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APPENDIX A

United States Court of Appeals
For The Eighth Circuit
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St. Louis, Missouri 63102

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June 14, 2017

Ms. Laine Cardarella
FEDERAL PUBLIC DEFENDER'S OFFICE
Suite 300
818 Grand Avenue
Kansas City, MO 64106-0000

RE: 16-1936 United States v. Wansolo Hughley

Dear Counsel:

The court has issued an opinion in this case. Judgment has been entered in accordance with the opinion. The opinion will be released to the public at 10:00 a.m. today. Please hold the opinion in confidence until that time.

Please review Federal Rules of Appellate Procedure and the Eighth Circuit Rules on post-submission procedure to ensure that any contemplated filing is timely and in compliance with the rules. Note particularly that petitions for rehearing and petitions for rehearing en banc must be received in the clerk's office within 14 days of the date of the entry of judgment. Counsel-filed petitions must be filed electronically in CM/ECF. Paper copies are not required. No grace period for mailing is allowed, and the date of the postmark is irrelevant for pro-se-filed petitions. Any petition for rehearing or petition for rehearing en banc which is not received within the 14 day period for filing permitted by FRAP 40 may be denied as untimely.

Michael E. Gans
Clerk of Court

AMT

Enclosure(s)

cc: Mr. Wansolo B. Hughley
Mr. Jeffrey Q. McCarther
Ms. Paige Wymore-Wynn

District Court/Agency Case Number(s): 4:14-cr-00224-DW-1

United States Court of Appeals
For the Eighth Circuit

No. 16-1936

United States of America

Plaintiff - Appellee

v.

Wansolo B. Hughley, also known as Winslow B. Hughley

Defendant - Appellant

Appeal from United States District Court
for the Western District of Missouri - Kansas City

Submitted: February 6, 2017
Filed: June 14, 2017
[Unpublished]

Before RILEY, Chief Judge,[1] SMITH and BENTON, Circuit Judges.

PER CURIAM.

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[1]The Honorable William Jay Riley stepped down as Chief Judge of the United States Court of Appeals for the Eighth Circuit at the close of business on March 10, 2017. He has been succeeded by the Honorable Lavenski R. Smith.

In the mid-1990s, Wansolo Hughley was convicted of possessing a user amount of crack cocaine and unlawfully using a weapon. These were felonies. In 2014, Hughley illegally possessed two pistols and was charged with violating 18 U.S.C. § 922(g)(1). He pleaded guilty and was sentenced to 20 months' imprisonment, but he reserved the right to appeal the district court's[2] refusal to dismiss his indictment. On appeal, Hughley seeks reversal of his conviction, contending that § 922(g)(1) violates the Second Amendment as applied to him. We affirm.

We review this constitutional question de novo. *United States v. Bena*, 664 F.3d 1180, 1181 (8th Cir. 2011). The Second Amendment guarantees "the right of the people to keep and bear Arms." U.S. Const. amend. II. In *District of Columbia v. Heller*, the Supreme Court affirmed this right by holding unconstitutional a law prohibiting citizens from having guns in their homes. 554 U.S. 570, 635 (2008). *Heller* expressly avoided casting doubt on "presumptively lawful regulatory measures," *id.* at 627 n.26, such as the "longstanding prohibitions on the possession of firearms by felons," *id.* at 626. The contours of this presumptive lawfulness, however, remain undefined. *See, e.g.*, *Bena*, 664 F.3d at 1182 ("The analytical basis for the presumptive constitutionality of these regulatory measures was not thoroughly explained.").

We have upheld § 922(g)(1) against facial challenges. *See, e.g.*, *United States v. Woolsey*, 759 F.3d 905, 909 (8th Cir. 2014). Hughley, though, does not argue that § 922(g)(1) is facially unconstitutional. Such an argument would require showing that no set of circumstances exists under which it would be valid. *United States v. Seay*, 620 F.3d 919, 922 (8th Cir. 2010). Rather, Hughley argues that despite *Heller*'s reference to the continuing validity of certain firearms regulations, § 922(g)(1) is

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[2]The Honorable Dean Whipple, United States District Judge for the Western District of Missouri.

unconstitutional as applied to him because his felonies were nonviolent and happened years ago.

We have rejected as-applied challenges to § 922(g)(1) when the challenger had a violent felony or was otherwise among those historically not entitled to Second Amendment protections. *See, e.g.*, *Woolsey*, 759 F.3d at 909 (rejecting an as-applied challenge because defendant's prior felony convictions were violent and because he did not show that he was "no more dangerous than a typical law-abiding citizen" (quoting *United States v. Brown*, 436 F. App'x 725, 726 (8th Cir. 2011)).[3]

Although Hughley's prior felonies were nonviolent, he has not shown that he is no more dangerous than a typical law-abiding citizen. Hughley has been convicted of multiple felonies and has repeatedly violated his probation terms. In 1995, Hughley carried a concealed shotgun while possessing illegal drugs. In 2014, Hughley was arrested for trespassing, and police found two firearms, including one with a 30-round magazine, in his car along with illegal drugs. Hughley's conduct has not been typical of a law-abiding citizen. Restricting gun possession by felons—even nonviolent ones—differs meaningfully from restricting citizens who have not been convicted of serious offenses from having guns in their home for self-defense. Hughley's efforts to protect himself while possessing illegal drugs stand in stark contrast.

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[3]Other courts seem to favor a so-called "two-step approach." *See, e.g.*, *Schrader v. Holder*, 704 F.3d 980, 988 (D.C. Cir. 2013); *Ezell v. City of Chicago*, 651 F.3d 684, 703 (7th Cir. 2011). Step one asks whether the challenged law burdens conduct within the scope of the Second Amendment; if so, then step two asks whether the government's justification for the law holds up under a particular level of scrutiny—usually intermediate scrutiny. *Ezell*, 651 F.3d at 703. We have not adopted this approach and decline to do so here.

Section 922(g)(1)'s purpose reaches beyond felons who have proven themselves violent—that is, those who have already committed violent felonies. In enacting this statute, "Congress sought to keep guns out of the hands of those who have demonstrated that they may not be trusted to possess a firearm without becoming a threat to society." *Small v. United States*, 544 U.S. 385, 393 (2005) (internal quotation marks omitted). "[T]he principal purpose of the federal gun control legislation . . . was to curb crime by keeping firearms out of the hands of those not legally entitled to possess them because of age, criminal background, or incompetency." *Schrader*, 704 F.3d at 989–90 (ellipsis in original) (quoting *Huddleston v. United States*, 415 U.S. 814, 824 (1974)). The statute's objective therefore includes keeping firearms from "persons, such as those convicted of serious crimes, who might be expected to misuse them." *Id.* at 990 (quoting *Dickerson v. New Banner Inst., Inc.*, 460 U.S. 103, 119 (1983)). Indeed, the statute does not mention violent crimes, but rather serious ones—those deserving punishment of more than a year in prison. 18 U.S.C. § 922(g)(1).

Finally, we are not persuaded by Hughley's points about the age of his felonies and the practically permanent nature of his ban. He has not shown that the age of his felonies takes him outside the statute's legitimate objectives. Hughley also has not shown that avenues for restoration of gun rights are unreasonable or futile. Hughley must show that the ban's permanent nature poses unique constitutional concerns for him. He has not done so.

Accordingly, we affirm the district court's judgment.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 16-1936

United States of America

Appellee

v.

Wansolo B. Hughley, also known as Winslow B. Hughley

Appellant

Appeal from U.S. District Court for the Western District of Missouri - Kansas City
(4:14-cr-00224-DW-1)

ORDER

The petition for rehearing *en banc* is denied. The petition for panel rehearing is also denied.

Judge Kelly would grant the petition for rehearing *en banc.*

August 16, 2017

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans