No. 22-

In the Supreme Court of the United States

KEITH L. CARNES,
PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE U.S. COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

JOHN JENAB
JENAB LAW FIRM, P.A.
P.O. Box 30
Lampe, MO 65681
(816) 759-8686

ALLON KEDEM
Counsel of Record
KOLYA D. GLICK
JAYCE BORN
CHARLES BIRKEL
KELSIE SICINSKI
ARNOLD & PORTER KAYE SCHOLER LLP
601 Massachusetts Ave., NW
Washington, DC 20001
(202) 942-5000
Allon.Kedem@arnoldporter.com

QUESTION PRESENTED

Federal law prohibits the possession of a firearm or ammunition by any person who is "an *unlawful user* of or addicted to any controlled substance." 18 U.S.C. § 922(g)(3) (emphasis added). The question presented is:

Whether the government, to establish that the defendant is an "unlawful user" of a controlled substance, must show the defendant's regular or habitual drug use, or instead may establish that element based on a single incident of drug use on the day of arrest.

RELATED PROCEEDINGS

United States District Court (W.D. Mo.):

United States v. *Carnes*, No. 16-cr-301 (Oct. 2, 2020)

United States Court of Appeals (8th Cir):

United States v. *Carnes*, No. 20-3170 (Jan. 3, 2022)

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PETITION FOR A WRIT OF CERTIORARI

OPINIONS BELOW

The opinion of the court of appeals (App. 1a-15a) is reported at 22 F.4th 743. The court's order denying rehearing and rehearing en banc (App. 31a) is unreported. The district court's judgment (App. 16a-30a) is also unreported.

JURISDICTION

The judgment of the court of appeals was entered on January 3, 2022. App. 1a. A timely petition for rehearing was denied on February 23. On April 12, Justice Kavanaugh extended the time for filing a petition for a writ of certiorari to and including July 22. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Sections 922 and 924 of Title 18, U.S. Code, are reproduced in full in the Appendix (App. 32a-84a). The provision at issue here, 18 U.S.C. § 922(g)(3), provides:

> It shall be unlawful for any person--
>
> . . .
>
> (3) who is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));
>
> . . .
>
> 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.

STATEMENT

Federal law prohibits possessing a firearm while being "an *unlawful user* of or addicted to any controlled substance." 18 U.S.C. § 922(g)(3) (emphasis added). The defendant's status as an "unlawful user" is thus what turns an otherwise lawful gun owner into a federal felon, punishable by up to ten years in prison. Most courts of appeals have accordingly interpreted that phrase as requiring the government to prove that the defendant: (1) used drugs habitually or regularly; and (2) used drugs close in time to the prohibited gun possession.

In the decision below, however, the court of appeals rejected the former requirement—proof of regular use. Instead, the court held that even one-time drug use can render a defendant an "unlawful user." The court upheld the conviction of petitioner Keith Carnes, a registered gun owner, based on a single incident of marijuana use on the day of his arrest, for which he was sentenced to the statutory maximum. Under the court's ruling, when Mr. Carnes woke up the morning of February 10, 2013, he was a lawful gun owner; after smoking marijuana that day, he became a federal felon.

That ruling was wrong. The plain meaning of "user" is "someone who *regularly* takes illegal drugs," *MacMillan English Dictionary* 1650 (2d ed. 2007) (emphasis added), a meaning reinforced by the textual pairing of "unlawful user[s]" with "addict[s]." The statute's structure and history similarly confirm that Congress adopted the prohibition to keep guns out of the hands of *habitual* drug users—*i.e.*, those whose consistent use over an extended period of time disqualifies them from responsible gun ownership.

Interpreting Section 922(g)(3) to prohibit gun possession based on one-time drug use would also lead to absurd and unconstitutional results. The decision below renders

gun possession unlawful after a single use of any controlled substance—even a substance, like marijuana, that may be fully decriminalized or affirmatively permitted under state law. And because the prohibition applies equally to joint or "constructive" gun possession, an otherwise law-abiding gun owner who keeps her firearm in a locked safe at home (or whose spouse does) would become a federal felon, subject to a ten-year sentence, the very first time she smoked marijuana. These and other problematic scenarios have led courts to emphasize Section 922(g)(3)'s regular-use requirement as a means of avoiding vagueness and Second Amendment concerns.

In upholding Mr. Carnes's conviction, the court of appeals joined the short side of a circuit split, expressly breaking from the majority of circuits that require the government to prove that the defendant engaged in "regular, long-term drug use." *United States* v. *Tanco-Baez*, 942 F.3d 7, 16 (1st Cir. 2019). Indeed, even the government itself previously represented to the en banc Fifth Circuit that it "certainly wouldn't charge one time use." *United States* v. *Herrera*, 313 F.3d 882, 885 (5th Cir. 2002) (en banc). The court below acknowledged that its ruling was inconsistent with "case law from our sister circuits that requires proof of regular use over an extended period," but it "declined to adopt [their] rigorous definition." App. 8a-9a.

The government was right the first time: An otherwise lawful gun owner does not become an "unlawful user" of drugs—and hence a federal felon—based on one-time drug use. This Court should grant certiorari to resolve the circuit split and overturn an atextual interpretation of the statute that would produce absurd and unconstitutional results.

A. Mr. Carnes Is Convicted of Being an "Unlawful User" in Possession of a Firearm Based on a Single Incident of Marijuana Use

On February 10, 2013, a Kansas City police officer pulled Mr. Carnes over for speeding. D. Ct. Doc. 143, at 316-20. The officer smelled marijuana, which Mr. Carnes admitted to smoking earlier that day. *Id.* at 321. Mr. Carnes also informed the officer that he possessed a registered handgun, which the officer took from Mr. Carnes's waistband during a pat-down search. *Id.* at 322-23, 348; see *id.* at 344 (Mr. Carnes "cooperate[d] fully" and offered "no resistance"). Police took Mr. Carnes to the patrol station, where he failed a field sobriety test and again admitted to smoking marijuana earlier in the day. *Id.* at 352-53, 360-70. He was charged with driving under the influence, but the charges were later dismissed. D. Ct. Doc. 144, at 460-61.

A grand jury indicted Mr. Carnes under 18 U.S.C. § 922(g)(3) on charges of possessing a firearm despite being "an unlawful user" of a controlled substance, based on the February 2013 incident, as well as two additional charges tied to separate events that occurred in August 2016. Mr. Carnes testified in his defense at trial. He acknowledged possessing a registered firearm during the February 2013 traffic stop and smoking marijuana earlier in the day, D. Ct. Doc. 144, at 460, 481-82, though he disputed that he had failed the field sobriety test, *id.* at 482-83. The government did not introduce evidence that Mr. Carnes had used drugs at any other time prior to the traffic stop.

Following the conclusion of the government's evidence, and again following summation, Mr. Carnes moved for a judgment of acquittal, but the district court denied his motions. *Id.* at 437-38, 564. The jury convicted Mr. Carnes on all charges. *Id.* at 566. The court sentenced him

to the statutory maximum—ten years of imprisonment, see 18 U.S.C. § 924(a)(2)—on the illegal-possession charge stemming from the February 2013 incident. D. Ct. Doc. 145, at 64. The court ordered this sentence to run consecutively with ten-year sentences for the counts related to the August 2016 incident (which merged), for a total sentence of twenty years of imprisonment. *Ibid.*

B. The Eighth Circuit Rejects the Need to Prove "Regular Use over an Extended Period"

On appeal, Mr. Carnes argued that the Government had failed to prove the "unlawful user" element necessary to support a conviction under 18 U.S.C. § 922(g)(3). Relying on precedent from other circuits, Mr. Carnes explained that "the 'unlawful user' element of the offense requires proof of a 'temporal nexus between the gun possession and *regular drug use*.'" Appellant's Opening Br. 17 (citation omitted; emphasis in original). Yet the government "did not even attempt to meet this burden," he noted, as the only evidence of drug use by Mr. Carnes in relation to the February 2013 incident concerned his smoking marijuana earlier the same day. *Id.* at 20.

In response, the government argued that because Mr. Carnes had used marijuana at roughly the same time as his gun possession, "there was no need for the Government to show . . . that there existed some temporal nexus between the gun possession and 'regular drug use.'" Gov't C.A. Br. 23. The government argued for the following categorical rule: "[W]here, as here, the evidence shows that a defendant was actively using a controlled substance at the time he possessed the firearm, the defendant's prior history of drug use is essentially irrelevant." *Id.* at 24.

The court of appeals affirmed Mr. Carnes's conviction. App. 2a. The court acknowledged that the term "unlawful user" in Section 922(g)(3) "runs the risk of being

unconstitutionally vague without a judicially-created temporal nexus between the gun possession and regular gun use." App. 6a-7a (citation omitted). It nevertheless held that a defendant is automatically an "'unlawful user'" if he was "actively engaged in use of a controlled substance during the time he possessed the firearm," irrespective of whether the drug use was habitual. App. 8a (citation and quotation marks omitted). The court accordingly "reject[ed] Carnes's expansive interpretation of 'regular drug use' that would require evidence of use over an extended period." *Ibid.*

In so ruling, the court of appeals acknowledged that its rejection of a regular-use requirement was inconsistent with "case law from our sister circuits that requires proof of regular use over an extended period." *Ibid.* (citing First, Sixth, and Ninth Circuit decisions). But the court simply "declined to adopt [their] rigorous definition." App. 9a. Because the trial evidence showed that Mr. Carnes had smoked marijuana earlier in the day "when law enforcement stopped him" in February 2013, the court held, the jury could conclude that he was an unlawful drug user "during the time he possessed" a firearm. *Ibid.*

The court of appeals accordingly upheld Mr. Carnes's conviction under Section 922(g)(3), although it remanded for the district court correct his sentence on the other counts and his term of supervised release. App. 14a-15a. Mr. Carnes filed a rehearing petition, calling on the court of appeals to align with the majority of circuits that have endorsed a regular-use requirement, but his petition was denied. App. 31a.

REASONS FOR GRANTING THE PETITION

The decision below worsens an acknowledged split among the courts of appeals regarding the meaning of "unlawful user" under 18 U.S.C. § 922(g)(3). Under a proper reading of that term, a registered firearm owner like Mr. Carnes does not become a felon based on a single incidence of drug use. In ruling to the contrary, the court of appeals upheld a textually indefensible—and undefended—interpretation of one of the most frequently invoked federal criminal prohibitions.

I. THE CIRCUITS ARE SPLIT ON THE MEANING OF "UNLAWFUL USER" IN SECTION 922(g)(3)

"[C]ases interpreting § 922(g)(3) typically discuss two concepts: contemporaneousness and regularity." *United States* v. *Patterson*, 431 F.3d 832, 838-39 (5th Cir. 2005). The first concept requires the government to show that the defendant's drug use was "proximate to or contemporaneous with the possession of the firearm." *United States* v. *Caparotta*, 676 F.3d 213, 216 (1st Cir. 2012) (citation omitted). The second concept requires proof that the defendant "engage[d] in regular use over a long period of time." *Ibid.* (cleaned up).

The decision below exacerbates a division of circuit authority regarding the latter requirement: proof of regular use. Seven courts of appeals have endorsed a regular-use requirement, rejecting criminal liability under Section 922(g)(3) based on a single incident of using a controlled substance. Two other courts of appeals—including now the Eighth Circuit—permit conviction *without* proof that the defendant's drug use was regular or took place over an extended period, so long as the use was contemporaneous with the defendant's gun possession.

A. Seven Circuits Have Held that the Defendant Must Use Drugs "Regularly"

The majority of the courts of appeals have held that, to establish the defendant was an "unlawful user" in possession of a firearm, in violation of 18 U.S.C. § 922(g)(3), the government must prove the defendant used drugs "with regularity, over an extended period of time." *United States* v. *Bowens*, 938 F.3d 790, 793 (6th Cir. 2019) (citation omitted). That is the rule in seven circuits. See *Caparotta*, 676 F.3d at 216 (1st Cir.) ("regular use over a long period of time") (cleaned up); *United States* v. *Augustin*, 376 F.3d 135, 139 (3d Cir. 2004) ("regular use over a period of time"); *United States* v. *Hasson*, 26 F.4th 610, 615 (4th Cir. 2022) ("drug use is consistent [and] prolonged") (citation omitted); *Patterson*, 431 F.3d at 838 (5th Cir.) ("with regularity and over an extended period of time") (citation omitted); *Bowens*, 938 F.3d at 793 (6th Cir.) ("with regularity, over an extended period of time") (citation omitted); *United States* v. *Cook*, 970 F.3d 866, 874 (7th Cir. 2020) ("regularly or habitually"); *United States* v. *Purdy*, 264 F.3d 809, 813 (9th Cir. 2001) ("with regularity, over an extended period of time").

1. Particularly notable among these are decisions that have overturned Section 922(g)(3) convictions for insufficient proof under the regular-use requirement. These decisions expressly reject criminal liability based on one-time use.

In *United States* v. *Augustin*, the Third Circuit reversed a conviction in circumstances that mirror this case. The defendant there was convicted for possessing a gun after smoking marijuana. 376 F.3d at 138. Ample evidence showed that the defendant had "used drugs on June 28 and possessed a firearm on June 29, roughly six hours later." *Id.* at 139. But the defendant nevertheless argued

that "evidence of his single use of marijuana . . . was insufficient to prove that he was 'an unlawful user'" under Section 922(g)(3). *Id.* at 138.

The Third Circuit agreed. In addition to proving "unlawful drug use at or about the time of the possession of the firearm," the court explained, the government must also show that the defendant "engaged in *regular use over a period of time*." *Id.* at 138-39 (emphasis added). Yet "[t]here was no evidence that [the defendant] had ever used drugs prior to the single use on June 28," and so the court deemed the evidence "insufficient to support his conviction under 18 U.S.C. § 922(g)(3)." *Id.* at 139.

The First Circuit likewise reversed a defendant's conviction under Section 922(g)(3) where the only competent evidence showed one-time drug use. In *United States* v. *Tanco-Baez*, 942 F.3d 7 (1st Cir. 2019), the officers who arrested the defendant found a bag of marijuana in his shoe, and he admitted in a post-arrest interview that he had "smoke[d] marijuana that day." *Id.* at 14. The defendant nevertheless argued that the evidence was insufficient to show his "regular, long-term drug use and thus that he was an 'unlawful user.'" *Id.* at 16. The First Circuit agreed. Though the evidence established the defendant's "drug use on the day of the offense," *id.* at 23, the court explained, the evidence was "not adequate" to prove "that he had used drugs over a long period of time," *Id.* at 25.[1]

The Fourth Circuit has similarly limited the reach of Section 922(g)(3) to circumstances where the defendant's drug use has been shown to be "consistent [and] prolonged." *Hasson*, 26 F.4th at 615. Applying that rule, the

[1] In *Tanco-Baez*, the government also pointed to the defendant's uncorroborated admission of regular and long-term drug use, 942 F.3d at 15-16, but the court found that evidence "unreliab[le]" and therefore insufficient to satisfy the regular-use requirement, *id.* at 25.

Fourth Circuit reversed a conviction where the defendant's parents testified that he had used drugs approximately ten years prior to his arrest, and a canine alert indicated the presence of controlled substances in the defendant's car. *United States* v. *Sperling*, 400 Fed. App'x 765, 766, 768 (4th Cir. 2010). Though the defendant had also admitted to using marijuana and cocaine "within a couple months of his arrest," and to "continu[ing] to use [drugs] on and off" and having "a drug problem," the Fourth Circuit found those "uncorroborated" admissions to be insufficiently reliable. *Id.* at 766-67. Without them, the court concluded, the two identified incidents of drug use—based on the parents' testimony and the canine alert on the day of arrest—were inadequate to prove that the defendant's drug use had been "sufficiently consistent, prolonged, and close in time to his gun possession to put him on notice that he qualified as an unlawful user." *Id.* at 767 (quotation marks omitted).

In *United States* v. *Cook*, 970 F.3d 866 (7th Cir. 2020), the Seventh Circuit ordered a new trial for a defendant convicted under Section 922(g)(3) following this Court's decision in *Rehaif* v. *United States*, 139 S. Ct. 2191, 2200 (2019), that the government must prove the defendant "knew he belonged to the relevant category of persons barred from possessing a firearm." Although the defendant in *Cook* admitted to the arresting officer that "he had smoked two 'blunts' earlier that day," 970 F.3d at 871, the Seventh Circuit explained it was "not inevitable" that a jury would have found the defendant "knew he was an unlawful user" of marijuana, *id.* at 882. "[I]t is possible for any given user to think that his use falls outside the range of *regular, ongoing* use," the court noted, and "current but isolated use (perhaps only when offered at the occasional social gathering) . . . would not count as regular use." *Id.* at 884 (emphasis added).

2. Other courts of appeals have endorsed jury instructions that expressly require the government to show the defendant engaged in regular drug use. Since juries in these circuits know they may not convict unless the government offers evidence sufficient to prove regular use beyond a reasonable doubt, the courts of appeals are rarely confronted with cases involving insufficient proof.

For instance, the Sixth Circuit agrees that "[t]he one time or infrequent use of a controlled substance is not sufficient to establish the defendant as an 'unlawful user'" under Section 922(g)(3). *United States* v. *Burchard*, 580 F.3d 341, 352 & n.4 (6th Cir. 2009). The court has thus endorsed the following jury instruction:

> The term "unlawful user of a controlled substance" contemplates the *regular and repeated use* of a controlled substance in a manner other than as prescribed by a licensed physician. *The one time or infrequent use of a controlled substance is not sufficient* to establish the defendant as an "unlawful user." Rather, the defendant must have been engaged in use that was *sufficiently consistent and prolonged as to constitute a pattern of regular and repeated use* of a controlled substance. The government need not show that defendant used a controlled substance at the precise time he possessed a firearm. It must, however, establish that he was engaged in a *pattern of regular and repeated use* of a controlled substance during a period that reasonably covers the time a firearm was possessed.

Ibid. (emphases added).

This instruction—which could not be clearer in rejecting criminal liability based on one-time use—has done the job: Juries in the Sixth Circuit have convicted only in

cases where the government introduced significant evidence of the defendant's repeated drug use. See, *e.g.*, *United States* v. *Bowens*, 938 F.3d 790, 793-94 (6th Cir. 2019) (upholding conviction based on photos and videos showing "defendants used marijuana regularly and over an extended period of time"); *United States* v. *Bellamy*, 682 Fed. App'x 447, 451 (6th Cir. 2017) (upholding conviction based on "evidence in the record that Defendant engaged in repeated use of marijuana").

Other courts of appeals on the long side of the split have similarly approved jury instructions requiring a finding of "'regular and ongoing' drug use." *Cook*, 970 F.3d at 879 (quoting jury instruction); see, *e.g.*, *Patterson*, 431 F.3d at 838 (upholding "pattern of use" instruction). These courts, like the Sixth Circuit, are accordingly unlikely to produce cases necessitating appellate reversal on sufficiency grounds.

3. Several courts of appeals have also expressly relied on the existence of a regular-use requirement in rejecting constitutional challenges to Section 922(g)(3).

Second Amendment. Courts of appeals have relied on the regular-use requirement in rejecting challenges based on the defendant's constitutional right to bear arms. In *District of Columbia* v. *Heller*, 554 U.S. 570 (2008), this Court recognized that while the Second Amendment guarantees citizens the right to possess firearms for protection in their home, recognition of that right did not "cast doubt on longstanding prohibitions on the possession of firearms" by certain categories of persons, such as "felons and the mentally ill." *Id.* at 626. Following *Heller*, several courts of appeals have relied on the government's need to prove that the defendant used drugs regularly in turning away Second Amendment challenges to Section 922(g)(3).

In *United States* v. *Yancey*, 621 F.3d 681 (7th Cir. 2010), the Seventh Circuit upheld Section 922(g)(3) as a permissible limitation on the defendant's Second Amendment rights. "Keeping guns away from habitual drug abusers," the court explained, "is analogous to disarming felons." *Id.* at 684. Those who use drugs on a regular basis render themselves "habitual criminals," and thus among those "'unvirtuous citizens'" whom the government historically was allowed to "disarm." *Id.* at 685 (citation omitted). The *Yancey* court also reasoned that "habitual drug abusers, like the mentally ill, are more likely to have difficulty exercising self-control, making it dangerous for them to possess deadly firearms." *Ibid.* "Extending the ban to those who regularly abuse drugs [thus] makes particular sense," the court concluded, "because the [Supreme] Court has noted the similarity between the two groups." *Ibid.*; see *id.* at 686 (relying on "studies" that "illuminate the nexus between Congress's attempt to keep firearms away from habitual drug abusers and its goal of reducing violent crime").

The Ninth Circuit relied on similar reasoning in rejecting a Second Amendment challenge in *United States* v. *Dugan*, 657 F.3d 998 (9th Cir. 2011). In so ruling, the court recognized that a restriction on firearm possession, in order to withstand constitutional scrutiny, must "embod[y] a long-standing prohibition of conduct similar to the examples mentioned in *Heller*." *Id.* at 999. The federal prohibition on firearm possession by an "unlawful drug user" meets that standard, the court reasoned, because "the same amount of danger [exists] in allowing habitual drug users to traffic in firearms as we see in allowing felons and mentally ill people to do so." *Ibid.*

Due process. "In order to avoid unconstitutional vagueness, courts have held that the critical term 'unlaw-

ful user' requires a temporal nexus between the gun possession and *regular drug use*." *United States* v. *Marceau*, 554 F.3d 24, 30 (1st Cir. 2009) (emphasis added; quotation marks omitted). Defendants have repeatedly challenged Section 922(g)(3) on due process grounds. These defendants have argued that the term "unlawful user" is so broad and open-ended that it "fails to apprise what conduct is prohibited and fails to establish minimal guidelines to govern law enforcement." *United States* v. *Richard*, 350 Fed. App'x 252, 260 (10th Cir. 2009) (citation omitted).

In rejecting such arguments, courts on the long side of the split have relied on the regular-use requirement. As such courts have explained, a defendant who engages in "consistent, prolonged" drug use is sufficiently "on notice that he qualified as an unlawful user of drugs under § 922(g)(3)." *Purdy*, 264 F.3d at 812 (quotation marks omitted); see *United States* v. *Edwards*, 540 F.3d 1156, 1162 (10th Cir. 2008) ("Given the ample evidence of Defendant's heavy, habitual drug use in the year during which he possessed the firearms at issue, we conclude that the statute was not unconstitutionally vague as applied to him."); *Patterson*, 431 F.3d at 836 ("an ordinary person would understand that [the defendant's] actions establish him as an unlawful user," because he "admitted that he regularly used marijuana"); *United States* v. *Dugan*, 450 Fed. App'x 633, 636 (9th Cir. 2011) ("because Defendant took drugs with regularity" and "over an extended period of time," his "use was sufficient to put him on notice that he fell within the statutory definition") (quotation marks omitted); see also *United States* v. *Ocegueda*, 564 F.2d 1363, 1366 (9th Cir. 1977) ("had [the defendant's] use of heroin been infrequent and in the distant past, we would be faced with an entirely different vagueness challenge").

B. Two Circuits, Including the Court Below, Do Not Require Proof of Regular Use

In the decision below, the Eighth Circuit expressly "reject[ed]" a proposed definition of "'unlawful user'" that "would require evidence of use over an extended period." App. 8a; see App. 8a-9a. ("While some of our sister circuits require proof that a defendant used controlled substances regularly over an extended period, . . . we decline[] to adopt such a rigorous definition.") (citations omitted). The court thus upheld Mr. Carnes's conviction based solely on evidence that he had used marijuana earlier on the same day as his 2013 arrest, accepting the government's argument that Mr. Carnes's "prior history of drug use is essentially irrelevant." Gov't C.A. Br. 24. Jury instructions in the Eighth Circuit likewise reflect that while the defendant's drug use must be contemporaneous with his gun possession, there is no requirement that use occur more than once. See 8th Cir. Model Crim. Jury Instr. § 6.18.922B (2022) (requiring proof that defendant's drug use occurred "recently," but not requiring regular use).

The Eleventh Circuit has similarly adopted an interpretation of Section 922(g)(3) that does not require proof of regular or habitual drug use to support a conviction. Instead, the court's focus has been on whether the defendant's drug use was "ongoing" or "active" at the time of his gun possession—*i.e.*, whether (as the decision below put it) "the unlawful use has occurred recently enough to indicate that the individual is actively engaged in such conduct." App. 8a. But "active" use is not the same as "regular" use, as Mr. Carnes's case vividly illustrates.

In *United States* v. *Clanton*, 515 Fed. App'x 826 (11th Cir. 2013), for instance, the defendant asked the district court to adopt the Sixth Circuit's pattern jury instruction, which requires proof of "regular and repeated use" and expressly precludes conviction based on "[i]ntermittent or

infrequent use." *Id.* at 829. The district court refused, instead giving the Eighth Circuit pattern instruction that the jury could convict if it determined the defendant "was actively engaged in the use of a controlled substance during the time he possessed the firearm." *Ibid.* On appeal, the Eleventh Circuit approved the district court's "actively engaged" instruction, which it deemed sufficient to establish that the defendant's drug use was "ongoing" (though it found a separate instruction to be erroneous because it "undercut the temporal nexus requirement"). *Id.* at 830. The Eleventh Circuit accordingly accepted proof of the defendant's "active engagement" in drug use at the time of gun possession as sufficient to sustain his conviction under Section 922(g)(3). *Ibid.*; see, *e.g.*, *United States* v. *Davis*, 224 Fed. App'x 919, 922 (11th Cir. 2007) (approving "actively engaged" instruction).

Active engagement, however, speaks only to whether the defendant's drug use was *contemporaneous* with his firearm possession, not whether his use was *regular*. Indeed, in the decision below, the Eighth Circuit upheld Mr. Carnes's conviction on the theory that he was "actively engaged in the use of a controlled substance during the time he possessed [a firearm] in 2013," even though the evidence established only a single use on the day of his arrest. App. 9a. The Eleventh Circuit's standard—which mimics the Eighth Circuit's—thus allows conviction even where the defendant's drug use was not regular. See, *e.g.*, *United States* v. *Baker*, 206 Fed. App'x 928, 931 (11th Cir. 2006) (upholding conviction where evidence showed the defendant had smoked marijuana "around the time that officers searched his home" and on another occasion "months before the search of his house"); see also *United States* v. *Bernardine*, 73 F.3d 1078, 1081 (11th Cir. 1996) (requiring only that a defendant's use must be "ongoing

and contemporaneous" to qualify as an "'unlawful user'" in the context of U.S.S.G. § 2K2.1(a)(6)).

II. THE DECISION BELOW IS WRONG

In the decision below, the court of appeals did not explain why a defendant who used drugs one time on the day of his arrest would be described in plain English as an "unlawful user" of a controlled substance. Indeed, the court did not interpret the text of Section 922(g)(3) at all. Properly read, the provision *excludes* single-use defendants like Mr. Carnes—a reading that is also necessary to avoid absurd and unconstitutional results.

A. The Plain Meaning of "Unlawful User" Requires Regular or Habitual Drug Use

The text, context, structure, and history of Section 922(g)(3) all support the interpretation adopted by the majority of circuits.

1. Both at the time of enactment and today, the ordinary meaning of "unlawful user" denotes repeated and regular drug use. When Section 922(g)(3)'s predecessor was added to the statute, see Gun Control Act of 1968, Pub. L. 90-618, § 102, 82 Stat. 1213, 1220, contemporary sources defined an unlawful "user" as "[a] drug addict," *The American Heritage Dictionary* 1410 (1969); see *Longmans English Larousse* 1267 (1968) (defining "use," in relevant part, as "to take (narcotics) habitually"). Modern sources confirm that understanding: A "user" is "someone who *regularly* takes illegal drugs." *MacMillan English Dictionary* 1650 (2d ed. 2007) (emphasis added); see *Collins Dictionary* 1792 (10th ed. 2009) ("a drug addict"). Legal dictionaries similarly define "use" in this context as "a habitual or common practice <drug use>." *Black's Law Dictionary* 1776 (10th ed. 2014).

This plain meaning is reinforced by the precise phrasing of Section 922(g)(3): The provision "does not forbid

possession of a firearm *while unlawfully using* a controlled substance. Rather, the statute prohibits *unlawful users* of controlled substances (and those addicted to such substances) from possessing firearms." *Augustin*, 376 F.3d at 139 n.6 (quoting *United States* v. *Jackson*, 280 F.3d 403, 406 (4th Cir. 2002)) (emphases in original). The focus on the defendant's status as a "user," rather than his engagement in one-time "use," thus clearly indicates that "use of drugs with some regularity is required to support a conviction." *Ibid.*

2. The requirement of regular use becomes even clearer when the key statutory term is read in context. Section 922(g)(3) prohibits firearm possession by a person who is "an unlawful user of *or addicted to* any controlled substance." To prove that the defendant is "addicted to" drugs, the government would obviously have to show far more than one-time use. Indeed, the Controlled Substances Act—which Section 922(g)(3) cross-references—defines "'addict' [as] any individual who *habitually uses* any narcotic drug so as to endanger the public morals, health, safety, or welfare, or who is so far addicted to the use of narcotic drugs as to have lost the power of self-control with reference to his addiction." 21 U.S.C. § 802(1) (emphasis added).

The textual pairing of "unlawful user" with the phrase "addicted to" thus bolsters the circuit-majority reading in two respects. First, an interpretation that would allow for conviction based upon one-time use "would defy [the] usual rule of statutory interpretation that a law's terms are best understood by the company they keep." *United States* v. *Taylor*, No. 20-1459, 596 U.S. ___ (2022), slip op. 10 (brackets and quotation marks omitted). Second, such a reading would render the phrase "unlawful user" so broad that it would give its companion

("addicted to") no work to do. After all, how could the government ever prove beyond reasonable doubt that a defendant was *addicted to* a controlled substance if the defendant never used it unlawfully—not even once? "The canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme." *City of Chicago* v. *Fulton*, 141 S. Ct. 585, 591 (2021) (citation omitted). Here, the two phrases are not merely "part of the same statutory scheme"; they adjoin one another in the same subsection.

3. The commonsense meaning of "unlawful user" becomes clearer still when considered in the context of the other categories of prohibited persons listed in Section 922(g). Those categories identify individuals who are forbidden from possessing firearms due to their ongoing *legal* status, which is the product of (or at least subject to) a formal determination that complies with due process:

- felons convicted in a court of law, § 922(g)(1);
- fugitives from justice, § 922(g)(2);
- persons who have been "adjudicated" to be "mental defective[s]" or have been "committed to a mental institution," § 922(g)(4);
- aliens who have unlawfully entered or remained in the United States, § 922(g)(5);
- those dishonorably discharged from the Armed Forces, § 922(g)(6);
- former Americans who have formally renounced their citizenship, § 922(g)(7);
- dangerous persons subject to court-issued restraining orders, § 922(g)(8); and
- those convicted of misdemeanor crimes of domestic violence, § 922(g)(9).

A defendant prosecuted under Section 922(g)(3), by contrast, has no formal mechanism for determining—or contesting—his "unlawful user" status in advance. Indeed, the defendant is unlikely to learn that he is even suspected of being an "unlawful user," and hence ineligible to possess a firearm, until the day he is arrested. Reading subsection (g)(3) so broadly as to encompass even one-time drug use would thus render it a bizarre mismatch with its neighboring subsections. See *Graham Cnty. Soil & Water* v. *United States ex rel. Wilson*, 559 U.S. 280, 290 (2010) (statutory "categories" are not "islands unto themselves").

4. The history of Section 922(g)(3)'s enactment confirms its focus on habitual drug users. In 1968, Congress determined that an overhaul of the federal firearm laws was necessary to combat a wave of "lawlessness and violent crime." *Huddleston* v. *United States*, 415 U.S. 814, 824 (1974). Congress accordingly devised the subsection (g) categories to "make it possible to keep firearms out of the hands of those not legally entitled to possess them because of age, criminal background, or incompetency." S. Rep. No. 1501, 90th Cong., 2d Sess. 22 (1968).

Throughout the legislative process, the intention was to identify persons so "irresponsible and dangerous" that they had to be "comprehensively barred . . . from acquiring firearms by any means." *Barrett* v. *United States*, 423 US 212, 218 (1976). Supporters emphasized that the provision would "keep . . . lethal weapons out of the hands of criminals, *drug addicts*, mentally disordered persons, juveniles, and other persons whose possession of them is too high a price in danger to us all to allow." 114 Cong. Rec. 13,219 (1968) (remarks by Sen. Tydings) (emphasis added); see 114 Cong. Rec. 21,784 (1968) ("No one can dispute the need to prevent *drug addicts*, mental incompetents, persons with a history of mental disturbances, and

persons convicted of certain offenses, from buying, owning, or possessing firearms.") (remarks of Rep. Celler) (emphasis added).

Congress's focus in enacting Section 922(g) was thus on the persistent status of persons categorically unfit for gun ownership. Insofar as controlled substances were mentioned *at all*, it was in connection with their use by "addicts." No legislator contemplated the need to keep firearms out of the hands of one-time users. See *Purdy*, 264 F.3d at 812 (legislative history shows Congress was concerned with "prolonged use") (citation omitted).

5. Finally and in any event, even if Section 922(g)(3) were susceptible to a broader reading that encompasses one-time use—and it is not—any "ambiguities about the breadth of [this] criminal statute should be resolved in the defendant's favor" under the rule of lenity. *United States* v. *Davis*, 139 S. Ct. 2319, 2333 (2019).

B. Reading "Unlawful User" as Including a Single Instance of Drug Use Would Produce Absurd and Unconstitutional Results

If the lack of textual support for the court of appeals' decision were not bad enough, the decision also gives Section 922(g)(3) a bizarrely broad and unconstitutional scope, far exceeding what Congress could have intended.

1. The stunning breadth of the decision below can be illustrated by just a few examples.

According to the court of appeals, an otherwise law-abiding gun owner faces up to ten years in prison for even a single use of a controlled substance. That includes marijuana, which 49% of American adults report having tried

at least once.[2] Under the Eighth Circuit's reasoning, therefore, almost half the country would become federal felons if they owned or otherwise possessed a gun "recently enough" after such use. App. 8a (citation omitted).

It gets worse. Section 922(g) prosecutions "may be based on constructive or joint possession of [a] firearm." *United States* v. *Boyd*, 180 F.3d 967, 978 (8th Cir. 1999). As a result, even *touching* a gun after drug use is not necessary in order to face liability. A gun owner who keeps her registered firearm in a locked safe at home, or who shares a firearm with a spouse, would become a federal felon the first time she tried marijuana.

Actually, the marijuana examples significantly *understate* the problem, because the "unlawful user" prohibition applies to a wide range of less-restricted drugs as well. The Controlled Substances Act includes five schedules of prohibited substances, arranged from most to least dangerous. See 21 U.S.C. §§ 802(6), 812. Marijuana is on Schedule I, the most-restricted category. See *id.* § 812(c). Drugs on lower schedules include Tylenol with codeine (Schedule III); Xanax, Valium, and Ambien (Schedule IV); and Robitussin AC (Schedule V). So even a business traveler who takes a prescription sleeping pill from her spouse to combat jetlag upon returning from an overseas trip would be an "unlawful user" and—if she or her spouse is a gun-owner—a felon as well.

2. Read so broadly as to include even one-time drug users, Section 922(g)(3) would also threaten two core constitutional rights.

Second Amendment. As this Court recently explained, governmental intrusions on gun ownership must

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[2] Jeffrey M. Jones, *Nearly Half of U.S. Adults Have Tried Marijuana*, Gallup (Aug. 17, 2021), https://news.gallup.com/poll/353645/nearly-half-adults-tried-marijuana.aspx

fall within the "historical tradition that delimits the outer bounds of the right to keep and bear arms." *New York State Rifle & Pistol Ass'n* v. *Bruen*, No. 20-843, 597 U.S. ___ (2022), slip op. 10. Courts of appeals have thus rejected challenges to Section 922(g)(3) by relying on the regular-use requirement to create a defined category of "unvirtuous citizens," analogous to those whom the government historically was allowed to disarm. *Yancey*, 621 F.3d at 685 (citation omitted). These courts have characterized "habitual drug users" as persons who repeatedly have refused to align their behavior with social norms and, "like the mentally ill, are more likely to have difficulty exercising self-control, making it dangerous for them to possess deadly firearms." *Ibid.* As the Ninth Circuit summarized in the wake of *Heller*: "Like our sister circuits, we see the same amount of danger in allowing *habitual drug users* to traffic in firearms as we see in allowing felons and mentally ill people to do so." *Dugan*, 657 F.3d at 999 (emphasis added).

This logic does not apply, however, without the regular-use requirement. If Section 922(g)(3) were interpreted as including even one-time drug users, it would sweep within its scope *most Americans* at one or more points in their lives. Whatever the proper historical "analogy" to this provision may be, *Bruen*, *supra*, slip op. at 19, no Founding-era limitation on the right to bear arms ever extended *that* far. Nor can such an overbroad prohibition be justified on the ground that all unlawful drug users a pose a significant threat to public safety. See *Kanter* v. *Barr*, 919 F.3d 437, 458 (7th Cir. 2019) (Barrett, J., dissenting) ("[F]ounding-era legislatures categorically disarmed groups whom they judged to be a threat to the public safety."). Neither the business traveler who takes a spouse's prescription sleeping pill, nor the college student who has her first encounter with a marijuana cigarette,

poses a comparable danger to those who have been adjudicated felons or mentally incompetent by a court.

Fifth Amendment. To comply with due process, a criminal law must "give the person of ordinary intelligence a reasonable opportunity to know what is prohibited," and also "must provide explicit standards for those who apply them." *Grayned* v. *City of Rockford*, 408 U.S. 104, 108 (1972). A vague and overinclusive law, by contrast, "impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application." *Id.* at 108-09.

These principles have led courts of appeals, "[i]n order to avoid unconstitutional vagueness," to require the government to establish that the defendant engaged in "'regular drug use.'" *Marceau*, 554 F.3d at 30 (quoting *Edwards*, 540 F.3d at 1162). As these courts have recognized, it is a defendant's use of drugs "with regularity" and "over an extended period of time" that "suffic[es] to put him on notice that he fell within the statutory definition." *Dugan*, 450 Fed. App'x at 636 (quotation marks omitted). But "an ordinary person" would *not* "understand that [his] actions establish him as an unlawful user" based on a single incidence of drug use. *Patterson*, 431 F.3d at 836 (quotation marks omitted). Nor, if the term "unlawful user" in Section 922(g)(3) were read so broadly—effectively extending to half of the country's population—could the law avoid the "dangers of arbitrary and discriminatory application" by "policemen, judges, and juries." *Grayned*, 408 U.S. at 109.

III. THIS ISSUE IS IMPORTANT AND RECURRING

Before the en banc Fifth Circuit, the United States embraced the regular-use requirement in no uncertain terms:

> [T]he Government conceded in its supplemental en banc brief that, for a defendant to be an "unlawful user" for § 922(g)(3) purposes, his "drug use would have to be with regularity and over an extended period of time." The Government reiterated this at en banc oral argument: "We certainly wouldn't charge one time use. It would have to be over a period of time."

Herrera, 313 F.3d at 885. This case is proof positive that the government's representations no longer hold true: The government can and will prosecute even registered gun owners like Mr. Carnes based on evidence of one-time use. That fact alone makes the issue worthy of this Court's review, but several factors further elevate its salience.

First, firearm possession by an "unlawful user" is among the most frequently prosecuted of all federal offenses. Between 2008 and 2017, it was the lead charge in more than 1,200 cases.[3] And the actual number of charges under Section 922(g)(3) is likely far higher, given longstanding Department of Justice guidance under which prosecutors are told "to charge a defendant who has multiple disqualifying factors with a separate count of unlawful weapons possession under § 922(g) for each disqualifying status."[4]

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[3] TracReports, *Federal Weapons Prosecutions Rise for Third Consecutive Year*, Syracuse Univ. (Nov. 29, 2017), https://bit.ly/3OaGz4b.

[4] Memorandum from Robert S. Mueller, III, Ass't Att'y Gen., to All Federal Prosecutors, *Prosecutions Under 18 U.S.C. § 922(g)*

Second, the importance of interpreting Section 922(g)(3) properly has only grown in recent years. Marijuana has now been at least partly decriminalized under the laws of 37 states and the District of Columbia,[5] and most of those jurisdictions affirmatively license its sale, use, or both.[6] Yet marijuana remains a Schedule I controlled substance, see 21 U.S.C. § 812, and federal law enforcement has committed to prosecuting any marijuana user who possesses a firearm "regardless of whether his or her State has passed legislation authorizing marijuana use."[7] Indeed, the government has repeatedly prosecuted defendants under Section 922(g)(3) for marijuana use that is permitted under state law. See, *e.g.*, *Bellamy*, 682 Fed. App'x at 450 (upholding conviction based on defendant's at-home use of medical marijuana pursuant to state-granted license). Giving the provision its proper scope is thus key to avoiding unnecessary friction between state and federal law.

Third, the circuit minority's overbroad reading threatens to exacerbate invidious law-enforcement disparities. The overrepresentation of racial minorities among those prosecuted for gun possession and for drug

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(Nov. 3, 1992), https://bit.ly/39na0kv; see U.S. Dep't of Justice, Justice Manual 9-63.514 (2018), https://bit.ly/3NWTWoZ.

[5] *State Medical Cannabis Laws*, Nat'l Conf. of State Legislators (June 14, 2022), https://bit.ly/3Hjy0ld.

[6] Barry Weisz & Michael Rosenblum, *Cannabis State-by-State Regulations*, Thompson Coburn LLP (updated Aug. 2021), https://www.thompsoncoburn.com/docs/default-source/blog-documents/ranking-of-state-cannabis-regulations.pdf.

[7] Arthur Herbert, Ass't Dir., Enforcement Programs & Servs., U.S. Dep't of Justice, Bureau of Alcohol, Tobacco, Firearms & Explosives, *Open Letter to All Federal Firearms Licensees* (Sept. 21, 2011), https://bit.ly/3GMdOZ6.

offenses is well known,[8] and Section 922(g)(3) sits at the intersection of both those trends. An interpretation that turns half the country into "unlawful users" at one time or another "places great power in the hands of the prosecutor," at the risk of "allowing policemen, prosecutors, and juries to pursue their personal predilections." *Marinello* v. *United States*, 138 S. Ct. 1101, 1108 (2018) (quotation marks omitted). This Court has admonished that the judiciary "cannot construe a criminal statute on the assumption that the Government will 'use it responsibly,'" *id.* at 1109, and this case shows why.

CONCLUSION

The petition for a writ of certiorari should be granted.

[8] See, *e.g.*, David E. Patton, *Criminal Justice Reform and Guns: The Irresistible Movement Meets the Immovable Object*, 69 Emory L.J. 1011, 1012-13 (2020); John Hudack, *Marijuana's Racist History Shows the Need for Comprehensive Drug Reform*, Brookings Inst. (June 23, 2020), https://brook.gs/3mNvQ3X; Benjamin Levin, *Guns and Drugs*, 84 Fordham L. Rev. 2173, 2194-99 (2016).

Respectfully submitted,

JOHN JENAB
JENAB LAW FIRM, P.A.
P.O. Box 30
Lampe, MO 65681
(816) 759-8686

ALLON KEDEM
Counsel of Record
KOLYA D. GLICK
JAYCE BORN
CHARLES BIRKEL
KELSIE SICINSKI
ARNOLD & PORTER
KAYE SCHOLER LLP
601 Massachusetts Ave., NW
Washington, DC 20001
(202) 942-5000
Allon.Kedem@arnoldporter.com

JULY 2022

APPENDIX

APPENDIX

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 20-3170

United States of America
Plaintiff - Appellee

v.

Keith L. Carnes
Defendant - Appellant

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

Submitted: September 24, 2021
Filed: January 3, 2022

Before SHEPHERD, WOLLMAN, and KOBES, Circuit Judges.

SHEPHERD, Circuit Judge.

A jury found Keith L. Carnes guilty on all counts of a 3-count indictment, and the district court sentenced him to 240 months imprisonment and 3 years supervised release. Carnes appeals his convictions and sentence. Having jurisdiction under 28 U.S.C. § 1291, we vacate Carnes's third concurrent term of supervised release, affirm the district court in all other respects, and remand for the district court to enter a corrected written judgment.

I.

This case arises out of Carnes's possession of a gun one day in 2013 and during a two-week period in 2016. "We recite the facts in the light most favorable to the jury's verdict." United States v. Galloway, 917 F.3d 631, 632 (8th Cir. 2019) (citation omitted).

On February 10, 2013, a law enforcement officer stopped a vehicle driven by Carnes, who was the sole occupant, for driving 57 miles per hour in a 35-mile-per-hour zone near the intersection of East 63rd Street and Lewis Road in Kansas City, Missouri. Upon approaching the driver's side door, the officer smelled the odor of marijuana. The officer told Carnes, "I need your driver's license and your sack of weed." Carnes responded, "I just smoked at the house" and said that he "just got done smoking." Carnes also told the officer, "I got my gun, too." The officer asked Carnes to exit the vehicle and subsequently recovered a handgun from Carnes's waistband during a pat-down search. A backup officer also smelled a strong odor of marijuana coming from within the vehicle, Carnes's clothing, and his breath. Carnes told this officer that he had smoked a "blunt," which he also

called "Kush." Carnes was arrested and transported to the patrol station, where he failed a field sobriety test. Officers at the station noted that Carnes's breath had a strong odor of marijuana, his eyes were bloodshot, and he was walking hesitantly. Carnes stated that he was not "that high." At trial, Carnes admitted that he was under the influence of marijuana when stopped by law enforcement. Carnes testified that he refused to take a blood test or provide a urine sample because he knew the results would come back positive for marijuana.

Three-and-a-half years later, on August 16, 2016, a man was sitting in his parked vehicle near the intersection of East 35th Street and Wabash Avenue in Kansas City, Missouri. As the man's ex-girlfriend was exiting the man's vehicle, another vehicle pulled up alongside the left-hand side of the man's vehicle. The driver of the other vehicle said to the man's ex-girlfriend, "What's up, baby," and the man said to the driver, "Do you mind, I'm talking to my ex." The driver then pulled out a gun and fired at the man four times before driving away. The man selected Carnes as the shooter from a photo array and also testified that his ex-girlfriend had identified Carnes as the shooter. A witness who identified himself as the front-seat passenger of the shooter's vehicle provided law enforcement with a phone number to contact the shooter. Law enforcement determined that Carnes was associated with the phone number. At trial, Carnes denied the shooting.

On August 30, 2016, two weeks after the shooting, Carnes was approaching a female friend's house in Kansas City, Missouri when he saw her son. They spoke briefly before exchanging gunfire; Carnes sustained

multiple gunshot wounds. Despite his injuries, Carnes ran to his girlfriend's vehicle and drove away alone. While speeding and driving in the wrong lane, Carnes ran a red light and caused a three-car collision that killed a motorist. A law enforcement officer responding to the collision approached Carnes's vehicle, and Carnes identified himself. The officer smelled the odor of marijuana in his vehicle and observed a handgun on the floorboard between Carnes's feet and a plastic baggie containing what testing later revealed to be an ounce of marijuana. A shell casing from inside the handgun matched shell casings found at the scene of the August 16 shooting. Carnes tested positive for marijuana, cocaine, and phencyclidine (PCP). At trial, Carnes admitted to smoking marijuana and driving under the influence of marijuana on the day of the collision, though he claimed the marijuana found in the vehicle did not belong to him. Carnes also testified that he used marijuana frequently and that law enforcement had previously taken marijuana from him.

A grand jury returned a three-count indictment, charging Carnes with one count of being a felon in possession of a firearm in violation of 18 U.S.C. §§ 922(g)(1), 924(a)(2) (Count 1) and two counts of being an unlawful user of a controlled substance in possession of a firearm in violation of 18 U.S.C. §§ 922(g)(3), 924(a)(2) (Counts 2 and 3). Counts 1 and 2 concerned Carnes's possession of a gun on August 30, 2016. Count 3 concerned his possession of a gun on February 10, 2013. In 2019, a superseding indictment expanded the date range in Counts 1 and 2 to cover August 16 through August 30.

Before trial, Carnes stipulated that, prior to August 16, 2016, he had been convicted of a felony offense punishable by a term of imprisonment exceeding one year and he knew that he had been convicted of such an offense. After the government presented its evidence, Carnes moved for a judgment of acquittal, arguing that the government failed to prove the elements of each count. The district court denied his motion. Carnes renewed his motion for a judgment of acquittal after both parties rested their cases, which the district court again denied. At the conclusion of the jury trial, Carnes was convicted on all three counts.

Prior to sentencing, the United States Probation Office prepared a Presentence Investigation Report (PSR). The PSR found a total offense level of 24 and a criminal history category of IV. It calculated Carnes's United States Sentencing Guidelines range as 77 to 96 months imprisonment, with a statutory maximum of 240 months. The government requested an upward variance to 240 months, citing the nature and circumstances of Carnes's offense, his criminal history, and his post-conviction assault of a corrections officer. At sentencing, the district court merged Counts 1 and 2 for purposes of sentencing and sentenced Carnes to 120 months imprisonment on Counts 1 and 2 as well as 120 months on Count 3, to run consecutively. This resulted in a total term of 240 months imprisonment. The district court also imposed three concurrent three-year terms of supervised release. Carnes appeals his conviction and sentence on multiple grounds.

II.

Carnes first argues that the government failed to present sufficient evidence that he was an "unlawful user of a controlled substance," as required for Counts 2 and 3. "We review de novo the denial of a motion for judgment of acquittal based on the sufficiency of the evidence." United States v. Fang, 844 F.3d 775, 778 (8th Cir. 2016) (citation omitted). "We review the sufficiency of the evidence de novo, considering the evidence in the light most favorable to the government and drawing all reasonable inferences in favor of the verdict." United States v. White, 962 F.3d 1052, 1056 (8th Cir. 2020).

Counts 2 and 3 charged Carnes with being an unlawful user of a controlled substance in possession of a firearm, in violation of §§ 922(g)(3) and 924(a)(2). "It is illegal for 'an unlawful user of . . . any controlled substance' to possess a firearm." United States v. Rodriguez, 711 F.3d 928, 937 (8th Cir. 2013) (alteration in original) (quoting § 922(g)(3)). "The government is not required to prove that the defendant possessed the firearm while contemporaneously using a controlled substance." Id. Instead, "[i]t is sufficient for the government to demonstrate use of a controlled substance 'during the period of time' that the defendant possessed firearms, not that there was actual use 'at the time that the officers discovered [the defendant] in possession of firearms.'" Id. (second alteration in original) (citation omitted).

In United States v. Turnbull, we recognized that "[t]he term 'unlawful user' is not otherwise defined in the statute, but courts generally agree the law runs the risk

of being unconstitutionally vague without a judicially-created temporal nexus between the gun possession and regular drug use." 349 F.3d 558, 561 (8th Cir. 2003), vacated, 543 U.S. 1099 (2005), reinstated, 414 F.3d 942 (8th Cir. 2005) (per curiam). In subsequent decisions, we interpreted § 922's "unlawful user" element to require a temporal nexus between the proscribed act (for § 922(g)(3), possession of a firearm) and regular drug use. E.g., United States v. Figueroa-Serrano, 971 F.3d 806, 812 (8th Cir. 2020); United States v. Turner, 842 F.3d 602, 605 (8th Cir. 2016); United States v. Boslau, 632 F.3d 422, 430 (8th Cir. 2011).

Without defining "regular drug use" ourselves, we have "held that a district court acted within its discretion" when giving a jury instruction that "adequately captured the 'temporal nexus [between the proscribed act] and regular drug use' required by the term [unlawful user]." Boslau, 632 F.3d at 430 (first alteration in original) (citation omitted). In Boslau, the district court instructed the jury: "Such use [of a controlled substance] is not limited to the use of drugs on a particular day, or within a matter of days or weeks before, but rather that the unlawful use has occurred recently enough to indicate that the individual is actively engaged in such conduct." Id. at 429 (emphasis added); see also Turnbull, 349 F.3d at 561 (finding a district court did not abuse its discretion by giving an almost-identical jury instruction). "'[A]ctively engaging' sufficiently encompasses the requisite temporal nexus" required by § 922's "unlawful user" element. See Boslau, 632 F.3d at 430. Here, the district court similarly

instructed the jury regarding the phrase "unlawful user of a controlled substance":

> The defendant must have been *actively engaged in use of a controlled substance during the time he possessed the firearm*, but the law does not require that he use the controlled substance at the precise time he possessed the firearm. Such use is *not limited to the use of drugs on a particular day* or within a matter of days or weeks before but, rather, that the unlawful use has occurred recently enough to indicate that the individual is actively engaged in such conduct.

R. Doc. 144, at 101 (emphasis added).

Carnes cites case law from our sister circuits that requires proof of regular use over an extended period. E.g., United States v. Tanco-Baez, 942 F.3d 7, 15 (1st Cir. 2019); United States v. Bowens, 938 F.3d 790, 793 (6th Cir. 2019). Carnes acknowledges that the government offered evidence that he used controlled substances on the days he was found in possession of a firearm. Nevertheless, Carnes argues that the government failed to meet its burden of proof that Carnes had regularly used controlled substances over an extended period leading up to the 2013 and 2016 incidents.

We reject Carnes's expansive interpretation of "regular drug use" that would require evidence of use over an extended period. While some of our sister circuits require proof that a defendant used controlled substances regularly over an extended period, e.g., Tanco-Baez, 942

F.3d at 15; Bowens, 938 F.3d at 793; United States v. Purdy, 264 F.3d 809, 812-13 (9th Cir. 2001), when the defendant in Boslau urged asimilar approach, we declined to adopt such a rigorous definition, 632 F.3d at 429-31.

Viewing the evidence in the light most favorable to the verdict and acceptingall reasonable inferences that support the verdict, the government presented sufficient evidence that Carnes was actively engaged in the use of a controlled substance during the time he possessed firearms in 2013 and 2016, thereby satisfying the requisite temporal nexus between gun possession and regular drug use required under § 922(g)(3). At trial, Carnes admitted that he used marijuana frequently and that law enforcement had previously taken marijuana from him. In 2013, law enforcement smelled the odor of marijuana on Carnes, and Carnes repeatedly admitted that he had smoked marijuana, including the statements that he had "just smoked at the house" and had "just got done smoking." At trial, Carnes testified that he was under the influence of marijuana when law enforcement stopped him andthat he refused to take a blood test or provide a urine sample because he knew either would test positive for marijuana. In 2016, law enforcement smelled the odor of marijuana inside a vehicle driven by Carnes and observed a baggie containing marijuana by his feet. Carnes tested positive for marijuana, cocaine, and PCP. At trial, Carnes testified that he was operating the vehicle under the influence of marijuana.

Carnes also argues that the government failed to prove that he knew he was an unlawful user at the time of each offense. We conclude that the government presented

sufficient evidence that Carnes knew his use of controlled substances (notably, marijuana) was unlawful. In a § 922(g) prosecution, the government must prove "that [the defendant] knew he belonged to the relevant category of persons barred from possessing a firearm." Rehaif v. United States, 139 S. Ct. 2191, 2200 (2019). In 2013, Carnes refused to take a blood test or provide a urine sample because he knew either would test positive for marijuana, showing his knowledge of the unlawfulness of its use. At trial after the 2016 incident, Carnes testified that lawenforcement would often not arrest him but would take his marijuana, pour it out, and stomp on it. Based on this evidence, a reasonable juror could find that Carnes knew he was using marijuana unlawfully. The district court thus did not err in denying Carnes's motion for judgment of acquittal based on the sufficiency of the evidence.

III.

Carnes next argues that Counts 1 and 2 are multiplicitous in violation of the Double Jeopardy Clause of the Fifth Amendment and that the district court erred by imposing separate sentences for the two counts that were based on a single incident. Because Carnes did not raise this claim before the district court, we review for plain error. United States v. Woolsey, 759 F.3d 905, 907 (8th Cir. 2014). For Carnes to prevail, he "must show that the district court committed an error that is plain, *i.e.* clear under current law, that he was prejudiced by the error, and that the error seriously affects the fairness, integrity, or public reputation of judicial proceedings." Id. (citation omitted). The parties agree that the district court

committed plain error because its written judgment regarding Counts 1 and 2 is broader than its oral pronouncement delivered at sentencing.

The parties agree that at sentencing, the district court correctly merged Counts 1 and 2 for purposes of sentencing, because they were based on a single incident. See United States v. Richardson, 439 F.3d 421, 422 (8th Cir. 2006) (en banc) (per curiam) (holding that multiple counts of conviction under § 922(g) arising out of a single act of possession of a firearm should be merged at sentencing into a single offense). The district court orally sentenced Carnes to one 120-month sentence for the merged Counts 1 and 2. However, the written judgment committed Carnes to two concurrent 120-month sentences for Counts 1 and 2.[1] Also, at sentencing and in its written judgment, the district court committed Carnes to three concurrent three-year terms of supervised release.

"The oral pronouncement by the sentencing court is the judgment of the court." United States v. Mays, 993 F.3d 607, 622 (8th Cir. 2021) (citation omitted)."Where an oral sentence and the written judgment conflict, the oral sentencecontrols." United States v. Foster, 514 F.3d 821, 825 (8th Cir. 2008) (citation omitted). "[T]he portion of the written judgment 'that is broader than the oral version is void.'" Mays, 993 F.3d at 622 (citation omitted). When such a conflict exists, the appropriate remedy is to

[1] Both the district court's oral pronouncement and written judgment properly sentenced Carnes to a separate 120-month sentence for Count 3, to be served consecutively.

remand "to the district court with instructions for it to reconcile the written judgment with the oral pronouncement." Id. Accordingly, we will remand for the district court to amend its written judgment to conform to its oral pronouncement of one 120-month sentence for Counts 1 and 2.

Additionally, as the government concedes, the district court plainly erred when it imposed three terms of supervised release. After properly merging Counts 1 and 2, the district court was limited to imposing one term of supervised release for these counts, in addition to the single term of supervised release imposed for Count 3, for a total of two terms of supervised release. See 18 U.S.C. §§ 3583(a), 3624(e). Accordingly, we will vacate the district court's imposition of a third term of supervised release.

IV.

Carnes finally contends that the district court imposed a substantively unreasonable sentence. We review the substantive reasonableness of a sentence for abuse of discretion. United States v. Feemster, 572 F.3d 455, 461 (8th Cir. 2009) (en banc). A district court abuses its discretion when, in weighing the factors set forth in 18 U.S.C. § 3553(a), "it (1) 'fails to consider a relevant factor that should have received significant weight'; (2) 'gives significant weight to an improper or irrelevant factor'; or (3) 'considers only the appropriate factors but in weighing those factors commits a clear error of judgment.'" Id. (citation omitted).

Carnes argues that the district court failed to consider mitigating factors that should have received

significant weight and committed a clear error of judgment inweighing relevant factors that led the district court to impose a significant upward variance. Carnes claims that the district court gave no consideration to his gunshot wounds that caused the August 30 collision, his remorse over the fatality resulting from the collision, and his separate state charge for involuntary manslaughter. Carnes also contends that the district court failed to consider his mental health issuesthat contributed to his post-conviction assault of a corrections officer. Finally, Carnes argues that, while a district court may consider factors already considered in calculating a defendant's Guidelines range, the heavy weight assigned to Carnes's criminal history led to a substantial upward variance that undermined sentencing uniformity.

Having examined the record, we conclude that the district court did not abuse its discretion by varying upward from the Guidelines range and did not impose a substantively unreasonable sentence, as the court properly considered the factors listed in § 3553(a). "A district court has 'wide latitude' to assign weight to give[n] factors, and '[t]he district court may give some factors less weight than a defendant prefers or more weight to other factors, but that alone does not justify reversal.'" United States v. Brown, 992 F.3d 665, 673-74 (8th Cir. 2021) (second alteration in original) (citation omitted). In crafting Carnes's sentence, the district court considered the § 3553(a) factors, stressing the nature and circumstances of Carnes's offense, including the August 30 fatality, his violent criminal history, and the need to deter Carnes and protect the public. The district court

was entitled to give great weight to these factors. See id. Carnes's assertion of substantive unreasonableness amounts to nothing more than a disagreement with how the district court chose to weigh the § 3553(a) factors. See United States v. Campbell, 986 F.3d 782, 800 (8th Cir. 2021).

Regarding Carnes's claim that the district court failed to consider mitigating factors that were presented during the sentencing hearing and appeared in the PSR, "[t]he [district] court did not abuse its discretion merely by not discussing all of a defendant's arguments." United States v. Delgado-Hernandez, 646 F.3d 562, 568 (8th Cir. 2011) (per curiam). We presume the district court properly considered issues argued by the parties at the sentencing hearing even though the district court itself did not discuss the issues. See United States v. Miles, 499 F.3d 906, 909-10 (8th Cir. 2007). The district court also had the PSR at its disposal, and it is evident from the record that the district court examined the PSR. Regarding the factors that influenced the district court to vary upward, as Carnes acknowledges, "factors that have already been taken into account in calculating the advisory Guidelines range can nevertheless form the basis of a variance." United States v. Thorne, 896 F.3d 861, 865 (8th Cir. 2018) (per curiam) (citation omitted). Carnes's sentence is thus not substantively unreasonable.

V.

For the foregoing reasons, we vacate Carnes's third term of supervised release, remand for the district court to amend its written judgment to conform to its oral pronouncement regarding the merged Counts 1 and 2,

and affirm the judgment of the district court in all other respects.

APPENDIX B

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA Plaintiff, v. KEITH L. CARNES Defendant.	JUDGMENT IN A CRIMINAL CASE Case Number: 4:16-CR-00301-DGK(1) USM Number: 31800-045 Jonathan D Truesdale Defendant's Attorney

THE DEFENDANT:

☐ pleaded guilty to count(s).

☐ pleaded guilty to count(s) before a U.S. Magistrate Judge, which was accepted by the court.

☒ was found guilty on Counts 1, 2, and 3 of the Superseding Indictment on November 6, 2019.

The defendant is adjudicated guilty of these offenses:

Title & Section/Nature of Offense	**Offense Ended**	**Count**
Felon in Possession of a Firearm	08/30/2016	1s

18 U.S.C. §§ 922(g)(1) and 924(a)(2)		
Unlawful User of a Controlled Substance in Possession of a Firearm 18 U.S.C. §§ 922(g)(3) and 924(a)(2)	08/30/2016	2s
Unlawful User of a Controlled Substance in Possession of a Firearm 18 U.S.C. §§ 922(g)(3) and 924(a)(2)	02/10/2013	3s

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s)
☒ The Original Indictment is dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

September 30, 2020
Date of Imposition of Judgment

/s/ Greg Kays
Signature of Judge

GREG KAYS
UNITED STATES DISTRICT JUDGE

Name and Title of Judge

October 2, 2020
Date

DEFENDANT: KEITH L. CARNES
CASE NUMBER: 4:16-CR-00301-DGK(1)

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

120 months as to Counts 1 and 2, to run concurrently, and 120 months as to Count 3, terms to run consecutively to Counts 1 and 2, for a total term of 240 months.

☐ The court makes the following recommendations to the Bureau of Prisons:

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____ at _____, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: KEITH L. CARNES
CASE NUMBER: 4:16-CR-00301-DGK(1)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: **3 years as to each of Counts 1, 2, and 3, terms to run concurrently**.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
   - ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. (*check if applicable*)
4. ☒ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. (*check if applicable*)
5. ☐ You must cooperate in the collection of DNA as directed by the probation officer. (*check if applicable*)
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you

reside, work, are a student, or were convicted of a qualifying offense. (*check if applicable*)

7. ☐ You must participate in an approved program for domestic violence. (*check if applicable*)

You must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

DEFENDANT: KEITH L. CARNES
CASE NUMBER: 4:16-CR-00301-DGK(1)

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the

probation officer within 72 hours of becoming aware of a change or expected change.

6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing

bodily injury or death to another person such as nunchakus or tasers).

11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. I understand additional information regarding these conditions is available at the www.uscourts.gov.

Defendant's Signature _____

Date _____

DEFENDANT: KEITH L. CARNES
CASE NUMBER: 4:16-CR-00301-DGK(1)

SPECIAL CONDITIONS OF SUPERVISION

a) The defendant shall successfully participate in any substance abuse testing program, which may include urinalysis, sweat patch, or Breathalyzer testing, as approved by the Probation Office, and pay any associated costs as directed by the Probation Office.
b) The defendant shall submit his person and any property, house, residence, office, vehicle, papers, computer, other electronic communication or data storage devices or media and effects to a search, conducted by a U.S. Probation Officer at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release; failure to submit to a search may be grounds for revocation; the defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.
c) The defendant shall satisfy any warrants/pending charges within the first 30 days of supervised release.
d) The defendant shall comply with the Western District of Missouri Offender Employment Guideline which may include participation in training, counseling, and/or daily job searching, as directed by the probation officer. If not in compliance with the condition of supervision requiring full-time employment at a lawful occupation, the defendant may be required to perform up to 20 hours of community service per week until employed, as approved or directed by the probation officer.
e) The defendant shall provide the Probation Office with access to any requested financial information.

ACKNOWLEDGMENT OF CONDITIONS

I have read or have read the conditions of supervision set forth in this judgment and I fully understand them. I have been provided a copy of them.

I understand that upon finding of a violation of probation or supervised release, the Court may (1) revoke supervision, (2) extend the term of supervision, and/or (3) modify the conditions of supervision.

_____	_____
Defendant	Date
_____	_____
United States Probation Officer	Date

DEFENDANT: KEITH L. CARNES
CASE NUMBER: 4:16-CR-00301-DGK(1)

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments.

	Assessment	**Restitution**	**Fine**
TOTALS	$200.00	$3,833.78	$.00

	AVAA Assessment*	**JVTA Assessment****
TOTALS		

☒ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Restitution Ordered
T.W.	$3,833.78

☒ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☒ the interest requirement is waved for the	☐ fine	☒ restitution
☐ the interest requirement for the	☐ fine	☐ restitution is modified as follows:

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22

*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

☒ Lump sum payment of $3,833.78 due immediately. If unable to pay the full amount immediately, while incarcerated, the defendant shall make quarterly payments of $25 or at least 10 percent of earnings, whichever is greater, and while on supervised release, monthly payments of $100 or 10 percent of gross income, whichever is greater, to commence 30 days after release from incarceration.

☒ Special instructions regarding the payment of criminal monetary penalties:
It is ordered that the Defendant shall pay to the United States a special assessment of $200.00 for Counts 1s, 2s and 3s, which shall be due immediately. Said special assessment shall be paid to the Clerk, U.S. District Court.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) JVTA Assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.

APPENDIX C
UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 20-3170

United States of America
Appellee
v.
Keith L. Carnes
Appellant

Appeal from U.S. District Court for the Western District of Missouri - Kansas City
(4:16-cr-00301-DGK-1)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

February 23, 2022

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

/s/ Michael E. Gans

APPENDIX D

18 U.S.C. § 922 Unlawful acts

(a) It shall be unlawful—

(1) for any person—

(A) except a licensed importer, licensed manufacturer, or licensed dealer, to engage in the business of importing, manufacturing, or dealing in firearms, or in the course of such business to ship, transport, or receive any firearm in interstate or foreign commerce; or

(B) except a licensed importer or licensed manufacturer, to engage in the business of importing or manufacturing ammunition, or in the course of such business, to ship, transport, or receive any ammunition in interstate or foreign commerce;

(2) for any importer, manufacturer, dealer, or collector licensed under the provisions of this chapter to ship or transport in interstate or foreign commerce any firearm to any person other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, except that—

(A) this paragraph and subsection (b)(3) shall not be held to preclude a licensed importer, licensed manufacturer, licensed dealer, or licensed collector from returning a firearm or replacement firearm of the same kind and type to a person from whom it was received; and this paragraph shall not be held to preclude an individual from mailing a firearm owned in compliance with Federal, State, and local law to a licensed importer, licensed manufacturer, licensed dealer, or licensed collector;

(B) this paragraph shall not be held to preclude a licensed importer, licensed manufacturer, or licensed dealer from depositing a firearm for conveyance in the mails to any officer, employee, agent, or watchman who, pursuant to the provisions of section 1715 of this title, is eligible to receive through the mails pistols, revolvers, and other firearms capable of being concealed on the person, for use in connection with his official duty; and

(C) nothing in this paragraph shall be construed as applying in any manner in the District of Columbia, the Commonwealth of Puerto Rico, or any possession of the United States differently than it would apply if the District of Columbia, the Commonwealth of Puerto Rico, or the possession were in fact a State of the United States;

(3) for any person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector to transport into or receive in the State where he resides (or if the person is a corporation or other business entity, the State where it maintains a place of business) any firearm purchased or otherwise obtained by such person outside that State, except that this paragraph (A) shall not preclude any person who lawfully acquires a firearm by bequest or intestate succession in a State other than his State of residence from transporting the firearm into or receiving it in that State, if it is lawful for such person to purchase or possess such firearm in that State, (B) shall not apply to the transportation or receipt of a firearm obtained in conformity with subsection (b)(3) of this section, and (C) shall not apply to the transportation of any firearm acquired in any State prior to the effective

date of this chapter;

(4) for any person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, to transport in interstate or foreign commerce any destructive device, machinegun (as defined in section 5845 of the Internal Revenue Code of 1986), short-barreled shotgun, or short-barreled rifle, except as specifically authorized by the Attorney General consistent with public safety and necessity;

(5) for any person (other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector) to transfer, sell, trade, give, transport, or deliver any firearm to any person (other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector) who the transferor knows or has reasonable cause to believe does not reside in (or if the person is a corporation or other business entity, does not maintain a place of business in) the State in which the transferor resides; except that this paragraph shall not apply to (A) the transfer, transportation, or delivery of a firearm made to carry out a bequest of a firearm to, or an acquisition by intestate succession of a firearm by, a person who is permitted to acquire or possess a firearm under the laws of the State of his residence, and (B) the loan or rental of a firearm to any person for temporary use for lawful sporting purposes;

(6) for any person in connection with the acquisition or attempted acquisition of any firearm or ammunition from a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, knowingly to make any false or fictitious oral or written statement or to furnish or exhibit any false, fictitious, or misrepresented identification, intended or likely to deceive such importer, manufacturer,

dealer, or collector with respect to any fact material to the lawfulness of the sale or other disposition of such firearm or ammunition under the provisions of this chapter;

(7) for any person to manufacture or import armor piercing ammunition, unless—

(A) the manufacture of such ammunition is for the use of the United States, any department or agency of the United States, any State, or any department, agency, or political subdivision of a State;

(B) the manufacture of such ammunition is for the purpose of exportation; or

(C) the manufacture or importation of such ammunition is for the purpose of testing or experimentation and has been authorized by the Attorney General;

(8) for any manufacturer or importer to sell or deliver armor piercing ammunition, unless such sale or delivery—

(A) is for the use of the United States, any department or agency of the United States, any State, or any department, agency, or political subdivision of a State;

(B) is for the purpose of exportation; or

(C) is for the purpose of testing or experimentation and has been authorized by the Attorney General;

(9) for any person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, who does not reside in any State to receive any firearms unless such receipt is for lawful sporting purposes.

(b) It shall be unlawful for any licensed importer, licensed manufacturer, licensed dealer, or licensed collector to sell or deliver—

(1) any firearm or ammunition to any individual who the licensee knows or has reasonable cause to believe is less than eighteen years of age, and, if the firearm, or ammunition is other than a shotgun or rifle, or ammunition for a shotgun or rifle, to any individual who the licensee knows or has reasonable cause to believe is less than twenty-one years of age;

(2) any firearm to any person in any State where the purchase or possession by such person of such firearm would be in violation of any State law or any published ordinance applicable at the place of sale, delivery or other disposition, unless the licensee knows or has reasonable cause to believe that the purchase or possession would not be in violation of such State law or such published ordinance;

(3) any firearm to any person who the licensee knows or has reasonable cause to believe does not reside in (or if the person is a corporation or other business entity, does not maintain a place of business in) the State in which the licensee's place of business is located, except that this paragraph (A) shall not apply to the sale or delivery of any rifle or shotgun to a resident of a State other than a State in which the licensee's place of business is located if the transferee meets in person with the transferor to accomplish the transfer, and the sale, delivery, and receipt fully comply with the legal conditions of sale in both such States (and any licensed manufacturer, importer or dealer shall be presumed, for purposes of this subparagraph, in the absence of evidence to the contrary, to have had actual knowledge of the State laws and published ordinances of both States), and (B) shall not apply to the loan or rental of a firearm to

any person for temporary use for lawful sporting purposes;

(4) to any person any destructive device, machinegun (as defined in section 5845 of the Internal Revenue Code of 1986), short-barreled shotgun, or short-barreled rifle, except as specifically authorized by the Attorney General consistent with public safety and necessity; and

(5) any firearm or armor-piercing ammunition to any person unless the licensee notes in his records, required to be kept pursuant to section 923 of this chapter, the name, age, and place of residence of such person if the person is an individual, or the identity and principal and local places of business of such person if the person is a corporation or other business entity.

Paragraphs (1), (2), (3), and (4) of this subsection shall not apply to transactions between licensed importers, licensed manufacturers, licensed dealers, and licensed collectors. Paragraph (4) of this subsection shall not apply to a sale or delivery to any research organization designated by the Attorney General.

(c) In any case not otherwise prohibited by this chapter, a licensed importer, licensed manufacturer, or licensed dealer may sell a firearm to a person who does not appear in person at the licensee's business premises (other than another licensed importer, manufacturer, or dealer) only if—

(1) the transferee submits to the transferor a sworn statement in the following form:

> "Subject to penalties provided by law, I swear that, in the case of any firearm other than a shotgun or a rifle, I am twenty-one

years or more of age, or that, in the case of a shotgun or a rifle, I am eighteen years or more of age; that I am not prohibitedby the provisions of chapter 44 of title 18, United States Code, from receiving a firearm in interstate or foreign commerce;and that my receipt of this firearm will not be in violation of any statute of the State and published ordinance applicable to thelocality in which I reside. Further, the true title, name, and address of the principal law enforcement officer of the locality to which the firearm will be delivered are .....

Signature ..... Date....."

and containing blank spaces for the attachment of a true copy of any permit or other information required pursuant to suchstatute or published ordinance;

(2) the transferor has, prior to the shipment or delivery of the firearm, forwarded by registered or certified mail (return receipt requested) a copy of the sworn statement, together with a description of the firearm, in a form prescribed by the Attorney General, to the chief law enforcement officer of the transferee's place of residence, and has received a return receipt evidencing delivery of the statement or has had the statement returned due to the refusal of the named addressee to accept such letter in accordance with United States Post Office Department regulations; and

(3) the transferor has delayed shipment or delivery for a period of at least seven days following receipt of the notification of the acceptance or refusal

of delivery of the statement.

A copy of the sworn statement and a copy of the notification to the local law enforcement officer, together with evidence of receipt or rejection of that notification shall be retained by the licensee as a part of the records required to be kept under section 923(g).

(d) It shall be unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person, including as a juvenile—

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

(2) is a fugitive from justice;

(3) is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

(4) has been adjudicated as a mental defective or has been committed to any mental institution at 16 years of age or older;

(5) who, being an alien—

(A) is illegally or unlawfully in the United States; or

(B) except as provided in subsection (y)(2), has been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26)));

(6) who has been discharged from the Armed Forces under dishonorable conditions;

(7) who, having been a citizen of the United States, has renounced his citizenship;

(8) is subject to a court order that restrains such

person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child, except that this paragraph shall only apply to a court order that—

(A) was issued after a hearing of which such person received actual notice, and at which such person had the opportunity to participate; and

(B)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury;

(9) has been convicted in any court of a misdemeanor crime of domestic violence;

(10) intends to sell or otherwise dispose of the firearm or ammunition in furtherance of a felony, a Federal crime of terrorism, or a drug trafficking offense (as such terms are defined in section 932(a)); or

(11) intends to sell or otherwise dispose of the firearm or ammunition to a person described in any of paragraphs (1) through (10).

This subsection shall not apply with respect to the sale or disposition of a firearm or ammunition to a licensed importer, licensed manufacturer, licensed dealer, or licensed collector who pursuant to subsection (b) of section 925 is not precluded from dealingin firearms or ammunition, or to a person who has been granted relief from disabilities pursuant to subsection (c) of section 925.

(e) It shall be unlawful for any person knowingly to deliver or cause to be delivered to any common or contract carrier for transportation or shipment in interstate or foreign commerce, to persons other than licensed importers, licensed manufacturers, licensed dealers, or licensed collectors, any package or other container in which there is any firearm or ammunition without written notice to the carrier that such firearm or ammunition is being transported or shipped; except that any passenger who owns or legally possesses a firearm or ammunition being transported aboard any common or contract carrier for movement with the passenger in interstate or foreign commerce may deliver said firearm or ammunition into the custody of the pilot, captain, conductor or operator of such common or contract carrier for the duration of the trip without violating any of the provisions of this chapter. No common or contract carrier shall require or cause any label, tag, or other written notice to be placed on the outside of any package, luggage, or other container that such package, luggage, or other container contains a firearm.

(f)(1) It shall be unlawful for any common or contract carrier to transport or deliver in interstate or foreign commerce any firearm or ammunition with knowledge or reasonable cause to believe that the shipment,

transportation, or receipt thereof would be in violation of the provisions of this chapter.

(2) It shall be unlawful for any common or contract carrier to deliver in interstate or foreign commerce any firearm without obtaining written acknowledgement of receipt from the recipient of the package or other container in which there is a firearm.

(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;

(2) who is a fugitive from justice;

(3) who is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

(4) who has been adjudicated as a mental defective or who has been committed to a mental institution;

(5) who, being an alien—

(A) is illegally or unlawfully in the United States; or

(B) except as provided in subsection (y)(2), has been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26)));

(6) who has been discharged from the Armed Forces under dishonorable conditions;

(7) who, having been a citizen of the United States, has renounced his citizenship;

(8) who is subject to a court order that—

(A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;

(B) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

(C)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

(9) who has been convicted in any court of a misdemeanor crime of domestic violence,

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.

(h) It shall be unlawful for any individual, who to that individual's knowledge and while being employed for any person described in any paragraph of subsection (g) of this section, in the course of such employment—

(1) to receive, possess, or transport any firearm or ammunition in or affecting interstate or foreign commerce; or

(2) to receive any firearm or ammunition which has been shipped or transported in interstate or

foreign commerce.

(i) It shall be unlawful for any person to transport or ship in interstate or foreign commerce, any stolen firearm or stolen ammunition, knowing or having reasonable cause to believe that the firearm or ammunition was stolen.

(j) It shall be unlawful for any person to receive, possess, conceal, store, barter, sell, or dispose of any stolen firearm or stolen ammunition, or pledge or accept as security for a loan any stolen firearm or stolen ammunition, which is moving as, which is a part of, which constitutes, or which has been shipped or transported in, interstate or foreign commerce, either before or after it was stolen, knowing or having reasonable cause to believe that the firearm or ammunition was stolen.

(k) It shall be unlawful for any person knowingly to transport, ship, or receive, in interstate or foreign commerce, any firearm which has had the importer's or manufacturer's serial number removed, obliterated, or altered or to possess or receive any firearm which has had the importer's or manufacturer's serial number removed, obliterated, or altered and has, at any time, been shipped or transported in interstate or foreign commerce.

(l) Except as provided in section 925(d) of this chapter, it shall be unlawful for any person knowingly to import or bring into the United States or any possession thereof any firearm or ammunition; and it shall be unlawful for any person knowingly to receive any firearm or ammunition which has been imported or brought into the United States or any possession thereof in violation of the provisions of this chapter.

(m) It shall be unlawful for any licensed importer, licensed manufacturer, licensed dealer, or licensed collector knowingly to make any false entry in, to fail to make appropriate entry in, or to fail to properly maintain,

any record which he is required to keep pursuant to section 923 of this chapter or regulations promulgated thereunder.

(n) It shall be unlawful for any person who is under indictment for a crime punishable by imprisonment for a term exceeding one year to ship or transport in interstate or foreign commerce any firearm or ammunition or receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

(o)(1) Except as provided in paragraph (2), it shall be unlawful for any person to transfer or possess a machinegun.

(2) This subsection does not apply with respect to—

(A) a transfer to or by, or possession by or under the authority of, the United States or any department or agency thereof or a State, or a department, agency, or political subdivision thereof; or

(B) any lawful transfer or lawful possession of a machinegun that was lawfully possessed before the date this subsection takes effect.

(p)(1) It shall be unlawful for any person to manufacture, import, sell, ship, deliver, possess, transfer, or receive any firearm—

(A) that, after removal of grips, stocks, and magazines, is not as detectable as the Security Exemplar, by walk-through metal detectors calibrated and operated to detect the Security Exemplar; or

(B) any major component of which, when subjected to inspection by the types of x-ray machines commonly used at airports, does not

generate an image that accurately depicts the shape of the component. Barium sulfate or other compounds may be used in the fabrication of the component.

(2) For purposes of this subsection—

(A) the term "firearm" does not include the frame or receiver of any such weapon;

(B) the term "major component" means, with respect to a firearm, the barrel, the slide or cylinder, or the frame or receiver of the firearm; and

(C) the term "Security Exemplar" means an object, to be fabricated at the direction of the Attorney General, that is—

(i) constructed of, during the 12-month period beginning on the date of the enactment of this subsection, 3.7 ounces of material type 17-4 PH stainless steel in a shape resembling a handgun; and

(ii) suitable for testing and calibrating metal detectors:

Provided, however, That at the close of such 12-month period, and at appropriate times thereafter the Attorney General shall promulgate regulations to permit the manufacture, importation, sale, shipment, delivery, possession, transfer, or receipt of firearms previously prohibited under this subparagraph that are as detectable as a "Security Exemplar" which contains 3.7 ounces of material type 17-4 PH stainless steel, in a shape resembling a handgun, or such lesser amount as is detectable in view of advances in

state-of-the-art developments in weapons detection technology.

(3) Under such rules and regulations as the Attorney General shall prescribe, this subsection shall not apply to the manufacture, possession, transfer, receipt, shipment, or delivery of a firearm by a licensed manufacturer or any person acting pursuant to a contract with a licensed manufacturer, for the purpose of examining and testing such firearm to determine whether paragraph (1) applies to such firearm. The Attorney General shall ensure that rules and regulations adopted pursuant to this paragraph do not impair the manufacture of prototype firearms or the development of new technology.

(4) The Attorney General shall permit the conditional importation of a firearm by a licensed importer or licensed manufacturer, for examination and testing to determine whether or not the unconditional importation of such firearm would violate this subsection.

(5) This subsection shall not apply to any firearm which—

(A) has been certified by the Secretary of Defense or the Director of Central Intelligence, after consultation with the Attorney General and the Administrator of the Federal Aviation Administration, as necessary for military or intelligence applications; and

(B) is manufactured for and sold exclusively to military or intelligence agencies of the United States.

(6) This subsection shall not apply with respect to any firearm manufactured in, imported into, or

possessed in the United States before the date of the enactment of the Undetectable Firearms Act of 1988.

(q)(1) The Congress finds and declares that—

(A) crime, particularly crime involving drugs and guns, is a pervasive, nationwide problem;

(B) crime at the local level is exacerbated by the interstate movement of drugs, guns, and criminal gangs;

(C) firearms and ammunition move easily in interstate commerce and have been found in increasing numbers in and around schools, as documented in numerous hearings in both the Committee on the Judiciary the House of Representatives and the Committee on the Judiciary of the Senate;

(D) in fact, even before the sale of a firearm, the gun, its component parts, ammunition, and the raw materials from which they are made have considerably moved in interstate commerce;

(E) while criminals freely move from State to State, ordinary citizens and foreign visitors may fear to travel to or through certain parts of the country due to concern about violent crime and gun violence, and parents may decline to send their children to school for the same reason;

(F) the occurrence of violent crime in school zones has resulted in a decline in the quality of education in our country;

(G) this decline in the quality of education has an adverse impact on interstate commerce and the foreign commerce of the United States;

(H) States, localities, and school systems find it almost impossible to handle gun-related crime by themselves—even States, localities, and school systems that have made strong efforts to prevent, detect, and punish gun-related crime find their efforts unavailing due in part to the failure or inability of other States or localities to take strong measures; and

(I) the Congress has the power, under the interstate commerce clause and other provisions of the Constitution, to enact measures to ensure the integrity and safety of the Nation's schools by enactment of this subsection.

(2)(A) It shall be unlawful for any individual knowingly to possess a firearm that has moved in or that otherwise affects interstate or foreign commerce at a place that the individual knows, or has reasonable cause to believe, is a school zone.

(B) Subparagraph (A) does not apply to the possession of a firearm—

(i) on private property not part of school grounds;

(ii) if the individual possessing the firearm is licensed to do so by the State in which the school zone is located or a political subdivision of the State, and the law of the State or political subdivision requires that, before an individual obtains such a license, the law enforcement authorities of the State or political subdivision verify that the individual is qualified under law to receive the license;

(iii) that is—

(I) not loaded; and

(II) in a locked container, or a locked firearms rack that is on a motor vehicle;

(iv) by an individual for use in a program approved by a school in the school zone;

(v) by an individual in accordance with a contract entered into between a school in the school zone and the individual or an employer of the individual;

(vi) by a law enforcement officer acting in his or her official capacity; or

(vii) that is unloaded and is possessed by an individual while traversing school premises for the purpose of gaining access to public or private lands open to hunting, if the entry on school premises is authorized by school authorities.

(3)(A) Except as provided in subparagraph (B), it shall be unlawful for any person, knowingly or with reckless disregard for the safety of another, to discharge or attempt to discharge a firearm that has moved in or that otherwise affects interstate or foreign commerce at a place that the person knows is a school zone.

(B) Subparagraph (A) does not apply to the discharge of a firearm—

(i) on private property not part of school grounds;

(ii) as part of a program approved by a school in the school zone, by an individual

who is participating in the program;

(iii) by an individual in accordance with a contract entered into between a school in a school zone and the individual or an employer of the individual; or

(iv) by a law enforcement officer acting in his or her official capacity.

(4) Nothing in this subsection shall be construed as preempting or preventing a State or local government from enacting a statute establishing gun free school zones as provided in this subsection.

(r) It shall be unlawful for any person to assemble from imported parts any semiautomatic rifle or any shotgun which is identical to any rifle or shotgun prohibited from importation under section 925(d)(3) of this chapter as not being particularly suitable for or readily adaptable to sporting purposes except that this subsection shall not apply to—

(1) the assembly of any such rifle or shotgun for sale or distribution by a licensed manufacturer to the United States or any department or agency thereof or to any State or any department, agency, or political subdivision thereof; or

(2) the assembly of any such rifle or shotgun for the purposes of testing or experimentation authorized by the Attorney General.

(s)(1) Beginning on the date that is 90 days after the date of enactment of this subsection and ending on the day before the date that is 60 months after such date of enactment, it shall be unlawful for any licensed importer, licensed manufacturer, or licensed dealer to sell, deliver, or transfer a handgun (other than the return of a handgun to

the person from whom it was received) to an individual who is not licensed under section 923, unless—

(A) after the most recent proposal of such transfer by the transferee—

(i) the transferor has—

(I) received from the transferee a statement of the transferee containing the information described in paragraph (3);

(II) verified the identity of the transferee by examining the identification document presented;

(III) within 1 day after the transferee furnishes the statement, provided notice of the contents of the statement to the chief law enforcement officer of the place of residence of the transferee; and

(IV) within 1 day after the transferee furnishes the statement, transmitted a copy of the statement to the chief law enforcement officer of the place of residence of the transferee; and

(ii)(I) 5 business days (meaning days on which State offices are open) have elapsed from the date the transferor furnished notice of the contents of the statement to the chief law enforcement officer, during which period the transferor has not received information from the chief law enforcement officer that receipt or possession of the handgun by the transferee would be in violation of Federal, State, or local law; or

(II) the transferor has received notice from the chief law enforcement officer that the officer has no information indicating that receipt or possession of the handgun by the transferee would violate Federal, State, or local law;

(B) the transferee has presented to the transferor a written statement, issued by the chief law enforcement officer of the place of residence of the transferee during the 10-day period ending on the date of the most recent proposal of such transfer by the transferee, stating that the transferee requires access to a handgun because of a threat to the life of the transferee or of any member of the household of the transferee;

(C)(i) the transferee has presented to the transferor a permit that—

(I) allows the transferee to possess or acquire a handgun; and

(II) was issued not more than 5 years earlier by the State in which the transfer is to take place; and

(ii) the law of the State provides that such a permit is to be issued only after an authorized government official has verified that the information available to such official does not indicate that possession of a handgun by the transferee would be in violation of the law;

(D) the law of the State requires that, before any licensed importer, licensed manufacturer, or

licensed dealer completes the transfer of a handgun to an individual who is not licensed under section 923, an authorized government official verify that the information available to such official does not indicate that possession of a handgun by the transferee would be in violation of law;

(E) the Attorney General has approved the transfer under section 5812 of the Internal Revenue Code of 1986; or

(F) on application of the transferor, the Attorney General has certified that compliance with subparagraph (A)(i)(III) is impracticable because—

(i) the ratio of the number of law enforcement officers of the State in which the transfer is to occur to the number of square miles of land area of the State does not exceed 0.0025;

(ii) the business premises of the transferor at which the transfer is to occur are extremely remote in relation to the chief law enforcement officer; and

(iii) there is an absence of telecommunications facilities in the geographical area in which the business premises are located.

(2) A chief law enforcement officer to whom a transferor has provided notice pursuant to paragraph (1)(A)(i)(III) shall make a reasonable effort to ascertain within 5 business days whether receipt or possession would be in violation of the law, including research in whatever State and local recordkeeping

systems are available and in a national system designated by the Attorney General.

(3) The statement referred to in paragraph (1)(A)(i)(I) shall contain only—

(A) the name, address, and date of birth appearing on a valid identification document (as defined in section 1028(d)(1)) of the transferee containing a photograph of the transferee and a description of the identification used;

(B) a statement that the transferee—

(i) is not under indictment for, and has not been convicted in any court of, a crime punishable by imprisonment for a term exceeding 1 year, and has not been convicted in any court of a misdemeanor crime of domestic violence;

(ii) is not a fugitive from justice;

(iii) is not an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act);

(iv) has not been adjudicated as a mental defective or been committed to a mental institution;

(v) is not an alien who—

(I) is illegally or unlawfully in the United States; or

(II) subject to subsection (y)(2), has been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8

U.S.C. 1101(a)(26)));

(vi) has not been discharged from the Armed Forces under dishonorable conditions; and

(vii) is not a person who, having been a citizen of the United States, has renounced such citizenship;

(C) the date the statement is made; and

(D) notice that the transferee intends to obtain a handgun from the transferor.

(4) Any transferor of a handgun who, after such transfer, receives a report from a chief law enforcement officer containing information that receipt or possession of the handgun by the transferee violates Federal, State, or local law shall, within 1 business day after receipt of such request, communicate any information related to the transfer that the transferor has about the transfer and the transferee to—

(A) the chief law enforcement officer of the place of business of the transferor; and

(B) the chief law enforcement officer of the place of residence of the transferee.

(5) Any transferor who receives information, not otherwise available to the public, in a report under this subsection shall not disclose such information except to the transferee, to law enforcement authorities, or pursuant to the direction of a court of law.

(6)(A) Any transferor who sells, delivers, or otherwise transfers a handgun to a transferee shall retain the copy of the statement of the transferee

with respect to the handgun transaction, and shall retain evidence that the transferor has complied with subclauses (III) and (IV) of paragraph (1)(A)(i) with respect to the statement.

(B) Unless the chief law enforcement officer to whom a statement is transmitted under paragraph (1)(A)(i)(IV) determines that a transaction would violate Federal, State, or local law—

(i) the officer shall, within 20 business days after the date the transferee made the statement on the basis of which the notice was provided, destroy the statement, any record containing information derived from the statement, and any record created as a result of the notice required by paragraph (1)(A)(i)(III);

(ii) the information contained in the statement shall not be conveyed to any person except a person who has a need to know in order to carry out this subsection; and

(iii) the information contained in the statement shall not be used for any purpose other than to carry out this subsection.

(C) If a chief law enforcement officer determines that an individual is ineligible to receive a handgun and the individual requests the officer to provide the reason for such determination, the officer shall provide such reasons to the individual in writing within 20 business days after receipt of the request.

(7) A chief law enforcement officer or other

person responsible for providing criminal history background information pursuant to this subsection shall not be liable in an action at law for damages—

(A) for failure to prevent the sale or transfer of a handgun to a person whose receipt or possession of the handgun is unlawful under this section; or

(B) for preventing such a sale or transfer to a person who may lawfully receive or possess a handgun.

(8) For purposes of this subsection, the term "chief law enforcement officer" means the chief of police, the sheriff, or an equivalent officer or the designee of any such individual.

(9) The Attorney General shall take necessary actions to ensure that the provisions of this subsection are published and disseminated to licensed dealers, law enforcement officials, and the public.

(t)(1) Beginning on the date that is 30 days after the Attorney General notifies licensees under section 103(d) of the Brady Handgun Violence Prevention Act that the national instant criminal background check system is established, a licensed importer, licensed manufacturer, or licensed dealer shall not transfer a firearm to any other person who is not licensed under this chapter, unless—

(A) before the completion of the transfer, the licensee contacts the national instant criminal background check system established under section 103 of that Act;

(B)(i) the system provides the licensee with a unique identification number; or

(ii) subject to subparagraph (C), 3

business days (meaning a day on which State offices are open) have elapsed since the licensee contacted the system, and the system has not notified the licensee that the receipt of a firearm by such other person would violate subsection (g) or (n) of this section;

(C) in the case of a person less than 21 years of age, in addition to all other requirements of this chapter—

(i) the system provides the licensee with a unique identification number;

(ii) 3 business days (meaning a day on which State offices are open) have elapsed since the licensee contacted the system, and the system has not notified the licensee that cause exists to further investigate a possibly disqualifying juvenile record under subsection (d); or

(iii) in the case of such a person with respect to whom the system notifies the licensee in accordance with clause (ii) that cause exists to further investigate a possibly disqualifying juvenile record under subsection (d), 10 business days (meaning a day on which State offices are open) have elapsed since the licensee contacted the system, and the system has not notified the licensee that—

(I) transferring the firearm to the other person would violate subsection (d) of this section; or

(II) receipt of a firearm by the

other person would violate subsection (g) or (n) of this section, or State, local, or Tribal law; and

(D) the transferor has verified the identity of the transferee by examining a valid identification document (as defined in section 1028(d) of this title) of the transferee containing a photograph of the transferee.

(2) If transfer or receipt of a firearm would not violate subsection (d), (g), or (n) (as applicable) or State law, the system shall—

(A) assign a unique identification number to the transfer;

(B) provide the licensee with the number; and

(C) destroy all records of the system with respect to the call (other than the identifying number and the date the number was assigned) and all records of the system relating to the person or the transfer.

(3) Paragraph (1) shall not apply to a firearm transfer between a licensee and another person if—

(A)(i) such other person has presented to the licensee a permit that—

(I) allows such other person to possess or acquire a firearm; and

(II) was issued not more than 5 years earlier by the State in which the transfer is to take place; and

(ii) the law of the State provides that such a permit is to be issued only after an authorized government official has verified

that the information available to such official does not indicate that possession of a firearm by such other person would be in violation of law;

(B) the Attorney General has approved the transfer under section 5812 of the Internal Revenue Code of 1986; or

(C) on application of the transferor, the Attorney General has certified that compliance with paragraph (1)(A) is impracticable because—

(i) the ratio of the number of law enforcement officers of the State in which the transfer is to occur to the number of square miles of land area of the State does not exceed 0.0025;

(ii) the business premises of the licensee at which the transfer is to occur are extremely remote in relation to the chief law enforcement officer (as defined in subsection (s)(8)); and

(iii) there is an absence of telecommunications facilities in the geographical area in which the business premises are located.

(4) If the national instant criminal background check system notifies the licensee that the information available to the system does not demonstrate that the transfer of a firearm to or receipt of a firearm by such other person would violate subsection (d), (g), or (n) (as applicable) or State law, and the licensee transfers a firearm to such other person, the licensee shall include in the record of the transfer the unique identification number

provided by the system with respect to the transfer.

(5) If the licensee knowingly transfers a firearm to such other person and knowingly fails to comply with paragraph (1) of this subsection with respect to the transfer and, at the time such other person most recently proposed the transfer, the national instant criminal background check system was operating and information was available to the system demonstrating that transfer of a firearm to or receipt of a firearm by such other person would violate subsection (d), (g), or (n) (as applicable) of this section or State law, the Attorney General may, after notice and opportunity for a hearing, suspend for not more than 6 months or revoke any license issued to the licensee under section 923, and may impose on the licensee a civil fine of not more than $5,000.

(6) Neither a local government nor an employee of the Federal Government or of any State or local government, responsible for providing information to the national instant criminal background check system shall be liable in an action at law for damages—

(A) for failure to prevent the sale or transfer of a firearm to a person whose receipt or possession of the firearm is unlawful under this section; or

(B) for preventing such a sale or transfer to a person who may lawfully receive or possess a firearm.

(u) It shall be unlawful for a person to steal or unlawfully take or carry away from the person or the premises of a person whois licensed to engage in the business of importing, manufacturing, or dealing

in firearms, any firearm in the licensee's business inventory that has been shipped or transported in interstate or foreign commerce.

[(v), (w) Repealed. Pub.L. 103-322, Title XI, § 110105(2), Sept. 13, 1994, 108 Stat. 2000.]

(x)(1) It shall be unlawful for a person to sell, deliver, or otherwise transfer to a person who the transferor knows or has reasonable cause to believe is a juvenile—

(A) a handgun; or

(B) ammunition that is suitable for use only in a handgun.

(2) It shall be unlawful for any person who is a juvenile to knowingly possess—

(A) a handgun; or

(B) ammunition that is suitable for use only in a handgun.

(3) This subsection does not apply to—

(A) a temporary transfer of a handgun or ammunition to a juvenile or to the possession or use of a handgun or ammunition by a juvenile if the handgun and ammunition are possessed and used by the juvenile—

(i) in the course of employment, in the course of ranching or farming related to activities at the residence of the juvenile (or on property used for ranching or farming at which the juvenile, with the permission of the property owner or lessee, is performing activities related to the operation of the farm or ranch), target practice, hunting, or a course of instruction in the safe and lawful use of a handgun;

(ii) with the prior written consent of the juvenile's parent or guardian who is not prohibited by Federal, State, or local law from possessing a firearm, except—

(I) during transportation by the juvenile of an unloaded handgun in a locked container directly from the place of transfer to a place at which an activity described in clause (i) is to take place and transportation by the juvenile of that handgun, unloaded and in a locked container, directly from the place at which such an activity took place to the transferor; or

(II) with respect to ranching or farming activities as described in clause (i), a juvenile may possess and use a handgun or ammunition with the prior written approval of the juvenile's parent or legal guardian and at the direction of an adult who is not prohibited by Federal, State or local law from possessing a firearm;

(iii) the juvenile has the prior written consent in the juvenile's possession at all times when a handgun is in the possession of the juvenile; and

(iv) in accordance with State and local law;

(B) a juvenile who is a member of the Armed Forces of the United States or the National Guard who possesses or is armed with a handgun in the line of duty;

(C) a transfer by inheritance of title (but not possession) of a handgun or ammunition to a juvenile; or

(D) the possession of a handgun or ammunition by a juvenile taken in defense of the juvenile or other persons against an intruder into the residence of the juvenile or a residence in which the juvenile is an invited guest.

(4) A handgun or ammunition, the possession of which is transferred to a juvenile in circumstances in which the transferor is not in violation of this subsection shall not be subject to permanent confiscation by the Government if its possession by the juvenile subsequently becomes unlawful because of the conduct of the juvenile, but shall be returned to the lawful owner when such handgun or ammunition is no longer required by the Government for the purposes of investigation or prosecution.

(5) For purposes of this subsection, the term "juvenile" means a person who is less than 18 years of age.

(6)(A) In a prosecution of a violation of this subsection, the court shall require the presence of a juvenile defendant's parent or legal guardian at all proceedings.

(B) The court may use the contempt power to enforce subparagraph (A).

(C) The court may excuse attendance of a parent or legal guardian of a juvenile defendant at a proceeding in a prosecution of a violation of this subsection for good cause shown.

(y) Provisions relating to aliens admitted under nonimmigrant visas.—

(1) Definitions.—In this subsection—

(A) the term "alien" has the same meaning as in section 101(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1101(a) (3)); and

(B) the term "nonimmigrant visa" has the same meaning as in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26)).

(2) Exceptions.—Subsections (d)(5)(B), (g)(5)(B), and (s)(3)(B)(v)(II) do not apply to any alien who has been lawfully admitted to the United States under a nonimmigrant visa, if that alien is—

(A) admitted to the United States for lawful hunting or sporting purposes or is in possession of a hunting license or permit lawfully issued in the United States;

(B) an official representative of a foreign government who is—

(i) accredited to the United States Government or the Government's mission to an international organization having its headquarters in the United States; or

(ii) en route to or from another country to which that alien is accredited;

(C) an official of a foreign government or a distinguished foreign visitor who has been so designated by the Department of State; or

(D) a foreign law enforcement officer of a friendly foreign government entering the United States on official law enforcement business.

(3) Waiver.—

(A) Conditions for waiver.—Any individual

who has been admitted to the United States under a nonimmigrant visa may receive a waiver from the requirements of subsection (g)(5), if—

(i) the individual submits to the Attorney General a petition that meets the requirements of subparagraph (C); and

(i) the Attorney General approves the petition.

(B) Petition.—Each petition under subparagraph (B) shall—

(i) demonstrate that the petitioner has resided in the United States for a continuous period of not less than 180 days before the date on which the petition is submitted under this paragraph; and

(ii) include a written statement from the embassy or consulate of the petitioner, authorizing the petitioner to acquire a firearm or ammunition and certifying that the alien would not, absent the application of subsection (g)(5)(B), otherwise be prohibited from such acquisition under subsection (g).

(C) Approval of petition.—The Attorney General shall approve a petition submitted in accordance with this paragraph, if the Attorney General determines that waiving the requirements of subsection (g)(5)(B) with respect to the petitioner—

(i) would be in the interests of justice; and

(ii) would not jeopardize the public

safety.

(z) Secure gun storage or safety device.—

(1) In general.—Except as provided under paragraph (2), it shall be unlawful for any licensed importer, licensed manufacturer, or licensed dealer to sell, deliver, or transfer any handgun to any person other than any person licensed under this chapter, unless the transferee is provided with a secure gun storage or safety device (as defined in section 921(a)(34)) for that handgun.

(2) Exceptions.—Paragraph (1) shall not apply to—

(A)(i) the manufacture for, transfer to, or possession by, the United States, a department or agency of the United States, a State, or a department, agency, or political subdivision of a State, of a handgun; or

(ii) the transfer to, or possession by, a law enforcement officer employed by an entity referred to in clause (i) of a handgun for law enforcement purposes (whether on or off duty); or

(B) the transfer to, or possession by, a rail police officer directly employed by or contracted by a rail carrier and certified or commissioned as a police officer under the laws of a State of a handgun for purposes of law enforcement (whether on or off duty);

(C) the transfer to any person of a handgun listed as a curio or relic by the Secretary pursuant to section 921(a)(13); or

(D) the transfer to any person of a handgun for which a secure gun storage or safety device is

temporarily unavailable for the reasons described in the exceptions stated in section 923(e), if the licensed manufacturer, licensed importer, or licensed dealer delivers to the transferee within 10 calendar days from the date of the delivery of the handgun to the transferee a secure gun storage or safety device for the handgun.

(3) Liability for use.—

(A) In general.—Notwithstanding any other provision of law, a person who has lawful possession and control of a handgun, and who uses a secure gun storage or safety device with the handgun, shall be entitled to immunity from a qualified civil liability action.

(B) Prospective actions.—A qualified civil liability action may not be brought in any Federal or State court.

(C) Defined term.—As used in this paragraph, the term "qualified civil liability action"—

(i) means a civil action brought by any person against a person described in subparagraph (A) for damages resulting from the criminal or unlawful misuse of the handgun by a third party, if—

(I) the handgun was accessed by another person who did not have the permission or authorization of the person having lawful possession and control of the handgun to have access to it; and

(II) at the time access was gained

by the person not so authorized, the handgun had been made inoperable by use of a secure gun storage or safety device; and

(ii) shall not include an action brought against the person having lawful possession and control of the handgun for negligent entrustment or negligence per se.

APPENDIX E

18 U.S.C. § 924 Penalties

(a)(1) Except as otherwise provided in this subsection, subsection (b), (c), (f), or (p) of this section, or in section 929, whoever—

(A) knowingly makes any false statement or representation with respect to the information required by this chapter to be kept in the records of a person licensed under this chapter or in applying for any license or exemption or relief from disability under the provisions of this chapter;

(B) knowingly violates subsection (a)(4), (f), (k), or (q) of section 922;

(C) knowingly imports or brings into the United States or any possession thereof any firearm or ammunition in violation of section 922(l); or

(D) willfully violates any other provision of this chapter,

shall be fined under this title, imprisoned not more than five years, or both.

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

(3) Any licensed dealer, licensed importer, licensed manufacturer, or licensed collector who knowingly—

(A) makes any false statement or representation with respect to the information

required by the provisions of this chapter to be kept in the records of a person licensed under this chapter, or

(B) violates subsection (m) of section 922,

shall be fined under this title, imprisoned not more than one year, or both.

(4) Whoever violates section 922(q) shall be fined under this title, imprisoned for not more than 5 years, or both. Notwithstanding any other provision of law, the term of imprisonment imposed under this paragraph shall not run concurrently with any other term of imprisonment imposed under any other provision of law. Except for the authorization of a term of imprisonment of not more than 5 years made in this paragraph, for the purpose of any other law a violation of section 922(q) shall be deemed to be a misdemeanor.

(5) Whoever knowingly violates subsection (s) or (t) of section 922 shall be fined under this title, imprisoned for not more than 1 year, or both.

(6)(A)(i) A juvenile who violates section 922(x) shall be fined under this title, imprisoned not more than 1 year, or both, except that a juvenile described in clause (ii) shall be sentenced to probation on appropriate conditions and shall not be incarcerated unless the juvenile fails to comply with a condition of probation.

(ii) A juvenile is described in this clause if—

(I) the offense of which the juvenile is charged is possession of a handgun or ammunition in violation of section 922(x)(2); and

(II) the juvenile has not been convicted in any court of an offense (including an offense under section 922(x) or a similar State law, but not including any other offense consisting of conduct that if engaged in by an adult would not constitute an offense) or adjudicated as a juvenile delinquent for conduct that if engaged in by an adult would constitute an offense.

(B) A person other than a juvenile who knowingly violates section 922(x)—

(i) shall be fined under this title, imprisoned not more than 1 year, or both; and

(ii) if the person sold, delivered, or otherwise transferred a handgun or ammunition to a juvenile knowing or having reasonable cause to know that the juvenile intended to carry or otherwise possess or discharge or otherwise use the handgun or ammunition in the commission of a crime of violence, shall be fined under this title, imprisoned not more than 10 years, or both.

(7) Whoever knowingly violates section 931 shall be fined under this title, imprisoned not more than 3 years, or both.

(8) Whoever knowingly violates subsection (d) or (g) of section 922 shall be fined under this title, imprisoned for not more than 15 years, or both.

(b) Whoever, with intent to commit therewith an offense punishable by imprisonment for a term exceeding one year, or with knowledge or reasonable cause to believe that an offense punishable by imprisonment for a

term exceeding one year is to be committed therewith, ships, transports, or receives a firearm or any ammunition in interstate or foreign commerce shall be fined under this title, or imprisoned not more than ten years, or both.

(c)(1)(A) Except to the extent that a greater minimum sentence is otherwise provided by this subsection or by any other provision of law, any person who, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which the person may be prosecuted in a court of the United States, uses or carries a firearm, or who, in furtherance of any such crime, possesses a firearm, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime—

(i) be sentenced to a term of imprisonment of not less than 5 years;

(ii) if the firearm is brandished, be sentenced to a term of imprisonment of not less than 7 years; and

(iii) if the firearm is discharged, be sentenced to a term of imprisonment of not less than 10 years.

(B) If the firearm possessed by a person convicted of a violation of this subsection—

(i) is a short-barreled rifle, short-barreled shotgun, or semiautomatic assault weapon, the person shall be sentenced to a term of imprisonment of not less than 10 years; or

(ii) is a machinegun or a destructive device, or is equipped with a firearm silencer or firearm muffler, the person shall be

sentenced to a term of imprisonment of not less than 30 years.

(C) In the case of a violation of this subsection that occurs after a prior conviction under this subsection has become final, the person shall—

(i) be sentenced to a term of imprisonment of not less than 25 years; and

(ii) if the firearm involved is a machinegun or a destructive device, or is equipped with a firearm silencer or firearm muffler, be sentenced to imprisonment for life.

(D) Notwithstanding any other provision of law—

(i) a court shall not place on probation any person convicted of a violation of this subsection; and

(ii) no term of imprisonment imposed on a person under this subsection shall run concurrently with any other term of imprisonment imposed on the person, including any term of imprisonment imposed for the crime of violence or drug trafficking crime during which the firearm was used, carried, or possessed.

(2) For purposes of this subsection, the term "drug trafficking crime" means any felony punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46.

(3) For purposes of this subsection the term

"crime of violence" means an offense that is a felony and—

(A) has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or

(B) that by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

(4) For purposes of this subsection, the term "brandish" means, with respect to a firearm, to display all or part of the firearm, or otherwise make the presence of the firearm known to another person, in order to intimidate that person, regardless of whether the firearm is directly visible to that person.

(5) Except to the extent that a greater minimum sentence is otherwise provided under this subsection, or by any other provision of law, any person who, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which the person may be prosecuted in a court of the United States, uses or carries armor piercing ammunition, or who, in furtherance of any such crime, possesses armor piercing ammunition, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime or conviction under this section—

(A) be sentenced to a term of imprisonment of not less than 15 years; and

(B) if death results from the use of such ammunition—

(i) if the killing is murder (as defined in section 1111), be punished by death or sentenced to a term of imprisonment for any term of years or for life; and

(ii) if the killing is manslaughter (as defined in section 1112), be punished as provided in section 1112.

(d)(1) Any firearm or ammunition involved in or used in any knowing violation of subsection (a)(4), (a)(6), (f), (g), (h), (i), (j), or (k) of section 922, or knowing importation or bringing into the United States or any possession thereof any firearm or ammunition in violation of section 922(l), or knowing violation of section 924, 932, or 933, or willful violation of any other provision of this chapter or any rule or regulation promulgated thereunder, or any violation of any other criminal law of the United States, or any firearm or ammunition intended to be used in any offense referred to in paragraph (3) of this subsection, where such intent is demonstrated by clear and convincing evidence, shall be subject to seizure and forfeiture, and all provisions of the Internal Revenue Code of 1986 relating to the seizure, forfeiture, and disposition of firearms, as defined in section 5845(a) of that Code, shall, so far as applicable, extend to seizures and forfeitures under the provisions of this chapter: *Provided*, That upon acquittal of the owner or possessor, or dismissal of the charges against him other than upon motion of the Government prior to trial, or lapse of or court termination of the restraining order to which he is subject, the seized or relinquished firearms or ammunition shall be returned forthwith to the owner or possessor or to a person delegated by the owner or possessor unless the return of the firearms or ammunition would place the owner or possessor or his delegate in violation of law. Any action or proceeding for the forfeiture of firearms or ammunition

shall be commenced within one hundred and twenty days of such seizure.

(2)(A) In any action or proceeding for the return of firearms or ammunition seized under the provisions of this chapter, the court shall allow the prevailing party, other than the United States, a reasonable attorney's fee, and the United States shall be liable therefor.

(B) In any other action or proceeding under the provisions of this chapter, the court, when it finds that such action was without foundation, or was initiated vexatiously, frivolously, or in bad faith, shall allow the prevailing party, other than the United States, a reasonable attorney's fee, and the United States shall be liable therefor.

(C) Only those firearms or quantities of ammunition particularly named and individually identified as involved in or used in any violation of the provisions of this chapter or any rule or regulation issued thereunder, or any other criminal law of the United States or as intended to be used in any offense referred to in paragraph (3) of this subsection, where such intent is demonstrated by clear and convincing evidence, shall be subject to seizure, forfeiture, and disposition.

(D) The United States shall be liable for attorneys' fees under this paragraph only to the extent provided in advance by appropriation Acts.

(3) The offenses referred to in paragraphs (1) and (2)(C) of this subsection are—

(A) any crime of violence, as that term is defined in section 924(c)(3) of this title;

(B) any offense punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.) or the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.);

(C) any offense described in section 922(a)(1), 922(a)(3), 922(a)(5), or 922(b)(3) of this title, where the firearm or ammunition intended to be used in any such offense is involved in a pattern of activities which includes a violation of any offense described in section 922(a)(1), 922(a)(3), 922(a)(5), or 922(b)(3) of this title;

(D) any offense described in section 922(d) of this title where the firearm or ammunition is intended to be used in such offense by the transferor of such firearm or ammunition;

(E) any offense described in section 922(i), 922(j), 922(l), 922(n), or 924(b) of this title;

(F) any offense which may be prosecuted in a court of the United States which involves the exportation of firearms or ammunition; and

(G) any offense under section 932 or 933.

(e)(1) In the case of a person who violates section 922(g) of this title and has three previous convictions by any court referred to in section 922(g)(1) of this title for a violent felony or a serious drug offense, or both, committed on occasions different from one another, such person shall be fined under this title and imprisoned not less than fifteen years, and, notwithstanding any other provision of law, the court shall not suspend the sentence of, or grant a probationary sentence to, such person with respect to the conviction under section 922(g).

(2) As used in this subsection—

(A) the term "serious drug offense"

means—

(i) an offense under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46 for which a maximum term of imprisonment of ten years or more is prescribed by law; or

(ii) an offense under State law, involving manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), for which a maximum term of imprisonment of ten years or more is prescribed by law;

(B) the term "violent felony" means any crime punishable by imprisonment for a term exceeding one year, or any act of juvenile delinquency involving the use or carrying of a firearm, knife, or destructive device that would be punishable by imprisonment for such term if committed by an adult, that—

(i) has as an element the use, attempted use, or threatened use of physical force against the person of another; or

(ii) is burglary, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another; and

(C) the term "conviction" includes a finding that a person has committed an act of juvenile delinquency involving a violent felony.

(f) In the case of a person who knowingly violates section 922(p), such person shall be fined under this title, or imprisoned not more than 5 years, or both.

(g) Whoever, with the intent to engage in conduct which—

(1) constitutes an offense listed in section 1961(1),

(2) is punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46,

(3) violates any State law relating to any controlled substance (as defined in section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6))), or

(4) constitutes a crime of violence (as defined in subsection (c)(3)),

travels from any State or foreign country into any other State and acquires, transfers, or attempts to acquire or transfer, a firearm in such other State in furtherance of such purpose, shall be imprisoned not more than 10 years, fined in accordance with this title, or both.

(h) Whoever knowingly receives or transfers a firearm or ammunition, or attempts or conspires to do so, knowing or having reasonable cause to believe that such firearm or ammunition will be used to commit a felony, a Federal crime of terrorism, or a drug trafficking crime (as such terms are defined in section 932(a)), or a crime under the Arms Export Control Act (22 U.S.C. 2751 et seq.), the Export Control Reform Act of 2018 (50 U.S.C. 4801 et seq.), the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.), or the Foreign Narcotics Kingpin Designation Act (21 U.S.C. 1901 et seq.), shall be fined

under this title, imprisoned for not more than 15 years, or both.

(i)(1) A person who knowingly violates section 922(u) shall be fined under this title, imprisoned not more than 10 years, or both.

(2) Nothing contained in this subsection shall be construed as indicating an intent on the part of Congress to occupy the field in which provisions of this subsection operate to the exclusion of State laws on the same subject matter, nor shall any provision of this subsection be construed as invalidating any provision of State law unless such provision is inconsistent with any of the purposes of this subsection.

(j) A person who, in the course of a violation of subsection (c), causes the death of a person through the use of a firearm, shall—

(1) if the killing is a murder (as defined in section 1111), be punished by death or by imprisonment for any term of years or for life; and

(2) if the killing is manslaughter (as defined in section 1112), be punished as provided in that section.

(k)(1) A person who smuggles or knowingly brings into the United States a firearm or ammunition, or attempts or conspires to do so, with intent to engage in or to promote conduct that—

(A) is punishable under the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46; or

(B) constitutes a felony, a Federal crime of terrorism, or a drug trafficking crime (as such terms are defined in section 932(a)), shall be fined under this title, imprisoned for not more than 15

years, or both.

(2) A person who smuggles or knowingly takes out of the United States a firearm or ammunition, or attempts or conspires to do so, with intent to engage in or to promote conduct that—

(A) would be punishable under the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46, if the conduct had occurred within the United States; or

(B) would constitute a felony or a Federal crime of terrorism (as such terms are defined in section 932(a)) for which the person may be prosecuted in a court of the United States, if the conduct had occurred within the United States,

shall be fined under this title, imprisoned for not more than 15 years, or both.

(l) A person who steals any firearm which is moving as, or is a part of, or which has moved in, interstate or foreign commerce shall be imprisoned for not more than 10 years, fined under this title, or both.

(m) A person who steals any firearm from a licensed importer, licensed manufacturer, licensed dealer, or licensed collector shall be fined under this title, imprisoned not more than 10 years, or both.

(n) A person who, with the intent to engage in conduct that constitutes a violation of section 922(a)(1)(A), travels from any State or foreign country into any other State and acquires, or attempts to acquire, a firearm in such other State in furtherance of such purpose shall be imprisoned for not more than 10 years.

(o) A person who conspires to commit an offense under subsection (c) shall be imprisoned for not more than

20 years, fined under this title, or both; and if the firearm is a machinegun or destructive device, or is equipped with a firearm silencer or muffler, shall be imprisoned for any term of years or life.

(p) Penalties relating to secure gun storage or safety device.—

(1) In general.—

(A) Suspension or revocation of license; civil penalties.—With respect to each violation of section 922(z)(1) by a licensed manufacturer, licensed importer, or licensed dealer, the Secretary may, after notice and opportunity for hearing—

(i) suspend for not more than 6 months, or revoke, the license issued to the licensee under this chapter that was used to conduct the firearms transfer; or

(ii) subject the licensee to a civil penalty in an amount equal to not more than $2,500.

(B) Review.—An action of the Secretary under this paragraph may be reviewed only as provided under section 923(f).

(2) Administrative remedies.—The suspension or revocation of a license or the imposition of a civil penalty under paragraph (1) shall not preclude any administrative remedy that is otherwise available to the Secretary.