarino*, 955 F. Supp. 2d at 31 (quoting *Virts v. Prudential Life Ins. Co. of Am.*, 950 F. Supp. 2d 101, 106 (D.D.C. 2013)).

The third factor, the location where the claim arose, strongly favors transfer. Plaintiff argues that it favors him, because Defendant enforces the federal firearms laws from the District of Columbia. Pl.'s Opp'n at 10-11. This argument is meritless. "[V]enue is not appropriate in the District of Columbia, where 'the only real connection [the] lawsuit has to the District of Columbia is that a federal agency headquartered here is charged with generally regulating and overseeing the [administrative] process.' " *Shawnee Tribe v. United States*, 298 F. Supp. 2d 21, 26 (D.D.C. 2002) (alterations in original) (quoting *DeLoach v. Philip Morris Cos.*, 132 F. Supp. 2d 22, 25 (D.D.C. 2000)). In fact, it is clear that Plaintiff's claim arose in the Northern District of Georgia. That is where his 1987 convictions occurred and where he has resided for the last thirty years. *See* Compl. ¶¶ 13, 24. Moreover, Plaintiff alleges that his work as a successful businessman and philanthropist supports his constitutional claim, and those activities largely took place near his home. *See id.* ¶¶ 26-39. He also relies on the fact that the State of Georgia has restored his rights to firearm ownership under state law. *See id.* ¶ 41. Finally, he claims that his desire to own firearms stems in part from his experiences as a victim of burglaries at his home. *See id.* ¶¶ 53-57. In short, the facts of this case overwhelmingly—indeed, perhaps exclusively—took place in the Northern District of Georgia. Therefore, this factor strongly favors transfer.

The parties agree that the fourth, fifth and sixth factors are neutral. *See* Def.'s Br. at 7; Pl.'s Opp'n at 11.

Taken together, the private-interest factors clearly weigh in favor of transfer. To the extent the first factor tips against transfer, it is vastly outweighed by the second and third.

C. Public-Interest Factors

Public-interest considerations relevant to a transfer-of-venue analysis include: "(1) the transferee's familiarity with the governing law; (2) the relative congestion of the courts of the transferor and potential transferee; and (3) the local interest in deciding local controversies at home." *Mazzarino*, 955 F. Supp. 2d at 28.

The parties agree that the first factor is neutral. *See* Def.'s Br. at 8; Pl.'s Opp'n at 11.

The parties also agree that the second factor, congestion of the courts, favors transfer. *See* Def.'s Br. at 8; Pl.'s Opp'n at 11-12. Defendant attaches an exhibit showing that, while the Northern District of Georgia has a higher caseload, civil matters proceed much more quickly there than in this District. *See* ECF No. 8-1.

The third factor, the "local interest in deciding local controversies," weighs strongly in favor of transfer. Plaintiff disagrees, arguing that he "seeks the restoration of his firearm rights, which have been banned not just locally in Georgia but throughout the United States." Pl.'s Opp'n at 12. But Plaintiff conveniently ignores the fact that he brings an as-applied, not facial, challenge to the statute. He wishes to own firearms "for

sport and for self-defense within his own home." Compl. ¶ 7. Clearly, those most affected by the outcome of this case will be Plaintiff, his family, and the surrounding community in the Northern District of Georgia. Therefore, this factor strongly favors transfer.

Together, the public-interest factors weigh in favor of transfer. And when they are combined with the private-interest factors, the case for transfer is overwhelming.

III. Conclusion and Order

Therefore, the Court hereby **ORDERS** that Defendant's motion (ECF No. 8) is **GRANTED**. The action shall be transferred to the U.S. District Court for the Northern District of Georgia.

SO ORDERED.

/s/ Timothy J. Kelly
TIMOTHY J. KELLY
United States District Judge

Date: March 30, 2018

APPENDIX D

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 19-11433-EE

KENNETH E. FLICK,

Plaintiff-Appellant,

versus

ATTORNEY GENERAL,
DEPARTMENT OF JUSTICE,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Georgia

(Filed Oct. 21, 2020)

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

Before WILSON and JILL PRYOR, Circuit Judges, and CORRIGAN,* District Judge.

PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc.

(FRAP 35) The Petition for Rehearing En Banc is also treated as a Petition for Rehearing before the panel and is DENIED. (FRAP 35, IOP2)

ORD-42

APPENDIX E

U.S. Const. amend. II:

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.

17 U.S.C. § 506(a) (1982):

Any person who infringes a copyright willfully and for purposes of commercial advantage or private financial gain shall be punished as provided in section 2319 of title 18.

18 U.S.C. § 545 (1982):

Whoever knowingly and willfully, with intent to defraud the United States, smuggles, or clandestinely introduces into the United States any merchandise which should have been invoiced, or makes out or passes, or attempts to pass, through the customhouse any false, forged, or fraudulent invoice, or other document or paper; or

Whoever fraudulently or knowingly imports or brings into the United States, any merchandise contrary to law, or receives, conceals, buys, sells, or in any manner facilitates the transportation, concealment, or sale of such merchandise after importation, knowing the same to have been imported or brought into the United States contrary to law—

Shall be fined not more than $10,000 or imprisoned not more than five years, or both.

Proof of defendant's possession of such goods, unless explained to the satisfaction of the jury, shall be deemed evidence sufficient to authorize conviction for violation of this section.

Merchandise introduced into the United States in violation of this section, or the value thereof, to be recovered from any person described in the first or second paragraph of this section, shall be forfeited to the United States.

The term "United States", as used in this section, shall not include the Philippine Islands, Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, or Guam.

18 U.S.C. § 921:

(a) As used in this chapter—

* * *

(20) The term "crime punishable by imprisonment for a term exceeding one year" does not include—

(A) 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, or

(B) any State offense classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of two years or less.

What constitutes a conviction of such a crime shall be determined in accordance with the law of the jurisdiction in which the proceedings were held. Any conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction for purposes of this chapter, unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

18 U.S.C. § 922(g)(1):

18 U.S.C. § 922: Unlawful acts

* * *

(g) It shall be unlawful for any person—

(1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

* * *

to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

18 U.S.C. § 924(a)(2):

Whoever knowingly violates subsection (a)(6), (d), (g), (h), (i), (j), or (o) of section 922 shall be fined as provided in this title, imprisoned not more than 10 years, or both.

18 U.S.C. § 2319 (1982):

(a) Whoever violates section 506(a) (relating to criminal offenses) of title 17 shall be punished as provided in subsection (b) of this section and such penalties shall be in addition to any other provisions of title 17 or any other law.

(b) Any person who commits an offense under subsection (a) of this section—

> (1) shall be fined not more than $250,000 or imprisoned for not more than five years, or both, if the offense—
>
> > (A) involves the reproduction or distribution, during any one-hundred-and-eighty-day period, of at least one thousand phonorecords or copies infringing the copyright in one or more sound recordings;
>
> * * *
