WEBINAR WEDNESDAYS

Wednesday, August 25, 2021

"Ghost Guns" and Violent Crime: Effective Prosecution Strategies

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Distributed by:

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18 USCS § 922, Part 1 of 3

Current through Public Law 117-36, approved August 6, 2021, excepting Part V of Subtitle A of Title 10, as added by Public Law 116-283 (effective 1/1/2022).

§ 922. Unlawful acts [Caution: See prospective amendment note below.]

(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 [*18 USCS §§ 921* et seq.] 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 [*18 USCS § 1715*], 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 [effective Dec. 16, 1968];

(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 1954* [1986] [*26 USCS § 5845*]), 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 [*18 USCS §§ 921* et seq.];

(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; [and]

(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 1954* [1986] [*26 USCS § 5845*]), 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 [*18 USCS § 923*], 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 [*18 USCS §§ 921* et seq.], 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 prohibited by the provisions of chapter 44 of title 18, United States Code [*18 USCS §§ 921* et seq.], 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 the locality 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 such statute 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 [United States Postal Service] 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) [*18 USCS § 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—

(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;

(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; or

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

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 of this chapter [*18 USCS § 925*] is not precluded from dealing in firearms or ammunition, or to a person who has been granted relief from disabilities pursuant to subsection (c) of section 925 of this chapter [*18 USCS § 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 [*18 USCS §§ 921* et seq.]. 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 [*18 USCS §§ 921* et seq.].

(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 [*18 USCS § 925(d)*], 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 [*18 USCS §§ 921* et seq.].

(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 [*18 USCS § 923*] 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 [effective May 19, 1986].

(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 [enacted Nov. 10, 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 [of] 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 [*18 USCS § 925(d)(3)*] 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 [enacted Nov. 30, 1993] 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 [*18 USCS § 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 [*18 USCS § 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* [*26 USCS § 5812*]; 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) [*18 USCS § 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 [*21 USCS § 802*]);

(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 [note to this section] 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 [*18 USCS §§ 921* et seq.], 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 [note to this section];

(B)

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

(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 the receipt of a firearm by such other person would violate subsection (g) or (n) of this section; and

(C) the transferor has verified the identity of the transferee by examining a valid identification document (as defined in section 1028(d) of this title [*18 USCS § 1028(d)*]) of the transferee containing a photograph of the transferee.

(2) If receipt of a firearm would not violate section 922 (g) or (n) [*18 USCS § 922(g)* or (n)] 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* [*26 USCS § 5812*]; 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 receipt of a firearm by such other person would violate subsection (g) or (n) 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 receipt of a firearm by such other person would violate subsection (g) or (n) 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 [*18 USCS § 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 who is 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]

(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

(ii) 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 [*18 USCS §§ 921* et seq.], unless the transferee is provided with a secure gun storage or safety device (as defined in section 921(a)(34) [*18 USCS § 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) [*18 USCS § 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) [*18 USCS § 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 A repealed]

History

HISTORY:

Added June 19, 1968, *P. L. 90-351*, Title IV, § 902, *82 Stat. 228*; Oct. 22, 1968, *P. L. 90-618*, Title I, § 102, *82 Stat. 1216*; Dec. 21, 1982, *P. L. 97-377*, Title I, § 165(a), 96 Stat. 1923; May 19, 1986, *P. L. 99-308*, § 102, *100 Stat. 451*; Aug. 28, 1986, *P. L. 99-408*, § 2, *100 Stat. 920*; Nov. 11, 1988, *P. L. 100-649*, § 2(a), *102 Stat. 3816*; Nov. 18, 1988, *P. L. 100-690*, Title VII, Subtitle B, § 7060(c), *102 Stat. 4404*; Nov. 29, 1990, *P. L. 101-647*, Title XVII, § 1702(b)(1), Title XXII, §§ 2201, 2202, 2204(b), Title XXXV, § 3524 *104 Stat. 4844*, 4856, 4857, 4924.; Nov. 30, 1993, *P. L. 103-159*, Title I, § 102(a)(1), (b), Title III, § 302(a)–(c), *107 Stat. 1536*, 1539, 1545; Sept. 13, 1994, *P. L. 103-322*, Title XI, Subtitle A, §§ 110102(a), 110103(a), 110106, Subtitle B, § 110201(a), Subtitle D, § 110401(b), (c), Subtitle E, §§ 110511, 110514, Title XXXII, Subtitle I, §§ 320904, 320927, Title XXXIII, § 330011(i), *108 Stat.*

1996, 1998, 2000, 2010, 2014, 2019, 2125, 2131, 2145.; Oct. 11, 1996, *P. L. 104-294*, Title VI, § 603(b), (c)(1), (d), (e), (f)(1), (g), *110 Stat. 3503*, 3504; Sept. 30, 1996, *P. L. 104-208*, Div A, Title I, § 101(f) [Title VI, §§ 657, 658(b)], *110 Stat. 3009*-369, 3009-372; Oct. 21, 1998, *P. L. 105-277*, Div A, § 101(b) [Title I, § 121], *112 Stat. 2681*-71; Nov. 2, 2002, *P. L. 107-273*, Div B, Title IV, § 4003(a)(1), *116 Stat. 1811*; Nov. 25, 2002, *P. L. 107-296*, Title XI, Subtitle B, § 1112(f)(4), (6), *116 Stat. 2276*; Oct. 26, 2005, *P. L. 109-92*, §§ 5(c)(1), 6(a), *119 Stat. 2099*, 2101; Dec. 4, 2015, *P. L. 114-94*, Div A, Title XI, Subtitle D, § 11412(c)(2), *129 Stat. 1688*.

Annotations

Notes

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

Explanatory notes:

Effective date of section:

Prospective amendments:

Repeal of subsec. (p), effective December 10, 2023.

Amendment Notes

1968.

1982.

1986.

1988.

1990.

1993.

1994.

1996.

1998.

2002.

2005.

2015.

Other provisions:

References in text:

“Director of Central Intelligence”, referred to in this section, to the extent that it refers to the Director’s capacity as the head of the intelligence community, is deemed to be a reference to the Director of National Intelligence and to the extent that it refers to the Director’s capacity as the head of the Central Intelligence Agency, is deemed to be a

reference to the Director of the Central Intelligence Agency, pursuant to § 1081(a) and (b) of Act Dec. 17, 2004, *P. L. 108-458*, which appears as *50 USCS § 401* note.

Explanatory notes:

"1986" has been inserted in brackets in subsecs. (a)(4) and (b)(4) pursuant to § 2 of Act Oct. 22, 1986, *P. L. 99-514*, which redesignated the Internal Revenue Code of 1954 (Act *Aug. 16, 1954, ch 736*) as the Internal Revenue Code of 1986. In redesignating the Internal Revenue Code of 1954 as the Internal Revenue Code of 1986, Congress provided, in Act Oct. 22, 1986, *P. L. 99-514*, § 2(b), *100 Stat. 2095*, for construction of references to the Internal Revenue Code as follows: except when inappropriate, any reference in any law, Executive Order, or other document to the Internal Revenue Code of 1954 shall include a reference to the Internal Revenue Code of 1986 and any reference to the Internal Revenue Code of 1986 shall include a reference to the provisions of law formerly known as the Internal Revenue Code of 1954.

The bracketed word "and" has been inserted at the end of subsec. (a)(8)(c) to indicate the probable intent of Congress to include such word.

"United States Postal Service" has been inserted in brackets in subsec. (c)(2) on the authority of § 6(o) of Act Aug. 12, 1970, *P. L. 91-375*, which appears as a note preceding *39 USCS § 101*, and which redesignated the United States Post Office Department as the United States Postal Service.

The word "who" in subsec. (d)(6) has been enclosed in brackets to indicate the probable intent of Congress to delete such word.

The bracketed word "of" has been inserted in subsec. (q)(1)(C) to indicate the probable intent of Congress to include such word.

"Section 1028(d)(1)", referred to in subsec. (s)(3), was amended by Oct. 30, 1998, *P. L. 105-318*, § 3(d), *112 Stat. 3008*, and no longer defines the term "identification document". Such term is defined elsewhere in the section.

Effective date of section:

This section became effective 180 days after enactment, as provided by § 907 of Act June 19, 1968, *P. L. 90-351*, which appears as *18 USCS § 921* note.

Prospective amendments:

Repeal of subsec. (p), effective December 10, 2023.

Section 2(f)(2)(A) of Act Nov. 11, 1988, *P. L. 100-649*, which appears as a note to this section, provides that effective 35 years after the effective date of such Act [effective on the 30th day after Nov. 10, 1988] subsec. (p) is repealed.

Amendment Notes

1968.

Act Oct. 22, 1968 (effective Dec. 16, 1968, except for the amendment to subsec. (l), which is effective Oct. 22, 1968, pursuant to § 105 of such Act, which appears as 18 USCS § 921 note), substituted this section for the former one, which read:

"(a) It shall be unlawful—

> "(1) for any person, except a licensed importer, licensed manufacturer, or licensed dealer, to engage in the business of importing, manufacturing, or dealing in firearms, or ammunition, or in the course of such business to ship, transport, or receive any firearm or ammunition in interstate or foreign commerce.

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

"(A) this paragraph shall not be held to preclude a licensed importer, licensed manufacturer, or licensed dealer from returning a firearm or replacement firearm of the same kind and type to a person from whom it was received;

"(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 title 18 of the United States Code, 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;

"(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, or licensed dealer to transport into or receive in the State where he resides (or if the person is a corporation or other business entity, in which he maintains a place of business)—

"(A) any firearm, other than a shotgun or rifle, purchased or otherwise obtained by him outside that State;

"(B) any firearm, purchased or otherwise obtained by him outside that State, which it would be unlawful for him to purchase or possess in the State or political subdivision thereof wherein he resides (or if the person is a corporation or other business entity, in which he maintains a place of business).

"(4) for any person, other than a licensed importer, licensed manufacturer, or licensed dealer, to transport in interstate or foreign commerce any destructive device, machinegun (as defined in section 5848 of the Internal Revenue Code of 1954), short-barreled shotgun, or short-barreled rifle, except as specifically authorized by the Secretary.

"(5) for any person to transfer, sell, trade, give, transport, or deliver to any person (other than a licensed importer, licensed manufacturer, or licensed dealer) who resides in any State other than that in which the transferor resides (or in which his place of business is located if the transferor is a corporation or other business entity)—

"(A) any firearm, other than a shotgun or rifle;

"(B) any firearm which the transferee could not lawfully purchase or possess in accord with applicable laws, regulations or ordinances of the State or political subdivision thereof in which the transferee resides (or in which his place of business is located if the transferee is a corporation or other business entity).

This paragraph shall not apply to transactions between licensed importers, licensed manufacturers, and licensed dealers.

"(6) for any person in connection with the acquisition or attempted acquisition of any firearm from a licensed importer, licensed manufacturer, or licensed dealer, knowingly to make any false or fictitious oral or written statement or to furnish or exhibit any false or fictitious or misrepresented identification, intended or likely to deceive such importer, manufacturer, or dealer with respect to any fact material to the lawfulness of the sale or other disposition of such firearm under the provisions of this chapter.

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

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

"(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, or in the locality in which such person resides 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 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 shall not apply in the case of a shotgun or rifle.

"(4) to any person any destructive device, machine gun (as defined in section 5848 of the Internal Revenue Code of 1954), short-barreled shotgun, or short-barreled rifle, unless he has in his possession a sworn statement executed by the principal law enforcement officer of the locality wherein the purchaser or person to whom it is otherwise disposed of resides, attesting that there is no provision of law, regulation, or ordinance which would be violated by such person's receipt or possession thereof, and that he is satisfied that it is intended by such person for lawful purposes; and such sworn statement shall be retained by the licensee as a part of the records required to be kept under the provisions of this chapter.

"(5) any firearm 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, and licensed dealers.

"(c) It shall be unlawful for any licensed importer, licensed manufacturer, or licensed dealer to sell or otherwise dispose of any firearm or ammunition to any person, knowing or having reasonable cause to believe that such person is a fugitive from justice or is under indictment or has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year. This subsection shall not apply with respect to sale or disposition of a firearm to a licensed importer, licensed manufacturer, or licensed dealer who pursuant to subsection (b) of section 925 of this chapter is not precluded from dealing in firearms, or to a person who has been granted relief from disabilities pursuant to subsection (c) of section 925 of this chapter.

"(d) It shall be unlawful for any common or contract carrier to transport or deliver in interstate or foreign commerce any firearm with knowledge or reasonable cause to believe that the shipment, transportation, or receipt thereof would be in violation of the provisions of this chapter.

"(e) It shall be unlawful for any person who is under indictment or who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year, or who is a fugitive from justice, to ship or transport any firearm or ammunition in interstate or foreign commerce.

"(f) It shall be unlawful for any person who is under indictment or who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year, or is a fugitive from justice, to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

"(g) 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 the same to have been stolen.

"(h) It shall be unlawful for any person to receive, 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, moving as or which is a part of or which constitutes interstate or foreign commerce, knowing or having reasonable cause to believe the same to have been stolen.

“(i) It shall be unlawful for any person knowingly to transport, ship, or receive, in interstate or foreign commerce, any firearm the importer’s or manufacturer’s serial number of which has been removed, obliterated, or altered.

“(j) It shall be unlawful for any person knowingly to import or bring into the United States or any possession thereof any firearm or ammunition, except as provided in subsection (d) of section 925 of this chapter; 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.

“(k) It shall be unlawful for any licensed importer, licensed manufacturer, or licensed dealer knowingly to make any false entry in, or 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.”.

1982.

Act Dec. 21, 1982, in subsec. (b)(5) inserted “except .22 caliber rimfire ammunition”.

1986.

Act May 19, 1986 (effective upon enactment on 5/19/86, as provided by § 110(c) of such Act, which appears as 18 USCS § 921 note) added subsec. (o).

Such Act further (effective 180 days after enactment on 5/19/86, as provided by § 110(a) of such Act, which appears as 18 USCS § 921 note), in subsec. (a), substituted para. (1) for one which read: “for any person, except a licensed importer, licensed manufacturer, or licensed dealer, to engage in the business of importing, manufacturing, or dealing in firearms or ammunition, or in the course of such business to ship, transport, or receive any firearm or ammunition in interstate or foreign commerce;” in para. (2), in the introductory matter, deleted “or ammunition” following “firearm” and, in subpara. (A), substituted “licensed dealer, or licensed collector;” for “or licensed dealer for the sole purpose of repair or customizing;”, in para. (3), substituted “(B) shall not apply to the transportation or receipt of a firearm obtained in conformity with subsection (b)(3) of this section,” for “(B) shall not apply to the transportation or receipt of a rifle or shotgun obtained in conformity with the provisions of subsection (b)(3) of this section,”; in subsec. (b), in para. (2), deleted “or ammunition” following “firearm” in two places, in para. (3), substituted “(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),” for “(A) shall not apply to the sale or delivery of a rifle or shotgun to a resident of a State contiguous to the State in which the licensee’s place of business is located if the purchaser’s State of residence permits such sale or delivery by law, the sale fully complies with the legal conditions of sale in both such contiguous States, and the purchaser and the licensee have, prior to the sale, or delivery for sale, of the rifle or shotgun, complied with all of the requirements of section 922(c) applicable to intrastate transactions other than at the licensee’s business premises,”, inserted “and” preceding “(B) shall not”, and substituted a semicolon for “, and (C) shall not preclude any person who is participating in any organized rifle or shotgun match or contest, or is engaged in hunting, in a State other than his State of residence and whose rifle or shotgun has been lost or stolen or has become inoperative in such other State, from purchasing a rifle or shotgun in such other State from a licensed dealer if such person presents to such dealer a sworn statement (i)that his rifle or shotgun was lost or stolen or became inoperative while participating in such a match or contest, or while engaged in hunting, in such other State, and (ii) identifying the chief law enforcement officer of the locality in which such person resides, to whom such licensed dealer shall forward such statement by registered mail;”, and, in para. (5), substituted “or armor-piercing ammunition” for “or ammunition except .22 caliber rimfire ammunition”; in subsec. (d), in the introductory matter, substituted “person” for “licensed importer, licensed manufacturer, licensed dealer, or licensed collector”, substituted para. (3) for one which read: “is an unlawful user of or addicted to marihuana or any depressant or stimulant drug (as defined in section 201(v) of the Federal Food, Drug, and Cosmetic Act or narcotic drug (as defined in section 4731(a) of the Internal Revenue Code of 1954); or”, in para. (4), substituted a semicolon for the concluding period, and added paras. (5)–(7); in subsec. (g), in para. (1), deleted “is under indictment for, or who”

following "who", substituted para. (3) for one which read: "who is an unlawful user of or addicted to marihuana or any depressant or stimulant drug (as defined in section 201(v) of the Federal Food, Drug, and Cosmetic Act) or narcotic drug (as defined in section 4731(a) of the Internal Revenue Code of 1954); or", added paras. (5)–(7), and substituted the concluding matter for one which read: "to ship or transport any firearm or ammunition in interstate or foreign commerce."; and substituted subsec. (h) for one which read:

"(h) It shall be unlawful for any person—

> "(1) who is under indictment for, or 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 marihuana or any depressant or stimulant drug (as defined in section 201(v) of the Federal Food, Drug, and Cosmetic Act) or narcotic drug (as defined in section 4731(a) of the Internal Revenue Code of 1954); or
>
> "(4) who has been adjudicated as a mental defective or who has been committed to any mental institution;

to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce."; and added subsec. (n).

Act Aug. 28, 1986 (effective on enactment on 8/28/86, as provided by § 9 of such Act, which appears as 18 USCS § 921 note), in subsec. (a), in para. (5), deleted "and" following the concluding semicolon, in para. (6), substituted a semicolon for the concluding period, and added paras. (7) and (8).

1988.

Act Nov. 11, 1988 (effective on the 30th day beginning after enactment as provided by § 2(f)(1) of such Act, which appears as a note to this section added subsec. (p). Act Nov. 18, 1988, in subsec. (g)(3), inserted "who".

1990.

Act Nov. 29, 1990, as amended by § 330011(i) of Act Sept. 13, 1994, P. L. 103-322 (effective as of the date on which § 3524 of the 1990 Act took effect, as provided by § 330011(i) of the 1994 Act, which appears as a note to this section), in subsec. (a)(5), substituted "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;" for "resides in any State other than that in which the transferor resides (or other than that in which its place of business is located if the transferor is a corporation or other business entity);"; in subsec. (b)(1), substituted a semicolon for the concluding period; in subsec. (j), substituted "which constitutes, or which has been shipped or transported in," for "or which constitutes," and in subsec. (k), inserted "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"; and added subsecs. (q) and (r).

1993.

Act Nov. 30, 1993, in subsec. (e), added the sentence beginning "No common or contract carrier . . ."; in subsec. (f), designated the existing provisions as para. (1) and added para. (2); and added subsecs. (s)–(u).

1994.

Act Sept. 13, 1994, in subsec. (a), in para. (7), deleted "and" after the concluding semicolon, in para. (8), substituted "; and" for a concluding period, and added para. (9); in subsec. (d), in para. (6), deleted "or" after the semicolon, in para. (7), substituted "; or" for a concluding period, and added para. (8); in subsec. (g), in para. (6), deleted "or" after the concluding semicolon, in para. (7), inserted "or" after the concluding semicolon, and added para. (8); substituted subsec. (j) for one which read: "It shall be unlawful for any person to receive, 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, knowing or having reasonable cause to believe that the firearm or ammunition was stolen."; in subsec. (q), redesignated paras. (1), (2), and (3) as paras. (2), (3), and (4), respectively, and added a new para. (1).

Act Sept. 13, 1994, as amended by Act Oct. 11, 1996 (effective as provided by § 603(c)(2) and (f)(2) of Act Oct. 11, 1996, which appear as notes to this section), in subsec. (s)(1), in the introductory matter, inserted "(other than the return of a handgun to the person from whom it was received)"; and added subsec. (x).

Act Sept. 13, 1994 (effective 9/13/94 and repealed 9/13/2004 as provided by § 110105 of such Act, which appears as 18 USCS § 921 note) added subsecs. (v) and (w), which read:

"(v)(1) It shall be unlawful for a person to manufacture, transfer, or possess a semiautomatic assault weapon.

"(2) Paragraph (1) shall not apply to the possession or transfer of any semiautomatic assault weapon otherwise lawfully possessed under Federal law on the date of the enactment of this subsection.

"(3) Paragraph (1) shall not apply to—

"(A) any of the firearms, or replicas or duplicates of the firearms, specified in Appendix A to this section, as such firearms were manufactured on October 1, 1993;

"(B) any firearm that—

"(i) is manually operated by bolt, pump, lever, or slide action;

"(ii) has been rendered permanently inoperable; or

"(iii) is an antique firearm;

"(C) any semiautomatic rifle that cannot accept a detachable magazine that holds more than 5 rounds of ammunition; or

"(D) any semiautomatic shotgun that cannot hold more than 5 rounds of ammunition in a fixed or detachable magazine.

The fact that a firearm is not listed in Appendix A shall not be construed to mean that paragraph (1) applies to such firearm. No firearm exempted by this subsection may be deleted from Appendix A so long as this subsection is in effect.

"(4) Paragraph (1) shall not apply to—

"(A) the manufacture for, transfer to, or possession by the United States or a department or agency of the United States or a State or a department, agency, or political subdivision of a State, or a transfer to or possession by a law enforcement officer employed by such an entity for purposes of law enforcement (whether on or off duty);

"(B) the transfer to a licensee under title I of the Atomic Energy Act of 1954 for purposes of establishing and maintaining an on-site physical protection system and security organization required by Federal law, or possession by an employee or contractor of such licensee on-site for such purposes or off-site for purposes of licensee-authorized training or transportation of nuclear materials;

"(C) the possession, by an individual who is retired from service with a law enforcement agency and is not otherwise prohibited from receiving a firearm, of a semiautomatic assault weapon transferred to the individual by the agency upon such retirement; or

"(D) the manufacture, transfer, or possession of a semiautomatic assault weapon by a licensed manufacturer or licensed importer for the purposes of testing or experimentation authorized by the Attorney General.

"(w)(1) Except as provided in paragraph (2), it shall be unlawful for a person to transfer or possess a large capacity ammunition feeding device.

"(2) Paragraph (1) shall not apply to the possession or transfer of any large capacity ammunition feeding device otherwise lawfully possessed on or before the date of the enactment of this subsection.

"(3) This subsection shall not apply to—

"(A) the manufacture for, transfer to, or possession by the United States or a department or agency of the United States or a State or a department, agency, or political subdivision of a State, or a transfer to or possession by a law enforcement officer employed by such an entity for purposes of law enforcement (whether on or off duty);

"(B) the transfer to a licensee under title I of the Atomic Energy Act of 1954 for purposes of establishing and maintaining an on-site physical protection system and security organization required by Federal law, or possession by an employee or contractor of such licensee on-site for such purposes or off-site for purposes of licensee-authorized training or transportation of nuclear materials;

"(C) the possession, by an individual who is retired from service with a law enforcement agency and is not otherwise prohibited from receiving ammunition, of a large capacity ammunition feeding device transferred to the individual by the agency upon such retirement; or

"(D) the manufacture, transfer, or possession of any large capacity ammunition feeding device by a licensed manufacturer or licensed importer for the purposes of testing or experimentation authorized by the Attorney General.

"(4) If a person charged with violating paragraph (1) asserts that paragraph (1) does not apply to such person because of paragraph (2) or (3), the Government shall have the burden of proof to show that such paragraph (1) applies to such person. The lack of a serial number as described in section 923(i) of this title shall be a presumption that the large capacity ammunition feeding device is not subject to the prohibition of possession in paragraph (1).",

and added Appendix A, which read:

"APPENDIX A .

"Browning BAR Mark II Safari Semi-Auto Rifle.

"Browning BAR Mark II Safari Magnum Rifle.

"Browning High-Power Rifle.

"Heckler & Koch Model 300 Rifle.

"Iver Johnson M-1 Carbine.

"Iver Johnson 50th Anniversary M-1 Carbine.

"Marlin Model 9 Camp Carbine.

"Marlin Model 45 Carbine.

"Remington Nylon 66 Auto-Loading Rifle.

"Remington Model 7400 Auto Rifle.

"Remington Model 7400 Rifle.

"Remington Model 7400 Special Purpose Auto Rifle.

"Ruger Mini-14 Autoloading Rifle (w/o folding stock).

"Ruger Mini Thirty Rifle.

“Browning Model 81 BLR Lever-Action Rifle.

“Browning Model 81 Long Action BLR.

“Browning Model 1886 Lever-Action Carbine.

“Browning Model 1886 High Grade Carbine.

“Cimarron 1860 Henry Replica.

“Cimarron 1866 Winchester Replicas.

“Cimarron 1873 Short Rifle.

“Cimarron 1873 Sporting Rifle.

“Cimarron 1873 30” Express Rifle.

“Dixie Engraved 1873 Rifle.

“E.M.F. 1866 Yellowboy Lever Actions.

“E.M.F. 1860 Henry Rifle.

“E.M.F. Model 73 Lever-Action Rifle.

“Marlin Model 336CS Lever-Action Carbine.

“Marlin Model 30AS Lever-Action Carbine.

“Marlin Model 444SS Lever-Action Sporter.

“Marlin Model 1894S Lever-Action Carbine.

“Marlin Model 1894CS Carbine.

“Marlin Model 1894CL Classic.

“Marlin Model 1895SS Lever-Action Rifle.

“Mitchell 1858 Henry Replica.

“Mitchell 1866 Winchester Replica.

“Mitchell 1873 Winchester Replica.

“Navy Arms Military Henry Rifle.

“Navy Arms Henry Trapper.

“Navy Arms Iron Frame Henry.

“Navy Arms Henry Carbine.

“Navy Arms 1866 Yellowboy Rifle.

“Navy Arms 1873 Winchester-Style Rifle.

“Navy Arms 1873 Sporting Rifle.

“Remington 7600 Slide Action.

“Remington Model 7600 Special Purpose Slide Action.

“Rossi M92 SRC Saddle-Ring Carbine.

“Rossi M92 SRS Short Carbine.

“Savage 99C Lever-Action Rifle.

“Uberti Henry Rifle.

“Uberti 1866 Sporting Rifle.

“Uberti 1873 Sporting Rifle.

“Winchester Model 94 Side Eject Lever-Action Rifle.

“Winchester Model 94 Trapper Side Eject.

“Winchester Model 94 Big Bore Side Eject.

“Winchester Model 94 Ranger Side Eject Lever-Action Rifle.

“Winchester Model 94 Wrangler Side Eject.

“Alpine Bolt-Action Rifle.

“A-Square Caesar Bolt-Action Rifle.

“A-Square Hannibal Bolt-Action Rifle.

“Anschutz 1700D Classic Rifles.

“Anschutz 1700D Custom Rifles.

“Anschutz 1700D Bavarian Bolt-Action Rifle.

“Anschutz 1733D Mannlicher Rifle.

“Barret Model 90 Bolt-Action Rifle.

“Beeman/HW 60J Bolt-Action Rifle.

“Blaser R84 Bolt-Action Rifle.

“BRNO 537 Sporter Bolt-Action Rifle.

“BRNO ZKB 527 Fox Bolt-Action Rifle.

“BRNO ZKK 600, 601, 602 Bolt-Action Rifles.

“Browning A-Bolt Rifle.

“Browning A-Bolt Stainless Stalker.

“Browning A-Bolt Left Hand

“Browning A-Bolt Short Action.

“Browning Euro-Bolt Rifle.

“Browning A-Bolt Gold Medallion.

“Browning A-Bolt Micro Medallion.

“Century Centurion 14 Sporter.

“Century Enfield Sporter #4.

“Century Swedish Sporter #38.

“Century Mauser 98 Sporter.

“Cooper Model 38 Centerfire Sporter.

“Dakota 22 Sporter Bolt-Action Rifle.

“Dakota 76 Classic Bolt-Action Rifle.

“Dakota 76 Short Action Rifles.

“Dakota 76 Safari Bolt-Action Rifle.

“Dakota 416 Rigby African.

“E.A.A./Sabatti Rover 870 Bolt-Action Rifle.

“Auguste Francotte Bolt-Action Rifles.

“Carl Gustaf 2000 Bolt-Action Rifle.

“Heym Magnum Express Series Rifle.

“Howa Lightning Bolt-Action Rifle.

“Howa Realtree Camo Rifle.

“Interarms Mark X Viscount Bolt-Action Rifle.

“Interarms Mini-Mark X Rifle.

“Interarms Mark X Whitworth Bolt-Action Rifle.

“Interarms Whitworth Express Rifle.

“Iver Johnson Model 5100A1 Long-Range Rifle.

“KDF K15 American Bolt-Action Rifle.

“Krico Model 600 Bolt-Action Rifle.

“Krico Model 700 Bolt-Action Rifles.

“Mauser Model 66 Bolt-Action Rifle.

“Mauser Model 99 Bolt-Action Rifle.

“McMillan Signature Classic Sporter.

“McMillan Signature Super Varminter.

“McMillan Signature Alaskan.

“McMillan Signature Titanium Mountain Rifle.

“McMillan Classic Stainless Sporter.

“McMillan Talon Safari Rifle.

“McMillan Talon Sporter Rifle.

“Midland 1500S Survivor Rifle.

“Navy Arms TU-33/40 Carbine.

“Parker-Hale Model 81 Classic Rifle.

“Parker-Hale Model 81 Classic African Rifle.

“Parker-Hale Model 1000 Rifle.

“Parker-Hale Model 1100M African Magnum.

“Parker-Hale Model 1100 Lightweight Rifle.

“Parker-Hale Model 1200 Super Rifle.

“Parker-Hale Model 1200 Super Clip Rifle.

“Parker-Hale Model 1300C Scout Rifle.

“Parker-Hale Model 2100 Midland Rifle.

“Parker-Hale Model 2700 Lightweight Rifle.

“Parker-Hale Model 2800 Midland Rifle.

“Remington Model Seven Bolt-Action Rifle.

“Remington Model Seven Youth Rifle.

“Remington Model Seven Custom KS.

“Remington Model Seven Custom MS Rifle.

“Remington 700 ADL Bolt-Action Rifle.

“Remington 700 BDL Bolt-Action Rifle.

“Remington 700 BDL Varmint Special.

“Remington 700 BDL European Bolt-Action Rifle.

“Remington 700 Varmint Synthetic Rifle.

“Remington 700 BDL SS Rifle.

“Remington 700 Stainless Synthetic Rifle.

“Remington 700 MTRSS Rifle.

“Remington 700 BDL Left Hand

“Remington 700 Camo Synthetic Rifle.

“Remington 700 Safari.

“Remington 700 Mountain Rifle.

“Remington 700 Custom KS Mountain Rifle.

“Remington 700 Classic Rifle.

“Ruger M77 Mark II Rifle.

“Ruger M77 Mark II Magnum Rifle.

“Ruger M77RL Ultra Light.

“Ruger M77 Mark II All-Weather Stainless Rifle.

“Ruger M77 RSI International Carbine.

“Ruger M77 Mark II Express Rifle.

“Ruger M77VT Target Rifle.

“Sako Hunter Rifle.

“Sako FiberClass Sporter.

“Sako Safari Grade Bolt Action.

“Sako Hunter Left-Hand Rifle.

“Sako Classic Bolt Action.

“Sako Hunter LS Rifle.

“Sako Deluxe Lightweight.

“Sako Super Deluxe Sporter.

“Sako Mannlicher-Style Carbine.

“Sako Varmint Heavy Barrel.

“Sako TRG-S Bolt-Action Rifle.

“Sauer 90 Bolt-Action Rifle.

“Savage 110G Bolt-Action Rifle.

“Savage 110CY Youth/Ladies Rifle.

“Savage 110WLE One of One Thousand Limited Edition Rifle.

“Savage 110GXP3 Bolt-Action Rifle.

“Savage 110F Bolt-Action Rifle.

“Savage 110FXP3 Bolt-Action Rifle.

“Savage 110GV Varmint Rifle.

“Savage 112FV Varmint Rifle.

“Savage Model 112FVS Varmint Rifle.

“Savage Model 112BV Heavy Barrel Varmint Rifle.

“Savage 116FSS Bolt-Action Rifle.

“Savage Model 116FSK Kodiak Rifle.

“Savage 110FP Police Rifle.

“Steyr-Mannlicher Sporter Models SL, L, M, S, S/T.

“Steyr-Mannlicher Luxus Model L, M, S.

“Steyr-Mannlicher Model M Professional Rifle.

“Tikka Bolt-Action Rifle.

“Tikka Premium Grade Rifles.

“Tikka Varmint/Continental Rifle.

“Tikka Whitetail/Battue Rifle.

“Ultra Light Arms Model 20 Rifle.

“Ultra Light Arms Model 28, Model 40 Rifles.

“Voere VEC 91 Lightning Bolt-Action Rifle.

“Voere Model 2165 Bolt-Action Rifle.

“Voere Model 2155, 2150 Bolt-Action Rifles.

“Weatherby Mark V Deluxe Bolt-Action Rifle.

“Weatherby Lasermark V Rifle.

“Weatherby Mark V Crown Custom Rifles.

“Weatherby Mark V Sporter Rifle.

“Weatherby Mark V Safari Grade Custom Rifles.

“Weatherby Weathermark Rifle.

“Weatherby Weathermark Alaskan Rifle.

“Weatherby Classicmark No. 1 Rifle.

“Weatherby Weatherguard Alaskan Rifle.

“Weatherby Vanguard VGX Deluxe Rifle.

“Weatherby Vanguard Classic Rifle.

“Weatherby Vanguard Classic No. 1 Rifle.

“Weatherby Vanguard Weatherguard Rifle.

“Wichita Classic Rifle.

“Wichita Varmint Rifle.

“Winchester Model 70 Sporter.

“Winchester Model 70 Sporter WinTuff.

“Winchester Model 70 SM Sporter.

“Winchester Model 70 Stainless Rifle.

“Winchester Model 70 Varmint.

“Winchester Model 70 Synthetic Heavy Varmint Rifle.

“Winchester Model 70 DBM Rifle.

“Winchester Model 70 DBM-S Rifle.

“Winchester Model 70 Featherweight.

“Winchester Model 70 Featherweight WinTuff.

“Winchester Model 70 Featherweight Classic.

“Winchester Model 70 Lightweight Rifle.

“Winchester Ranger Rifle.

“Winchester Model 70 Super Express Magnum.

“Winchester Model 70 Super Grade.

“Winchester Model 70 Custom Sharpshooter.

“Winchester Model 70 Custom Sporting Sharpshooter Rifle.

“Armsport 1866 Sharps Rifle, Carbine.

“Brown Model One Single Shot Rifle.

“Browning Model 1885 Single Shot Rifle.

“Dakota Single Shot Rifle.

“Desert Industries G-90 Single Shot Rifle.

“Harrington & Richardson Ultra Varmint Rifle.

“Model 1885 High Wall Rifle.

“Navy Arms Rolling Block Buffalo Rifle.

“Navy Arms #2 Creedmoor Rifle.

“Navy Arms Sharps Cavalry Carbine.

“Navy Arms Sharps Plains Rifle.

“New England Firearms Handi-Rifle.

“Red Willow Armory Ballard No. 5 Pacific.

“Red Willow Armory Ballard No. 1.5 Hunting Rifle.

“Red Willow Armory Ballard No. 8 Union Hill Rifle.

“Red Willow Armory Ballard No. 4.5 Target Rifle.

“Remington-Style Rolling Block Carbine.

“Ruger No. 1B Single Shot.

“Ruger No. 1A Light Sporter.

“Ruger No. 1H Tropical Rifle.

“Ruger No. 1S Medium Sporter.

“Ruger No. 1 RSI International.

“Ruger No. 1V Special Varminter.

“C. Sharps Arms New Model 1874 Old Reliable.

“C. Sharps Arms New Model 1875 Rifle.

“C. Sharps Arms 1875 Classic Sharps.

“C. Sharps Arms New Model 1875 Target & Long Range.

“Shiloh Sharps 1874 Long Range Express.

“Shiloh Sharps 1874 Montana Roughrider.

“Shiloh Sharps 1874 Military Carbine.

“Shiloh Sharps 1874 Business Rifle.

“Shiloh Sharps 1874 Military Rifle.

“Sharps 1874 Old Reliable.

“Thompson/Center Contender Carbine.

“Thompson/Center Stainless Contender Carbine.

“Thompson/Center Contender Carbine Survival System.

“Thompson/Center Contender Carbine Youth Model.

“Thompson/Center TCR ‘87 Single Shot Rifle.

“Uberti Rolling Block Baby Carbine.

“Beretta Express SSO O/U Double Rifles.

“Beretta Model 455 SxS Express Rifle.

“Chapuis RGExpress Double Rifle.

“Auguste Francotte Sidelock Double Rifles.

“Auguste Francotte Boxlock Double Rifle.

“Heym Model 55B O/U Double Rifle.

“Heym Model 55FW O/U Combo Gun.

“Heym Model 88b Side-by-Side Double Rifle.

“Kodiak Mk. IV Double Rifle.

“Kreighoff Teck O/U Combination Gun.

“Kreighoff Trumpf Drilling.

“Merkel Over/Under Combination Guns.

“Merkel Drillings.

“Merkel Model 160 Side-by-Side Double Rifles.

“Merkel Over/Under Double Rifles.

“Savage 24F O/U Combination Gun.

“Savage 24F-12T Turkey Gun.

“Springfield Inc. M6 Scout Rifle/Shotgun.

“Tikka Model 412s Combination Gun.

“Tikka Model 412S Double Fire.

“A. Zoli Rifle-Shotgun O/U Combo.

“AMT Lightning 25/22 Rifle.

“AMT Lightning Small-Game Hunting Rifle II.

“AMT Magnum Hunter Auto Rifle.

“Anschutz 525 Deluxe Auto.

“Armscor Model 20P Auto Rifle.

“Browning Auto-22 Rifle.

“Browning Auto-22 Grade VI.

“Krico Model 260 Auto Rifle.

“Lakefield Arms Model 64B Auto Rifle.

“Marlin Model 60 Self-Loading Rifle.

“Marlin Model 60ss Self-Loading Rifle.

“Marlin Model 70 HC Auto.

“Marlin Model 990l Self-Loading Rifle.

“Marlin Model 70P Papoose.

“Marlin Model 922 Magnum Self-Loading Rifle.

“Marlin Model 995 Self-Loading Rifle.

“Norinco Model 22 ATD Rifle.

“Remington Model 522 Viper Autoloading Rifle.

“Remington 552BDL Speedmaster Rifle.

“Ruger 10/22 Autoloading Carbine (w/o folding stock).

“Survival Arms AR-7 Explorer Rifle.

“Texas Remington Revolving Carbine.

“Voere Model 2115 Auto Rifle.

“Browning BL-22 Lever-Action Rifle.

“Marlin 39TDS Carbine.

“Marlin Model 39AS Golden Lever-Action Rifle.

“Remington 572BDL Fieldmaster Pump Rifle.

“Norinco EM-321 Pump Rifle.

“Rossi Model 62 SA Pump Rifle.

“Rossi Model 62 SAC Carbine.

“Winchester Model 9422 Lever-Action Rifle.

“Winchester Model 9422 Magnum Lever-Action Rifle.

“Anschutz Achiever Bolt-Action Rifle.

“Anschutz 1416D/1516D Classic Rifles.

“Anschutz 1418D/1518D Mannlicher Rifles.

“Anschutz 1700D Classic Rifles.

“Anschutz 1700D Custom Rifles.

“Anschutz 1700 FWT Bolt-Action Rifle.

“Anschutz 1700D Graphite Custom Rifle.

“Anschutz 1700D Bavarian Bolt-Action Rifle.

“Armscor Model 14P Bolt-Action Rifle.

“Armscor Model 1500 Rifle.

“BRNO ZKM–452 Deluxe Bolt-Action Rifle.

“BRNO ZKM 452 Deluxe.

“Beeman/HW 60-J-ST Bolt-Action Rifle.

“Browning A-Bolt 22 Bolt-Action Rifle.

“Browning A-Bolt Gold Medallion.

“Cabanas Phaser Rifle.

“Cabanas Master Bolt-Action Rifle.

“Cabanas Espronceda IV Bolt-Action Rifle.

“Cabanas Leyre Bolt-Action Rifle.

“Chipmunk Single Shot Rifle.

“Cooper Arms Model 36S Sporter Rifle.

“Dakota 22 Sporter Bolt-Action Rifle.

“Krico Model 300 Bolt-Action Rifles.

“Lakefield Arms Mark II Bolt-Action Rifle.

“Lakefield Arms Mark I Bolt-Action Rifle.

“Magtech Model MT-22C Bolt-Action Rifle.

“Marlin Model 880 Bolt-Action Rifle.

“Marlin Model 881 Bolt-Action Rifle.

“Marlin Model 882 Bolt-Action Rifle.

“Marlin Model 883 Bolt-Action Rifle.

“Marlin Model 883SS Bolt-Action Rifle.

“Marlin Model 25MN Bolt-Action Rifle.

“Marlin Model 25N Bolt-Action Repeater.

“Marlin Model 15YN “Little Buckaroo“.

“Mauser Model 107 Bolt-Action Rifle.

“Mauser Model 201 Bolt-Action Rifle.

“Navy Arms TU–KKW Training Rifle.

“Navy Arms TU–33/40 Carbine.

“Navy Arms TU–KKW Sniper Trainer.

“Norinco JW–27 Bolt-Action Rifle.

“Norinco JW–15 Bolt-Action Rifle.

“Remington 541–T.

“Remington 40–XR Rimfire Custom Sporter.

“Remington 541–T HB Bolt-Action Rifle.

“Remington 581–S Sportsman Rifle.

“77/22 Rimfire Bolt-Action Rifle.

“Ruger K77/22 Varmint Rifle.

“Ultra Light Arms Model 20 RF Bolt-Action Rifle.

“Winchester Model 52B Sporting Rifle.

“Anschutz 64-MS Left Silhouette.

“Anschutz 1808D RT Super Match 54 Target.

“Anschutz 1827B Biathlon Rifle.

“Anschutz 1903D Match Rifle.

“Anschutz 1803D Intermediate Match.

“Anschutz 1911 Match Rifle.

“Anschutz 54.18MS REP Deluxe Silhouette Rifle.

“Anschutz 1913 Super Match Rifle.

“Anschutz 1907 Match Rifle.

“Anschutz 1910 Super Match II.

“Anschutz 54.18MS Silhouette Rifle.

“Anschutz Super Match 54 Target Model 2013.

“Anschutz Super Match 54 Target Model 2007.

“Beeman/Feinwerkbau 2600 Target Rifle.

“Cooper Arms Model TRP-1 ISU Standard Rifle.

“E.A.A./Weihrauch HW 60 Target Rifle.

“E.A.A./HW 660 Match Rifle.

“Finnish Lion Standard Target Rifle.

“Krico Model 360 S2 Biathlon Rifle.

“Krico Model 400 Match Rifle.

“Krico Model 360S Biathlon Rifle.

“Krico Model 500 Kricotronic Match Rifle.

“Krico Model 600 Sniper Rifle.

“Krico Model 600 Match Rifle.

“Lakefield Arms Model 90B Target Rifle.

“Lakefield Arms Model 91T Target Rifle.

“Lakefield Arms Model 92S Silhouette Rifle.

“Marlin Model 2000 Target Rifle.

“Mauser Model 86–SR Specialty Rifle.

“McMillan M–86 Sniper Rifle.

“McMillan Combo M–87/M–88 50-Caliber Rifle.

“McMillan 300 Phoenix Long Range Rifle.

“McMillan M–89 Sniper Rifle.

“McMillan National Match Rifle.

“McMillan Long Range Rifle.

“Parker-Hale M–87 Target Rifle.

“Parker-Hale M–85 Sniper Rifle.

“Remington 40–XB Rangemaster Target Centerfire.

“Remington 40–XR KS Rimfire Position Rifle.

“Remington 40–XBBR KS.

“Remington 40–XC KS National Match Course Rifle.

“Sako TRG–21 Bolt-Action Rifle.

“Steyr-Mannlicher Match SPG–UIT Rifle.

“Steyr-Mannlicher SSG P–I Rifle.

“Steyr-Mannlicher SSG P–III Rifle.

“Steyr-Mannlicher SSG P–IV Rifle.

“Tanner Standard UIT Rifle.

“Tanner 50 Meter Free Rifle.

“Tanner 300 Meter Free Rifle.

“Wichita Silhouette Rifle.

“American Arms/Franchi Black Magic 48/AL.

“Benelli Super Black Eagle Shotgun.

“Benelli Super Black Eagle Slug Gun.

“Benelli M1 Super 90 Field Auto Shotgun.

“Benelli Montefeltro Super 90 20-Gauge Shotgun.

“Benelli Montefeltro Super 90 Shotgun.

“Benelli M1 Sporting Special Auto Shotgun.

“Benelli Black Eagle Competition Auto Shotgun.

“Beretta A-303 Auto Shotgun.

“Beretta 390 Field Auto Shotgun.

“Beretta 390 Super Trap, Super Skeet Shotguns.

“Beretta Vittoria Auto Shotgun.

“Beretta Model 1201F Auto Shotgun.

“Browning BSA 10 Auto Shotgun.

“Browning BSA 10 Stalker Auto Shotgun.

“Browning A–500R Auto Shotgun.

“Browning A–500G Auto Shotgun.

“Browning A–500G Sporting Clays.

“Browning Auto-5 Light 12 and 20.

“Browning Auto-5 Stalker.

“Browning Auto-5 Magnum 20.

“Browning Auto-5 Magnum 12.

“Churchill Turkey Automatic Shotgun.

“Cosmi Automatic Shotgun.

“Maverick Model 60 Auto Shotgun.

“Mossberg Model 5500 Shotgun.

“Mossberg Model 9200 Regal Semi-Auto Shotgun.

“Mossberg Model 9200 USST Auto Shotgun.

“Mossberg Model 9200 Camo Shotgun.

“Mossberg Model 6000 Auto Shotgun.

“Remington Model 1100 Shotgun.

“Remington 11–87 Premier Shotgun.

“Remington 11–87 Sporting Clays.

“Remington 11–87 Premier Skeet.

“Remington 11–87 Premier Trap.

“Remington 11–87 Special Purpose Magnum.

“Remington 11–87 SPS-T Camo Auto Shotgun.

“Remington 11–87 Special Purpose Deer Gun.

“Remington 11–87 SPS-BG-Camo Deer/Turkey Shotgun.

“Remington 11–87 SPS-Deer Shotgun.

“Remington 11–87 Special Purpose Synthetic Camo.

“Remington SP–10 Magnum-Camo Auto Shotgun.

“Remington SP–10 Magnum Auto Shotgun.

“Remington SP–10 Magnum Turkey Combo.

“Remington 1100 LT–20 Auto.

“Remington 1100 Special Field.

“Remington 1100 20-Gauge Deer Gun.

“Remington 1100 LT–20 Tournament Skeet.

“Winchester Model 1400 Semi-Auto Shotgun.

“Browning Model 42 Pump Shotgun.

“Browning BPS Pump Shotgun.

“Browning BPS Stalker Pump Shotgun.

“Browning BPS Pigeon Grade Pump Shotgun.

“Browning BPS Pump Shotgun (Ladies and Youth Model).

“Browning BPS Game Gun Turkey Special.

“Browning BPS Game Gun Deer Special.

“Ithaca Model 87 Supreme Pump Shotgun.

“Ithaca Model 87 Deerslayer Shotgun.

“Ithaca Deerslayer II Rifled Shotgun.

“Ithaca Model 87 Turkey Gun.

“Ithaca Model 87 Deluxe Pump Shotgun.

“Magtech Model 586–VR Pump Shotgun.

“Maverick Models 88, 91 Pump Shotguns.

“Mossberg Model 500 Sporting Pump.

“Mossberg Model 500 Camo Pump.

“Mossberg Model 500 Muzzleloader Combo.

“Mossberg Model 500 Trophy Slugster.

“Mossberg Turkey Model 500 Pump.

“Mossberg Model 500 Bantam Pump.

“Mossberg Field Grade Model 835 Pump Shotgun.

“Mossberg Model 835 Regal Ulti-Mag Pump.

“Remington 870 Wingmaster.

“Remington 870 Special Purpose Deer Gun.

“Remington 870 SPS–BG-Camo Deer/Turkey Shotgun.

“Remington 870 SPS-Deer Shotgun.

“Remington 870 Marine Magnum.

“Remington 870 TC Trap.

“Remington 870 Special Purpose Synthetic Camo.

“Remington 870 Wingmaster Small Gauges.

“Remington 870 Express Rifle Sighted Deer Gun.

“Remington 870 SPS Special Purpose Magnum.

“Remington 870 SPS–T Camo Pump Shotgun.

“Remington 870 Special Field.

“Remington 870 Express Turkey.

“Remington 870 High Grades.

“Remington 870 Express.

“Remington Model 870 Express Youth Gun.

“Winchester Model 12 Pump Shotgun.

“Winchester Model 42 High Grade Shotgun.

“Winchester Model 1300 Walnut Pump.

“Winchester Model 1300 Slug Hunter Deer Gun.

“Winchester Model 1300 Ranger Pump Gun Combo & Deer Gun.

“Winchester Model 1300 Turkey Gun.

“Winchester Model 1300 Ranger Pump Gun.

“American Arms/Franchi Falconet 2000 O/U.

“American Arms Silver I O/U.

“American Arms Silver II Shotgun.

“American Arms Silver Skeet O/U.

“American Arms/Franchi Sporting 2000 O/U.

“American Arms Silver Sporting O/U.

“American Arms Silver Trap O/U.

“American Arms WS/OU 12, TS/OU 12 Shotguns.

“American Arms WT/OU 10 Shotgun.

“Armsport 2700 O/U Goose Gun.

“Armsport 2700 Series O/U.

“Armsport 2900 Tri-Barrel Shotgun.

“Baby Bretton Over/Under Shotgun.

“Beretta Model 686 Ultralight O/U.

“Beretta ASE 90 Competition O/U Shotgun.

“Beretta Over/Under Field Shotguns.

“Beretta Onyx Hunter Sport O/U Shotgun.

“Beretta Model SO5, SO6, SO9 Shotguns.

“Beretta Sporting Clay Shotguns.

“Beretta 68L Sporting O/U.

“Beretta 682 Super Sporting O/U.

“Beretta Series 682 Competition Over/Unders.

“Browning Citori O/U Shotgun.

“Browning Superlight Citori Over/Under.

“Browning Lightning Sporting Clays.

“Browning Micro Citori Lightning.

“Browning Citori Plus Trap Combo.

“Browning Citori Plus Trap Gun.

“Browning Citori O/U Skeet Models.

“Bowning Citori O/U Trap Models.

“Browning Special Sporting Clays.

“Browning Citori GTI Sporting Clays.

“Browning 325 Sporting Clays.

“Centurion Over/Under Shotgun.

“Chapuis Over/Under Shotgun.

“Connecticut Valley Classics Classic Sporter O/U.

“Connecticut Valley Classics Classic Field Waterfowler.

“Charles Daly Field Grade O/U.

“Charles Daly Lux Over/Under.

“E.A.A./Sabatti Sporting Clays Pro-Gold O/U.

“E.A.A./Sabatti Falcon-Mon Over/Under.

“Kassnar Grade I O/U Shotgun.

“Krieghoff K–80 Sporting Clays O/U.

“Krieghoff K–80 Skeet Shotgun.

“Krieghoff K–80 International Skeet.

“Krieghoff K–80 Four-Barrel Skeet Set.

“Krieghoff K–80/RT Shotguns.

“Krieghoff K–80 O/U Trap Shotgun.

“Laurona Silhouette 300 Sporting Clays.

“Laurona Silhouette 300 Trap.

“Laurona Super Model Over/Unders.

“Ljutic LM–6 Deluxe O/U Shotgun.

“Marocchi Conquista Over/Under Shotgun.

“Marocchi Avanza O/U Shotgun.

“Merkel Model 200E O/U Shotgun.

“Merkel Model 200E Skeet, Trap Over/Unders.

“Merkel Model 203E, 303E Over/Under Shotguns.

“Perazzi Mirage Special Sporting O/U.

“Perazzi Mirage Special Four-Gauge Skeet.

“Perazzi Sporting Classic O/U.

“Perazzi MX7 Over/Under Shotguns.

“Perazzi Mirage Special Skeet Over/Under.

“Perazzi MX8/MX8 Special Trap, Skeet.

“Perazzi MX8/20 Over/Under Shotgun.

“Perazzi MX9 Single Over/Under Shotguns.

“Perazzi MX12 Hunting Over/Under.

“Perazzi MX28, MX410 Game O/U Shotguns.

“Perazzi MX20 Hunting Over/Under.

“Piotti Boss Over/Under Shotgun.

“Remington Peerless Over/Under Shotgun.

“Ruger Red Label O/U Shotgun.

“Ruger Sporting Clays O/U Shotgun.

“San Marco 12-Ga. Wildflower Shotgun.

“San Marco Field Special O/U Shotgun.

“San Marco 10-Ga. O/U Shotgun.

“SKB Model 505 Deluxe Over/Under Shotgun.

“SKB Model 685 Over/Under Shotgun.

“SKB Model 885 Over/Under Trap, Skeet, Sporting Clays.

“Stoeger/IGA Condor I O/U Shotgun.

“Stoeger/IGA ERA 2000 Over/Under Shotgun.

“Techni-Mec Model 610 Over/Under.

“Tikka Model 412S Field Grade Over/Under.

“Weatherby Athena Grade IV O/U Shotguns.

“Weatherby Athena Grade V Classic Field O/U.

“Weatherby Orion O/U Shotguns.

“Weatherby II, III Classic Field O/Us.

“Weatherby Orion II Classic Sporting Clays O/U.

“Weatherby Orion II Sporting Clays O/U.

“Winchester Model 1001 O/U Shotgun.

“Winchester Model 1001 Sporting Clays O/U.

“Pietro Zanoletti Model 2000 Field O/U.

“American Arms Brittany Shotgun.

“American Arms Gentry Double Shotgun.

“American Arms Derby Side-by-Side.

“American Arms Grulla #2 Double Shotgun.

“American Arms WS/SS 10.

“American Arms TS/SS 10 Double Shotgun.

“American Arms TS/SS 12 Side-by-Side.

“Arrieta Sidelock Double Shotguns.

“Armsport 1050 Series Double Shotguns.

“Arizaga Model 31 Double Shotgun.

“AYA Boxlock Shotguns.

“AYA Sidelock Double Shotguns.

“Beretta Model 452 Sidelock Shotgun.

“Beretta Side-by-Side Field Shotguns.

“Crucelegui Hermanos Model 150 Double.

“Chapuis Side-by-Side Shotgun.

“E.A.A./Sabatti Saba-Mon Double Shotgun.

“Charles Daly Model Dss Double.

“Ferlib Model F VII Double Shotgun.

“Auguste Francotte Boxlock Shotgun.

“Auguste Francotte Sidelock Shotgun.

“Garbi Model 100 Double.

“Garbi Model 101 Side-by-Side.

“Garbi Model 103A, B Side-by-Side.

“Garbi Model 200 Side-by-Side.

“Bill Hanus Birdgun Doubles.

“Hatfield Uplander Shotgun.

“Merkel Model 8, 47E Side-by-Side Shotguns.

“Merkel Model 47LSC Sporting Clays Double.

“Merkel Model 47S, 147S Side-by-Sides.

“Parker Reproductions Side-by-Side.

“Piotti King No. 1 Side-by-Side.

“Piotti Lunik Side-by-Side.

“Piotti King Extra Side-by-Side.

“Piotti Piuma Side-by-Side.

“Precision Sports Model 600 Series Doubles.

“Rizzini Boxlock Side-by-Side.

“Rizzini Sidelock Side-by-Side.

“Stoeger/IGA Uplander Side-by-Side Shotgun.

“Ugartechea 10-Ga. Magnum Shotgun.

“Armsport Single Barrel Shotgun.

“Browning BT–99 Competition Trap Special.

“Browning BT–99 Plus Trap Gun.

“Browning BT–99 Plus Micro.

“Browning Recoilless Trap Shotgun.

“Browning Micro Recoilless Trap Shotgun.

“Desert Industries Big Twenty Shotgun.

“Harrington & Richardson Topper Model 098.

“Harrington & Richardson Topper Classic Youth Shotgun.

“Harrington & Richardson N.W.T.F. Turkey Mag.

“Harrington & Richardson Topper Deluxe Model 098.

“Krieghoff KS–5 Trap Gun.

“Krieghoff KS–5 Special.

“Krieghoff K-80 Single Barrel Trap Gun.

“Ljutic Mono Gun Single Barrel.

“Ljutic LTX Super Deluxe Mono Gun.

“Ljutic Recoilless Space Gun Shotgun.

“Marlin Model 55 Goose Gun Bolt Action.

“New England Firearms Turkey and Goose Gun.

“New England Firearms N.W.T.F. Shotgun.

“New England Firearms Tracker Slug Gun.

“New England Firearms Standard Pardner.

“New England Firearms Survival Gun.

“Perazzi TM1 Special Single Trap.

“Remington 90–T Super Single Shotgun.

“Snake Charmer II Shotgun.

“Stoeger/IGA Reuna Single Barrel Shotgun.

“Thompson/Center TCR ‘87 Hunter Shotgun.”.

Such Act further (effective as of the date on which § 3524 of Act Nov. 29, 1990, P. L. 101-647, took effect, as provided by § 330011(i) of the 1994 Act, which appears as a note to this section), amended the directory language of § 3524 of the 1990 Act without affecting the text of this section.

1996.

Act Sept. 30, 1996, in subsec. (d), in para. (7), deleted “or” following the concluding semicolon, in para. (8), substituted “; or” for a concluding period, and added para. (9); in subsec. (g), in para. (7), deleted “or” following the concluding semicolon, in para. (8), substituted “; or” for a concluding comma, and added para. (9); substituted subsec. (q) for one which read:

“(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 Judiciary Committee of the House of Representatives and Judiciary Committee 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) Congress has 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 at a place that the individual knows, or has reasonable cause to believe, is a school zone.

"(B) Subparagraph (A) shall 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 obtain 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) which is—

"(I) not loaded; and

"(II) in a locked container, or a locked firearms rack which 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 at a place that the person knows is a school zone.

"(B) Subparagraph (A) shall 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.";

and, in subsec. (s)(3)(B)(i), inserted ", and has not been convicted in any court of a misdemeanor crime of domestic violence".

Act Oct. 11, 1996, in subsec. (g)(8)(C)(ii), substituted the concluding semicolon for a comma; in subsec. (w)(4), substituted "this title" for "title 18, United States Code,"; and, in Appx. A, under "Centerfire Rifles—Lever & Slide", substituted "Uberti 1866 Sporting Rifle" for "Uberti 1866 Sporting Rilfe", under "Centerfire Rifles—Bolt Action", substituted "Sako FiberClass Sporter" for "Sako Fiberclass Sporter", under "Shotguns—Slide Actions", substituted "Remington 870 SPS Special Purpose Magnum" for "Remington 879 SPS Special Purpose Magnum" and, under "Shotguns—Over/Unders" substituted "E.A.A./Sabatti Falcon-Mon Over/Under" for "E.A.A/Sabatti Falcon-Mon Over/Under".

Such Act further (effective as provided by § 603(c)(2) of such Act, which appears as a note to this section) amended the directory language of Act Sept. 13, 1994 without affecting the text of this section.

Such Act further purported to amend subsec. (t)(2) by substituting "subsection (g)" for "section 922(g); however, because of a prior amendment, this amendment could not be executed.

Such Act further (effective as provided by § 603(f)(2) of such Act, which appears as a note to this section) amended the directory language of Act Sept. 13, 1994 without affecting the text of this section.

1998.

Act Oct. 21, 1998, in subsec. (d), substituted para. (5) for one which read: "(5) who, being an alien, is illegally or unlawfully in the United States;"; in subsec. (g), substituted para. (5) for one which read: "(5) who, being an alien, is illegally or unlawfully in the United States;"; in subsec. (s)(3)(B), substituted cl. (v) for one which read: "(v) is not an alien who is illegally or unlawfully in the United States;"; and added subsec. (y).

2002.

Act Nov. 2, 2002, in subsec. (t)(1)(C), substituted "1028(d)" for "1028(d)(1)".

Act Nov. 25, 2002 (effective 60 days after enactment, as provided by § 4 of such Act, which appears as 6 USCS § 101 note), in subsecs. (a)–(c), substituted "Attorney General" for "Secretary" wherever appearing; in subsec. (p), in paras. (2) and (3), substituted "Attorney General" for "Secretary" wherever appearing, and, in para. (5)(A), substituted "after consultation with the Attorney General" for "after consultation with the Secretary"; and, in subsecs. (s), (t), (v), and (w), substituted "Attorney General" for "Secretary" wherever appearing.

2005.

Act Oct. 26, 2005, in subsec. (a), substituted paras. (7) and (8) for ones which read:

"(7) for any person to manufacture or import armor piercing ammunition, except that this paragraph shall not apply to—

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

"(B) the manufacture of such ammunition for the purpose of exportation; and

"(C) any manufacture or importation for the purposes of testing or experimentation authorized by the Attorney General;

"(8) for any manufacturer or importer to sell or deliver armor piercing ammunition, except that this paragraph shall not apply to—

"(A) the sale or delivery by a manufacturer or importer of such ammunition for use of the United States or any department or agency thereof or any State or any department, agency, or political subdivision thereof;

"(B) the sale or delivery by a manufacturer or importer of such ammunition for the purpose of exportation;

"(C) the sale or delivery by a manufacturer or importer of such ammunition for the purposes of testing or experimenting authorized by the Attorney General; and".

Such Act further (effective 180 days after enactment, as provided by § 5(d) of such Act, which appears as a note to this section) added subsec. (z).

2015.

Act Dec. 4, 2015 (effective 10/1/2015, as provided by § 1003 of such Act, which appears as 5 USCS § 5313 note), in subsec. (z)(2)(B), substituted "directly employed by or contracted by" for "employed by".

Other provisions:

State firearms laws and published ordinances to be provided to licensees; annual publication in Federal Register. Act May 19, 1986, *P. L. 99-308*, § 110(a), *100 Stat. 460*, which appears as *18 USCS § 921* note, provides that the shall Secretary publish and provide to all licensees a compilation of the State laws and published ordinances of which licensees are presumed to have knowledge pursuant to *18 USCS §§ 921* et seq., and publish same in the Federal Register.

Studies to identify equipment capable of distinguishing security exemplar from other metal objects likely to be carried on one's person. Act Nov. 11, 1988, *P. L. 100-649*, § 2(e), *102 Stat. 3817*, effective on the 30th day beginning after enactment as provided by § 2(f)(1) of such Act, which appears as a note to this section, provides: "The Attorney General, the Secretary of the Treasury, and the Secretary of Transportation shall each conduct studies to identify available state-of-the-art equipment capable of detecting the Security Exemplar (as defined in *section 922(p)(2)(C) of title 18, United States Code*) and distinguishing the Security Exemplar from innocuous metal objects likely to be carried on one's person. Such studies shall be completed within 6 months after the date of the enactment of this Act and shall include a schedule providing for the installation of such equipment at the earliest practicable time at security checkpoints maintained or regulated by the agency conducting the study. Such equipment shall be installed in accordance with each schedule. In addition, such studies may include recommendations, where appropriate, concerning the use of secondary security equipment and procedures to enhance detection capability at security checkpoints.".

Nov. 11, 1988 amendments; effective dates and sunset provisions. Act Nov. 11, 1988, *P. L. 100-649*, § 2(f), *102 Stat. 3818*; Oct. 21, 1998, *P. L. 105-277*, Div A, § 101(h) [Title VI, § 649], *112 Stat. 2681- 528*; Dec. 9, 2003, *P. L. 108-174*, § 1, *117 Stat. 2481*; Dec. 9, 2013, *P. L. 113-57*, § 1, *127 Stat. 656*, provides:

"(1) Effective date. This Act and the amendments made by this Act [amending *18 USCS §§ 922*, *924*, and *925*] shall take effect on the 30th day beginning after the date of the enactment of this Act.

"(2) Sunset. Effective 35 years after the effective date of this Act—

"(A) subsection (p) of *section 922 of title 18, United States Code*, is hereby repealed;

"(B) subsection (f) of section 924 of such title is hereby repealed and subsections (g) through (o) of such section are hereby redesignated as subsections (f) through (n), respectively;

"(C) subsection (f) of section 925 of such title is hereby repealed;

"(D) section 924(a)(1) of such title is amended by striking 'this subsection, subsection (b), (c), or (f) of this section, or in section 929' and inserting 'this chapter'; and

"(E) section 925(a) of such title is amended—

"(i) in paragraph (1), by striking 'and provisions relating to firearms subject to the prohibitions of section 922(p)'; and

"(ii) in paragraph (2), by striking ', except for provisions relating to firearms subject to the prohibitions of section 922(p),'; and

"(iii) in each of paragraphs (3) and (4), by striking 'except for provisions relating to firearms subject to the prohibitions of section 922(p),'.".

Gun-free zone signs. Act Nov. 29, 1990, *P. L. 101-647*, Title XVII, § 1702(b)(5), *104 Stat. 4845*, provides: "Federal, State, and local authorities are encouraged to cause signs to be posted around school zones giving warning of prohibition of the possession of firearms in a school zone.".

National instant criminal background check system. Act Nov. 30, 1993, *P. L. 103-159*, Title I, § 103, *107 Stat. 1541*; Sept. 13, 1994, *P. L. 103-322*, Title XXI, Subtitle F, § 210603(b), *108 Stat. 2074*; Oct. 11, 1996, *P. L. 104-294*, Title VI, § 603(h), *110 Stat. 3504*; Oct. 11, 1996, *P. L. 104-294*, Title VI, § 603(i)(1) (effective as if included in Act Sept. 13, 1994 on enactment, as provided by § 603(i)(2) of Act Oct. 11, 1996), *110 Stat. 3504*; Jan. 8, 2008, *P. L. 110-180*, Title I, § 101(a), *121 Stat. 2561*, which formerly appeared as a note to this section, was transferred to *34 USCS § 40901* by the compilers of the United States Code.

Grants for improvement of criminal records. Act Nov. 30, 1993, *P. L. 103-159*, Title I, § 106(b), *107 Stat. 1544*; Sept. 13, 1994, *P. L. 103-322*, Title XXI, Subtitle F, § 210603(b), *108 Stat. 2074*; Oct. 11, 1996, *P. L. 104-294*, Title VI, § 603(i)(1), *110 Stat. 3504* (effective as if included in Act Sept. 13, 1994 on enactment, as provided by § 603(i)(2) of Act Oct. 11, 1996), which formerly appeared as a note to this section, was transferred to *34 USCS § 40302* by the compilers of the United States Code.

Repeal of provision relating to availability of certain funding for activities authorized by Brady Handgun Violence Prevention Act and National Child Protection Act of 1993. Act Sept. 13, 1994, *P. L. 103-322*, Title XXI, Subtitle F, § 210603(a), *108 Stat. 2074*, which formerly appeared as a note to this section, was repealed by Act Jan. 5, 2006, *P. L. 109-162*, Title XI, Subtitle B, Ch. 5, § 1154(b)(4), *119 Stat. 3113*. Such note provided for appropriation of funds from the Violent Crime Reduction Trust Fund for activities authorized by the Brady Handgun Violence Prevention Act and the National Child Protection Act of 1993.

Effective date of amendments made by § 330011(i) of Act Sept. 13, 1994. Act Sept. 13, 1994, *P. L. 103-322*, § 330011(i), *108 Stat. 2145*, provides that the amendments made by such section, inserting "of title 18, United States Code" in the directory language of §§ 3524, 3525, and 3528 of Act Nov. 29, 1990, *P. L. 101-647*, are effective on the date on which such §§ 3524, 3525, and 3528 took effect.

Effective date of amendment made by § 603(c)(1) of Act Oct. 11, 1996. Act Oct. 11, 1996, *P. L. 104-294*, Title VI, § 603(c)(2), *110 Stat. 3503*, provides: "The amendment made by paragraph (1) [amending § 320927 of Act Sept. 13, 1994, *P. L. 103-322*, which amended this section] shall take effect as if the amendment had been included in section 320927 of the Act referred to in paragraph (1) on the date of the enactment of such Act.".

Effective date of amendment made by § 603(f)(1) of Act Oct. 11, 1996. Act Oct. 11, 1996, *P. L. 104-294*, Title VI, § 603(f)(2), *110 Stat. 3503*, provides: "The amendment made by paragraph (1) [amending § 110201(a) of Act Sept. 13, 1994, *P. L 103-322*, which amended this section] shall take effect as if the amendment had been included in section 110201 of the Act referred to in paragraph (1) on the date of the enactment of such Act.".

Child Safety Lock Act of 2005; purposes. Act Oct. 26, 2005, *P. L. 109-92*, § 5(b), *119 Stat. 2099* (effective 180 days after enactment, as provided by § 5(d) of such Act, which appears as a note to this section), provides:

"The purposes of this section [amending *18 USCS §§ 922* and *924* and appearing in part as notes to *18 USCS §§ 921* and *922*] are—

"(1) to promote the safe storage and use of handguns by consumers;

"(2) to prevent unauthorized persons from gaining access to or use of a handgun, including children who may not be in possession of a handgun; and

"(3) to avoid hindering industry from supplying firearms to law abiding citizens for all lawful purposes, including hunting, self-defense, collecting, and competitive or recreational shooting.".

Child Safety Lock Act of 2005; liability; evidence. Act Oct. 26, 2005, *P. L. 109-92*, § 5(c)(3), *119 Stat. 2101* (effective 180 days after enactment, as provided by § 5(d) of such Act, which appears as a note to this section), provides:

"(A) Liability. Nothing in this section [amending *18 USCS §§ 922* and *924*, and appearing in part as notes to *18 USCS §§ 921* and *922*] shall be construed to—

"(i) create a cause of action against any Federal firearms licensee or any other person for any civil liability; or

"(ii) establish any standard of care.

"(B) Evidence. Notwithstanding any other provision of law, evidence regarding compliance or noncompliance with the amendments made by this section [amending *18 USCS §§ 922* and *924*] shall not be admissible as evidence in any proceeding of any court, agency, board, or other entity, except with respect to an action relating to *section 922(z) of title 18, United States Code*, as added by this subsection.

"(C) Rule of construction. Nothing in this paragraph shall be construed to bar a governmental action to impose a penalty under *section 924(p) of title 18, United States Code*, for a failure to comply with section 922(z) of that title.".

Effective date of § 5 of Act Oct. 26, 2005. Act Oct. 26, 2005, *P. L. 109-92*, § 5(d), *119 Stat. 2101*, provides: "This section and the amendments made by this section [amending *18 USCS §§ 922* and *924*, and appearing in part as notes to *18 USCS §§ 921* and *922*] shall take effect 180 days after the date of enactment of this Act.".

NICS Improvement Amendments Act of 2007. Act Jan. 8, 2008, *P. L. 110-180*, §§ 1–3, *121 Stat. 2559*, which formerly appeared as a note to this section, were transferred to *34 USCS § 10101* note, §§ 40902, and 40903, respectively. Titles I–III of such Act were transferred to Chapter 409 of Title 34, and Title IV was omitted from the Code by the compilers of the United States Code.

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I. IN GENERAL

1. Purpose

Principal purpose of the Gun Control Act of 1968, *18 USCS §§ 921* et seq. is to curb crime by keeping firearms out of the hands of those not legally entitled to possess them because of age, criminal background, or incompetency and to channel commerce in firearms through federally-licensed importers, manufacturers, and dealers in an attempt to halt mail-order and interstate consumer traffic in firearms. *Huddleston v. United States, 415 U.S. 814, 94 S. Ct. 1262, 39 L. Ed. 2d 782, 1974 U.S. LEXIS 121 (1974)*.

Principal purpose of *18 USCS § 922* was to make it possible to keep firearms out of hands of those not legally entitled to possess them because of age, criminal background, or incompetency. *Barrett v. United States, 423 U.S. 212, 96 S. Ct. 498, 46 L. Ed. 2d 450, 1976 U.S. LEXIS 37 (1976)*.

Purpose of Congress in enacting Gun Control Act of 1968, *18 USCS §§ 921* et seq., is to eliminate firearms from hands of criminals while interfering as little as possible with law-abiding citizen. *United States v. Weatherford, 471 F.2d 47, 1972 U.S. App. LEXIS 6217 (7th Cir. 1972)*, cert. denied, *411 U.S. 972, 93 S. Ct. 2144, 36 L. Ed. 2d 695, 1973 U.S. LEXIS 2593 (1973)*.

In enacting Gun Control Act of 1968, Congress intended to regulate all businesses engaged in importing, dealing, and manufacturing firearms concerning interstate as well as intrastate transactions so as to assist states effectively to regulate firearms traffic within their borders. *United States v. Petrucci, 486 F.2d 329, 1973 U.S. App. LEXIS 7980 (9th Cir. 1973)*, cert. denied, *416 U.S. 937, 94 S. Ct. 1937, 40 L. Ed. 2d 287, 1974 U.S. LEXIS 554 (1974)*.

Gun Control Act, *18 USCS §§ 921* et. seq., was intended to be broad measure to correct widespread abuses in traffic in firearms. *United States v. Swinton, 521 F.2d 1255, 1975 U.S. App. LEXIS 12926 (10th Cir. 1975)*, cert. denied, *424 U.S. 918, 96 S. Ct. 1121, 47 L. Ed. 2d 324, 1976 U.S. LEXIS 550 (1976)*.

18 USCS § 922 is intended to dry up supply of “crime guns” completely for felon. *United States v. Haddad, 558 F.2d 968, 1977 U.S. App. LEXIS 12073 (9th Cir. 1977)*.

Purpose of Gun Control Act of 1968 is to limit possession of firearms to those persons who are responsible and law-abiding. *Barker v. United States, 579 F.2d 1219, 1978 U.S. App. LEXIS 10217 (10th Cir. 1978)*.

Gun Control Act is intended to strengthen federal controls over interstate commerce and firearms and to assist states effectively to regulate firearms traffic within their borders. *United States v. Busic, 587 F.2d 577, 2 Fed. R. Evid. Serv. (CBC) 1225, 1978 U.S. App. LEXIS 13177 (3d Cir. 1978)*, rev'd, *446 U.S. 398, 100 S. Ct. 1747, 64 L. Ed. 2d 381, 1980 U.S. LEXIS 98 (1980)*.

Control Act of 1968 (*18 USCS §§ 921* et seq.) is not directed at catching illegal firearm exporters at airport, but rather at helping individual states regulate firearm distribution for safety of their citizens by shutting off flow of weapons across their borders. *United States v. Flores, 753 F.2d 1499, 1985 U.S. App. LEXIS 29065 (9th Cir. 1985)*.

Provisions of *18 USCS § 922(g)* demonstrate that objective of *18 USCS § 922(g)* is to prohibit persons within specifically defined groups from possessing, receiving, or transporting firearms, and specific types of groups that have been selected for disqualification indicate that purpose of statute is that of keeping firearms out of hands of those who are typically considered dangerous or irresponsible. *United States v. Orellana, 405 F.3d 360, 2005 U.S. App. LEXIS 5436 (5th Cir. 2005)*.

Purpose of *18 USCS § 922(h)* is to eliminate supply of firearms available to felons through interstate and foreign commerce. *United States v. Rivera, 467 F. Supp. 37, 1979 U.S. Dist. LEXIS 14400 (D. Conn. 1979)*.

Purpose of Gun Control Act of 1968 is to strengthen federal controls over interstate and foreign commerce in firearms and to assist states effectively to regulate firearms traffic within their borders. United States v Busic, 22 Crim. L. Rep. (BNA) 2443 (CA3 1/5/78).

2. Construction and interpretation

Word “acquisition” in *18 USCS § 922* is not restricted to only a sale-like transaction, but also includes pawnshop redemption of firearm even though such redemption might be considered a “reacquisition” by the pawnor; since the words “acquisition” and “sale or other disposition” are correlatives, a pawnshop redemption constitutes an “other disposition” of the firearm by the pawnbroker whereby the pawnor “acquires” the firearm, and thus application of *18 USCS § 922* to a pawnshop redemption is not invalid for ambiguity, and a narrow construction of *18 USCS § 922* in a redeeming pawnor’s favor is not required, particularly since the Gun Control Act explicitly includes pawnbrokers in *18 USCS § 922(a)(11)*, explicitly mentions pledge and pawn transactions in defining “pawnbrokers” under *18 USCS § 921(a)(12)*, and fails to include redemptive transactions among the statutory exceptions listed in *18 USCS § 922(a)(2)(A)*. *Huddleston v. United States, 415 U.S. 814, 94 S. Ct. 1262, 39 L. Ed. 2d 782, 1974 U.S. LEXIS 121 (1974)*.

In light of *Rehaif v. United States, 139 S. Ct. 2191 (2019)*, defendant’s substantial rights were affected because, given that factual predicate for conviction under this statute was lacking, there was reasonable probability that he would not have pleaded guilty had he been correctly instructed on elements of crime—which included scienter requirement—or had district court looked for such factual predicate on “knowledge of status” element. *United States v. Johnson, 820 Fed. Appx. 29, 2020 U.S. App. LEXIS 21478 (2d Cir. 2020)*.

Fact that language of *18 USCS § 922* does not include specific type of transferor does not mean that such transferor cannot be prosecuted, since predecessor to *18 USCS § 922* had not prevented courts from imposing ordinary accessorial liability in connection with firearm “receipts” prescribed by other sections, and it is common presumption that when Congress re-enacts statute without overturning prior judicial construction, earlier interpretation should be followed. *United States v. Falletta, 523 F.2d 1198, 1975 U.S. App. LEXIS 11726 (5th Cir.)*, reh'g denied, *525 F.2d 1407 (5th Cir. 1975)*.

Since it is Congress’s intent to apply Federal Firearms Act, *18 USCS § 921* et. seq. broadly, broad interpretation is to be given word “convicted” within meaning of *18 USCS § 922*. *United States v. Cody, 529 F.2d 564, 1976 U.S. App. LEXIS 12914 (8th Cir. 1976)*.

Defendant charged with violation of *18 USCS § 922* by making false statement in connection with purchase of firearm told literal truth in response to answer on form concerning whether he was currently under "indictment" since indictment in its primary meaning does not encompass word "information" and if word has 2 meanings with answer to question literally true under one meaning, answer cannot be said to be false. *United States v. Isaacs, 539 F.2d 686, 1976 U.S. App. LEXIS 7705 (9th Cir. 1976)*.

18 USCS § 922(b) demonstrates that under *18 USCS § 922(h)* Congress, by using comprehensive term "firearm" without qualification, did not intend to exempt rifles and shotguns from prohibitions. *United States v. Mitchell, 557 F.2d 1290, 1977 U.S. App. LEXIS 12390 (9th Cir. 1977)*.

Phrase "in connection with the acquisition or attempted acquisition of any firearm" in *18 USCS § 922* does not suggest intention on part of Congress to create 2 separate crimes, one "in connection with the acquisition" and other in connection with the "attempted acquisition" of firearm, but rather indicates that Congress deemed it to be immaterial whether firearm was ultimately acquired; this construction of *18 USCS § 922* is bolstered by examination of *18 USCS § 924*, which provides penalty for violations of deceit provisions of Gun Control Act without distinguishing between, or even mentioning, cases where weapon is acquired and those in which it is not. *United States v. Brozyna, 571 F.2d 742, 1978 U.S. App. LEXIS 12664 (2d Cir. 1978)*.

Since *18 USCS § 922(e)* was set up to deal with growing problem of violent crime, phrase "owns or legally possesses" reflects intent of Congress that only people who own or legally possess firearms be allowed to come within exception. *United States v. Henry, 615 F.2d 1223, 1980 U.S. App. LEXIS 20280 (9th Cir. 1980)*.

18 USCS § 922(b)(3) has been interpreted to mean that dealer licensed in one state, who attends gun show in another state, may display and possess guns, negotiate price, and receive money for guns as long as transfer of firearm is through licensee of state in which gun show is located who fills out appropriate forms. *United States v. Ogles, 406 F.3d 586, 67 Fed. R. Evid. Serv. (CBC) 112, 2005 U.S. App. LEXIS 7326 (9th Cir.)*, vacated, *430 F.3d 1221, 2005 U.S. App. LEXIS 24603 (9th Cir. 2005)*.

Court of Appeals agrees with Eighth and Sixth Circuits that, in accordance with plain meaning of *18 USCS § 922(g)(8)*, term "hearing" refers to proceeding of which defendant has actual notice and opportunity to participate. *United States v. Young, 458 F.3d 998, 2006 U.S. App. LEXIS 21060 (9th Cir. 2006)*, cert. denied, *549 U.S. 1230, 127 S. Ct. 1305, 167 L. Ed. 2d 118, 2007 U.S. LEXIS 2428 (2007)*.

Rule of lenity did not apply to interpretation of *18 USCS § 922(g)* which incorporated use of Puerto Rican convictions in analysis of prior convictions because terms of statute were plain and unambiguous. *United States v. Laboy-Torres, 553 F.3d 715, 2009 U.S. App. LEXIS 1627 (3d Cir. 2009)*.

Plain text of *18 USCS § 922(h)* does not contain rigid requirement that defendants be hired for tangible compensation. *United States v. Weaver, 659 F.3d 353, 2011 U.S. App. LEXIS 21485 (4th Cir. 2011)*.

Although appellate court concluded, applying intermediate scrutiny standard, that Congress had important objective for enacting *18 USCS § 922(g)(3)* to reduce gun violence and it might have reasonably served that objective by disarming drug users and addicts, appellate court nonetheless found that government failed to make record to substantiate fit between its objective and means of serving that objective; without pointing to any study, empirical data, or legislative findings, it merely argued to district court that fit was matter of common sense. *United States v. Carter, 669 F.3d 411, 2012 U.S. App. LEXIS 1243 (4th Cir. 2012)*.

Fourth Circuit rejects application of strict scrutiny in reviewing enforcement of *18 USCS § 922(g)(3)*, or, for that matter, any other subsection of § 922(g). *United States v. Carter, 669 F.3d 411, 2012 U.S. App. LEXIS 1243 (4th Cir. 2012)*.

18 USCS § 922(g)(3) does not permanently disarm all persons who, at any point in their lives, were unlawful drug users or addicts; instead, it only applies to persons who are currently unlawful users or addicts. *United States v. Carter, 669 F.3d 411, 2012 U.S. App. LEXIS 1243 (4th Cir. 2012)*.

Language and history of *18 USCS § 922(g)* reflects desire of Congress to keep any firearm out of hand of convicted felons, regardless of gun type. *United States v. Pollock, 757 F.3d 582, 2014 U.S. App. LEXIS 12653 (7th Cir. 2014)*, cert. denied, *574 U.S. 1095, 135 S. Ct. 989, 190 L. Ed. 2d 868, 2015 U.S. LEXIS 475 (2015)*.

Any error in construing defendant's offense of possession of firearm in school zone as felony for purposes of imposing supervised release and monetary assessment was not plain given statute's imprecise language and differing constructions by courts in circuit. *United States v. Alvira-Sanchez, 804 F.3d 488, 2015 U.S. App. LEXIS 18945 (1st Cir. 2015)*, cert. denied, *136 S. Ct. 2030, 195 L. Ed. 2d 232, 2016 U.S. LEXIS 3180 (2016)*.

Fourth Circuit adopted the approach of sister circuits and declined to read into *18 USCS § 922(g)(9)* an exception for good behavior or for the passage of time following a disqualifying conviction for a misdemeanor crime of domestic violence. *Harley v. Wilkinson, 988 F.3d 766, 2021 U.S. App. LEXIS 5086 (4th Cir. 2021)*.

Fourth Circuit concluded *18 USCS § 922(g)(9)* survived intermediate scrutiny as despite the possibly over inclusive net cast by § 922(g), a reasonable fit existed between the statute and the substantial governmental objective of reducing domestic gun violence; the court emphasizes that the fit between the statutory prohibition and the governmental interest need only be a reasonable fit, not a perfect one. *Harley v. Wilkinson, 988 F.3d 766, 2021 U.S. App. LEXIS 5086 (4th Cir. 2021)*.

"Unlawful user of" any controlled substance was defined by court, for purposes of *18 USCS § 922(g)(3)*, as individual who regularly and unlawfully used any controlled substance over extended period of time that was contemporaneous with possession of firearm; court declined, as suggested by defendant, to equate definition of "unlawful user," as used in § 922(g)(3), with definition of "addict" in *21 USCS § 802(a)*. *United States v. Grover, 364 F. Supp. 2d 1298, 2005 U.S. Dist. LEXIS 6012 (D. Utah 2005)*.

Where defendants were charged with violating so-called Bodyguard Statute by possessing firearms while being "employed for" convicted felons and known drug users, statute did not require Government to allege or to prove that defendants were hired for wages, salary, or another form of tangible compensation. *United States v. Lahey, 967 F. Supp. 2d 731, 2013 U.S. Dist. LEXIS 130971 (S.D.N.Y. 2013)*.

18 USCS § 922(g)(8)(C)(ii) does not require that particular predicate domestic violence court order include explicit finding that person enjoined pose credible threat of violence to his spouse or child; nor must statute be read to require that predicate order be supported by sufficient evidence before court entering it for district court to sustain such finding. *United States v. Emerson, 270 F.3d 203, 2001 U.S. App. LEXIS 22386 (5th Cir. 2001)*, reh'g, en banc, denied, *281 F.3d 1281, 2001 U.S. App. LEXIS 27683 (5th Cir. 2001)*, cert. denied, *536 U.S. 907, 122 S. Ct. 2362, 153 L. Ed. 2d 184, 2002 U.S. LEXIS 4269 (2002)*.

3. —Any court

In context of *18 USCS § 922(g)(1)*, phrase "convicted in any court" refers only to domestic courts, not to foreign courts. *Small v. United States, 544 U.S. 385, 125 S. Ct. 1752, 161 L. Ed. 2d 651, 18 Fla. L. Weekly Fed. S. 245, 2005 U.S. LEXIS 3700*, remanded, *144 Fed. Appx. 281, 2005 U.S. App. LEXIS 13961 (3d Cir. 2005)*.

Foreign convictions cannot constitute predicate offenses under *18 USCS § 922(g)(1)*. *United States v. Gayle, 342 F.3d 89, 2003 U.S. App. LEXIS 17900 (2d Cir. 2003)*, reprinted, *2003 U.S. App. LEXIS 26673 (2d Cir. Aug. 27, 2003)*, cert. denied, *542 U.S. 925, 124 S. Ct. 2888, 159 L. Ed. 2d 787, 2004 U.S. LEXIS 4488 (2004)*.

Relationship between Puerto Rico and United States weighs heavily in favor of conclusion that Puerto Rican convictions should be considered domestic for purposes of *18 USCS § 922(g)(1)*; there is nothing to suggest that Puerto Rican convictions exhibit any of characteristics that prompted U.S. Supreme Court in Small v. United States to eliminate foreign convictions from grasp of § 922(g)(1) as Puerto Rican criminal laws do not differ markedly in terms of scope or severity of punishment from criminal laws of United States, and Puerto Rican defendants are afforded same due process protections as defendants in United States. *United States v. Laboy-Torres, 614 F. Supp.*

2d 531, 2007 U.S. Dist. LEXIS 53375 (M.D. Pa. 2007), aff'd, 553 F.3d 715, 2009 U.S. App. LEXIS 1627 (3d Cir. 2009).

4. —Illegally or unlawfully in United States

Fifth Circuit reads phrase "illegally or unlawfully in United States" in 18 USCS § 922(g)(5)(A) to include those aliens who entered country illegally and subsequently qualified for temporary treatment benefits under 8 USCS § 1254a; that interpretation is informed by administrative regulations promulgated by Bureau of Alcohol, Tobacco, and Firearms interpreting 18 USCS § 922(g)(5)(A), 27 C.F.R. § 478.11, to which court owes at least some degree of deference because it is both reasonable and consistent with court's interpretative norms for criminal statutes. United States v. Flores, 404 F.3d 320, 2005 U.S. App. LEXIS 4315 (5th Cir. 2005).

Read within context of 18 USCS § 922(g)(5)(A), dictionary definitions of illegal and unlawful indicate that alien "illegally or unlawfully in U.S." is alien whose presence within U.S. is forbidden or not authorized by law. United States v. Orellana, 405 F.3d 360, 2005 U.S. App. LEXIS 5436 (5th Cir. 2005).

Aliens are not lawfully or legally present in U.S. for purposes of 18 USCS § 922(g)(5)(A) solely because they have been released on immigration bond. United States v. Bravo-Muzquiz, 412 F.3d 1052, 2005 U.S. App. LEXIS 11422 (9th Cir.), cert. denied, *546 U.S. 969, 126 S. Ct. 500, 163 L. Ed. 2d 379, 2005 U.S. LEXIS 7787 (2005)*.

Defendant was properly found guilty of being illegal alien in possession of firearm and ammunition under 18 USCS § 922(g)(5), as interpreted by 27 CFR § 478.11 because fact that he was subject to departure control order did not affect legal status of defendant's presence in United States under § 922(g)(5)(A); departure control order was not equivalent to parole order under 8 USCS § 1182(d)(5) because parole order was granted only to aliens who had not yet entered U.S. United States v. Anaya-Acosta, 629 F.3d 1091, 2011 U.S. App. LEXIS 1 (9th Cir. 2011).

5. —Receive firearm or ammunition

Individual who had been convicted in state court and given 2-year sentence is properly convicted under 18 USCS § 922 which makes it unlawful for certain persons, including anyone who has been convicted in any court of crime punishable by imprisonment for more than one year, "to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce" upon evidence showing merely that he had purchased revolver from local dealer, and that gun, having been manufactured and then warehoused in other states, reached dealer through interstate channels, since language of 18 USCS § 922, being directed unrestrictedly at felon's receipt of any firearm that has been shipped in interstate commerce and containing no limitation to receipt which itself is part of interstate movement, is not ambiguous and construction of 18 USCS § 922 as applicable to intrastate firearm sale preceded by movement of firearm in interstate commerce is consistent with entire pattern of Gun Control Act. Barrett v. United States, 423 U.S. 212, 96 S. Ct. 498, 46 L. Ed. 2d 450, 1976 U.S. LEXIS 37 (1976).

Since Congress carefully chose wording in provisions of 18 USCS § 922, which makes it illegal for convicted felon to receive firearm, its application is clearly not confined to situations where firearms are directly received from commerce. Scarborough v. United States, 431 U.S. 563, 97 S. Ct. 1963, 52 L. Ed. 2d 582, 1977 U.S. LEXIS 2230 (1977).

Motions by hospital, administrators, health care professionals, and state officials to dismiss patient's complaint—charging, inter alia, violations of due process and equal protection rights as result of his involuntary commitment to psychiatric ward—were granted in part and denied in part because his conclusory and speculative allegations did not plausibly suggest sufficiently close nexus between State and challenged action where he did not allege facts plausibly suggesting that they deprived him of any right or privilege under state law and identified no basis for finding that statute provided any substantive relief from his statutory ability to receive firearm. Heendeniya v. St. Joseph's Hosp. Health Ctr. (SJHHC), 2017 U.S. Dist. LEXIS 35857 (N.D.N.Y. Mar. 14, 2017).

6. Exemptions

18 USCS § 922(h)(1) does not prevent plaintiff, convicted felon, from carrying firearm as State employee, since plaintiff's receipt of firearm in course of State employment is not type of transaction Congress sought to regulate and since *18 USCS § 925* specifically exempts state agencies from provisions of *18 USCS §§ 921* et seq. *Hyland v. Fukuda, 580 F.2d 977, 1978 U.S. App. LEXIS 9460 (9th Cir. 1978)*.

18 USCS § 922 does not exempt private persons from prohibition from possession of machine guns not lawfully possessed prior to May 19, 1986, since deference will be given to Bureau of Alcohol, Tobacco and Firearms' regulations, which are consistent with statutory language. *Farmer v. Higgins, 907 F.2d 1041, 1990 U.S. App. LEXIS 11725 (11th Cir. 1990)*, cert. denied, *498 U.S. 1047, 111 S. Ct. 753, 112 L. Ed. 2d 773, 1991 U.S. LEXIS 382 (1991)*.

7. Background checks

Temporary retention of NICS, "national instant criminal background check system" records of allowed transfers, for auditing purposes, did not violate three provisions of Brady Act, including *18 USCS § 922(t)(2)(c)*, since that statute does not unambiguously require immediate destruction of records; Attorney General had authority to exempt NICS information retained by state agencies from § 922(t)(2)(c) of Brady Act, even if that information was part of record system created and maintained pursuant to independent state law. *NRA of Am., Inc. v. Reno, 216 F.3d 122, 342 U.S. App. D.C. 231, 2000 U.S. App. LEXIS 15906 (D.C. Cir. 2000)*, cert. denied, *533 U.S. 928, 121 S. Ct. 2549, 150 L. Ed. 2d 716, 2001 U.S. LEXIS 4713 (2001)*.

State police may conduct Brady Act background checks as chief law enforcement officers (CLEOs) for administration of Act because (1) state police can qualify as CLEOs under statutory definition either as designee of sheriff, police chief, or as equivalent officer, and (2) state police are equipped to meed Brady Act's background check requirements, especially since state police keep comprehensive criminal history information system. *Roy v. Kentucky State Police, 881 F. Supp. 290, 1995 U.S. Dist. LEXIS 4468 (W.D. Ky. 1995)*.

8. Prior statute prosecutions

Where defendant was indicted under Federal Firearms Act of 1947, before its repeal in December 1968, he could be prosecuted thereunder in the absence of a savings clause in *18 USCS §§ 921* et seq. *United States v. Brown, 429 F.2d 566, 1970 U.S. App. LEXIS 8009 (5th Cir. 1970)*.

Prosecution under 15 USCS § 902 may be continued in 180 day period prior to effective date of *18 USCS §§ 921* et seq., even though defendant's acts would not constitute offense under new provisions, since no exception is found in the latter to prohibit such prosecution. *United States v. Smith, 433 F.2d 341, 1970 U.S. App. LEXIS 6845 (4th Cir. 1970)*, cert. denied, *401 U.S. 942, 91 S. Ct. 949, 28 L. Ed. 2d 223, 1971 U.S. LEXIS 2995 (1971)*.

Defendant, who pleaded guilty to being a convicted felon in possession of firearm, was properly sentenced under ACCA because his prior conviction for first degree robbery under *N.Y. Penal Law § 160.15* and conviction for second-degree murder under N.Y. Penal Law § 125.25(1) required use of physical force within ACCA's elements clause. *United States v. Sanchez, 940 F.3d 526, 28 Fla. L. Weekly Fed. C 395, 2019 U.S. App. LEXIS 29605 (11th Cir.)*, cert. denied, *140 S. Ct. 559, 205 L. Ed. 2d 364, 2019 U.S. LEXIS 7142 (2019)*.

Defendant's indictment for being felon in possession of firearm in violation of 18 Appx USCS § 1202(a) is dismissed where (1) new federal firearms law repealing § 1202 and redefining "conviction" in replacement law (*18 USCS §§ 921*-22) so as to make defendant's past conviction no longer count was enacted May 19, 1986, (2) defendant was arrested and charged September 3, 1986, (3) new law took effect November 15, 1986, and (4) trial was December 12, 1986, because Congress clearly intended to exclude this defendant as potential target for prosecutions pending after November 15, 1986, and general savings statute, *1 USCS § 109* does not apply under circumstances. *United States v. Adair, 649 F. Supp. 61, 1986 U.S. Dist. LEXIS 16425 (S.D. Tex. 1986)*.

9. Civil liability and actions

In *18 USCS § 922* action against various gun manufacturers, dealers, and distributors, for failing to prevent mentally ill individual from obtaining gun, court concluded that defendant's duty of care extended to those individuals that defendant puts at unreasonable risk of harm through reasonably foreseeable actions of third party. *Ileto v. Glock Inc., 349 F.3d 1191, 2003 Cal. Daily Op. Service 9984, 2003 U.S. App. LEXIS 23659 (9th Cir. 2003)*, reh'g, en banc, denied, *370 F.3d 860, CCH Prod. Liab. Rep. ¶ 17010, 2004 U.S. App. LEXIS 10568 (9th Cir. 2004)*, cert. denied, *543 U.S. 1050, 125 S. Ct. 865, 160 L. Ed. 2d 770, 2005 U.S. LEXIS 452 (2005)*.

Government had denied American citizen who resided in Canada ability to purchase firearm and he thereby suffered ongoing injury sufficient to give him standing under U.S. Const. art. III to bring Second Amendment challenge to Government's regulatory scheme that included portions of *18 USCS § 922*. *Dearth v. Holder, 641 F.3d 499, 395 U.S. App. D.C. 133, 2011 U.S. App. LEXIS 7737 (D.C. Cir. 2011)*.

Where police officer's son shot and killed his ex-girlfriend with officer's service-issued gun, officer was entitled to immunity pursuant to Child Safety Lock Act of 2005 because he never gave his son permission or authorization to have access to his gun, and he used secure gun storage or safety device in storing his weapon, and further, nothing in record suggested that officer's conduct with respect to his handgun was negligent, let alone that it rose to level of negligence that would cause him to lose statutory grant of immunity. *Arrington v. Michael, 738 F.3d 599, 2013 U.S. App. LEXIS 25603 (3d Cir. 2013)*.

Initial stop and patdown were supported by reasonable suspicion because, inter alia, officers had reasonable basis to believe that defendant had just left apartment where criminal activity was conducted and where firearm subject to seizure was then located; officers exceeded reasonable bounds of Terry stop when they handcuffed defendant, and error tainted statements procured immediately thereafter, but error was harmless. *United States v. Bailey, 743 F.3d 322, 2014 U.S. App. LEXIS 3320 (2d Cir.)*, cert. denied, *574 U.S. 1038, 135 S. Ct. 705, 190 L. Ed. 2d 461, 2014 U.S. LEXIS 7889 (2014)*.

In wrongful death action, website that facilitated sale of guns between private owners had no duty of care to decedent who was shot with gun illegally sold to out-of-state purchaser in violation of federal law; website did not have special relationship with decedent or shooter that would render it liable for intervening criminal attack. *Vesely v. Armslist LLC, 762 F.3d 661, 2014 U.S. App. LEXIS 15478 (7th Cir. 2014)*.

In survivors' action against federal government, stemming from negligent performance of background check that allowed shooter to obtain gun and open fire on church attendees, immunity provision of Brady Act did not bar survivors' claims because plain statutory text immunized only federal employees, not federal government itself, and federal employees whose conduct was at issue were not "responsible for providing information" to National Instant Criminal Background Check System system. *Sanders v. United States, 937 F.3d 316, 2019 U.S. App. LEXIS 26416 (4th Cir. 2019)*.

Plaintiff cannot recover in action against firearms dealer for injuries sustained from pistol mailed by defendant mail order company to ex-convict, since shipment date preceded effective date of *18 USCS § 922*. *Bennet v. Cincinnati Checker Cab Co., 353 F. Supp. 1206, 1973 U.S. Dist. LEXIS 15269 (E.D. Ky. 1973)*.

Victims injured by firearms obtained in violation of *18 USCS § 922* do not have private right of action to obtain damages. *Decker v. Gibson Prods. Co., 505 F. Supp. 34, 1980 U.S. Dist. LEXIS 16483 (M.D. Ga. 1980)*, remanded, *679 F.2d 212, 1982 U.S. App. LEXIS 18168 (11th Cir. 1982)*.

Where officer's son shot and killed ex-girlfriend with officer's gun, summary judgment was inappropriate as to immunity because it is appropriate to read into statutory term "made inoperable" requirement that, for immunity provision to apply, secure gun storage or safety device must make firearm inoperable by reasonably foreseeable means, and material factual disputes existed about whether officer's actions actually rendered service weapon "inoperable" by reasonably foreseeable means. *Estate of Arrington v. Michael, 914 F. Supp. 2d 650, 2012 U.S. Dist. LEXIS 179222 (E.D. Pa. 2012)*, remanded, *738 F.3d 599, 2013 U.S. App. LEXIS 25603 (3d Cir. 2013)*.

Unpublished decision: District court properly granted summary judgment based on qualified immunity in favor of special agent of Bureau of Alcohol, Tobacco, and Firearms (ATF) in Bivens action for malicious prosecution and unlawful arrest in violation of Fifth Amendment; agent reasonably believed that probable cause existed to prosecute individual under *18 USCS § 922(a)(6)* for making false statement on ATF Form 4473 regarding 10-year-old domestic violence conviction, which it was reasonable to believe that individual would remember. *Hart v. Gaione, 315 Fed. Appx. 3, 2007 U.S. App. LEXIS 27132 (9th Cir. 2007)*.

Shopowners who sold pistol to minor in violation of *18 USCS § 922* were not absolutely liable for all damages inflicted by minor with pistol; where employee of store who sold pistol to minor, had known minor when they were in school together, and knew of nothing to indicate that minor had previous criminal record or exhibited propensity to handle firearms in dangerous manner, murder of third party by minor was not within circle of reasonable foreseeability. *Robinson v. Howard Bros. of Jackson, Inc., 372 So. 2d 1074, 1979 Miss. LEXIS 2032 (Miss. 1979)*.

Citizen's complaint seeking declaratory judgment that district court incorrectly interpreted and applied *18 USCS § 922(g)(8)* by identifying him as person prohibited from possessing firearm or ammunition should have been dismissed for lack of subject matter jurisdiction pursuant to Me. R. Civ. P. 12(b)(1) because superior court lacked jurisdiction to consider citizen's challenge to district court's failure to act on his request that district court amend its judgment or its docket entries reflecting entry of judgment; there was no suggestion that information entered into district court's computer reporting system reflected anything other than what appeared on face of court order. *Ewing v. Me. Dist. Court, 964 A.2d 644, 2009 ME 16, 2009 Me. LEXIS 17 (Me.)*, cert. denied, *557 U.S. 938, 129 S. Ct. 2879, 174 L. Ed. 2d 580, 2009 U.S. LEXIS 4880 (2009)*.

10. —Negligence

Seller's violation of gun control law is negligence per se. *Hetherton v. Sears, Roebuck & Co., 593 F.2d 526, 1979 U.S. App. LEXIS 16846 (3d Cir. 1979)*.

To determine whether Gun Control Act is appropriate standard of care in action alleging defendants negligence per se, in state allowing adoption of statute as standard of conduct of reasonable person, courts examine purpose of statute to ascertain how it was intended to guard against and persons it was intended to protect. *Decker v. Gibson Prods. Co., 679 F.2d 212, 1982 U.S. App. LEXIS 18168 (11th Cir. 1982)*.

Unpublished decision: Factual basis of guilty plea to being dishonorable dischargee in possession of firearms in violation of *18 USCS § 922(g)(6)* was not insufficient because it did not establish that defendant had been actually discharged at time of offense; defendant was discharged at time of his arrest because his discharge documents were ready for delivery and defendant had notice of his discharge; it was not necessary under *10 USCS § 1168* that he knew date of his discharge. *United States v. Butler, 637 F.3d 519, 2011 U.S. App. LEXIS 5806 (5th Cir.)*, cert. denied, *565 U.S. 1092, 132 S. Ct. 844, 181 L. Ed. 2d 548, 2011 U.S. LEXIS 8996 (2011)*.

Dealer's violation of Federal Gun Control Act (*18 USCS § 922*) is not negligence per se, but is one of several factors to be considered in determining negligence. *Lipari v. Sears, Roebuck & Co., 497 F. Supp. 185, 1980 U.S. Dist. LEXIS 15527 (D. Neb. 1980)*.

Summary judgment for gun store owner was precluded on negligence per se cause of action by shooting victim's estate based on alleged violation of *18 USCS § 922(b)(1)*, where even assuming that statute permits dealer to sell ammunition usable in both rifle and handgun to person 18 or older if dealer is satisfied that ammunition is for use in rifle, material issue of fact existed as to whether clerk in store that sold bullets that 18-year-old buyer used in fatal handgun shooting made sufficient inquiry into buyer's age and type of weapon he intended to use. *Brown v. Wal-Mart Stores, 976 F. Supp. 729, 1997 U.S. Dist. LEXIS 13870 (W.D. Tenn. 1997)*.

Factual dispute as to how shooter obtained rifle precluded summary judgment as to whether *15 USCS § 7903(5)(A)(ii)*, (3) allowed claim of negligence per se based on knowing violations of federal firearms dealing requirements under *18 USCS §§ 922*, *924*, and claim of negligent entrustment; on remand, superior court was

instructed to consider admissibility under Alaska R. Evid. 404(b)(1), 406 of evidence that gun store owner had failed to take security measures and to account for missing firearms. *Estate of Kim v. Coxe, 295 P.3d 380, 2013 Alas. LEXIS 18 (Alaska 2013)*.

Where parties provided shotgun to man with felony criminal record who used weapon to commit suicide, his wife was allowed to proceed with negligent entrustment action because she could invoke statutory obligations to advance her arguments that defendants owed her duty of care and breached that duty; Supreme Court of Kansas held that firearms dealer must exercise highest standard of care in order to avoid selling guns to convicted felons. *Shirley v. Imogene Glass, 297 Kan. 888, 308 P.3d 1, 2013 Kan. LEXIS 603 (Kan. 2013)*.

In personal injury action against firearms dealer, where it was proven that store followed dictates of *18 USCS §§ 921* et seq., there was no statutory negligence to be considered. *Cullum & Boren-McCain Mall, Inc. v. Peacock, 267 Ark. 479, 592 S.W.2d 442, 1980 Ark. LEXIS 1353 (1980)*.

11. —Questions of law and fact

Regardless of whether violation of *18 USCS §§ 921* et seq. constitutes negligence per se in state, which is legal determination that should be left to trial court, survivors-plaintiffs of murder victim are entitled to have jury consider whether defendant's sale of pistol to person known to have been convicted of aggravated assault was reasonable in light of federal statute, restoration of civil rights shown to salesperson, alleged duty of corporate defendant to properly instruct employees concerning such matters, and all other facts surrounding gun transaction. *Decker v. Gibson Prods. Co., 679 F.2d 212, 1982 U.S. App. LEXIS 18168 (11th Cir. 1982)*.

Whether firearms salesperson's negligent failure to obtain unqualified buyer's signature on ATF form was proximate cause of his shooting and injuring plaintiff was question for jury. *King v. Story's, Inc., 54 F.3d 696, 9 Fla. L. Weekly Fed. C 136, 1995 U.S. App. LEXIS 14286 (11th Cir. 1995)*.

12. Miscellaneous

Social value of manufacturing and distributing guns without taking basic steps to prevent guns from reaching illegal purchasers and possessors cannot outweigh public interest in keeping guns out of hands of illegal purchasers and possessors who in turn use them in crimes. *Ileto v. Glock Inc., 349 F.3d 1191, 2003 Cal. Daily Op. Service 9984, 2003 U.S. App. LEXIS 23659 (9th Cir. 2003)*, reh'g, en banc, denied, *370 F.3d 860, CCH Prod. Liab. Rep. ¶ 17010, 2004 U.S. App. LEXIS 10568 (9th Cir. 2004)*, cert. denied, *543 U.S. 1050, 125 S. Ct. 865, 160 L. Ed. 2d 770, 2005 U.S. LEXIS 452 (2005)*.

18 USCS § 924(e) applies only to defendants with three predicate convictions in place prior to violating *18 USCS § 922(g)*. *United States v. Pressley, 359 F.3d 347, 2004 U.S. App. LEXIS 3813 (4th Cir. 2004)*.

Although defendant, who pled guilty to conspiring to possess with intent to distribute substance containing at least five grams of methamphetamine, *21 USCS §§ 846*, *841(a)(1)*, and being illegal alien in possession of firearm, *18 USCS § 922(g)(5)*, was not precluded from safety valve relief under USSG § 5C1.2(a)(2) on basis of defendant's sentencing enhancement for possession of firearm under USSG § 2D1.1(b)(1), defendant was properly denied safety valve relief because, even if defendant sold guns and drugs separately, defendant possessed firearms in connection with drug offense since defendant knew that defendant was selling both drugs and guns to person defendant believed to be another drug dealer, and selling firearms to other drug dealer would facilitate other dealer's ability to turn over drugs bought from defendant and enable other dealer to come back for more guns and more drugs. *United States v. Carillo-Ayala, 713 F.3d 82, 24 Fla. L. Weekly Fed. C 142, 2013 U.S. App. LEXIS 5812 (11th Cir. 2013)*.

Unpublished decision: Where defendant was charged with being felon in possession of firearm, district court clearly had jurisdiction pursuant to *18 USCS § 3231*, which provided district courts with jurisdiction over all offenses against laws of United States. *United States v. Kirkley, 520 Fed. Appx. 644, 2013 U.S. App. LEXIS 5988 (10th Cir. 2013)*.

18 USCS § 922 prohibits the importation of surplus military firearms as of its effective date and does not leave existing licenses for importing such weapons to expire by their own terms. *Century Arms, Inc. v. Kennedy, 323 F. Supp. 1002, 1971 U.S. Dist. LEXIS 14429 (D. Vt.)*, aff'd, *449 F.2d 1306, 1971 U.S. App. LEXIS 7218 (2d Cir. 1971)*.

In enacting *18 USCS § 922*, which requires disclosure of pending indictment and predicates criminal sanction on failure to make disclosure on forms in connection with purchase of firearms, Congress has determined that indictment of individual for crime punishable by imprisonment for term exceeding one year is so often indicative of propensity for violence that indictment classification was justified in public interest. *United States v. Friday, 404 F. Supp. 1343, 1975 U.S. Dist. LEXIS 14710 (E.D. Mich. 1975)*.

II. RELATIONSHIP TO OTHER LAWS

A. In General

13. Aliens and immigration

Alien's state conviction for possession of firearm by non-citizen was not "aggravated felony" for federal sentencing purposes, since federal crime, *18 USCS § 922(g)(5)*, could not be fairly said to be "described in" state statute, nor was conduct criminalized by state law necessarily included within conduct criminalized by federal law. *United States v. Sandoval-Barajas, 206 F.3d 853, 2000 Cal. Daily Op. Service 1981, 2000 D.A.R. 2701, 2000 U.S. App. LEXIS 3716 (9th Cir. 2000)*, app. after remand, *8 Fed. Appx. 622, 2001 U.S. App. LEXIS 7629 (9th Cir. 2001)*.

Provision of *8 USCS § 1254a(f)(4)* applies only to those aliens who have been granted temporary protected status (TPS) and did not apply to alien who had applied for but had not been granted TPS prior to his arrest for being alien, illegally or unlawfully in U.S., in possession of firearm, in violation of *18 USCS § 922(g)(5)(A)*; provision merely affects temporarily protected alien's ability to seek adjustment or change in status but does not alter alien's legal status for purposes of *18 USCS § 922(g)(5)(A)*. *United States v. Flores, 404 F.3d 320, 2005 U.S. App. LEXIS 4315 (5th Cir. 2005)*.

After Rehaif, government had to prove defendant knew he had nonimmigrant visa to satisfy statute's mens rea requirement; but because defendant could not show that he was prejudiced by erroneous jury instructions, his conviction was affirmed. *United States v. Gear, 985 F.3d 759, 2021 U.S. App. LEXIS 1342 (9th Cir. 2021)*.

Alien was ineligible for asylum because his federal conviction for importing, manufacturing, or dealing in firearms without license, in violation of this statute, qualified as aggravated felony under Immigration and Nationality Act; it categorically fit within generic definition of illicit trafficking in firearms under *8 U.S.C.S. § 1101*, as the Board of Immigration Appeals permissibly construed that phrase. *Chacon v. Wilkinson, 988 F.3d 1131, 2021 U.S. App. LEXIS 4668 (9th Cir. 2021)*.

Weapons charges against alien need not be dismissed, even though he contends he was not "illegal alien" when he purchased pistols, where he had not and could not have taken final step in lawful permanent resident process—filing of his status change documents—since his priority date had not yet been published, because legislative intent of *18 USCS §§ 922(a)(6)* and (g)(5) are consistent with this parsing of immigration statutes and regulations. *United States v. Revuelta, 109 F. Supp. 2d 1170, 2000 U.S. Dist. LEXIS 12689 (N.D. Cal. 2000)*.

14. —Deportation and removal

Defendant ordered to be deported because of his conviction of making false statements to federally licensed firearms dealer in connection with purchase of firearm was alien convicted of deportable firearms offense; therefore, Illegal Immigration Reform and Immigrant Responsibility Act of 1996 divested court of jurisdiction to hear his case. *Hall v. United States INS, 167 F.3d 852, 1999 U.S. App. LEXIS 1742 (4th Cir. 1999)*.

Lawful permanent resident's firearms offense was not aggravated felony under Immigration and Nationality Act because *18 USCS § 922(a)(3)* did not include "trafficking element"; because resident's § 922(a)(3) conviction was

not aggravated felony of "illicit trafficking in firearms" under *8 USCS § 1101(a)(43)(C)*, his petition for review of BIA's *8 USCS § 1227(a)(2)(A)(iii)*, (a)(2)(C) order of removal was granted. *Joseph v. AG of the United States, 465 F.3d 123, 2006 U.S. App. LEXIS 24726 (3d Cir. 2006)*.

Board of Immigration Appeals properly affirmed immigration judge's finding that alien was removable and ineligible for cancellation of removal under *8 USCS § 1229b(a)(3)* because alien was convicted of possession of firearms and ammunition by unlawful user of controlled substance in violation of *18 USCS § 922(g)(3)* and, thus, was aggravated felon under Immigration and Nationality Act, *8 USCS § 1101(a)(43)(E)(ii)*. *Alvarado v. Gonzales, 484 F.3d 535, 2007 U.S. App. LEXIS 8695 (8th Cir. 2007)*.

Where lawful U.S. permanent resident pled guilty to delivering package containing firearms, in violation of *18 USCS § 922(e)*, court lacked jurisdiction under *8 USCS § 1252(a)(2)(C)* to consider challenges to removal order based on conviction because delivery necessarily required some form of possession, which meant that his conviction rendered him removable under *8 USCS § 1227(a)(2)(C)*. *Malilia v. Holder, 632 F.3d 598, 2011 U.S. App. LEXIS 2121 (9th Cir. 2011)*.

Defendant's conviction for knowingly possessing firearms while illegally and unlawfully present in United States, violation of *18 USCS §§ 922(g)(5)(A)* and *924(a)(2)*, was affirmed because pendency of defendant's application for adjustment of status did not alter conclusion that he was illegally or unlawfully in United States when he possessed firearms in question. *United States v. Al Sabahi, 719 F.3d 305, 2013 U.S. App. LEXIS 11808 (4th Cir.)*, cert. denied, *571 U.S. 969, 134 S. Ct. 464, 187 L. Ed. 2d 311, 2013 U.S. LEXIS 7296 (2013)*.

Defendant's conviction for knowingly possessing firearms while illegally and unlawfully present in United States, violation of *18 USCS §§ 922(g)(5)(A)* and *924(a)(2)*, was affirmed because he was not, in effect, paroled via *8 USCS § 1182(d)* when he registered through National Security Entry-Exit Registration System (NSEERS) as Attorney General did not take any action on defendant's behalf, and defendant did not identify any urgent humanitarian reasons or significant public benefit that warranted his parole; further, he was already present in United States when he complied with NSEERS program. *United States v. Al Sabahi, 719 F.3d 305, 2013 U.S. App. LEXIS 11808 (4th Cir.)*, cert. denied, *571 U.S. 969, 134 S. Ct. 464, 187 L. Ed. 2d 311, 2013 U.S. LEXIS 7296 (2013)*.

Defendant's conviction for knowingly possessing firearms while illegally and unlawfully present in United States, violation of *18 USCS §§ 922(g)(5)(A)* and *924(a)(2)*, was affirmed because district court did not err in allowing case to proceed while his removal proceedings were pending as *8 USCS § 1229a(a)(1)* did not divest district courts of ability to decide whether aliens are illegally or unlawfully present in United States for purposes of § 922(g)(5)(A). *United States v. Al Sabahi, 719 F.3d 305, 2013 U.S. App. LEXIS 11808 (4th Cir.)*, cert. denied, *571 U.S. 969, 134 S. Ct. 464, 187 L. Ed. 2d 311, 2013 U.S. LEXIS 7296 (2013)*.

Alien's conviction for engaging in unlicensed business of firearms dealing did not constitute crime involving moral turpitude because it was regulatory/licensing offense, and thus, BIA erred in finding that alien had violated statute that categorically involved moral turpitude, thereby rendering him inadmissible for life. *Mayorga v. AG United States, 757 F.3d 126, 2014 U.S. App. LEXIS 12137 (3d Cir. 2014)*.

Where defendant pleaded guilty of possession of firearm by illegal alien, trial court did not err by denying his motion to dismiss indictment because his status at arrest was that of deportable alien; the trial court did not err in refusing to allow irrelevant evidence that BIA granted his motion to reopen removal proceedings, because it had no legal effect on his immigration status on date of offense. *United States v. Lim, 897 F.3d 673, 2018 U.S. App. LEXIS 21239 (5th Cir. 2018)*, cert. denied, *139 S. Ct. 852, 202 L. Ed. 2d 583, 2019 U.S. LEXIS 493 (2019)*.

15. Bureau of Prisons

Given substantial risk of danger and inherently violent nature of firearms, particularly firearms in possession of convicted felon, there was nothing unreasonable about Bureau of Prisons' determination that inmate convicted of violating *18 USCS § 922(g)* would not be eligible for early release pursuant to 18 USCS § 83221(e)(2)(B); BOP's

"Program Statement 5162.02" did not expand definition of "crime of violence" as that term was used in *18 USCS § 924(c)(3)* by listing violation of *18 USCS § 922(g)* as crime of violence in all cases. *Parsons v. Pitzer, 149 F.3d 734, 1998 U.S. App. LEXIS 17017 (7th Cir. 1998)*.

Bureau of Prisons' exclusion of mere possessory offenders from consideration for early release was improper in view of absence of statutory support for agency's definition of "nonviolent offense," or, conversely, "crime of violence" as well as body of decisional law construing term "crime of violence" not to include *18 USCS § 922(g)* violations. *Orr v. Hawk, 156 F.3d 651, 1998 FED App. 0281P, 1998 U.S. App. LEXIS 21895 (6th Cir. 1998)*, amended, *172 F.3d 411, 1999 U.S. App. LEXIS 5419 (6th Cir. 1999)*.

Bureau of Prisons' regulation and program statement classifying *18 USCS § 922(g)* crime as outside scope of "nonviolent offense" as that term is used in *18 USCS § 3621(e)(2)(B)* is permissible exercise of administrative discretion and is constitutionally permissible. *Cook v. Wiley, 208 F.3d 1314, 13 Fla. L. Weekly Fed. C 610, 2000 U.S. App. LEXIS 6788 (11th Cir. 2000)*.

Bureau of Prisons' Program Statement in effect prior to 1997 when defendant completed his drug treatment program was not sufficient authority to exclude felons in possession from consideration for early release, and Court declined to defer to it, where definition of "crime of violence" in *18 USCS § 16* standing alone could not encompass mere possession of firearm. *King v. Morrison, 231 F.3d 1094, 2000 U.S. App. LEXIS 27862 (8th Cir. 2000)*.

Bureau of Prisons' classification of convictions for violation of *18 USCS § 922(g)* as violent was not erroneous as matter of law, since it was reasonable and consistent with authority and discretion granted to Bureau by Congress. Venegas v Henman (1997, CA5 La) 126 F3d 760reh, en banc, den *1998 U.S. App. LEXIS 1750 (CA5 Tex 1998)*.

Petition for habeas corpus under *28 USCS § 2241* was denied because Bureau of Prisons' interpretation of *18 USCS § 3621(e)(2)(B)* in *28 CFR § 550.58(a)(1)(vi)(B)* and Program Statement 5162.04 to deny early release to persons convicted of violating *18 USCS § 922(g)(3)* did not violate Constitution or federal statute. *Ellis v. Terrell, 455 F. Supp. 2d 1230, 2006 U.S. Dist. LEXIS 68596 (D. Kan. 2006)*.

16. *26 USCS § 5861*

Prohibition against possession of machineguns by private individuals in *18 USCS § 922(o)* did not implicitly repeal provisions of National Firearms Act (NFA) requiring registration and taxation of machineguns by private individuals, *26 USCS § 5861*, even though Bureau of Alcohol, Tobacco, and Firearms refuses to accept applications to register or to pay tax on such weapons, making compliance with *26 USCS § 5861* impossible, and even though refusal to tax weapons would seem to undercut constitutional basis of registration in that NFA was originally upheld under Congress's power to tax, since NFA provisions may still be upheld under power to tax—preserved although unused—or, alternatively, under power to regulate interstate commerce. *United States v. Ardoin, 19 F.3d 177, 73 A.F.T.R.2d (RIA) 1994-1799, 73 A.F.T.R.2d (RIA) 94-1799, 94 TNT 83-28, 1994 U.S. App. LEXIS 6808 (5th Cir.)*, cert. denied, *513 U.S. 933, 115 S. Ct. 327, 130 L. Ed. 2d 287, 1994 U.S. LEXIS 7171 (1994)*.

Enactment of Firearms Owners Protection Act (FOPA), *18 USCS § 922(o)*, did not negate defendant's convictions for various violations of *26 USCS § 5861*, part of National Firearms Act (NFA); FOPA did not impliedly overrule NFA because two statutes were easily reconcilable and because one could easily comply with both statutes by refusing to deal with newly-made machine guns. *United States v. Grier, 354 F.3d 210, 2003 U.S. App. LEXIS 26525 (3d Cir. 2003)*.

Seventh Circuit agrees with majority of its sister circuits, which have held that *18 USCS § 922(o)* did not implicitly repeal *26 USCS § 5861(d)* because two statutory provisions can be read compatibly together: (1) pursuant to *18 USCS § 922(o)(2)(B)*, it remains lawful to transfer or possess machine gun that was properly registered prior to effective date of *18 USCS § 922(o)*, and registration requirement of *26 USCS § 5861(d)* continues to apply to such machine guns; (2) possession of certain guns after effective date of *18 USCS § 922(o)* can constitute automatic violation of both Gun Control Act and National Firearms Act; and (3) and defendant can comply with both statutes

simply by refusing to deal in newly-made machine guns. *United States v. Carmel, 548 F.3d 571, 2008 U.S. App. LEXIS 24053 (7th Cir. 2008)*.

Defendant's challenge to constitutionality of *26 USCS § 5861* was properly rejected because Congress may lawfully punish same action, i.e. possessing illegal machine guns, under two separate statutes, i.e. § 5861 and *18 USCS § 922(o)*, without running afoul of Due Process Clause and it may use its taxing power to require registration of machine guns that cannot be legally possessed because such guns are still subject to taxation. *United States v. Carmel, 548 F.3d 571, 2008 U.S. App. LEXIS 24053 (7th Cir. 2008)*.

Unpublished decision: In case in which defendant, police chief, appealed his conviction on three counts of possession of unregistered firearms, in violation of *26 USCS § 5861(d)*, by arguing that government did not produce sufficient evidence to show that his possession of three firearms was illegal, his argument that possession of firearms under *18 USCS § 922(o)* was irrelevant; Section 922(o) did not deal at all with registration. *United States v. Williams, 407 Fed. Appx. 791, 2011 U.S. App. LEXIS 199 (5th Cir. 2011)*.

District court properly enhanced defendant's sentence for being felon in possession of firearm because his three state-law drug convictions qualified as serious drug offenses, which triggered ACCA's mandatory minimum sentence of 15 years. *United States v. Stancil, 29 Fla. L. Weekly Fed. C 21, 2021 U.S. App. LEXIS 20694 (11th Cir. July 13, 2021)*.

Combination of *18 USCS § 922(o)* and *26 USCS § 5861(d)* did not violate defendant's Second Amendment rights to keep and bear arms, since Second Amendment does not confer broad right to unregulated possession of all types of weapons. *United States v. Bournes, 105 F. Supp. 2d 736, 2000 U.S. Dist. LEXIS 12738 (E.D. Mich. 2000)*.

Motion to dismiss was denied because intermediate scrutiny was appropriate standard of review, and *18 USCS § 922(g)(9)* independently passed constitutional muster under that standard; defendant was not within "core" of Second Amendment's protections when he was arrested for violating § 922(g)(9). *United States v. Smith, 742 F. Supp. 2d 855, 2010 U.S. Dist. LEXIS 98511 (S.D. W. Va. 2010)*.

17. —Due process

Defendant's conviction under *26 USCS § 5861(d)* did not violate due process simply because as convicted felon his application to register firearm would have been denied as being in violation of *18 USCS § 922(g)*, since he could have complied with both statutes by declining to possess firearms. *United States v. Rivera, 58 F.3d 600, 9 Fla. L. Weekly Fed. C 268, 1995 U.S. App. LEXIS 17065 (11th Cir. 1995)*.

Since defendant could comply with both *26 USCS § 5861* and *18 USCS § 922(o)(1)* simply by refusing to possess machinegun, his conviction for failure to register machine under *26 USCS § 5861* did not violate due process. *United States v. Elliott, 128 F.3d 671, 1997 U.S. App. LEXIS 29886 (8th Cir. 1997)*, reh'g denied, *1998 U.S. App. LEXIS 8541 (8th Cir. Apr. 17, 1998)*.

Defendant's challenge to constitutionality of *26 USCS § 5861* was properly rejected because Congress may lawfully punish same action, i.e. possessing illegal machine guns, under two separate statutes, i.e. § 5861 and *18 USCS § 922(o)*, without running afoul of Due Process Clause and it may use its taxing power to require registration of machine guns that cannot be legally possessed because such guns are still subject to taxation. *United States v. Carmel, 548 F.3d 571, 2008 U.S. App. LEXIS 24053 (7th Cir. 2008)*.

Reversal of conviction of possessing unregistered machine gun in violation of *26 USCS § 5861(d)* is required, where Congress in 1986 passed *18 USCS § 922(o)* making it unlawful to possess any machine gun so that government will no longer accept registration or taxation of such guns, because statutes are irreconcilable and prosecution under § 5861(d) violates due process rights. *United States v. Gambill, 912 F. Supp. 287, 1995 U.S. Dist. LEXIS 19861 (S.D. Ohio 1995)*, aff'd, *129 F.3d 1265, 1997 U.S. App. LEXIS 36616 (6th Cir. 1997)*.

18. State and local laws

18 USCS § 922(g)(1) and *922(k)* were not beyond Congress' power under Commerce Clause or in violation of Second, Ninth, or Tenth Amendments; although Utah's constitution gave defendant right to bear arms, his federal weapons prosecution was not improper, since state constitutional provisions cannot override federal criminal statutes unless incorporated into federal law. *United States v. Baer, 235 F.3d 561, 2000 Colo. J. C.A.R. 6667, 2000 U.S. App. LEXIS 32498 (10th Cir. 2000)*.

State felon-in-possession offenses did not need to have interstate commerce element in order for offense to be offense "described in" *18 USCS § 922(g)(1)*. *Hernandez v. Holder, 592 F.3d 681, 2009 U.S. App. LEXIS 28702 (5th Cir. 2009)*.

Upon conviction for being felon in possession of firearm, in violation of *18 USCS § 922(g)(1)*, defendant was properly held to be armed career criminal subject to 15-year minimum sentence under Armed Career Criminal Act (ACCA), *18 USCS § 924(e)*, because violations of Minnesota fleeing statute, *Minn. Stat. § 609.487*, subd. 3, presented serious potential risk of physical injury to another and were therefore violent felonies under ACCA. *United States v. Bartel, 698 F.3d 658, 2012 U.S. App. LEXIS 22026 (8th Cir. 2012)*, cert. denied, *568 U.S. 1203, 133 S. Ct. 1481, 185 L. Ed. 2d 381, 2013 U.S. LEXIS 1813 (2013)*.

18 USCS § 922(g)(9) on its face, its legislative history, and precedent did not distinguish between violent or non-violent misdemeanor convictions when they involved kind of conviction at issue—domestic violence under *Me. Rev. Stat. Ann. tit. 17-A, § 207-A(1)(A)*—and further, conviction for offensive touching such as physical contact for which defendant was convicted constituted predicate offense based on prior interpretation of § 922(g)(9) predicate offense requirements of physical force. *United States v. Armstrong, 706 F.3d 1, 2013 U.S. App. LEXIS 1350 (1st Cir. 2013)*, reaff'd, *778 F.3d 176, 2015 U.S. App. LEXIS 1638 (1st Cir. 2015)*.

Where defendant was convicted of violating *18 USCS § 922(g)* and he appealed his 15-year mandatory minimum sentence for violating ACCA, district court's use of modified categorical approach was proper since *35 Pa. Stat. Ann. § 780-113(a)(30)* was divisible statute under Descamps decision. *United States v. Abbott, 748 F.3d 154, 2014 U.S. App. LEXIS 6259 (3d Cir. 2014)*.

In order to evaluate "conviction" under this statute, question as to whether Florida treated guilty plea with adjudication withheld as "conviction" for purposes of Florida's felon-in-possession statute was certified to Florida Supreme Court because, although that court had not directly addressed point, indications from that court suggested that holdings of Eleventh Circuit were no longer in keeping with Florida law. *United States v. Clarke, 780 F.3d 1131, 2015 U.S. App. LEXIS 4219 (11th Cir. 2015)*, cert. denied, *137 S. Ct. 251, 196 L. Ed. 2d 189, 2016 U.S. LEXIS 5708 (2016)*.

Because defendant did not have qualifying predicate conviction for purposes of statutes at time of charged offense, it was not illegal for him to possess firearm; he could not remain convicted of crime of which he was actually innocent. *United States v. Burleson, 815 F.3d 170, 2016 U.S. App. LEXIS 4320 (4th Cir. 2016)*.

Possession of firearm by felon in violation of *18 USCS § 922* and possession of unregistered firearm in violation of D.C. Code § 6-2311 were separate offenses rather than second being lesser included offense of first, since each required proof of facts which other did not. *United States v. Wood, 879 F.2d 927, 279 U.S. App. D.C. 81, 28 Fed. R. Evid. Serv. (CBC) 1356, 1989 U.S. App. LEXIS 10616 (D.C. Cir. 1989)*.

Unpublished decision: District court plainly erred in sentencing defendant as armed career criminal because his prior North Carolina state conviction for eluding arrest with motor vehicle was not violent felony; under North Carolina Structured Sentencing Act, with prior record in Level III, defendant could only have been imprisoned for term exceeding one year for his conviction for eluding arrest with motor vehicle if he received sentence in aggravated range, and record did not indicate that defendant received aggravated sentence. *United States v. Council, 462 Fed. Appx. 312, 2012 U.S. App. LEXIS 1383 (4th Cir. 2012)*.

Unpublished decision: Plaintiff did not have standing to raise his Supremacy Clause challenges to *18 Pa. Cons. Stat. §§ 6111* & 6111.1; plaintiff did not allege that he was licensed firearms dealer (or like) or state police officer, and he

did not explain how he was injured by statutes governing conduct of groups to which he does not belong (rather, his allegations amounted to nothing more than generalized grievance shared by public, which was insufficient to confer standing). *Voneida v. Pennsylvania, 508 Fed. Appx. 152, 2012 U.S. App. LEXIS 26350 (3d Cir. 2012)*.

District court properly sentenced defendant to 86 months in prison for being felon in possession of firearm because his Georgia convictions for aggravated assault and aggravated assault with a deadly weapon qualified as crimes of violence under Sentencing Guidelines' enumerated-offenses clause, defendant did not object to presentence investigation report, which included description of his convictions and fact that both included use of a deadly weapon, district court considered the U.S. Sentencing Guideline factors, and sentence was six months below bottom of advisory guideline range. *United States v. Berry, 808 Fed. Appx. 857, 2020 U.S. App. LEXIS 10505 (11th Cir. 2020)*.

Search warrant was for contraband, not for mere evidence of crime, because defendant was felon and known to be felon; it was federal crime for defendant to possess gun, pursuant to *18 USCS § 922(g)* and he did not have Firearm Identification Card, as required by Mass. Gen. Laws ch.140, § 129C. *United States v. Andrews, 847 F. Supp. 2d 236, 2012 U.S. Dist. LEXIS 30523 (D. Mass. 2012)*.

Trial court did not err, pursuant to *18 USCS § 922(g)*, in awarding guns that were marital property to wife in divorce proceeding because husband was subject of numerous protective orders. *Rodvik v. Rodvik, 151 P.3d 338, 2006 Alas. LEXIS 191 (Alaska 2006)*.

Order directing issuance of Firearm Owners Identification Card (FOID) to appellee was properly upheld because individual scrutiny given appellee's circumstances, pursuant to 430 ILCS 65/10(c), resulted in assessment that he would not be likely to act in manner dangerous to public safety and granting relief would not be contrary to public interest; application of that standard, via § 10(c), removed federal firearm disability and entitled appellee to FOID card. *Coram v. State (Ill. Dep't of State Police), 2013 IL 113867, 375 Ill. Dec. 1, 996 N.E.2d 1057, 2013 Ill. LEXIS 854 (Ill. 2013)*.

Unpublished decision: District court properly followed precedent and found that former Ohio Rev. Code Ann. § 2911.12(A)(4) was qualifying violent felony predicate under Armed Career Criminal Act; because former Ohio Rev. Code Ann. § 2911.12(A)(4) required trespass in "habitation" of another individual that was effected by force, stealth, or deception while innocent person was "present or likely to be present," offense set forth recipe for surprise confrontation between burglar and third party, with risk of physical injury. *United States v. Lemaster, 445 Fed. Appx. 851, 2012 FED App. 0042N, 2012 U.S. App. LEXIS 811 (6th Cir. 2012)*.

Under Illinois Firearm Owners Identification (FOID) Card Act, granting defendant relief would not be contrary to federal law, and circuit court properly issued a FOID card to defendant; Illinois Supreme Court vacated circuit court's holding that federal law and provisions of FOID Card Act, along with relevant provisions of Illinois Administrative Code, were unconstitutional as applied to defendant. *Johnson v. Dep't of State Police, 2020 IL 124213, 443 Ill. Dec. 37, 161 N.E.3d 161, 2020 Ill. LEXIS 10 (Ill. 2020)*.

State was prohibited from issuing Firearm Owner's Identification card to applicant because of federal prohibition on applicant's possession of firearm; Illinois placed affirmative bar on possession of firearms by those convicted of felonies, such that it served as de facto permanent ban on possession of firearms by persons convicted of felonies because they would never have their federal possessory disability removed. *Evans v. Cook Cty. State's Atty., 2019 IL App (1st) 182488, 436 Ill. Dec. 304, 142 N.E.3d 407, 2019 Ill. App. LEXIS 859 (Ill. App. Ct. 1st Dist. 2019)*.

Supreme Court of Pennsylvania held that when denying the return of a firearm on the basis of a federal statute, specifically *18 USCS § 922(g)*, the Pennsylvania State Police must establish the subject firearm moved in interstate or foreign commerce. *Navarro v. Pa. State Police, 212 A.3d 26, 2019 Pa. LEXIS 3808 (Pa. 2019)*.

State circuit court erred in limiting restoration of petitioner's firearm rights to pellet guns, muzzle loaders, and black powder guns that did not take modern cartridge because petitioner satisfied all the statutory requirements, he was not convicted of a specified felony and so his right to possess a firearm was restored by operation of law three years

after he paid his fines and completed the terms of his probation, and the Michigan statutes did not interfere with the federal government's ability to enforce federal felon-in-possession statute or require, authorize, or excuse its violation. *In re Schultz, 2020 Mich. App. LEXIS 7867 (Mich. Ct. App. Nov. 24, 2020)*.

19. —Evidentiary matters

Unpublished decision: District court did not err in disallowing evidence concerning Tennessee court hearing because overwhelming weight of federal case law precluded defendant in *18 USCS § 922(g)(8)* prosecution from mounting collateral attack on merits of underlying state protective order. *United States v. Mudlock, 483 Fed. Appx. 823, 2012 U.S. App. LEXIS 12617 (4th Cir. 2012)*, cert. denied, *568 U.S. 1093, 133 S. Ct. 842, 184 L. Ed. 2d 665, 2013 U.S. LEXIS 481 (2013)*.

Fact that gun which served as basis for defendant's guilty plea to violation of *18 USCS § 922* does not preclude admission of gun into evidence at subsequent state murder trial. *State v. McCowan, 226 Kan. 752, 602 P.2d 1363, 1979 Kan. LEXIS 355 (Kan. 1979)*, cert. granted, *449 U.S. 844, 101 S. Ct. 127, 66 L. Ed. 2d 53, 1980 U.S. LEXIS 2900 (1980)*.

Federal conviction under *18 USCS § 922*, which involves false statement or presentation of false identification in connection with acquisition of firearm, is admissible in subsequent state criminal proceeding under state rule allowing impeachment, of defendant who chooses to testify, by prior conviction of making false statement with intent to deceive. *State v. Clements, 175 W. Va. 463, 334 S.E.2d 600, 1985 W. Va. LEXIS 516 (W. Va.)*, cert. denied, *474 U.S. 857, 106 S. Ct. 165, 88 L. Ed. 2d 137, 1985 U.S. LEXIS 3753 (1985)*.

20. Miscellaneous

Gun dealer's right to due process was not violated by government's decision to charge him under National Firearms Act rather than Gun Control Act, since, while he may not be able to register newly-made machine guns, he could comply with both Acts simply by refusing to deal in such guns. *United States v. Jones, 976 F.2d 176, 1992 U.S. App. LEXIS 22745 (4th Cir. 1992)*, cert. denied, *508 U.S. 914, 113 S. Ct. 2351, 124 L. Ed. 2d 260, 1993 U.S. LEXIS 3300 (1993)*.

Yemen diplomat's son was properly convicted of possession of firearm by non-immigrant alien, *18 USCS § 922(g)(5)(B)*, where son did not have diplomatic immunity under *Vienna Convention on Diplomatic Relations*, Apr. 18, 1961, art. 37.1, 23 U.S.T. 3227, as he had lost his immunity on his 21st birthday; State Department reasonably interpreted phrase "member of family" to exclude children who had reached 21 years of age and children still in school who had reached 23 years of age. *United States v. Al-Hamdi, 356 F.3d 564, 2004 U.S. App. LEXIS 1034 (4th Cir. 2004)*.

In declaratory judgment suit by federal government that it did not have to return seized weapons and ammunition to person who had been declared incompetent, state court ruling that *18 USCS § 922(g)(4)* did not bar return of these items was not entitled to preclusive effect under full faith and credit statute, *28 USCS § 1738*, because Iowa preclusion law required prior jurisdictional competency for application of collateral estoppel, and state court did not have jurisdiction to apply federal criminal statute regarding weapons possession (*18 USCS § 922(g)(4)*) as *18 USCS § 3231* precluded state court jurisdiction over federal criminal cases and *28 USCS § 2201* granted federal court exclusive jurisdiction over federal declaratory judgment actions. *United States v. B.H., 456 F.3d 813, 2006 U.S. App. LEXIS 19421 (8th Cir. 2006)*.

Where defendant, convicted felon and member of Navajo Nation, was found in possession of firearms on Navajo Reservation, defendant was properly convicted for firearms possession under *18 USCS § 922(g)(1)* because Treaty Between United States of America and Navajo Tribe of Indians, Aug. 12, 1868, *15 Stat. 667*, which guaranteed hunting rights that could be asserted by individual Navajos, did not insulate defendant from consequences of defendant's criminal activity. *United States v. Fox, 573 F.3d 1050, 2009 U.S. App. LEXIS 16715 (10th Cir.)*, cert. denied, *558 U.S. 1082, 130 S. Ct. 813, 175 L. Ed. 2d 570, 2009 U.S. LEXIS 8894 (2009)*.

Forcible medication for purpose of rendering defendant with delusional disorder, grandiose type, competent to stand trial was not justified because charged crimes of credit card fraud and aggravated identity theft were nonviolent crimes, defendant had served more than entirety of her likely sentence in pretrial detention, *18 USCS § 922(g)(4)* prohibited defendant from owning gun following her commitment in prison mental hospital, and there was little evidence about effectiveness of antipsychotic medication on individuals with defendant's condition and even less information about possible side effects that defendant might suffer. *United States v. White, 620 F.3d 401, 2010 U.S. App. LEXIS 19707 (4th Cir. 2010)*.

Convictions under *18 USCS § 922(g)(9)* for possession of firearms by individuals who had previously been convicted of misdemeanor crimes of domestic violence did not run afoul of right to bear arms under Second Amendment. *United States v. Booker, 644 F.3d 12, 2011 U.S. App. LEXIS 8925 (1st Cir. 2011)*, cert. denied, *565 U.S. 1204, 132 S. Ct. 1538, 182 L. Ed. 2d 175, 2012 U.S. LEXIS 1581 (2012)*.

Petitioner, whose conviction for being felon in possession of firearm was vacated because his prior offenses were not qualifying felonies, did not qualify for certificate of actual innocence under *28 USCS § 2513*; record showed that petitioner possessed firearms, and possessory act was "act charged" under felon-in-possession statute. *United States v. Mills, 773 F.3d 563, 2014 U.S. App. LEXIS 23058 (4th Cir. 2014)*, cert. denied, *576 U.S. 1006, 135 S. Ct. 2824, 192 L. Ed. 2d 850, 2015 U.S. LEXIS 3800 (2015)*.

Unpublished decision: At time of defendant's arrest, ten years had passed since he served his sentence for his 1988 convictions and he completed term of his deferred sentence for his 1999 conviction and for this reason, defendant argued he reasonably believed his right to possess firearms was fully restored for purpose of dismissing indictment against him but he did not show restoration of other three requisite rights—right to vote, serve on jury, and hold public office—as he did not show his right to hold public office was restored; absent restoration of this right, defendant did not have his civil rights fully restored for purposes of *18 USCS § 921(a)(20)*. *United States v. Molina, 484 Fed. Appx. 276, 2012 U.S. App. LEXIS 15677 (10th Cir. 2012)*.

U.S. Sentencing Guidelines Manual § 2K2.1(b) and this statute are fundamentally different, and court cannot assume that Congress intended to include unwritten mens rea for Guidelines enhancement because it included a written one for statutory offense. *United States v. Krueger, 802 Fed. Appx. 346, 2020 U.S. App. LEXIS 3471 (10th Cir. 2020)*.

State district court properly granted two-year extension of protection from abuse order because it was proper for court to consider evidence of conduct that supported original order, defendant's right to procedural due process was not violated where he was notified of, present at, and participated in motion hearing, and, even if order had not explicitly prohibited possession of firearms, it would have arisen by operation of federal law as result of provisions of order that, inter alia, prohibited him from threatening, harassing, or stalking plaintiff, and using, attempting to use, or threatening to use physical force against her that would reasonably be expected to cause bodily injury. *Doe v. Tierney, 189 A.3d 756, 2018 ME 101, 2018 Me. LEXIS 102 (Me. 2018)*.

The retailer complied with *18 U.S.C.S. § 922(b)(3)* and thus committed no statutory violation that would give rise to the predicate exception in the Protection of Lawful Commerce in Arms Act,. The sale of the rifle to the shooter complied with the legal conditions of sale in both Texas and Colorado and, because the Gun Control Act did not regulate the sale of the magazines, the Colorado law prohibiting their sale was immaterial. *In re Acad., Ltd., 625 S.W.3d 19, 2021 Tex. LEXIS 623 (Tex. 2021)*.

B. Title 18

21. § 921

Requirement of physical force is satisfied, for purposes of *18 USCS § 922(g)(9)*, by degree of force that supports common-law battery conviction. *United States v. Castleman, 572 U.S. 157, 134 S. Ct. 1405, 188 L. Ed. 2d 426, 24 Fla. L. Weekly Fed. S 632, 2014 U.S. LEXIS 2220 (2014)*.

Prior case law required that courts attribute common-law meaning of force to *18 USCS § 921(a)(33)(A)*'s definition of misdemeanor crime of domestic violence as offense that had, as element, use or attempted use of physical force. *United States v. Castleman, 572 U.S. 157, 134 S. Ct. 1405, 188 L. Ed. 2d 426, 24 Fla. L. Weekly Fed. S 632, 2014 U.S. LEXIS 2220 (2014)*.

Provision applied to reckless assaults, and thus possession of guns, following state law domestic assault convictions, violated statute because federal ban on firearms possession applied to any person with prior misdemeanor conviction for use of physical force against domestic relation. *Voisine v. United States, 136 S. Ct. 2272, 195 L. Ed. 2d 736, 26 Fla. L. Weekly Fed. S 352, 2016 U.S. LEXIS 4061 (2016)*.

In determining, for purposes of sentence enhancement, whether defendant, found to be convicted felon in possession of firearm in violation of *18 USCS § 922*, had in past been convicted of crime punishable by term of imprisonment exceeding one year, state law should be looked to as required by *18 USCS § 921(a)(20)*, rather than looking to federal definition of violent felony found in *18 USCS § 924(e)*. *United States v. Frushon, 10 F.3d 663, 93 Cal. Daily Op. Service 8788, 93 D.A.R. 15017, 1993 U.S. App. LEXIS 31042 (9th Cir. 1993)*, cert. denied, *511 U.S. 1147, 114 S. Ct. 2175, 128 L. Ed. 2d 895, 1994 U.S. LEXIS 4393 (1994)*.

Defendant was not entitled to restoration of firearm privileges that had been revoked pursuant to *18 USCS § 922(g)(1)*, since his criminal activity of billing for services not rendered did not fall within business offense exemption of *18 USCS § 921(a)*(20(A). *Dreher v. United States ex rel. United States BATF, 115 F.3d 330, 1997 U.S. App. LEXIS 14778 (5th Cir. 1997)*.

Congress intended to prohibit both those charged by indictment and those charged by information from possessing explosives, since "indictment" should be defined as in *18 USCS § 922(n)*, *921(a)(14)*, with which it is in pari materia. *United States v. Fillman, 162 F.3d 1055, 1999 Colo. J. C.A.R. 75, 1998 U.S. App. LEXIS 31070 (10th Cir. 1998)*.

District court erred in concluding that all Norinco weapons fit within ambit of *18 USCS § 921(a)(30)*A)(i) and, thus, in applying sentencing enhancement to defendant whose modified weapon was not prohibited, despite fact that it was not listed as exempt weapon in Appendix A to *18 USCS § 922*. *United States v. Jamieson, 202 F.3d 1293, 13 Fla. L. Weekly Fed. C 385, 2000 U.S. App. LEXIS 1278 (11th Cir. 2000)*.

In case in which defendant appealed his two convictions for violating *18 USCS § 922(g)(1)*, he argued that his 2007 conviction for scheme to defraud in first degree under *N.Y. Penal Law § 190.65* fell within business practices exemption of *18 USCS § 921(a)(20)(A)* since fraud offense under § 190.65 was sufficiently similar to unfair trade practice because § 190.65 was designed to aid in prosecution of consumer fraud schemes where many victims are bilked mainly of small amounts of money; it was clear that § 190.65 did not cover type of criminal offense that Congress intended to exempt under § 921(a)(20)(A); § 190.65 did not have isolated purpose of protecting consumers or regulating business practices. *United States v. Miller, 678 F.3d 649, 2012 U.S. App. LEXIS 9895 (8th Cir. 2012)*.

Although pistol was in bad condition and required gunsmith to restore it to working condition, it was still designed to expel projectile by means of explosive action and was thus firearm as defined in *18 USCS § 921(a)(3)(A)*, (B), sufficient for defendant's felon in possession conviction under *18 USCS § 922(g)(1)*. *United States v. Dotson, 712 F.3d 369, 2013 U.S. App. LEXIS 6784 (7th Cir.)*, cert. denied, *571 U.S. 899, 134 S. Ct. 238, 187 L. Ed. 2d 177, 2013 U.S. LEXIS 6232 (2013)*.

Where government appealed district court's dismissal of indictment, defendant, Native American, was not denied his right to counsel as it existed in tribal court misdemeanor proceeding, and his resulting conviction could properly serve as predicate to *18 USCS § 922(g)(9)* prosecution. Interpreting right to counsel in *18 USCS § 921(a)(33)(B)(i)(I)* as referring to right to counsel as it existed in domestic violence misdemeanor proceeding did not violate Sixth Amendment, Fifth Amendment Due Process Clause, or Fourteenth Amendment Equal Protection Clause. *United States v. First, 731 F.3d 998, 2013 U.S. App. LEXIS 20010 (9th Cir. 2013)*, cert. denied, *574 U.S. 828, 135 S. Ct. 50, 190 L. Ed. 2d 54, 2014 U.S. LEXIS 5455 (2014)*.

Although *18 USCS § 921(a)(33)(B)(ii)* prevented application of statue where defendant's civil rights had been restored, defendant's misdemeanor domestic violence conviction did not divest him of civil rights because it did not divest him of right to vote, serve on jury, or hold public office *United States v. Chovan, 735 F.3d 1127, 2013 U.S. App. LEXIS 23199 (9th Cir. 2013)*, cert. denied, *574 U.S. 878, 135 S. Ct. 187, 190 L. Ed. 2d 146, 2014 U.S. LEXIS 6380 (2014)*.

Unpublished decision: Because first degree misdemeanors carried maximum penalty of five years' incarceration in Pennsylvania, appellant's conviction for first degree misdemeanors did not satisfy exception created in *18 USCS § 921(a)(20)*, and district court properly dismissed appellant's civil rights complaint, challenging fact that he was prohibited from purchasing firearm, for failure to state claim. *Dutton v. Pennsylvania, 503 Fed. Appx. 125, 2012 U.S. App. LEXIS 23061 (3d Cir. 2012)*.

Unpublished decision: In case in which defendant appealed his 15-year sentence under *18 USCS § 924(e)* for his violation of *18 USCS § 922(g)(1)*, he unsuccessfully argued that letter he received from Illinois Department of Corrections (IDOC) restored his civil rights, thereby invalidating his prior convictions for purposes of ACCA; IDOC letter did not sufficiently restore his civil rights so as to invalidate his convictions under *18 USCS § 921(a)(20)*; letter omitted reference to right to vote. *United States v. Swims, 506 Fed. Appx. 520, 2013 U.S. App. LEXIS 4154 (7th Cir.)*, cert. denied, *571 U.S. 952, 134 S. Ct. 420, 187 L. Ed. 2d 280, 2013 U.S. LEXIS 7494 (2013)*.

Defendant's shotgun was "firearm," and he could not reasonably dispute that he knew shotgun to be firearm; defendant did not dispute government's evidence that his gun could not have been manufactured before 1915, and he offered no evidence that he reasonably believed gun was manufactured before 1899, and defendant had enough information to be aware that he was convicted felon. *United States v. Benamor, 937 F.3d 1182, 2019 U.S. App. LEXIS 26793 (9th Cir. 2019)*, reh'g, en banc, denied, *2019 U.S. App. LEXIS 26794 (9th Cir. Sept. 5, 2019)*, cert. denied, *140 S. Ct. 818, 205 L. Ed. 2d 502, 2020 U.S. LEXIS 64 (2020)*.

In matter of first impression in District of Columbia Circuit, plaintiff's as-applied statutory and constitutional challenges to *18 U.S.C.S. § 922(d)(1)* and (g)(1) would not be dismissed since his convictions for violating Securities Exchange Act of 1934 fell within *18 U.S.C.S. § 921(a)(20)(A)*'s business practices exception; each of his predicate business practices offenses possessed requisite primary purpose under business practices exception. *Reyes v. Sessions, 342 F. Supp. 3d 141, 2018 U.S. Dist. LEXIS 167431 (D.D.C. 2018)*.

22. § 924

Inmate who pled guilty to being felon in possession of firearm, in violation of *18 USCS §§ 922* and *924*, and was sentenced to 188 months' imprisonment under ACCA, was entitled to have his sentence reviewed because U.S. Supreme Court's decision in *Johnson v. United States, _ U.S. _, 135 S. Ct. 2551, 192 L. Ed. 2d 569 (2015)*, negated district court's use of inmate's conviction for possessing deadly weapon by prisoner as one of three violent felonies he committed that subjected him to enhanced sentence; however, inmate was not entitled to reduction in his sentence because court could have used his conviction for robbery, in violation of *N.M. Stat. Ann. § 30-16-2*, as predicate offense because that crime was also "violent felony" under ACCA. *United States v. Garcia, 2017 U.S. Dist. LEXIS 13250 (D.N.M. Jan. 31, 2017)*.

Where defendant pled guilty to being felon in unlawful possession of firearm, district court properly enhanced his sentence under Armed Career Criminal Act based on his three prior convictions of violent felonies; it was immaterial that intervening opinion, *Johnson v. United States, 192 L. Ed. 2d 569 (2015)*, held that definition of "violent felony" in Act's residual clause was unconstitutionally vague, because defendant's conviction in Maryland of robbery with deadly weapon was violent felony under Act's force clause, which remained valid. *United States v. Redrick, 841 F.3d 478, 426 U.S. App. D.C. 290, 2016 U.S. App. LEXIS 20106 (D.C. Cir. 2016)*, reh'g, en banc, denied, *2017 U.S. App. LEXIS 1557 (D.C. Cir. Jan. 27, 2017)*, cert. denied, *137 S. Ct. 2204, 198 L. Ed. 2d 267, 2017 U.S. LEXIS 3477 (2017)*, reh'g denied, *2017 U.S. App. LEXIS 1558 (D.C. Cir. Jan. 27, 2017)*.

Where appellant moved to vacate his sentence on grounds his reckless endangerment conviction—one of three predicate convictions selected by government—no longer qualified as Armed Career Criminal Act (ACCA) predicate in light of *Johnson v. United States, 192 L. Ed. 2d 569 (2015)*, district court erred in denying motion because it incorrectly ruled that his conviction of felony possession of cocaine with intent to distribute, listed in his presentence investigation report but never designated as ACCA predicate, could replace now-invalid predicate; Government lost its right to use this conviction to enhance appellant's sentence by not providing him sufficient notice of its intent to do so. *United States v. Hodge, 902 F.3d 420, 2018 U.S. App. LEXIS 23595 (4th Cir. 2018)*, limited, *United States v. Rumley, 952 F.3d 538, 111 Fed. R. Evid. Serv. (CBC) 1192, 2020 U.S. App. LEXIS 8128 (4th Cir. 2020)*.

Phrase "in connection with the acquisition or attempted acquisition of any firearm" in *18 USCS § 922* does not suggest intention on part of Congress to create 2 separate crimes, one "in connection with the acquisition" and other in connection with "attempted acquisition" of firearm, but rather indicates that Congress deemed it to be immaterial whether firearm was ultimately acquired; this construction of *18 USCS § 922* is bolstered by examination of *18 USCS § 924*, which provides penalty for violations of deceit provisions of Gun Control Act without distinguishing between, or even mentioning, cases where weapon is acquired and those in which it is not. *United States v. Brozyna, 571 F.2d 742, 1978 U.S. App. LEXIS 12664 (2d Cir. 1978)*.

Mens rea required for violation of subsection of *18 USCS § 922* is "knowingly," as set out in *18 USCS § 924*, even when defendant is to be sentenced under enhanced penalty provision of § 924. *United States v. Sherbondy, 865 F.2d 996, 1988 U.S. App. LEXIS 17033 (9th Cir. 1988)*.

Three previous convictions in *18 USCS § 924(e)* does not refer to convictions which occur merely prior to sentencing or prior to conviction for *18 USCS § 922(g)* offense, but to those convictions which occur prior to violating § 922(g). *United States v. Talley, 16 F.3d 972, 1994 U.S. App. LEXIS 3385 (8th Cir. 1994)*.

Penalty provision of *18 USCS § 924(a)(2)*, read, as it must be, into *18 USCS § 922(o)*, which prohibits unlawful possession and transfer of machine guns, does not require government to prove defendant's specific knowledge of statutory offense, but only that defendant knowingly possessed and transferred machine guns which are already weapons of quasi-suspect class. *United States v. Farrell, 69 F.3d 891, 1995 U.S. App. LEXIS 31417 (8th Cir. 1995)*, cert. denied, *516 U.S. 1181, 116 S. Ct. 1283, 134 L. Ed. 2d 228, 1996 U.S. LEXIS 1912 (1996)*.

For purposes of *18 USCS § 924*, conviction was "previous" to *18 USCS § 922(g)* offense only if it occurred before violation of § 922(g) occurred, not simply prior to conviction or sentencing for that violation; thus, district court committed plain error in relying on 1996 drug conviction to enhance defendant's sentence for 1995 violation of *18 USCS § 922(g)*. *United States v. Richardson, 166 F.3d 1360, 12 Fla. L. Weekly Fed. C 532, 1999 U.S. App. LEXIS 2266 (11th Cir. 1999)*, app. after remand, *230 F.3d 1297, 14 Fla. L. Weekly Fed. C 65, 2000 U.S. App. LEXIS 25700 (11th Cir. 2000)*.

Even assuming arguendo that "knowingly" requirement in *18 USCS § 924(a)(2)* applies throughout that section, there would be no corresponding impact on elements of crime listed in *18 USCS § 922(g)(1)*. *United States v. Potts, 644 F.3d 233, 2011 U.S. App. LEXIS 12069 (5th Cir. 2011)*, cert. denied, *566 U.S. 923, 132 S. Ct. 1855, 182 L. Ed. 2d 647, 2012 U.S. LEXIS 2661 (2012)*.

"Actual buyer" question on Form 4473 was information required by *18 USCS § 924(a)(1)(A)* and relevant statutes and regulations made clear that information on Form was indeed required to be kept by federally licensed firearms dealers, as *18 USCS § 922(b)(5)* directed licensed dealers to maintain records containing name, age, and place of residence of all individual buyers and *18 USCS § 923(g)(1)(A)* stated that licensed dealers had to maintain such records of sale, or other disposition of firearms; thus, contrary to defendant's argument, district court did not err by deciding as matter of law that "actual buyer" question on Form 4473 was information required by law to be kept by federally licensed firearms dealers rather than submitting question to jury. *United States v. Johnson, 680 F.3d 1140, 2012 U.S. App. LEXIS 10767 (9th Cir. 2012)*.

In case in which defendant appealed his sentence for violating *18 USCS § 922(g)(1)*, which was enhanced under *18 USCS § 924(e)*, his criminal conduct in 1992 was not single criminal episode; like defendant in Letterlough decision, he would like to assign some culpability for subsequent sales to undercover officer who purchased drugs; regardless, responsibility for crime fell squarely on defendant; in between each of drug offenses, he had meaningful opportunity to cease his illegal conduct. *United States v. Delossantos, 680 F.3d 1217, 2012 U.S. App. LEXIS 10888 (10th Cir. 2012)*.

In case in which defendant's sentence for violating *21 USCS § 841(a)(1)* and *18 USCS § 922(g)(1)* had been enhanced pursuant to *18 USCS § 924(e)(1)* because of prior conviction for false imprisonment under *Fla. Stat. § 787.02*, district judge was right in characterizing Florida false imprisonment as being comparable to burglary with respect to degree and kind of risk produced; his false imprisonment conviction was qualified predicate offense for enhancement. *United States v. Schneider, 681 F.3d 1273, 23 Fla. L. Weekly Fed. C 1077, 2012 U.S. App. LEXIS 10557 (11th Cir. 2012)*.

In criminal case in which defendant pled guilty to possessing firearm as convicted felon in violation of *18 USCS § 922(g)*, district court did not err in applying 15-year mandatory minimum under *18 USCS § 924(e)* on basis that two drug offenses, one for selling cocaine and other for possessing cocaine with intent to deliver, were committed by defendant on occasions different from one another because two offenses were separated by week. *United States v. Sims, 683 F.3d 815, 2012 U.S. App. LEXIS 12938 (7th Cir. 2012)*, reh'g, en banc, denied, *2012 U.S. App. LEXIS 17015 (7th Cir. Aug. 3, 2012)*, cert. denied, *568 U.S. 1074, 133 S. Ct. 802, 184 L. Ed. 2d 592, 2012 U.S. LEXIS 9526 (2012)*.

In case in which defendant pled guilty to violating *18 USCS § 922(g)* and he appealed his 180-month sentence, arguing that district court erred in concluding that he was armed career criminal under *18 USCS § 924(e)*, he acknowledged that he had conviction for drug offense, but he contended that he committed predicate crime on only one other occasion and thus was not armed career criminal because his 1991 convictions for burglary, arson, and murder, crimes that he committed on same day, should have counted as one, rather than two, previous convictions under ACCA; under ACCA, criminal offense is distinct criminal episode when it occurs in different location and at different time, and his murder conviction was based on criminal episode separate from burglary and arson, because crimes occurred at different locations, against different victims, and at different times. *United States v. Chappell, 704 F.3d 551, 2013 U.S. App. LEXIS 1962 (8th Cir. 2013)*.

District court properly imposed 420-month sentence under *18 USCS § 924(e)(1)* for possessing firearm while being convicted felon, in violation of *18 USCS § 922(g)*, because, given defendant's murder of his wife (found by preponderance) and his past violent criminal conduct, need for deterrence and public protection were entitled to great weight. *United States v. Overstreet, 713 F.3d 627, 24 Fla. L. Weekly Fed. C 155, 2013 U.S. App. LEXIS 6257 (11th Cir.)*, cert. denied, *571 U.S. 896, 134 S. Ct. 229, 187 L. Ed. 2d 171, 2013 U.S. LEXIS 6088 (2013)*.

210-month sentence was permitted by *18 USCS § 924(e)*, which allowed district court to sentence defendant to more than 15 years as felon in possession of firearm; he qualified as armed career criminal because he had previously been convicted of at least three requisite offenses. *United States v. Walker, 720 F.3d 705, 2013 U.S. App. LEXIS 14106 (8th Cir. 2013)*, reh'g, en banc, denied, *2013 U.S. App. LEXIS 20957 (8th Cir. Oct. 16, 2013)*, cert. denied, *571 U.S. 1228, 134 S. Ct. 1355, 188 L. Ed. 2d 355, 2014 U.S. LEXIS 1246 (2014)*.

Where defendant appealed his 198-month sentence under Armed Career Criminal Act (ACCA), *18 USCS § 924(e)*, for his violation of *18 USCS § 922(g)(1)*, he unsuccessfully argued that ACCA's residual clause was unconstitutionally vague. U.S. Supreme Court had affirmed that residual clause stated intelligible principle and provided guidance that allowed person to conform his or her conduct to law. *United States v. Orona, 724 F.3d 1297, 2013 U.S. App. LEXIS 15669 (10th Cir.)*, cert. denied, *571 U.S. 1034, 134 S. Ct. 662, 187 L. Ed. 2d 438, 2013 U.S. LEXIS 8212 (2013)*.

In criminal trial for unlawfully possessing ammunition, district court's application of modified categorical approach to defendant's state law second-degree assault conviction to support defendant's ACCA sentencing enhancement was in error because "offensive physical contact" and "physical harm" were not alternative elements of completed battery

form of second-degree assault, and, under traditional categorical approach, defendant's second-degree assault conviction did not constitute predicate violent felony under ACCA. *United States v. Royal, 731 F.3d 333, 2013 U.S. App. LEXIS 20019 (4th Cir. 2013)*, cert. denied, *572 U.S. 1040, 134 S. Ct. 1777, 188 L. Ed. 2d 605, 2014 U.S. LEXIS 2325 (2014)*.

Where defendant appealed his 180-month sentence for violating *18 USCS § 922(g)*, he unsuccessfully argued that residual clause in *18 USCS § 924(e)(2)(B)(ii)* was unconstitutionally vague because it did not give fair notice of what crimes triggered statute's application. *United States v. Brown, 734 F.3d 824, 2013 U.S. App. LEXIS 22074 (8th Cir. 2013)*.

Where defendant appealed his 268-month sentence for violating *18 USCS § 922(g)(1)*, district court properly determined that he qualified as armed career criminal under *18 USCS § 924(e)* since maximum possible prison sentence that he faced for his three prior North Carolina state convictions for breaking and entering exceeded one year. *United States v. Kerr, 737 F.3d 33, 2013 U.S. App. LEXIS 24039 (4th Cir. 2013)*, cert. denied, *572 U.S. 1039, 134 S. Ct. 1773, 188 L. Ed. 2d 603, 2014 U.S. LEXIS 2374 (2014)*.

Where defendant appealed his 300-month sentence for violating *18 USCS §§ 922(g)(1)* and *924(e)*, at his arrest, he was in possession of Romarm, Draco 7.62 caliber pistol with vertical foregrip, which was no longer intended to be held and fired with one hand; consequently, it was not pistol, and did qualify for sentencing enhancement as any other weapon under *26 USCS § 5845(e)*. *United States v. Black, 739 F.3d 931, 2014 FED App. 0014P, 2014 U.S. App. LEXIS 759 (6th Cir. 2014)*, cert. denied, *572 U.S. 1129, 134 S. Ct. 2326, 189 L. Ed. 2d 200, 2014 U.S. LEXIS 3346 (2014)*.

Unpublished decision: Where defendant appealed his sentence for violating *18 USCS § 922(g)(1)*, district court did not rely upon his 1992 convictions in applying Armed Career Criminal Act; rather presentence report and district court excluded those convictions and relied solely upon four of defendant's convictions from 1980s. *United States v. Ross, 741 F.3d 743, 565 Fed. Appx. 505, 2013 U.S. App. LEXIS 25275 (7th Cir. 2013)*.

Where defendant was convicted of violating *18 USCS § 922(g)* and he appealed his 15-year mandatory minimum sentence for violating Armed Career Criminal Act (ACCA), *18 USCS § 924(e)*, since his previous conviction under *35 Pa. Stat. Ann. § 780-113(a)(30)* for possession with intent to distribute cocaine was serious drug offense, it properly served as predicate offense for imposition of his 15-year minimum sentence under ACCA. *United States v. Abbott, 748 F.3d 154, 2014 U.S. App. LEXIS 6259 (3d Cir. 2014)*.

Where defendant was convicted of violating *18 USCS § 922(g)(1)* and he appealed his 15-year sentence under *18 USCS § 924(e)*, his argument failed under plain language of ACCA that since he was actually sentenced to less than one year for his state court conviction for robbery in third degree that conviction did not qualify as violent felony under ACCA. His state conviction in New York or robbery in third degree fell within ACCA, regardless of what sentence he received or why he received it. *United States v. Miles, 748 F.3d 485, 2014 U.S. App. LEXIS 6637 (2d Cir.)*, cert. denied, *574 U.S. 936, 135 S. Ct. 381, 190 L. Ed. 2d 255, 2014 U.S. LEXIS 6991 (2014)*.

Where defendant appealed his 15-year sentence for violating *18 USCS § 922(g)*, he had two convictions that qualified as violent felonies under Armed Career Criminal Act (ACCA), and his conviction under Arkansas carnal-abuse statute, *Ark. Code Ann. § 5-14-104* (current version *Ark. Code Ann. 5-14-125*), qualified as violent felony under ACCA's residual clause. *United States v. Howard, 754 F.3d 608, 2014 U.S. App. LEXIS 10816 (8th Cir. 2014)*, reh'g, en banc, denied, *2014 U.S. App. LEXIS 16502 (8th Cir. Aug. 26, 2014)*.

Where defendant appealed his 15-year sentence for violating *18 USCS § 922(g)* because he had three qualifying felonies under Armed Career Criminal Act (ACCA), his argument that ACCA's residual clause was unconstitutionally vague was foreclosed by U.S. Supreme Court's holdings in Sykes decision and James decision and by Eighth Circuit's holding in Evans decision. *United States v. Howard, 754 F.3d 608, 2014 U.S. App. LEXIS 10816 (8th Cir. 2014)*, reh'g, en banc, denied, *2014 U.S. App. LEXIS 16502 (8th Cir. Aug. 26, 2014)*.

Where defendant appealed his 150-month sentence for being felon in possession of firearm, he did not have required three predicate offenses to be considered armed career criminal since his Missouri suspended imposition of sentence for burglary was not conviction for purposes of Armed Career Criminal Act, and, as to his Kansas burglary conviction, district court lacked sufficient information upon which to find that he pled guilty to generic burglary under Kansas law. *United States v. Thornton, 766 F.3d 875, 2014 U.S. App. LEXIS 17386 (8th Cir. 2014)*.

Where defendant appealed his sentence for being felon in possession of firearm and possession of component part of ammunition, his 1985 Oklahoma state conviction for pointing firearm at person counted as violent felony under Armed Career Criminal Act. *United States v. Hood, 774 F.3d 638, 96 Fed. R. Evid. Serv. (CBC) 223, 2014 U.S. App. LEXIS 24239 (10th Cir. 2014)*, cert. denied, *135 S. Ct. 2370, 192 L. Ed. 2d 159, 2015 U.S. LEXIS 3426 (2015)*.

Where defendant appealed his 204-month sentence, he unsuccessfully argued that district court's determination that he qualified as armed career criminal violated his Sixth Amendment rights because jury as opposed to court was required to determine whether his (1) criminal history included necessary predicate offenses to trigger application of Armed Career Criminal Act (ACCA) and (2) prior convictions for second-degree assault could be counted as separate offenses under ACCA. *United States v. Daniels, 775 F.3d 1001, 2014 U.S. App. LEXIS 24556 (8th Cir. 2014)*, cert. denied, *577 U.S. 884, 136 S. Ct. 191, 193 L. Ed. 2d 151, 2015 U.S. LEXIS 5354 (2015)*.

Where defendant appealed his 180-month sentence for being felon in possession of firearm, district court did not err in sentencing him as armed career criminal since his previous convictions for June 8 and 9, 2004 drug crimes had sufficient temporal separateness to be treated as separate Armed Career Criminal Act predicates. *United States v. Abbott, 794 F.3d 896, 2015 U.S. App. LEXIS 12620 (8th Cir. 2015)*.

Where defendant appealed his 180-month sentence for being felon in possession of firearm, he unsuccessfully argued that two counts prosecuted under same criminal case could not be counted as separate Armed Career Criminal predicates; *18 USCS § 924(e)* did not require separate prosecutions, as it was sufficient that offenses occurred at different times. *United States v. Abbott, 794 F.3d 896, 2015 U.S. App. LEXIS 12620 (8th Cir. 2015)*.

Where defendant pled guilty to being felon in possession of firearm and was sentenced as armed career criminal under violent felonies provision of Armed Career Criminal Act, he had to be resentenced since government failed to establish that he had requisite three prior violent felonies; district court erred in considering presentence report from unrelated proceeding. *United States v. Braun, 801 F.3d 1301, 25 Fla. L. Weekly Fed. C 1590, 2015 U.S. App. LEXIS 15908 (11th Cir. 2015)*.

Where defendant appealed his 262-month sentence for violating *18 USCS § 922(g)(1)*, district court did not err by finding that he was armed career criminal; his conviction for assault within maritime and territorial jurisdiction and his two convictions for use of firearm during commission of violent crime were predicate offenses under Armed Career Criminal Act. *United States v. Boman, 810 F.3d 534, 99 Fed. R. Evid. Serv. (CBC) 421, 2016 U.S. App. LEXIS 129 (8th Cir. 2016)*, reh'g, en banc, denied, *2016 U.S. App. LEXIS 3854 (8th Cir. Mar. 1, 2016)*.

Where defendant appealed his sentence for violating *18 USCS § 922(g)(1)*, which was enhanced pursuant to *18 USCS § 924(e)*, his felony riot conviction under *Wash. Rev. Code § 9A.84.010* was not violent felony for purposes of Armed Career Criminal Act because it was overinclusive and indivisible with respect to term force. *United States v. Werle, 815 F.3d 614, 2016 U.S. App. LEXIS 3996 (9th Cir. 2016)*.

Where defendant appealed his sentence for being felon in possession of firearm, without evidence establishing which portion of *Mo. Rev. Stat. § 575.150* defendant was convicted for violating, appellate court could not conclude that any of his prior convictions were violent felonies under Armed Career Criminal Act's force clause. *United States v. Shockley, 816 F.3d 1058, 2016 U.S. App. LEXIS 5357 (8th Cir. 2016)*.

Where defendant appealed his sentence for being felon in possession of firearm,in light of Johnson decision, his prior convictions could no longer qualify as predicate offenses under Armed Career Criminal Act'S residual clause. *United States v. Shockley, 816 F.3d 1058, 2016 U.S. App. LEXIS 5357 (8th Cir. 2016)*.

Where defendant appealed his 135-month sentence for violating *18 USCS § 922(g)(1)*, which was enhanced under *18 USCS § 924(e)*, district court did not err in concluding that his three March 30 burglaries, in violation of *Tenn. Code Ann. § 39-14-403*, were committed on occasions different from one another. *United States v. Pledge, 821 F.3d 1035, 2016 U.S. App. LEXIS 8138 (8th Cir.)*, cert. denied, *137 S. Ct. 258, 196 L. Ed. 2d 195, 2016 U.S. LEXIS 4505 (2016)*.

Because *18 USCS § 924(a)(1)(B)* requires that violation of *18 USCS § 922(k)* be knowing, government must establish not only that defendant knowingly received firearm but that he knew that serial number had been removed. *United States v. Fennell, 53 F.3d 1296, 311 U.S. App. D.C. 332, 1995 U.S. App. LEXIS 10074 (D.C. Cir. 1995)*, remanded, *77 F.3d 510, 316 U.S. App. D.C. 198, 1996 U.S. App. LEXIS 10703 (D.C. Cir. 1996)*.

Unpublished decision: Federal prisoner's life sentence for firearm offense under *18 USCS §§ 922(g)* and *924(e)* was not illegal under former *Fed. R. Crim. P. 35(a)* because law of case had concluded that life sentence was imposed under § 924(e)(1) as armed career criminal and not under § 924(c)(3) and prisoner failed to show that exception applied; additionally, prisoner was sentenced under version of § 924(e) in effect at time he committed his offenses so that there was no Ex Post Facto Clause violation. *Griffin v. United States, 405 Fed. Appx. 377, 2010 U.S. App. LEXIS 25525 (11th Cir. 2010)*.

Unpublished decision: In case in which defendant appealed his concurrent 180-month sentences for violating *18 USCS § 922(g)(1)* and *8 USCS § 1326(a)*, he unsuccessfully argued that district court improperly imposed mandated minimum sentence under Armed Career Criminal Act (ACCA) *18 USCS § 924(e)* because indictment made no allegations concerning his prior crimes and prosecution did not prove at trial that crimes were committed on occasions different from one another; existence of prior convictions used to enhance sentence under ACCA did not have to be charged in indictment or proved at trial; in particular, whether prior convictions happened on different occasions from one another is not fact required to be determined by jury but is instead matter for sentencing court. *United States v. Rendon-Martinez, 437 Fed. Appx. 685, 2011 U.S. App. LEXIS 17911 (10th Cir. 2011)*.

Unpublished decision: Defendant's Fifth and Sixth Amendment rights did not include having prior felonies charged in indictment or proven to jury, even if they triggered application of sentencing enhancement of *18 USCS § 924(e)(1)*, and district court properly looked to evidence of prior convictions according to § 924(e)(1) to enhance his sentence for conviction under *18 USCS § 922(g)*, even though prior convictions were neither charged in indictment nor proven at trial. *United States v. Edwards, 447 Fed. Appx. 43, 2011 U.S. App. LEXIS 22293 (11th Cir. 2011)*, cert. denied, *565 U.S. 1225, 132 S. Ct. 1606, 182 L. Ed. 2d 213, 2012 U.S. LEXIS 1297 (2012)*.

Unpublished decision: In case in which defendant appealed his 180-month sentence for violating 8 USCS §§ 922(g)(1) and 924(d)(1), he unsuccessfully argued that record did not establish his eligibility for sentencing under *18 USCS § 924(e)*; he argued that district court committed plain error in using state conviction because state court's judgment's use of *Fla. Stat. § 893.13(1)(A)(1)* instead of *Fla. Stat. § 893.13(1)(a)(1)* in citing statute rendered judgment unconstitutional; he could not collaterally attack in federal sentencing proceeding under ACCA state court conviction on constitutional ground unless conviction was obtained in violation of his right to counsel, and defendant did not argue that he was convicted in derogation of that right. *United States v. Brunson, 451 Fed. Appx. 879, 2012 U.S. App. LEXIS 1058 (11th Cir. 2012)*.

Unpublished decision: In case in which defendant was sentenced under *18 USCS § 924(e)(1)* following his guilty plea to violating *18 USCS § 922(g)(1)* and *21 USCS § 841(a)*, he could not dispute that his criminal history made him armed career criminal; he conceded that two of his past convictions were for serious drug offenses because each carried maximum potential prison term of 10 years or more, and his argument that four other drug convictions were not predicates because, for each, possible prison sentence met ten-year threshold only after applying recidivism enhancement was foreclosed by Rodriquez decision. *United States v. Brown, 483 Fed. Appx. 289, 2012 U.S. App. LEXIS 10554 (7th Cir. 2012)*.

Unpublished decision: In case in which defendant appealed his sentence for violating *18 USCS §§ 922(g)(1)* and (g)(5)(A) and 924(a)(2) by arguing that his previous convictions did not meet criteria for enhanced sentence under *18 USCS § 924(e)*, district court relied on defendant's conviction on June 28, 1999 for trafficking, possession with intent

to distribute cocaine, and another conviction for same offense; first drug trafficking conviction covered three offenses, occurring on separate dates in 1996 and 1997, that were consolidated into one plea agreement, and each of consolidated offenses carried sentence of nine years, and aggravation enhancement under *N.M. Stat. Ann. § 31-18-15.1* could have applied to each offense, thereby raising each above 10-year threshold required for sentencing under ACCA, and it was undisputed that 2002 conviction could have been enhanced in several ways, and met 10-year threshold. *United States v. Romero-Leon, 488 Fed. Appx. 302, 2012 U.S. App. LEXIS 14042 (10th Cir. 2012)*, remanded, *622 Fed. Appx. 712, 2015 U.S. App. LEXIS 13062 (10th Cir. 2015)*.

Unpublished decision: In criminal trial in which defendant pled guilty to being felon in possession of firearm in violation of *18 USCS § 922(g)(1)*, district court properly concluded that defendant was armed career criminal under *18 USCS § 924(e)*, because district court correctly held that defendant's conviction for eluding police in vehicle under *Wash. Rev. Code § 46.61.024* qualified as violent felony under § 924(e)(2)(B)(ii) based on legal precedent. *United States v. Denson, 488 Fed. Appx. 314, 2012 U.S. App. LEXIS 14143 (10th Cir. 2012)*.

Unpublished decision: In case in which defendant appealed his 360-month sentence for violating *21 USCS § 841(a)* and *18 USCS §§ 924(c)(1)* and *922(g)(1)*, which was enhanced under *18 USCS § 924(e)*, district court did not plainly err in finding that his three 1996 convictions were committed on separate occasions. *United States v. Chatman, 487 Fed. Appx. 769, 2012 U.S. App. LEXIS 18141 (3d Cir. 2012)*, cert. denied, *568 U.S. 1111, 133 S. Ct. 912, 184 L. Ed. 2d 700, 2013 U.S. LEXIS 242 (2013)*.

Unpublished decision: In case in which defendant appealed his 360-month sentence for violating *21 USCS § 841(a)* and *18 USCS §§ 924(c)(1)* and *922(g)(1)*, which was enhanced under *18 USCS § 924(e)*, he unsuccessfully argued that issue of separateness of convictions should have been submitted to jury to be found beyond reasonable doubt pursuant to Apprendi decision; he had not contested dates of his prior offense conduct as he only disputed legal significance of those dates; therefore, dates crimes were committed were not in dispute, all that was left was legal conclusion which district court could make without jury. *United States v. Chatman, 487 Fed. Appx. 769, 2012 U.S. App. LEXIS 18141 (3d Cir. 2012)*, cert. denied, *568 U.S. 1111, 133 S. Ct. 912, 184 L. Ed. 2d 700, 2013 U.S. LEXIS 242 (2013)*.

Unpublished decision: In case in which defendant appealed his 180-month sentence for violating *18 USCS § 922(g)(1)*, he unsuccessfully argued that district court erred in determining that he had three qualifying prior convictions under Armed Career Criminal Act, *18 USCS § 924(e)* because his two narcotics convictions under *Fla. Stat. § 893.13* did not qualify as serious drug offenses; it was clear on face of judgments that defendant was convicted of sale or delivery, although statute at time encompassed purchase as well; both judgments stated sale or delivery, with no mention of purchase. *United States v. Bailey, 522 Fed. Appx. 497, 2013 U.S. App. LEXIS 12112 (11th Cir. 2013)*.

Unpublished decision: In case in which defendant appealed his 180-month sentence for violating *18 USCS § 922(g)(1)*, his argument was foreclosed by James decision that his conviction for trafficking in 28-200 grams of cocaine did not qualify as serious drug offense under Armed Career Criminal Act (ACCA), *18 USCS § 924(e)*; in James decision, the Eleventh Circuit held that violation of Florida's drug trafficking statute, *Fla. Stat. § 893.135*, constituted ACCA predicate offense because statute necessarily inferred intent to distribute cocaine once defendant possessed 28 grams or more. *United States v. Bailey, 522 Fed. Appx. 497, 2013 U.S. App. LEXIS 12112 (11th Cir. 2013)*.

Unpublished decision: In case in which defendant appealed his 180-month sentence for violating *18 USCS § 922(g)(1)*, district court did not err by applying Armed Career Criminal Act (ACCA),*18 USCS § 924(e)*; defendant's Florida conviction for resisting officer with violence was violent felony under ACCA. *United States v. Bailey, 522 Fed. Appx. 497, 2013 U.S. App. LEXIS 12112 (11th Cir. 2013)*.

Unpublished decision: Where defendant appealed his 300-month total sentence for violating *18 USCS § 922(g)(1)* and *21 USCS § 841(a)(1)* and (b)(1)(B), district court did not err in sentencing him under *18 USCS § 924(2)*; it could not be concluded that it was clear or plain error for district court to have considered certain documents and conclude

that arson convictions under *Conn. Gen. Stat. §§ 53a-112(a)(1)(B)*, 53a-113(a) constituted two distinct violent felonies, and there was no error in district court's decision as to at least one of his three burglary convictions. *United States v. Roy, 550 Fed. Appx. 17, 2013 U.S. App. LEXIS 23244 (2d Cir. 2013)*.

Unpublished decision: Where defendant appealed his sentence for violating *18 USCS § 922(g)(1)*, neither Armed Career Criminal Act (ACCA) nor Constitution required jury finding on existence of three previous felony convictions required for ACCA enhancement. *United States v. Hoover, 548 Fed. Appx. 300, 2013 U.S. App. LEXIS 24972 (5th Cir. 2013)*, cert. denied, *572 U.S. 1052, 134 S. Ct. 1804, 188 L. Ed. 2d 769, 2014 U.S. LEXIS 2513 (2014)*.

Unpublished decision: Where defendant appealed his sentence for violating *18 USCS § 922(g)(1)*, his argument was foreclosed that *18 USCS § 924(e)(1)* and (e)(2)(B)(ii), residual clause, which provided for sentence enhancement on prior conviction that otherwise involved conduct that presented serious potential risk of physical injury to another were unconstitutionally void for vagueness. *United States v. Hoover, 548 Fed. Appx. 300, 2013 U.S. App. LEXIS 24972 (5th Cir. 2013)*, cert. denied, *572 U.S. 1052, 134 S. Ct. 1804, 188 L. Ed. 2d 769, 2014 U.S. LEXIS 2513 (2014)*.

Unpublished decision: Where defendant appealed his sentence for violating *18 USCS § 922(g)(1)*, neither Armed Career Criminal Act (ACCA) nor Constitution required jury finding on existence of three previous felony convictions required for ACCA enhancement. *United States v. Hoover, 548 Fed. Appx. 300, 2013 U.S. App. LEXIS 24972 (5th Cir. 2013)*, cert. denied, *572 U.S. 1052, 134 S. Ct. 1804, 188 L. Ed. 2d 769, 2014 U.S. LEXIS 2513 (2014)*.

Unpublished decision: Where defendant appealed his sentence for violating *18 USCS § 922(g)(1)*, his argument was foreclosed that *18 USCS § 924(e)(1)* and (e)(2)(B)(ii), residual clause, which provided for sentence enhancement on prior conviction that otherwise involved conduct that presented serious potential risk of physical injury to another were unconstitutionally void for vagueness. *United States v. Hoover, 548 Fed. Appx. 300, 2013 U.S. App. LEXIS 24972 (5th Cir. 2013)*, cert. denied, *572 U.S. 1052, 134 S. Ct. 1804, 188 L. Ed. 2d 769, 2014 U.S. LEXIS 2513 (2014)*.

Unpublished decision: Where defendant appealed his 180-month sentence for violating *18 USCS § 922(g)(1)*, district court did not err in determining that he should be sentenced under Armed Career Criminal Act, *18 USCS § 924(e)*; he did not deny that certified copy of his 1995 robbery conviction was accurate, nor did he argue that conviction failed to qualify for § 924(e)'s sentencing enhancement. *United States v. Blakney, 558 Fed. Appx. 300, 2014 U.S. App. LEXIS 4494 (3d Cir. 2014)*.

Unpublished decision: Where defendant appealed his 180-month sentence for violating *18 USCS § 922(g)*, district court had been directed by appellate court to sentence him as career offender under *18 USCS § 924(e)* on remand; under law of case doctrine, defendant could not relitigate issue of whether he qualified as career offender under Armed Career Criminal Act. *United States v. Smith, 559 Fed. Appx. 884, 2014 U.S. App. LEXIS 5019 (11th Cir.)*, cert. denied, *574 U.S. 858, 135 S. Ct. 147, 190 L. Ed. 2d 108, 2014 U.S. LEXIS 5984 (2014)*.

Unpublished decision: Where defendant appealed his 180-month sentence for violating *18 USCS § 922(g)*, his claim that government failed to establish that 1992 convictions occurred on occasions different from one another failed on merits; at resentencing hearing, he never once mentioned, let alone sufficiently challenged, 1992 convictions or their temporally separate nature, and district court did not plainly err in finding that his 1992 convictions were separate occurrences under Armed Career Criminal Act. *United States v. Smith, 559 Fed. Appx. 884, 2014 U.S. App. LEXIS 5019 (11th Cir.)*, cert. denied, *574 U.S. 858, 135 S. Ct. 147, 190 L. Ed. 2d 108, 2014 U.S. LEXIS 5984 (2014)*.

Unpublished decision: Where defendant appealed his 180-month sentence for violating *18 USCS § 922(g)*, defendant's vagueness challenge to residual clause in Armed Career Criminal Act failed on merits under Gandy decision. *United States v. Smith, 559 Fed. Appx. 884, 2014 U.S. App. LEXIS 5019 (11th Cir.)*, cert. denied, *574 U.S. 858, 135 S. Ct. 147, 190 L. Ed. 2d 108, 2014 U.S. LEXIS 5984 (2014)*.

Unpublished decision: Where defendant appealed his 180-month sentence, which was imposed under *18 USCS § 924(e)*, for his violation of *18 USCS § 922(g)*, his Sixth Amendment rights were not violated; under Almendarez-Torres decision, which remained binding precedent, his prior convictions were not facts that needed to be alleged in

his indictment or found by jury. *United States v. Smith, 559 Fed. Appx. 884, 2014 U.S. App. LEXIS 5019 (11th Cir.)*, cert. denied, *574 U.S. 858, 135 S. Ct. 147, 190 L. Ed. 2d 108, 2014 U.S. LEXIS 5984 (2014)*.

Unpublished decision: Where defendant appealed his 180-month statutory minimum sentence for violating *18 USCS §§ 922(g)(1)* and *924(e)(1)*, he unsuccessfully argued that two of three underlying convictions used to classify him as armed career criminal were handed down on same day, so they were not committed on different occasions; though two of his convictions occurred on same day, crimes occurred separately. *United States v. Flores, 562 Fed. Appx. 794, 2014 U.S. App. LEXIS 6079 (11th Cir. 2014)*.

Unpublished decision: Where defendant appealed his 180-month statutory minimum sentence for violating *18 USCS §§ 922(g)(1)* and *924(e)(1)*, relying on Sanchez decision, he challenged his designation as armed career criminal because his prior convictions failed to specify quantity of drugs involved; however, Sanchez decision did not apply, and his second degree felony drug convictions under *Fla. Stat. § 893.13(1)(a)* qualified as serious drug offenses for purposes of Armed Career Criminal Act ACCA as they carried maximum penalties of more than ten years, regardless of quantities involved. *United States v. Flores, 562 Fed. Appx. 794, 2014 U.S. App. LEXIS 6079 (11th Cir. 2014)*.

Unpublished decision: Where defendant appealed his 94-month sentence for possession of firearm by convicted felon, district court did not improperly apply sentence enhancement under Armed Career Criminal Act (ACCA); since *35 Pa. Stat. Ann. § 780-113(a)(30)* was divisible statute, his prior offenses qualified as serious drug offenses under ACCA. *United States v. Al-Akili, 578 Fed. Appx. 107, 2014 U.S. App. LEXIS 16420 (3d Cir. 2014)*.

Where defendant appealed his 235-month sentence for violating *18 USCS § § 922(g)(1)* and *924(e)*, district court did not abuse its discretion by concluding that his prior conviction under *Minn. Stat. § 609.66*, subd. 1e for attempted drive by shooting was violent felony under Armed Career Criminal Act. *United States v. Fogg, 836 F.3d 951, 2016 U.S. App. LEXIS 16479 (8th Cir. 2016)*, reh'g, en banc, denied, *2016 U.S. App. LEXIS 19607 (8th Cir. Oct. 31, 2016)*, cert. denied, *137 S. Ct. 2117, 198 L. Ed. 2d 203, 2017 U.S. LEXIS 3068 (2017)*, overruled in part, *Borden v. United States, 141 S. Ct. 1817, 210 L. Ed. 2d 63, 28 Fla. L. Weekly Fed. S. 835, 2021 U.S. LEXIS 2990 (2021)*.

Where defendant appealed his 180-month sentence for violating *18 USCS § 922(g)(1)*, his convictions for first-degree possession of marijuana for other than personal use under *Ala. Code § 13A-12-213(a)(1)* and trafficking in cocaine pursuant to § *Ala. Code § 13A-12-231(2)* were serious drug offenses under Armed Career Criminal Act. *United States v. White, 837 F.3d 1225, 26 Fla. L. Weekly Fed. C 825, 2016 U.S. App. LEXIS 17243 (11th Cir. 2016)*, reh'g, en banc, denied, *868 F.3d 1285, 27 Fla. L. Weekly Fed. C 119, 2017 U.S. App. LEXIS 16189 (11th Cir. 2017)*, cert. denied, *138 S. Ct. 1282, 200 L. Ed. 2d 477, 2018 U.S. LEXIS 1800 (2018)*.

Where defendant appealed his 15-month sentence for violating *18 USCS § 922(g)(1)*, his prior convictions for burglary in Illinois were not appropriate predicates under Armed Career Criminal Act; his statute of conviction was broader than generic burglary because when he was twice convicted of burglary in early 1970s, relevant statute applied not only to buildings but also to vehicles, such as house trailers, watercraft, aircraft, motor vehicles, and railroad cars. *United States v. Haney, 840 F.3d 472, 2016 U.S. App. LEXIS 19404 (7th Cir. 2016)*.

Where defendant appealed his 180-month sentence for violating *18 USCS § 922(a)(1)(A)* and (g)(1), district court did not err by finding that he was armed career criminal; he did not contest that his two convictions under Mass. Gen. Laws ch. 94C, § 32 were serious drug offenses, and his conviction under Mass. Gen. Laws ch. 265, § 15B(b) was violent felony. *United States v. Dawn, 842 F.3d 3, 2016 U.S. App. LEXIS 20566 (1st Cir. 2016)*, cert. denied, *137 S. Ct. 1361, 197 L. Ed. 2d 543, 2017 U.S. LEXIS 1780 (2017)*.

Where defendant appealed his 180-month sentence for violating *18 USCS § 922(g)(1)*, his prior conviction for making terroristic threats, in violation of *Minn. Stat. § 609.713*, subd. 1 (2004) was not Armed Career Criminal Act (ACCA) predicate offense, and without that conviction he had only two prior ACCA predicate convictions. *United States v. McFee, 842 F.3d 572, 2016 U.S. App. LEXIS 20593 (8th Cir. 2016)*.

Where defendant appealed district court's denial of his *28 U.S.C.S. § 2255* motion, district court erred in relying on modified categorical approach to treat his 1994 Oklahoma convictions for forcible sodomy, in violation of *Okla. Stat. Ann. tit. 21, § 888*, as predicates under Armed Career Criminal Act of 1984, *18 U.S.C.S. § 924(e)*. *United States v. Degeare, 884 F.3d 1241, 2018 U.S. App. LEXIS 6197 (10th Cir. 2018)*.

Where inmate appealed district court's denial of his *28 U.S.C.S. § 2255* motion, his argument was foreclosed by Smith decision that his conviction for Illinois residential burglary could not be a predicate violent felony because it was not an enumerated offense since Armed Career Criminal Act's enumerated clause mentioned burglary, not residential burglary. *Shields v. United States, 885 F.3d 1020, 2018 U.S. App. LEXIS 7095 (7th Cir. 2018)*.

Where inmate appealed district court's denial of his *28 U.S.C.S. § 2255* motion, he unsuccessfully argued that his 2003 conviction for armed robbery under Illinois law was not violent felony under Armed Career Criminal Act because armed robbery statute required only minimal force. *Shields v. United States, 885 F.3d 1020, 2018 U.S. App. LEXIS 7095 (7th Cir. 2018)*.

Defendant's claim district court erred by enhancing his sentence under Armed Career Criminal Act was without merit because record showed that defendant had three prior convictions for burglary, second degree burglary, and assault with intent to commit burglary, all in Tennessee state courts. *United States v. Smith, 2012 U.S. App. LEXIS 27429 (6th Cir. July 2, 2012)*.

Where defendant appealed his 15-year sentence for violating *18 USCS § 922(g)(1)*, he qualified as armed career criminal under *18 USCS § 924(e)(1)*; he acknowledged two qualifying prior convictions, and his conviction for second-degree battery under *Ark. Code Ann. § 5-13-202(a)(2)* was qualifying offense. *United States v. Winston, 845 F.3d 876, 2017 U.S. App. LEXIS 438 (8th Cir.)*, cert. denied, *137 S. Ct. 2201, 198 L. Ed. 2d 265, 2017 U.S. LEXIS 3513 (2017)*.

Defendant's sentence for possession of firearm as felon, in violation of *18 U.S.C.S. § 922(g)(1)*, required enhancement because convictions for burglary of habitation under Texas law were convictions for "violent felony" under Armed Career Criminal Act (ACCA), *18 U.S.C.S. § 924(e)*, and Texas conviction for possessing with intent to deliver was conduct involving "distribution" of controlled substances under § 924(e)(2)(A)(ii), making it a "serious drug offense" under ACCA. *United States v. Prentice, 956 F.3d 295, 2020 U.S. App. LEXIS 11562 (5th Cir.)*, cert. denied, *141 S. Ct. 920, 208 L. Ed. 2d 466, 2020 U.S. LEXIS 5971 (2020)*.

References in the indictment to sentence enhancements were mere surplusage and may be disregarded if remaining allegations were sufficient to charge crime; defendant had three qualifying prior convictions and indictment was sufficient to charge him even without reference to other statute. *United States v. Thompson, 2021 U.S. App. LEXIS 22041 (8th Cir. July 26, 2021)*.

Defendant had to be resentenced for violating *18 U.S.C.S. § 922(g)(1)* since his his conviction for aggravated assault with deadly weapon, in violation of *O.C.G.A. § 16-5-21(a)(2)*, did not qualify as violent felony within meaning of Armed Career Criminal Act's elements clause, *18 U.S.C. § 924(e)(2)(B)(i)*. *United States v. Carter, 2021 U.S. App. LEXIS 22879 (11th Cir. Aug. 3, 2021)*.

District court did not plainly err in interpreting *18 U.S.C.S. § 924(c)* and calculating defendant's guidelines range in light of his felon-in-possession conviction where case law previously explained that violations of *18 U.S.C.S. §§ 922(g)(1)* and *924(c)* were distinct offenses, the guidelines already accounted for defendant's concern, and § 924(c) set out a straightforward statutory command that the 60-month mandatory sentence was to be imposed consecutively to any other term of imprisonment. *United States v. Jefferson, 815 Fed. Appx. 87, 2020 U.S. App. LEXIS 16391 (8th Cir. 2020)*.

Defendant's participation in conspiracy may be broader than his underlying ACCA predicate convictions, and relevant inquiry was whether defendant's underlying convictions were distinct episodes in course of conduct constituting his participation in drug conspiracy; defendant's participation in conspiracy was broader than his two drug possession

offenses, and he returned to it, even after his state drug convictions. *United States v. Torres, 961 F.3d 618, 2020 U.S. App. LEXIS 17695 (3d Cir.)*, cert. denied, *141 S. Ct. 936, 208 L. Ed. 2d 476, 2020 U.S. LEXIS 5831 (2020)*.

Where defendant appealed his 300-month, within-U.S. Sentencing Guidelines, sentence for violating *18 USCS § 922(g)(1)*, his prior North Carolina convictions for assault with deadly weapon with intent to kill qualified as violent felonies under Armed Career Criminal Act's force clause. *United States v. Kelly, 677 Fed. Appx. 821, 2017 U.S. App. LEXIS 1399 (4th Cir. 2017)*.

Where defendant appealed his 180-month sentence for violating *18 USCS § 922(g)(1)*, he should not have been sentenced under Armed Career Criminal Act (ACCA) because, under Johnson decision, his false imprisonment conviction, in violation of *Fla. Stat. § 787.02*, was not valid ACCA predicate. *United States v. Driver, 663 Fed. Appx. 915, 2017 U.S. App. LEXIS 1556 (11th Cir. 2017)*.

Where defendant appealed his 180-month sentence for violating *18 USCS § 922(g)(1)*, arguing that his convictions for unarmed bank robbery did not qualify as violent felonies under elements clause of Armed Career Criminal Act, *18 USCS § 2113(a)* bank robbery categorically qualified as violent felony under *18 USCS § 924(e)*. *United States v. Horsting, 678 Fed. Appx. 947, 2017 U.S. App. LEXIS 2001 (11th Cir. 2017)*.

Where defendant appealed his 180-month sentence for violating *18 USCS §§ 922(g)(1)* and *924(e)(1)*, his three convictions under *Fla Stat. § 893.13(1)* were serious drug offenses under Armed Career Criminal Act (ACCA), and his conviction for aggravated battery with great bodily harm under *Fla. Stat § 784.045(1)(a)(1)* qualified as violent felony under ACCA. *United States v. Hale, 705 Fed. Appx. 876, 2017 U.S. App. LEXIS 16059 (11th Cir. 2017)*, cert. denied, *138 S. Ct. 1030, 200 L. Ed. 2d 287, 2018 U.S. LEXIS 1155 (2018)*.

Where defendant appealed his 180-month sentence for violating *18 USCS §§ 922(g)(1)* and *924(e)(1)*, there was no Fifth or Sixth Amendment violation; his argument failed that dates of his offenses were non-elemental facts that could not be found by sentencing court in order to enhance his sentence under Armed Career Criminal Act. *United States v. Hale, 705 Fed. Appx. 876, 2017 U.S. App. LEXIS 16059 (11th Cir. 2017)*, cert. denied, *138 S. Ct. 1030, 200 L. Ed. 2d 287, 2018 U.S. LEXIS 1155 (2018)*.

Where defendant appealed his 15-year sentence for violating *18 USCS §§ 922(g)(1)* and *924(e)(1)*, his 2004 conviction for violating *Minn. Stat. § 609.344(1)(c)* qualified as predicate felony under Armed Career Criminal Act, and his two drug related offenses in Texas did not count as single offense for the purpose of calculating number of predicate felonies under § 924(e)(1). *United States v. Mata, 869 F.3d 640, 2017 U.S. App. LEXIS 16243 (8th Cir. 2017)*, reh'g, en banc, denied, *2017 U.S. App. LEXIS 20402 (8th Cir. Oct. 18, 2017)*.

Where defendant received Armed Career Criminal Act (ACCA) sentence enhancement, district court erred in its dismissal of his *28 USCS § 2255* motion; since ACCA's residual clause did not play any role in his sentencing, and, under Martinez-Rodriguez decision, Texas's injury-to-a-child offense was broader than ACCA's elements clause, defendant's Texas's injury-to-a-child conviction could not be used predicate offense under ACCA. *United States v. Taylor, 873 F.3d 476, 2017 U.S. App. LEXIS 19954 (5th Cir. 2017)*.

Where defendant appealed his 210-month sentence for violating *18 USCS § 922(g)(1)*, because he specifically indicated that he had no dispute with facts in presentence report (PSR), and because supplemented record on appeal confirmed PSR's descriptions of relevant offenses, he failed to show that district clearly or obviously erred, and he also failed to show reversible plain error in district court's characterization of his prior convictions as violent felonies or serious drug offenses. *United States v. Moore, 711 Fed. Appx. 757, 2017 U.S. App. LEXIS 20974 (5th Cir. 2017)*.

Where defendant appealed his 180-month sentence for violating *18 USCS § 922(g)(1)*, he was properly classified as armed career criminal; he did not contest that his convictions for dealing in methamphetamine and Indiana robbery were qualifying convictions, and his Indiana Class B burglary of dwelling conviction was violent felony. *United States v. Foster, 877 F.3d 343, 2017 U.S. App. LEXIS 24830 (7th Cir. 2017)*.

Where defendant?s appealed their 180-month sentences for violating *18 USCS ? 922(g)(1)*, they were properly classified as armed career criminals; their violations of 720 ILCS 5/19-3 were generic burglary for purpose of *18 USCS ? 924(e)* and similar federal recidivist statutes. *Smith v. United States, 877 F.3d 720, 2017 U.S. App. LEXIS 25169 (7th Cir. 2017)*, cert. denied, *139 S. Ct. 784, 202 L. Ed. 2d 567, 2019 U.S. LEXIS 418 (2019)*, cert. denied, *139 S. Ct. 783, 202 L. Ed. 2d 567, 2019 U.S. LEXIS 450 (2019)*.

Where defendant appealed his 180-month sentence for violating *18 USCS § 922(g)(1)*, he was armed career criminal; his *Fla. Stat. § 893.13(1)(a)* and (2) convictions qualified as serious drug offenses under *18 USCS § 924(e)(2)(A)*, and his *Fla. Stat. § 843.01* conviction was violent felony under § 924(e)(2)(B)(i). *United States v. Martin, 719 Fed. Appx. 881, 2017 U.S. App. LEXIS 25231 (11th Cir. 2017)*, cert. denied, *138 S. Ct. 1601, 200 L. Ed. 2d 784, 2018 U.S. LEXIS 2551 (2018)*.

Where defendant appealed district court's denial of his *28 USCS § 2255* motion, in which he challenged his sentence for violating *18 USCS § 922(g)(1)*, his three prior convictions were for armed robbery under *Ariz. Rev. Stat. § 13-1904* did not qualified as violent felonies under Armed Career Criminal Act's force clause or enumerated felonies clause. *United States v. Jones, 877 F.3d 884, 2017 U.S. App. LEXIS 25406 (9th Cir. 2017)*.

Where defendant appealed district court's denial of his *28 USCS § 2255* motion, 2015 Johnson decision did not render his sentencing enhancement invalid because his New York robbery convictions under *N.Y. Penal Law § 160.15(1)* and (4) still qualified as violent crimes under Armed Career Criminal Act's elements clause. *United States v. Nieves-Galarza, 718 Fed. Appx. 159, 2017 U.S. App. LEXIS 26167 (3d Cir. 2017)*, cert. denied, *139 S. Ct. 281, 202 L. Ed. 2d 186, 2018 U.S. LEXIS 4472 (2018)*.

Where defendant pled guilty to violating *18 USCS §§ 922(g)(1)* and *924(a)(2)* and he sought a certificate of appealability to challenge dismissal of his *28 USCS § 2255* motion, he had not been sentenced under Armed Career Criminal Act's residual clause, and he was attempting to leverage irrelevant Johnson decision to enable him to apply Mathis decision retroactively to his Wyoming burglary conviction. *United States v. Safford, 707 Fed. Appx. 571, 2017 U.S. App. LEXIS 26628 (10th Cir. 2017)*, cert. denied, *139 S. Ct. 127, 202 L. Ed. 2d 200, 2018 U.S. LEXIS 4528 (2018)*.

Where inmate appealed district court's dismissal of his second or successive *28 USCS § 2255* motion, he had not carried his burden under Johnson decision of showing that sentencing court more likely than not relied on residual clause of Armed Career Criminal Act, when it found that his prior burglary convictions were violent felonies. *Oxner v. United States, 719 Fed. Appx. 916, 2017 U.S. App. LEXIS 26666 (11th Cir. 2017)*, cert. denied, *139 S. Ct. 102, 202 L. Ed. 2d 65, 2018 U.S. LEXIS 5469 (2018)*.

Where defendant sought certificate of appealability, since both of his prior convictions for attempted first-degree murder with firearm enhancement were based on *N.M. Stat. §§ 30-2-1(A)*, 30-28-1, and 31-18-16, his sentence under *18 USCS § 924(e)* for violating *18 USCS § 922(g)(1)* was not unconstitutional under Johnson decision. *United States v. Thompson, 720 Fed. Appx. 492, 2018 U.S. App. LEXIS 503 (10th Cir.)*, cert. denied, *139 S. Ct. 184, 202 L. Ed. 2d 113, 2018 U.S. LEXIS 5760 (2018)*.

Where inmate appealed district court's dismissal of his *28 USCS § 2255* motion, it erred in dismissing his motion as time-barred under § 2255(f)(3) because his claim was not based on Johnson decision; inmate made repeated references in his motion to Johnson decision and fact that invalidation of Armed Career Criminal Act's residual clause created newly recognized right, and he filed his motion just before one-year anniversary of Johnson decision. *Brooks v. United States, 723 Fed. Appx. 703, 2018 U.S. App. LEXIS 1764 (11th Cir. 2018)*.

Where defendant appealed his 180-month sentence for violating *18 USCS § 922(g)(1)*, he had three qualifying convictions since his conviction under *Ala. Code § 13A-6-21(a)(2)*, for second-degree assault, qualified as predicate felony under elements clause of Armed Career Criminal Act. *United States v. Mitchell, 724 Fed. Appx. 784, 2018 U.S. App. LEXIS 3590 (11th Cir. 2018)*.

Where defendant appealed his sentence for violating *18 USCS § 922(g)(1)*, applying Armed Career Criminal Act's enhanced sentences to criminal defendants based on prior drug offense convictions was not cruel and unusual punishment. *United States v. Terry, 726 Fed. Appx. 939, 2018 U.S. App. LEXIS 4853 (4th Cir.)*, cert. denied, *139 S. Ct. 119, 202 L. Ed. 2d 74, 2018 U.S. LEXIS 5619 (2018)*.

Where defendant appealed his 15-year sentence for violating *18 USCS § 922(g)(1)*, he was properly sentenced under *18 USCS § 924(e)*, his prior armed robbery and carjacking convictions would not be treated as occurring on single occasion; that offenses were prosecuted in different counties provided substantial evidence to support district court's finding that offenses occurred in separate geographical locations, and offenses involved different victims. *United States v. Brewster, 718 Fed. Appx. 197, 2018 U.S. App. LEXIS 5189 (4th Cir. 2018)*, cert. denied, *139 S. Ct. 949, 203 L. Ed. 2d 133, 2019 U.S. LEXIS 786 (2019)*.

Where defendant appealed district court's denial of his *28 USCS § 2255* motion, district court erred in relying on modified categorical approach to treat his 1994 Oklahoma convictions for forcible sodomy, in violation of *Okla. Stat. Ann. tit. 21, § 888*, as predicates under Armed Career Criminal Act of 1984, *18 USCS § 924(e)*. *United States v. Degeare, 884 F.3d 1241, 2018 U.S. App. LEXIS 6197 (10th Cir. 2018)*.

Where defendant appealed his sentence for violating *18 USCS §§ 922(g)(1)* and *924(a)(2)*, parties agreed that he received sentencing enhancement under Armed Career Criminal Act's now-invalid residual clause, and that case should be remanded for resentencing. *United States v. Felix, 727 Fed. Appx. 921, 2018 U.S. App. LEXIS 6217 (9th Cir. 2018)*, reh'g, en banc, denied, *2018 U.S. App. LEXIS 16537 (9th Cir. June 19, 2018)*.

Where inmate appealed district court's denial of his *28 USCS § 2255* motion, his argument was foreclosed by Smith decision that his conviction for Illinois residential burglary could not be a predicate violent felony because it was not an enumerated offense since Armed Career Criminal Act's enumerated clause mentioned burglary, not residential burglary. *Shields v. United States, 885 F.3d 1020, 2018 U.S. App. LEXIS 7095 (7th Cir. 2018)*.

Where inmate appealed district court's denial of his *28 USCS § 2255* motion, he unsuccessfully argued that his 2003 conviction for armed robbery under Illinois law was not violent felony under Armed Career Criminal Act because armed robbery statute required only minimal force. *Shields v. United States, 885 F.3d 1020, 2018 U.S. App. LEXIS 7095 (7th Cir. 2018)*.

Where defendant appealed his sentence for violating *18 USCS § 922(g)(1)*, district court properly applied Armed Career Criminal Act of 1984 since his Connecticut first-degree robbery conviction, in violation of *Conn. Gen. Stat. § 53a-134(a)(4)*, was violent felony under *18 USCS § 924(e)(2)(B)(i)*, and his three prior robbery convictions were for offenses committed on occasions different from one another. *United States v. Bordeaux, 886 F.3d 189, 2018 U.S. App. LEXIS 7598 (2d Cir. 2018)*.

Where defendant appealed his 180-month sentence for violating *18 USCS §§ 922(g)(1)* and *924(e)*, his argument that his convictions under *Fla. Stat. §§ 843.01* and 893.13 did not qualify as Armed Career Criminal Act predicates was foreclosed by binding United States Court of Appeals for the Eleventh Circuit precedent. *United States v. Lockhart, 731 Fed. Appx. 743, 2018 U.S. App. LEXIS 10701 (11th Cir.)*, cert. denied, *139 S. Ct. 254, 202 L. Ed. 2d 170, 2018 U.S. LEXIS 4730 (2018)*.

Where defendant pled guilty to being felon in possession of firearm, district court erred in imposing increased sentence under Armed Career Criminal Act because his prior Texas conviction of simple robbery was not violent felony since Texas robbery statute did not have "use, attempted use, or threatened use of physical force" as element for robbery-by-injury; that statute requires that serious bodily injury resulted does not mean that it requires that defendant used force that caused injury. *United States v. Burris, 892 F.3d 801, 2018 U.S. App. LEXIS 16313 (5th Cir. 2018)*.

Where defendant appealed his 180-month sentence for violating *18 U.S.C.S. §§ 922(g)(1)* and *924(e)*, his argument that his convictions under *Fla. Stat. §§ 843.01* and 893.13 did not qualify as Armed Career Criminal Act predicates

was foreclosed by binding United States Court of Appeals for the Eleventh Circuit precedent. *United States v. Lockhart, 731 Fed. Appx. 743, 2018 U.S. App. LEXIS 10701 (11th Cir.)*, cert. denied, *139 S. Ct. 254, 202 L. Ed. 2d 170, 2018 U.S. LEXIS 4730 (2018)*.

Conviction for conspiracy to violate *18 USCS § 922(b)(3)* might be sufficient to support felony penalties under *18 USCS § 924(a)(1)(D)*. *United States v. Dedrick, 665 F. Supp. 2d 535, 2009 U.S. Dist. LEXIS 112186 (W.D.N.C. 2009)*.

Charges for making false statement in connection with acquisition of firearm, violation of *18 USCS § 922(a)(6)*, and making false statement in connection with purchase of firearm, violation of *18 USCS § 924(a)(1)(A)*, were not multiplicitous because § 922(a)(6) required proof that false statement was intended or likely to deceive dealer, there was no similar materiality requirement in § 924(a)(1)(A), and only § 922(a)(6) required that false statement be about information that federally licensed dealer was required to retain in his records. *United States v. Spring, 810 F. Supp. 2d 331, 2011 U.S. Dist. LEXIS 102969 (D. Me. 2011)*.

Defendant's argument that possession of firearm by felon, under *18 USCS § 922(g)*, did not qualify under *18 USCS § 924(e)* because it was not crime of violence, was unavailing because violent felony provision, under § 924(e)(1), applied to prior convictions, not to firearms possession conviction. *United States v. Ramirez, 815 F. Supp. 2d 389, 2011 U.S. Dist. LEXIS 114286 (D. Me. 2011)*.

Defendant's prior convictions qualified as predicate convictions under *18 USCS § 924(e)* because defendant had committed three burglaries which were considered violent felonies under § 924(e)(2)(B)(ii). *United States v. Ramirez, 815 F. Supp. 2d 389, 2011 U.S. Dist. LEXIS 114286 (D. Me. 2011)*.

Unpublished decision: Where defendant appealed his 360-month sentence for violating *18 USCS §§ 922(g)(1)* and *924(e)(1)*, he unsuccessfully argued that he should not have been sentenced as armed career criminal under § 924(e)(2) because he merely acted as unarmed, non-violent lookout during predicate conviction for second-degree robbery; he had no case law supporting contention, and it was contrary to well-established categorical approach to determining whether prior conviction was for violent felony. *United States v. Walker, 562 Fed. Appx. 547, 2014 U.S. App. LEXIS 11848 (8th Cir.*, cert. denied, *574 U.S. 1052, 135 S. Ct. 765, 190 L. Ed. 2d 637, 2014 U.S. LEXIS 8120 (2014)*, reh'g, en banc, denied, *2014 U.S. App. LEXIS 14600 (8th Cir. July 30, 2014)*.

Unpublished decision: Where defendant appealed his 180-month sentence for possession of firearm and ammunition by convicted felon, district court did not unlawfully enhance his sentence by ruling that his prior state drug convictions under *Fla. Stat. § 893.13(1)* were serious drug offenses under *18 USCS § 924(e)(2)(A)* and controlled substance offenses under USSG § 4B1.2(b). *United States v. Williams, 605 Fed. Appx. 833, 2015 U.S. App. LEXIS 4968 (11th Cir.)*, cert. denied, *576 U.S. 1013, 135 S. Ct. 2827, 192 L. Ed. 2d 864, 2015 U.S. LEXIS 3836 (2015)*.

Unpublished decision: Where defendant appealed his 262-month sentence for violating *18 USCS §§ 922(g)* and *924(e)*, his argument was foreclosed by precedent that his sentence was unconstitutionally enhanced by prior convictions that were not submitted to or found by jury. *United States v. Fernandez, 606 Fed. Appx. 977, 2015 U.S. App. LEXIS 5453 (11th Cir. 2015)*.

Unpublished decision: Where defendant appealed his 180-month for possession of firearm and ammunition by convicted felon, there was no plain error in determination that his prior Florida convictions for third-degree burglary, in violation of *Fla. Stat. § 810.02(1)(b)*, qualified as violent felonies under Armed Career Criminal Act's residual clause. *United States v. Patterson, 607 Fed. Appx. 855, 2015 U.S. App. LEXIS 5466 (11th Cir. 2015)*.

Unpublished decision: Where defendant appealed his 300-month sentence for being felon in possession of firearm, district court did not err in classifying him as armed career criminal; his first-degree North Carolina kidnapping conviction qualified categorically as violent felony under Armed Career Criminal Act. *United States v. Starkie, 611 Fed. Appx. 113, 2015 U.S. App. LEXIS 7430 (4th Cir.)*, review or reh'g granted, *615 Fed. Appx. 132, 2015 U.S. App. LEXIS 15869 (4th Cir. 2015)*.

Unpublished decision: Error in aiding-and-abetting instruction was not plain error as it did not affect trial's outcome as defendant was convicted as principal under *18 USCS § 922*, which necessarily meant he was actual shooter since only evidence of ammunition was spent nine millimeter shell casings found in parking lot where shots were fired and there was no evidence that anyone but shooter possessed gun that contained ammunition; jury's note did not show that defendant was convicted of aiding and abetting *18 USCS § 924* offense, rather than as actual shooter, as jury found that he possessed ammunition in gun and trial court directed jurors to answer question three on verdict form regardless of theory on which defendant's § 924 conviction was based. *United States v. Rosemond, 615 Fed. Appx. 480, 2015 U.S. App. LEXIS 10744 (10th Cir. 2015)*, cert. denied, *136 S. Ct. 1450, 194 L. Ed. 2d 550, 2016 U.S. LEXIS 1935 (2016)*.

Unpublished decision: Where defendant appealed her 15-year sentence for possession of firearm by convicted felon, district court's application of Armed Career Criminal Act (ACCA) was not inappropriate as her prior state drug convictions under *35 Pa. Stat. Ann. § 780-113(a)(30)* were serious drug offenses under ACCA; her convictions involved heroin, which was controlled substance under *21 USCS § 802*. *United States v. Somerville, 618 Fed. Appx. 69, 2015 U.S. App. LEXIS 9894 (3d Cir. 2015)*.

Unpublished decision: Where defendant appealed his 180-month sentence, which was enhanced under Armed Career Criminal Act (ACCA), for being felon in possession of firearm, his Apprendi argument that district court misapplied ACCA's mandatory minimum sentence because his three qualifying prior convictions were neither charged in indictment nor proven to jury was foreclosed by binding precedent. *United States v. Tinker, 618 Fed. Appx. 635, 2015 U.S. App. LEXIS 12553 (11th Cir.)*, cert. denied, *577 U.S. 993, 136 S. Ct. 520, 193 L. Ed. 2d 410, 2015 U.S. LEXIS 7189 (2015)*.

Unpublished decision: Where defendant appealed his 187-month sentence for possession of firearm and ammunition by convicted felon, in violation of *18 USCS §§ 922(g)(1)* and *924(e)*, his guilty plea in Florida state court to violating *Fla. Stat. § 893.13(1)*, even though adjudication had been withheld, was conviction for purpose of enhancing his sentence under Armed Career Criminal Act. *United States v. Murray, 625 Fed. Appx. 955, 2015 U.S. App. LEXIS 15760 (11th Cir. 2015)*.

Unpublished decision: While district court's categorization of battery on law enforcement officer offense as violent felony was constitutional error under Johnson decision, error was harmless because even without battery that offense counting against defendant, he qualified for Armed Career Criminal Act enhancement based on his three serious drug offenses. *United States v. Murray, 625 Fed. Appx. 955, 2015 U.S. App. LEXIS 15760 (11th Cir. 2015)*.

Unpublished decision: Where defendant appealed his sentence for being felon in possession of firearm, district court did not err in determining that he was armed career felon, his resisting arrest conviction qualified as violent felony, and his two drug-related convictions were serious drug offenses. *United States v. James, 631 Fed. Appx. 803, 2015 U.S. App. LEXIS 19878 (11th Cir. 2015)*, cert. denied, *136 S. Ct. 2509, 195 L. Ed. 2d 845, 2016 U.S. LEXIS 4136 (2016)*.

Unpublished decision: Where defendant appealed his 180-month sentence for violating *18 USCS § 922(g)(1)*, he was properly designated as armed career criminal based on his two prior Michigan unarmed robbery convictions under *Mich. Comp. Laws § 750.530*, and his prior Wisconsin burglary conviction under *Wis. Stat. § 943.10(1m)(a)*. *United States v. Lamb, 638 Fed. Appx. 575, 2016 U.S. App. LEXIS 6180 (8th Cir. 2016)*, reh'g, en banc, denied, *2016 U.S. App. LEXIS 8976 (8th Cir. May 16, 2016)*.

Unpublished decision: Defendant's sentence for possessing firearm and ammunition as convicted felon could not be enhanced under Armed Career Criminal Act (ACCA) as: (1) residual clause of ACCA had been held to be unconstitutionally vague; (2) neither party contended that defendant's convictions under Florida's burglary statute fell within elements clause of ACCA; and (3) government's remarks at sentencing effectively disclaimed reliance on enumerated crimes clause of ACCA and it could not raise that claim for first time on remand. *United States v. Maida, 650 Fed. Appx. 682, 2016 U.S. App. LEXIS 9546 (11th Cir. 2016)*.

Unpublished decision: Where defendant appealed his 180-month sentence for being felon in possession of firearm, under Smith decision, his two Florida sale of cocaine convictions, in violation of *Fla. Stat. § 893.13*, and his resisting arrest conviction, in violation of *Fla. Stat. § 843.01*, were qualifying predicate convictions under Armed Career Criminal Act. *United States v. Telusme, 655 Fed. Appx. 743, 2016 U.S. App. LEXIS 12547 (11th Cir. 2016)*, cert. denied, *137 S. Ct. 2091, 197 L. Ed. 2d 896, 2017 U.S. LEXIS 2839 (2017)*.

Unpublished decision: In case in which defendant had been convicted of violating *18 USCS § 922(g)* and *924(e)*, he unsuccessfully argued in his pro se supplemental appellate brief that § 924(e) was unconstitutionally vague because of definition of serious drug offense contained in § 924(e)(2)(A)(ii); according to defendant, phrase prescribed by law was unclear and allowed for arbitrary prosecution because some criminal offenses only prescribed sentences greater than ten years when certain facts were found or enhancements apply. *United States v. Jackson, 491 Fed. Appx. 554, 2012 FED App. 0825N, 2012 U.S. App. LEXIS 16042 (6th Cir. 2012)*, cert. denied, *568 U.S. 1241, 133 S. Ct. 1612, 185 L. Ed. 2d 600, 2013 U.S. LEXIS 2093 (2013)*.

Unpublished decision: In case in which defendant appealed his 300-month sentence for violating *18 USCS §§ 922(g)(1)* and *924(e)*, district court properly determined that he had requisite number of predicate offenses to be sentenced under Armed Career Criminal Act; although defendant argued that his conviction for third-degree fleeing and eluding police officer was not crime of violence, he conceded that precedent in the Sixth Circuit held that violation of Michigan's fleeing and eluding statute was crime of violence. *United States v. Harris, 491 Fed. Appx. 612, 2012 FED App. 0853N, 2012 U.S. App. LEXIS 16758 (6th Cir. 2012)*.

Unpublished decision: In case in which defendant appealed his 188-month sentence for violating *18 USCS § 922(g)*, he unsuccessfully argued that two of his prior drug offenses were not serious drug offenses, as defined in Armed Career Criminal Act (ACCA), *18 USCS § 924(e)*, and therefore ACCA should not have applied; he conceded that his 1991 and 1998 convictions for delivery or manufacture of less than 50 grams of controlled substance qualified, and he unsuccessfully argued that his 1993 conviction for delivery or manufacture of less than 50 grams of controlled substance did not qualify because final judgment was ambiguous; it was clear that in 1993, defendant was convicted of second offense of delivering drugs and faced maximum penalty of 40 years imprisonment. *United States v. Jordan, 509 Fed. Appx. 532, 2013 FED App. 0002N, 2013 U.S. App. LEXIS 194 (6th Cir. 2013)*, dismissed, *2020 U.S. App. LEXIS 519 (6th Cir. Jan. 8, 2020)*.

Unpublished decision: In case in which defendant appealed his 180-month sentence for violating *18 USCS § 922(g)(1)* by arguing that district court erred when it designated him as armed career criminal because it should not have counted his three previous convictions because they were ancient and stale; Armed Career Criminal Act did not make exception for old convictions. *United States v. McCormick, 517 Fed. Appx. 411, 2013 FED App. 0261N, 2013 U.S. App. LEXIS 5256 (6th Cir.)*, cert. denied, *571 U.S. 934, 134 S. Ct. 351, 187 L. Ed. 2d 244, 2013 U.S. LEXIS 6563 (2013)*.

Unpublished decision: In case in which defendant appealed his 15-year mandatory minimum sentence for violating *18 USCS § 922(g)(1)*, he unsuccessfully argued that his three separate drug offenses committed over fifteen-day period, but consolidated for purposes of plea and sentencing, should be considered single criminal episode under Armed Career Criminal Act (ACCA), *18 USCS § 924(e)*. Relying on dissent in Brady decision, defendant argued that ACCA was meant to enhance punishments for only incorrigible, habitual criminals, but not for individuals who happened to commit three crimes in relatively short time period; however, since Brady decision, the Sixth Circuit had repeatedly rejected that argument. *United States v. Banner, 518 Fed. Appx. 404, 2013 FED App. 0310N, 2013 U.S. App. LEXIS 6403 (6th Cir. 2013)*.

Unpublished decision: In case in which defendant appealed his 235-month sentence for violating *18 USCS §§ 922(g)(1)* and *924(e)(1)*, he unsuccessfully argued that district court erred when it sentenced him as armed career criminal because his Kentucky conviction for assault under extreme emotional disturbance under *Ky. Rev. Stat. Ann. § 508.040* did not qualify as violent felony under Armed Career Criminal Act. Section 508.040 incorporated elements of *Ky. Rev. Stat. Ann, §§ 508.010*, 508.020, or 508.030, and it operated only to reduce applicable sentence. *United States v. Colbert, 525 Fed. Appx. 364, 2013 FED App. 0462N, 2013 U.S. App. LEXIS 9555 (6th Cir. 2013)*.

Where defendant appealed his 15-year sentence for violating *18 USCS § 922(g)(1)*, Armed Career Criminal Act's definition of serious drug offense in *18 USCS § 924(e)(2)(A)*, was not unconstitutionally vague, and his 1999 Florida conviction was serious drug offense. *United States v. Johnson, 664 Fed. Appx. 839, 2016 U.S. App. LEXIS 20643 (11th Cir. 2016)*.

23. § 925

Despite provisions of *18 USCS § 922(h)* which restricts receipt of firearms by those convicted of felony, § 925(a)(1) allows convicted felon currently employed as adult corrections officer to carry weapon. *Hyland v. Fukuda, 580 F.2d 977, 1978 U.S. App. LEXIS 9460 (9th Cir. 1978)*.

As matter of law, gun dealer who is winding down his operations under *18 USCS § 925(b)* pursuant to valid license cannot be convicted of possession of firearms under *18 USCS § 922(g)(1)*. *United States v. Douglas, 974 F.2d 1046, 92 Cal. Daily Op. Service 7081, 92 D.A.R. 11408, 1992 U.S. App. LEXIS 18734 (9th Cir.)*, reh'g denied, *92 D.A.R. 14059, 1992 U.S. App. LEXIS 25768 (9th Cir. 1992)*.

18 USCS § 925 was unconstitutional insofar as it purported to withhold public interest exception from those convicted of domestic violence misdemeanors; government may not bar such people from possessing firearms in public interest while imposing lesser restriction on those convicted of crimes that differ only in being more serious. *FOP v. United States, 152 F.3d 998, 332 U.S. App. D.C. 49, 1998 U.S. App. LEXIS 21033 (D.C. Cir.)*, review or reh'g granted, *159 F.3d 1362, 333 U.S. App. D.C. 49, 1998 U.S. App. LEXIS 31404 (D.C. Cir. 1998)*.

24. §§ 1151 et seq. (Native Americans)

Neither *18 USCS § 1152* nor § 1153 deprived district court of jurisdiction for violation of *18 USCS § 922(g)*, even though defendant had already been punished for felony possession by tribal court, since federal courts retain jurisdiction over crimes not enumerated under *18 USCS § 1153* which are of general, non-territorial applicability, and thus § 1152 and its exceptions were not implicated. *United States v. Yannott, 42 F.3d 999, 1994 FED App. 0413P, 1994 U.S. App. LEXIS 35173 (6th Cir. 1994)*, cert. denied, *513 U.S. 1182, 115 S. Ct. 1172, 130 L. Ed. 2d 1125, 1995 U.S. LEXIS 1508 (1995)*.

Application of *18 USCS § 922(g)(1)* to Indian did not impermissibly abrogate rights to hunt and fish guaranteed to him as Colville Indian by "Colville Treaty" of 1891 between Colville Confederated Tribes and United States, and district court had subject matter jurisdiction over § 922(g)(1) offense, since Indian Major Crimes Act, *18 USCS § 1153* is not exclusive basis for federal jurisdiction over Indians and has no bearing on federal laws of nationwide applicability that make actions criminal wherever committed; thus, in order to exempt tribal members from § 922(g)(1) which is federal law of otherwise general applicability, treaty itself must specifically so provide, which Colville Treaty did not. *United States v. Gallaher, 275 F.3d 784, 2001 Cal. Daily Op. Service 10619, 2001 D.A.R. 13303, 2001 U.S. App. LEXIS 27186 (9th Cir. 2001)*.

25. §§ 3141 et seq. (Bail Reform Act)

Crime of illegal possession of firearm by previously-convicted felon, *18 USCS § 922(g)*, involves substantial risk of violence, and therefore, is crime of violence within special definition of Bail Reform Act of 1984, *18 USCS § 3142*. *United States v. Dillard, 214 F.3d 88, 2000 U.S. App. LEXIS 11413 (2d Cir. 2000)*, cert. denied, *532 U.S. 907, 121 S. Ct. 1232, 149 L. Ed. 2d 141, 2001 U.S. LEXIS 2035 (2001)*.

Because charge of felon in possession of firearm, *18 USCS § 922(g)(1)*, did not involve substantial risk of violence, it was not crime of violence within criminal detention statute, *18 USCS § 3142(g)* and (f)(1)(A); therefore, defendant should not have been detained merely on those grounds; but matter was remanded in case there were other grounds to detain. *United States v. Bowers, 432 F.3d 518, 2005 U.S. App. LEXIS 28776 (3d Cir. 2005)*.

Convicted felons who possess firearms in violation of *18 USCS § 922(g)* have not by that act alone committed crime of violence under Bail Reform Act, *18 USCS § 3141*, warranting pretrial detention, since plain meaning of Bail Reform

Act excludes felon-in-possession offenses from category of violent crimes that trigger detention hearings. *United States v. Singleton, 182 F.3d 7, 337 U.S. App. D.C. 96, 1999 U.S. App. LEXIS 14200 (D.C. Cir. 1999)*.

Even though offense of felon in possession under *18 USCS § 922(g)(1)* includes nonviolent felons, for purposes of Bail Reform Act, government is entitled to detention hearing under *18 USCS § 3142(f)(1)(A)* prior to releasing defendant on bail because crime constitutes crime of violence pursuant to *18 USCS § 3156*; using five-part test, defendant's crime was felony that by its nature created risk of violence. *United States v. Green, 414 F. Supp. 2d 1029, 2006 U.S. Dist. LEXIS 4140 (N.D. Okla. 2006)*.

Defendant, who was awaiting sentencing pursuant to guilty plea to being convicted felon in possession of firearm, was not entitled to bond under Bail Reform Act, *18 USCS § 3143*, because being felon in possession of firearm pursuant to *18 USCS § 922(g)(1)* constituted crime of violence for purposes of determining bail. **United States v. Moffitt, 527 F. Supp. 2d 474, 2006 U.S. Dist. LEXIS 81908 (W.D.N.C. 2006)*, remanded, *271 Fed. Appx. 355, 2008 U.S. App. LEXIS 6521 (4th Cir. 2008)*.

Magistrate judge properly ordered pretrial detention of defendant following his indictment for violation of *18 USCS § 922(g)(1)* and *26 USCS § 5861(d)*, (i) because factors under *18 USCS § 3142(g)* counseled in favor of detaining defendant, who was found with sawed-off shotgun, ammunition, ski mask, and latex gloves and who had history of not appearing at court; Government established by clear and convincing evidence that defendant was danger to community and by preponderance of evidence that defendant was flight risk. *United States v. Kelly, 792 F. Supp. 2d 1166, 2011 U.S. Dist. LEXIS 65528 (D.N.M. 2011)*.

26. §§ 3161 et seq. (Speedy Trial Act)

Reprosecution of defendant after dismissal of the indictment without prejudice for violation of *18 USCS § 3161* of the Speedy Trial Act was proper because the seriousness of the offenses—violations of *21 USCS § 841(a)(1)* and *18 USCS § 922(g)(1)*—acts and circumstances of the case, and the impact of reprosecution led to the conclusion that the district court did not abuse its discretion. *United States v. Williams, 576 F.3d 1149, 2009 U.S. App. LEXIS 18048 (10th Cir. 2009)*, cert. denied, *559 U.S. 914, 130 S. Ct. 1307, 175 L. Ed. 2d 1092, 2010 U.S. LEXIS 827 (2010)*.

Unpublished decision: Motion to dismiss pursuant to *18 USCS § 3162(a)(2)* on speedy trial grounds under *18 USCS § 3161(c)(1)* by defendant, who was convicted of conspiracy to possess with intent to distribute and distribute oxycodone, under *21 USCS § 846*, possession with intent to distribute and distribution of oxycodone, under *21 USCS § 841(a)(1)*, (b)(1)(C), possession of firearm by convicted felon, under *18 USCS §§ 922(g)(1)*, *924(a)(2)*, and for causing Coast Guard to attempt to save life and property when no help was needed, under 14 USCS § 88(c), was properly denied because defendant did not show that any time ran on clock between defendant's pretrial filings on April 9, 2009, and beginning of jury selection on August 10, 2010; however, defendant's sentence was vacated because district court erred in failing to provide adequate explanation for its chosen sentence. *United States v. Nesbitt, 464 Fed. Appx. 89, 2012 U.S. App. LEXIS 2270 (4th Cir. 2012)*, cert. denied, *568 U.S. 1204, 133 S. Ct. 1482, 185 L. Ed. 2d 382, 2013 U.S. LEXIS 1743 (2013)*.

Unpublished decision: Motion to dismiss pursuant to *18 USCS § 3162(a)(2)* on speedy trial grounds under *18 USCS § 3161(c)(1)* by defendant, who was convicted of conspiracy to possess with intent to distribute and distribute oxycodone, *21 USCS § 846*, possession with intent to distribute and distribution of oxycodone, *21 USCS § 841(a)(1)*, (b)(1)(C), possession of firearm by convicted felon, *18 USCS §§ 922(g)(1)*, *924(a)(2)*, and for causing Coast Guard to attempt to save life and property when no help was needed, 14 USCS § 88(c), was properly denied because defendant did not show that any time ran on clock between defendant's pretrial filings on April 9, 2009, and beginning of jury selection on August 10, 2010; however, defendant's sentence was vacated because district court erred in failing to provide adequate explanation for its chosen sentence. *United States v. Nesbitt, 464 Fed. Appx. 89, 2012 U.S. App. LEXIS 2270 (4th Cir. 2012)*, cert. denied, *568 U.S. 1204, 133 S. Ct. 1482, 185 L. Ed. 2d 382, 2013 U.S. LEXIS 1743 (2013)*.

District court did not abuse its discretion when it granted defendant's motion to dismiss indictment charging him with conspiracy to distribute and to possess with intent to distribute 100 grams or more of heroin, in violation of *21 USCS §§ 846* and *841*, and unlawful possession of stolen firearm, in violation of *18 USCS § 922*, because Government violated Speedy Trial Act, *18 USCS §§ 3161-3174*, without prejudice to Government's right to seek another indictment; offenses in question were serious felonies, there was no evidence that Government delayed prosecution to facilitate turning witnesses against defendant, and defendant did not show that Speedy Trial Act violation undermined his ability to mount effective defense. *United States v. Stevenson, 832 F.3d 412, 2016 U.S. App. LEXIS 14592 (3d Cir. 2016)*, cert. denied, *137 S. Ct. 674, 196 L. Ed. 2d 558, 2017 U.S. LEXIS 95 (2017)*.

When defendant was charged in timely filed original indictment with possession of firearms by felon, superseding indictment, filed 15 months after defendant's arrest, charging defendant with possession of ammunition by felon, did not violate *18 USCS § 3161(b)* because (1) defendant was charged with same crime—violating *18 USCS § 922(g)(1)*—in both indictments, with only difference being prohibited object possessed, and (2) type of prohibited object was not crime element, so superseding indictment only added facts to original indictment without altering crime or elements charged, so first indictment's filing tolled Act's thirty-day deadline, making superseding indictment timely. *United States v. Widi, 697 F. Supp. 2d 140, 2010 U.S. Dist. LEXIS 26220 (D. Me. 2010)*.

27. 18 USCS Appx § 1202 (repealed)

Previously convicted felon may be prosecuted simultaneously for violations of *18 USCS § 922(h)(1)* and 18 USCS Appendix § 1202(a)()1) involving same firearm where single act establishes receipt and possession; but felon may not be convicted and sentenced for violations of both offenses; if court is satisfied that there is sufficient proof to go to jury on both counts, it should instruct jury as to elements of each offense; should jury return guilty verdicts for each count, court should enter judgment on only one statutory offense. *Ball v. United States, 470 U.S. 856, 105 S. Ct. 1668, 84 L. Ed. 2d 740, 1985 U.S. LEXIS 79 (1985)*.

Defendant can be prosecuted under *18 USCS § 922* even though he could have been charged under 18 USCS Appx. § 1202, which has lesser maximum punishment. *United States v. Fournier, 483 F.2d 68, 1973 U.S. App. LEXIS 8623 (5th Cir. 1973)* ; *United States v. Thrasher, 569 F.2d 894, 1978 U.S. App. LEXIS 12119 (5th Cir.)*, cert. denied, *439 U.S. 840, 99 S. Ct. 128, 58 L. Ed. 2d 137, 1978 U.S. LEXIS 2791 (1978)*.

Sentence imposed on defendant convicted for violation of *18 USCS § 922(h)* was not invalid on theory that it exceeded maximum sentence allowed for conviction under 18 USCS Appendix § 1202(a), which prohibits same act, since prosecution may prosecute under either statute. *United States v. Pruner, 606 F.2d 871, 1979 U.S. App. LEXIS 11209 (9th Cir. 1979)*.

District Court is not required to vacate judgment carrying most severe punishment where District Court erred in sentencing defendant under both *18 USCS § 922(h)(1)* and *18 USCS § 1202(a)(1)* and upon appeal case was remanded with instructions to vacate one conviction. *United States v. Larson, 625 F.2d 67, 1980 U.S. App. LEXIS 14489 (5th Cir. 1980)*, disapproved, *Ball v. United States, 470 U.S. 856, 105 S. Ct. 1668, 84 L. Ed. 2d 740, 1985 U.S. LEXIS 79 (1985)*.

Receipt of firearms in violation of *18 USCS § 922(h)* is not sufficiently different from possession of firearms in violation of *18 USCS § 1202(a)* to permit consecutive sentencing for receipt and subsequent possession of single firearm; Congress intended receipt and possession to merge into single offense and government must elect to prosecute under either *18 USCS § 922(h)* or *18 USCS § 1202(a)*. *United States v. Hodges, 628 F.2d 350, 1980 U.S. App. LEXIS 13148 (5th Cir. 1980)*.

Receipt of firearm by person under indictment under *18 USCS § 922 (h)(1)* and unlawful possession of firearm under 18 USCS Appendix § 1202(a)(1) constitutes single offense for which only single sentence may be imposed. *United States v. Taylor, 635 F.2d 232, 1980 U.S. App. LEXIS 11756 (3d Cir. 1980)*.

Government may prosecute under either *18 USCS § 922* or 18 USCS Appendix § 1202, but defendant's convictions under both sections cannot stand simultaneously. *United States v. Ivy, 644 F.2d 479, 1981 U.S. App. LEXIS 13626 (5th Cir. 1981)*.

Court is not precluded by law from sentencing defendant under *18 USCS § 922* for one firearm and Appx. § 1202 for other firearm, although if prosecution fails to elect under which statute to proceed, and if convictions are rendered under both statutes, court may exercise its discretion in deciding which conviction to vacate. *United States v. Wiga, 662 F.2d 1325, 1981 U.S. App. LEXIS 15460 (9th Cir. 1981)*, cert. denied, *456 U.S. 918, 102 S. Ct. 1775, 72 L. Ed. 2d 178, 1982 U.S. LEXIS 1650 (1982)*.

Person cannot be convicted under both *18 USCS § 922* and 18 USCS Appx § 1202 where same conduct is involved. *United States v. Oliver, 683 F.2d 224, 1982 U.S. App. LEXIS 17387 (7th Cir. 1982)*.

Possession of firearm by convicted felon (18 USCS Appx § 1202) is not lesser included offense of receipt of firearm (*18 USCS § 922*); offenses are same. *United States v. Martin, 732 F.2d 591, 1984 U.S. App. LEXIS 23371 (7th Cir. 1984)*.

Illegal possession of firearms under 18 USCS Appendix § 1202 and illegal receipt of ammunition *18 USCS § 922* are not multiplicitous, each requires proof of distinctly different facts. *United States v. Gann, 732 F.2d 714, 15 Fed. R. Evid. Serv. (CBC) 988, 1984 U.S. App. LEXIS 22888 (9th Cir.)*, cert. denied, *469 U.S. 1034, 105 S. Ct. 505, 83 L. Ed. 2d 397, 1984 U.S. LEXIS 4468 (1984)*.

18 USCS § 922 requires proof of at least one fact, one element, which 18 USCS Appx § 1202 does not, therefore, where defendant was convicted of violating § 922 and § 1202, separate punishments were valid. *United States v. Reis, 788 F.2d 54, 1986 U.S. App. LEXIS 23747 (1st Cir. 1986)*.

Convicted felon cannot be convicted of both receipt of firearms by convicted felon under *18 USCS § 922* and possession of firearm by convicted felon under 18 App. USCS § 1202, even though there was independent proof of receipt, where possession of firearm was incidental to its receipt. *United States v. Thomas, 810 F.2d 478, 1987 U.S. App. LEXIS 2359 (5th Cir.)*, cert. denied, *482 U.S. 930, 107 S. Ct. 3218, 96 L. Ed. 2d 704, 1987 U.S. LEXIS 2704 (1987)*.

Conviction for both receipt of firearms in violation of *18 USCS § 922* and possession of multiple firearms in violation of 18 USCS App. § 1202 (now repealed) was improper, where all firearms were discovered on same date and seized from same location, since possession was incidental to receipt, and government had to rely on defendant's possession of firearms to establish receipt offense as well. *United States v. Jones, 841 F.2d 1022, 1988 U.S. App. LEXIS 2898 (10th Cir. 1988)*.

18 USCS § 922 and 18 USCS Appx. § 1202 overlap to considerable extent, but absent Congressional scheme limiting its choice of statutes, government is free to prosecute defendant under either section. *United States v. Panetta, 436 F. Supp. 114, 2 Fed. R. Evid. Serv. (CBC) 337, 1977 U.S. Dist. LEXIS 15281 (E.D. Pa. 1977)*, aff'd, *568 F.2d 771 (3d Cir. 1978)*, disapproved, *United States v. Batchelder, 581 F.2d 626, 1978 U.S. App. LEXIS 9987 (7th Cir. 1978)*.

28. Sentencing Guidelines

Terms used in Sentencing Guideline 2K2.1 are reasonably understood to carry same meaning as used in *18 USCS § 922* itself, as defined in *18 USCS § 921(a)*. *United States v. Shepardson, 196 F.3d 306, 1999 U.S. App. LEXIS 29727 (2d Cir. 1999)*, cert. denied, *528 U.S. 1196, 120 S. Ct. 1258, 146 L. Ed. 2d 114, 2000 U.S. LEXIS 1701 (2000)*.

Term "prohibited person" as used in USSG § 2K2.1 covers those persons charged by information, since *18 USCS § 922* defines "indictment" to include "indictment or information." *United States v. Gevedon, 214 F.3d 807, 2000 U.S. App. LEXIS 11669 (7th Cir.)*, cert. denied, *531 U.S. 916, 121 S. Ct. 273, 148 L. Ed. 2d 199, 2000 U.S. LEXIS 6497 (2000)*.

It is sensible to read former *18 USCS § 922(v)(2)* as creating exception for pre-ban weapons only with respect to separate crime of former *18 USCS § 922(v)(1)*, and not with respect to USSG § 2K2.1(a)(4)(B); majority of courts that have addressed issue have held former *18 USCS § 922(v)(2)* was not exception to USSG § 2K2.1(a)(4)(B) or other like provisions. *United States v. Ray, 411 F.3d 900, 2005 U.S. App. LEXIS 11111 (8th Cir.)*, cert. denied, *546 U.S. 955, 126 S. Ct. 469, 163 L. Ed. 2d 356, 2005 U.S. LEXIS 7609 (2005)*.

Enhanced base level under USSG § 3C1.1,was properly imposed because defendant, who was charged with illegally possessing firearm in violation of *18 USCS § 922(g)*, provided materially false statement to police through intermediary; he informed police that his arresting officers planted gun on him when they did not do so. *United States v. Selvie, 684 F.3d 679, 2012 U.S. App. LEXIS 13291 (7th Cir. 2012)*.

Defendant who pled guilty to being felon in possession of firearm, in violation of *18 USCS § 922*, was precluded by court of appeals' decision in *United States v. Evans, 699 F.3d 858, 2012 U.S. App. LEXIS 23419*, from challenging district court's determination that his 20-year-old conviction for selling or delivering cocaine, in violation of *Tenn. Code Ann. § 39-17-417*, was "controlled substance offense" under USSG § 2K2.1; defendant's claim that Tennessee drug delivery statute did not match up with controlled substance offense under USSG because former included attempting to transfer drugs while USSG only included completed controlled substance offenses was considered and rejected in Evans. *United States v. Havis, 907 F.3d 439, 2018 FED App. 238P, 2018 U.S. App. LEXIS 29628 (6th Cir. 2018)*, remanded, *927 F.3d 382, 2019 FED App. 117P, 2019 U.S. App. LEXIS 17042 (6th Cir. 2019)*.

Legitimate concerns with overreaching in context of USSG § 2K2.1 were not present because defendant's firearm offense involved possession of weapon that was also in defendant's possession hours earlier in course of drug sales, and clearly fell within scope of relevant conduct. *United States v. Harper, 766 F.3d 741, 2014 U.S. App. LEXIS 17428 (7th Cir. 2014)*.

Because state felon in possession of firearm statute under which defendant was convicted criminalized more conduct than federal statute, there was no categorical match; district court erred in applying eight-level enhancement. *United States v. Hernandez, 769 F.3d 1059, 2014 U.S. App. LEXIS 20057 (9th Cir. 2014)*.

In sentencing defendant for being prohibited person in possession of firearm, district court erred by applying sentencing enhancement based on prior convictions for burglary and robbery because it relied on factual allegations, rather than addressing whether Puerto Rico statutes included elements of unlawful entry or violent force. *United States v. Castro-Vazquez, 802 F.3d 28, 2015 U.S. App. LEXIS 15857 (1st Cir. 2015)*.

Defendant should not have been sentenced as career offender under USSG § 4B1.1 because, where government conceded that residual clause of USSG § 4B1.2 was invalid, there was no textual hook in USSG § 4B1.2 to allow for conclusion that defendant's possession of firearm under this section constituted crime of violence. *United States v. Soto-Rivera, 811 F.3d 53, 2016 U.S. App. LEXIS 1111 (1st Cir. 2016)*.

Unpublished decision: Finding that defendant's prior conviction for possession of firearm by felon under *Fla. Stat. § 790.23(1)* was aggravated felony under *8 USCS §§ 1101(a)(43)*, *1326(b)(2)*, USSG § 2L1.2(b)(1)(C), 18 USCS § 922(g)(1), was not plain error as no precedent held § 790.23 criminalized possession of antique firearm by felon in some instances beyond scope of § 922(g)(1). *United States v. Sanchez, 458 Fed. Appx. 374, 2012 U.S. App. LEXIS 699 (5th Cir. 2012)*.

Unpublished decision: In sentencing defendant for unlawful possession of firearm as unlawful user of controlled substance, in violation of *18 USCS § 922(g)(3)*, it was not unreasonable for district court to follow recommendation of Sentencing Commission and to set defendant's base offense level in accordance with USSG § 2K2.1; district court was presented with no evidence showing that users of other drugs were more dangerous than users of marijuana when they possessed firearm. *United States v. Santos, 494 Fed. Appx. 676, 2012 U.S. App. LEXIS 24637 (8th Cir. 2012)*, reh'g denied, *2013 U.S. App. LEXIS 418 (8th Cir. Jan. 7, 2013)*.

Defendant's 71-month sentence for his conviction of being felon in possession of firearm, 34-month upward variance, was not unreasonable as court thoroughly considered and discussed *18 USCS § 3553(a)* factors, including defendant's prior convictions, poor performance on supervision, sporadic employment record, and violent tendencies, and its consideration of his prior sentences in context of deterrence was proper. *United States v. Davis, 714 Fed. Appx. 614, 2018 U.S. App. LEXIS 6169 (8th Cir. 2018)*.

District court did not err in applying a 2-level enhancement after defendant pleaded guilty to being a felon in possession of a firearm because his knowledge of firearms and dominion over the residence were sufficient to establish his constructive possession of firearms found inside the house, defendant argued that his mother's ownership of .22 caliber revolver found on refrigerator precluded his constructive possession to which this argument was unavailing, possession may be sole or joint. *United States v. Goldsberry, 888 F.3d 941, 2018 U.S. App. LEXIS 10527 (8th Cir. 2018)*, reh'g, en banc, denied, *2018 U.S. App. LEXIS 14558 (8th Cir. May 31, 2018)*.

Section 2K2.1, cmt., application n. 8(A) did not expressly prohibit application of stolen firearm enhancement, and there was no impermissible double counting concern, because in addition to pleading guilty to possessing stolen firearm, defendant had also pleaded guilty to possession of firearm as convicted felon, and base offense level was determined under § 2K2.1(a)(6), not § 2K2.1(a)(7) *United States v. Shelton, 2018 U.S. App. LEXIS 28011 (October 3, 2018)*.

In sentencing defendant for being a felon in possession of a firearm, defendant's prior Illinois conviction for aggravated vehicular hijacking was properly deemed a crime of violence because the robbery and vehicular-hijacking statutes were so similar that vehicular hijacking could be fairly described, for all practical purposes, as robbery of a specific kind of property, a motor vehicle; the definition of violent felony under the Armed Career Criminal Act (ACCA) and the definition of a crime of violence under the Sentencing Guidelines were so similar that the cases interpreting them were considered interchangeably; the ACCA intended common-law robberies to be violent felonies; and Illinois's definition of robbery fit the common-law mold. *United States v. Sykes, 914 F.3d 615, 2019 U.S. App. LEXIS 3042 (8th Cir.)*, cert. denied, *140 S. Ct. 136, 205 L. Ed. 2d 52, 2019 U.S. LEXIS 5458 (2019)*.

In sentencing for being felon in possession of firearm, district court improperly included conviction for domestic abuse in defendant's criminal history because there was no intervening arrest. *United States v. Griffin, 763 Fed. Appx. 782, 2019 U.S. App. LEXIS 4989 (10th Cir. 2019)*.

Conviction for outraging public decency by urinating in public, misdemeanor, was properly included in defendant's criminal history in sentencing for being felon in possession of firearm because it was not clear error to distinguish between generic disorderly conduct and openly outraging public decency. Openly outraging public decency and generic disturbing the peace are not equivalent offenses. *United States v. Griffin, 763 Fed. Appx. 782, 2019 U.S. App. LEXIS 4989 (10th Cir. 2019)*.

On resentencing, it was procedural error to impose extreme upward departure from guidelines range because district court did not articulate why same factors that justified 22-month, 10 percent upward departure in first sentencing later justified 67-month, 160 percent departure at resentencing. *United States v. Ballard, 950 F.3d 434, 2020 U.S. App. LEXIS 4771 (7th Cir. 2020)*.

Defendant's 71-month sentence for his conviction of being felon in possession of firearm, 34-month upward variance, was not unreasonable as court thoroughly considered and discussed *18 U.S.C.S. § 3553(a)* factors, including defendant's prior convictions, poor performance on supervision, sporadic employment record, and violent tendencies, and its consideration of his prior sentences in context of deterrence was proper. *United States v. Davis, 714 Fed. Appx. 614, 2018 U.S. App. LEXIS 6169 (8th Cir. 2018)*.

In sentencing defendant for being a felon in possession of a firearm, defendant's prior Illinois conviction for aggravated vehicular hijacking was properly deemed a crime of violence because the robbery and vehicular-hijacking statutes were so similar that vehicular hijacking could be fairly described, for all practical purposes, as robbery of a specific kind of property, a motor vehicle; the definition of violent felony under the Armed Career Criminal Act (ACCA) and the

definition of a crime of violence under the Sentencing Guidelines were so similar that the cases interpreting them were considered interchangeably; the ACCA intended common-law robberies to be violent felonies; and Illinois's definition of robbery fit the common-law mold. *United States v. Sykes, 914 F.3d 615, 2019 U.S. App. LEXIS 3042 (8th Cir.)*, cert. denied, *140 S. Ct. 136, 205 L. Ed. 2d 52, 2019 U.S. LEXIS 5458 (2019)*.

Conviction for outraging public decency by urinating in public, misdemeanor, was properly included in defendant's criminal history in sentencing for being felon in possession of firearm because it was not clear error to distinguish between generic disorderly conduct and openly outraging public decency. Openly outraging public decency and generic disturbing the peace are not equivalent offenses. *United States v. Griffin, 763 Fed. Appx. 782, 2019 U.S. App. LEXIS 4989 (10th Cir. 2019)*.

Although U.S. Sentencing Guidelines Manual app. C, amend. 599 applied retroactively for purposes of motion to amend sentence under *18 USCS § 3582*, such amendment did not apply to convictions obtained under *18 USCS § 922(g)*, *21 USCS §§ 841*, *846*, or *845*. *Little v. United States, 242 F. Supp. 2d 478, 2003 U.S. Dist. LEXIS 1088 (E.D. Mich.)*, aff'd, *76 Fed. Appx. 671, 2003 U.S. App. LEXIS 19753 (6th Cir. 2003)*.

Unpublished decision: District court properly sentenced defendant to 31 months of imprisonment for being unlawful user of controlled substance in possession of firearm because there was sufficient reliable evidence to attribute responsibility for destructive device to him for purposes of upward adjustment; evidence supported finding that defendant was aware that destructive device was being manufactured at his home and that he either participated in or counseled his codefendant in making of device. *United States v. Waits, 581 Fed. Appx. 432, 2014 U.S. App. LEXIS 17353 (5th Cir. 2014)*.

Unpublished decision: Remand was required because some of district court's comments seemed to show that court believed, as matter of law, that it did not have authority to downwardly depart under USSG § 5K2.12 to firearm-possession offense. *United States v. Enoch, 627 Fed. Appx. 872, 2015 U.S. App. LEXIS 17264 (11th Cir. 2015)*.

Unpublished decision: While instructive as to definition of possession for purposes of USSG § 2K2.1, cases under this statute do not perfectly illustrate kind of evidence that is needed under preponderance-of-evidence standard applicable to § 2K2.1, especially where review of district court's findings is for clear error. *United States v. Penaloza, 648 Fed. Appx. 508, 2016 U.S. App. LEXIS 8878 (6th Cir. 2016)*.

Unpublished decision: Defendant pled guilty to being felon in possession, and also to possessing three stolen firearms, and that admission provided clear connection to offense firearms and rifle that was used to shoot victim; use of firearm was relevant conduct that could trigger USSG § 2K2.1(c)(1)'s cross reference to USSG § 2X1.1's enhancement provision even if weapon used in related conduct was different from weapon that formed basis for *18 USCS § 922(g)* offense, if there was "clear connection" between offense firearm and enhancement firearm. *United States v. Sanchez, 527 Fed. Appx. 488, 2013 FED App. 0563N, 2013 U.S. App. LEXIS 11972 (6th Cir.)*, cert. denied, *571 U.S. 968, 134 S. Ct. 463, 187 L. Ed. 2d 310, 2013 U.S. LEXIS 7278 (2013)*.

29. Miscellaneous

Absent Congressional scheme limiting its choice of statutes, government is free to charge defendant with violation of *18 USCS § 659* rather than *18 USCS § 922*, which carries lighter offense but requires proof of lesser mental state. *United States v. Phillips, 522 F.2d 388, 1975 U.S. App. LEXIS 12982 (8th Cir. 1975)*.

Defendant could not be convicted for possession of firearm by felon under state law pursuant to authority of Assimilated Crimes Act, *18 USCS § 113*, where act was made punishable by enactment of Congress under *18 USCS § 922*; defendant's argument that he was denied equal protection of law by being convicted of state offense of possession of firearms by felon under Assimilated Crimes Act was without merit since defendant's sentence was no greater than he would have received under § 922. *United States v. Butler, 541 F.2d 730, 1976 U.S. App. LEXIS 7286 (8th Cir. 1976)*.

Defendant may be convicted for violating *18 USCS §§ 2(b)* and *922(m)* for willfully causing father to fail to properly maintain required records of firearms sales, even though no violation of § 922(m) was committed "knowingly" by father, since § 2 provides that one who puts in motion or assists in illegal enterprise or causes commission of indispensable element of offense by innocent agent or instrumentality is guilty and it is not necessary for intermediary, such as father, to have criminal intent. *United States v. Smith, 584 F.2d 731, 1978 U.S. App. LEXIS 7491 (5th Cir. 1978)*.

Where company appealed district court's grant of summary judgment in favor of U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), ATF had no authority to deny company's license application under *18 USCS § 923(d)(1)(C)*; there was no evidence that two corporate shareholders affirmatively helped employee, who was convicted felon and family member, possess guns illegally at work as gunsmith. *Harris News Agency, Inc. v. Bowers, 809 F.3d 411, 2015 U.S. App. LEXIS 22298 (8th Cir. 2015)*.

District court did not err when it applied U.S. Sentencing Guidelines Manual § 2K2.1(b)(1)(A), (b)(4)(B), (b)(6)(B) enhancements on defendant's sentence since although it was true that he was not in actual possession of guns left in vehicle, court had sufficient evidence to establish that he had constructive possession of guns. And, based on where officers found guns and where he was seating, it could find that he knew of guns and had power and intent to exercise dominion and control over them. *United States v. Varner, 789 Fed. Appx. 144, 2019 U.S. App. LEXIS 29216 (11th Cir. 2019)*.

Because firearm purchaser's assault conviction contained element of use of physical force and assault was against person with whom he had domestic relationship, denial of firearm purchase was proper under *18 USCS § 922(g)(9)*, and purchaser was not entitled to relief under *18 USCS § 925A*. *Eibler v. Dep't of Treasury, 311 F. Supp. 2d 618, 2004 U.S. Dist. LEXIS 5961 (N.D. Ohio 2004)*.

Individual's ability to possess firearms was not restricted under *18 U.S.C.S. 922(g)(4)* based on brief emergency mental health examination pursuant to § 302 of Pennsylvania Mental Health Procedures Act that was justified by only ex parte decisions of police officer, unspecified official in county administrator's office, and single physician. He was not adjudicated as a mental defective or committed to a mental institution. *Franklin v. Sessions, 291 F. Supp. 3d 705, 2017 U.S. Dist. LEXIS 209662 (W.D. Pa. 2017)*.

III. CONSTITUTIONAL CONSIDERATIONS

A. In General

30. Bills of attainder

18 USCS § 922(a)(6) does not violate Article I § 9 of Constitution prohibiting bills of attainder and ex post facto laws. *Cody v. United States, 460 F.2d 34, 1972 U.S. App. LEXIS 9651 (8th Cir.)*, cert. denied, *409 U.S. 1010, 93 S. Ct. 454, 34 L. Ed. 2d 303, 1972 U.S. LEXIS 672 (1972)*.

18 USCS §§ 922(d)(1) and (n) do not meet specificity requirement of bill of attainder, since they set forth rule generally applicable to all persons possessing certain characteristic, i.e., having been indicted for felony, and are reasonably calculated to achieve non-punitive public purpose, i.e., to keep firearms out of hands of persons who, having been indicted for felonies, may have somewhat greater likelihood than other citizens to misuse firearms. *United States v. Munsterman, 177 F.3d 1139, 99 Cal. Daily Op. Service 3914, 99 D.A.R. 4993, 1999 U.S. App. LEXIS 10044 (9th Cir.)*, cert. denied, *528 U.S. 919, 120 S. Ct. 279, 145 L. Ed. 2d 234, 1999 U.S. LEXIS 6521 (1999)*.

18 USCS § 922(g)(1) and (9) are constitutional under Commerce Clause, Second or Tenth Amendment, and are not ex post facto laws or bills of attainder. *United States v. Hemmings, 258 F.3d 587, 2001 U.S. App. LEXIS 15572 (7th Cir. 2001)*.

18 USCS §§ 921(a)(30) and former 922(v) do not violate Bill of Attainder Clause, since Violent Crime Control and Law Enforcement Act of 1994 does not impose punishment upon offenders as contemplated by that clause. *Navegar,*

Inc. v. United States, 192 F.3d 1050, 338 U.S. App. D.C. 213, 1999 U.S. App. LEXIS 25052 (D.C. Cir. 1999), reh'g, en banc, denied, *200 F.3d 868, 339 U.S. App. D.C. 410, 2000 U.S. App. LEXIS 975 (D.C. Cir. 2000)*, cert. denied, *531 U.S. 816, 121 S. Ct. 53, 148 L. Ed. 2d 21, 2000 U.S. LEXIS 5058 (2000)*.

18 USCS § 922(a)(6) did not operate as an ex post facto law or as bill of attainder as applied to defendant who was convicted of possessing dangerous drugs which was punishable by imprisonment for a term exceeding one year. *United States v. Furem, 389 F. Supp. 285, 1975 U.S. Dist. LEXIS 13928 (E.D. Wis. 1975)*.

31. Ex Post Facto Clause

18 USCS § 922(a)(6) does not violate Article I § 9 of Constitution prohibiting bills of attainder and ex post facto laws. *Cody v. United States, 460 F.2d 34, 1972 U.S. App. LEXIS 9651 (8th Cir.)*, cert. denied, *409 U.S. 1010, 93 S. Ct. 454, 34 L. Ed. 2d 303, 1972 U.S. LEXIS 672 (1972)*.

Although Ex Post Facto Clause applies of its own force only to legislative acts, and not to judicial decisions, right which clause protects against legislative action, that fair warning of conduct which is criminally culpable, is protected against federal judicial action by due process clause of Fifth Amendment. *United States v. Goodheim, 651 F.2d 1294, 1981 U.S. App. LEXIS 11079 (9th Cir. 1981)*, reh'g denied, *664 F.2d 754, 109 L.R.R.M. (BNA) 2974, 92 Lab. Cas. (CCH) ¶ 13166, 1981 U.S. App. LEXIS 15390 (9th Cir. 1981)*, app. after remand, *686 F.2d 776, 11 Fed. R. Evid. Serv. (CBC) 792, 1982 U.S. App. LEXIS 25876 (9th Cir. 1982)*.

Defendant's conviction under *18 USCS § 922(g)(9)* did not violate Ex Post Facto Clause or Due Process Clause. *United States v. Mitchell, 209 F.3d 319, 2000 U.S. App. LEXIS 5109 (4th Cir.)*, cert. denied, *531 U.S. 849, 121 S. Ct. 123, 148 L. Ed. 2d 78, 2000 U.S. LEXIS 5516 (2000)*.

18 USCS § 922(g)(1) and (9) are constitutional under Commerce Clause, Second or Tenth Amendment, and are not ex post facto laws or bills of attainder. *United States v. Hemmings, 258 F.3d 587, 2001 U.S. App. LEXIS 15572 (7th Cir. 2001)*.

Conviction of defendant under *18 USCS § 922(g)(9)* for possession of rifle while hunting, based on 17-year-old simple assault conviction in connection with striking his wife in face, did not violate Ex Post Facto Clause because defendant possessed gun after enactment of § 922(g). *United States v. Pfeifer, 371 F.3d 430, 2004 U.S. App. LEXIS 11415 (8th Cir. 2004)*, reh'g, en banc, denied, *2004 U.S. App. LEXIS 16248 (8th Cir. Aug. 6, 2004)*.

Defendant's *18 USCS § 922(g)* conviction did not violate the Ex Post Facto Clause as a result of amendments to Texas's felon-in-possession statute, *Tex. Penal Code Ann. § 46.04*, where state law was relevant only to the prior-conviction element, that element was met with a prior burglary conviction, and thus, the Texas statute was irrelevant to defendant's conviction. *United States v. Massey, 849 F.3d 262, 2017 U.S. App. LEXIS 3227 (5th Cir.)*, cert. denied, *138 S. Ct. 500, 199 L. Ed. 2d 384, 2017 U.S. LEXIS 7177 (2017)*.

18 USCS § 922(a)(6) did not operate as an ex post facto law or as bill of attainder as applied to defendant who was convicted of possessing dangerous drugs which was punishable by imprisonment for a term exceeding one year. *United States v. Furem, 389 F. Supp. 285, 1975 U.S. Dist. LEXIS 13928 (E.D. Wis. 1975)*.

Statute criminalizing possession of firearm by person convicted of misdemeanor crime of domestic violence does not violate Ex Post Facto Clause, even though man convicted under *18 USCS § 922(g)(9)* argues it did not exist at time he battered his son, and he thus had no notice that it would be unlawful for him to possess firearm in future, because statute is not made retroactive merely because it draws upon antecedent facts for its operation, and does not violate due process by failing to provide adequate notice of acts which it makes criminal. *United States v. Hicks, 992 F. Supp. 1244, 1997 U.S. Dist. LEXIS 21784 (D. Kan. 1997)*.

It was immaterial that defendant's firearm purchase and domestic violence conviction occurred prior to enactment of *18 USCS § 922(g)(9)* because conduct prohibited by *18 USCS § 922(g)(9)* was possession of firearm; thus, application of *18 USCS § 922(g)(9)* to defendant did not run afoul of ex post facto prohibition of *U.S. Const. art. I, §*

9, cl. 3. Swartz v. Mathes, 291 F. Supp. 2d 861, 2003 U.S. Dist. LEXIS 20433 (N.D. Iowa 2003), aff'd, 412 F.3d 1008, 2005 U.S. App. LEXIS 12744 (8th Cir. 2005).

Unpublished decision: Defendant's 110-month sentence imposed upon his guilty plea conviction for possession of firearm, violation of 18 USCS §§ 922(g)(1) and 924(a)(2), did not violate ex post facto principles of Due Process Clause of Fifth Amendment because Booker did not affect him retroactively to his detriment, and sentence was within statutory limit of 10 years that existed at time defendant committed his offense, so he had fair warning of punishment. United States v. Muhammad, 190 Fed. Appx. 106, 2006 U.S. App. LEXIS 19968 (3d Cir. 2006).

Unpublished decision: Contrary to defendant's argument, 18 USCS § 922(g)(1) criminalized felon's possession of firearm, not interstate transportation of firearm in commerce; mere fact firearm felon possessed traveled in interstate commerce prior to law's enactment did not make defendant's conviction unconstitutional as "in or affecting commerce" language—only described what kind of gun felons could not possess and provided necessary jurisdictional basis for federal law; thus, evidence established that defendant possessed firearm well after enactment of Gun Control Act of 1968, defendant's conviction did not constitute ex post facto violation. United States v. Hill, 200 Fed. Appx. 783, 2006 U.S. App. LEXIS 25493 (10th Cir. 2006), cert. denied, *549 U.S. 1244, 127 S. Ct. 1349, 167 L. Ed. 2d 143, 2007 U.S. LEXIS 2627 (2007)*.

Unpublished decision: Since district court did not sentence defendant in excess of statutory maximum in effect at time of conduct and therefore did not violate Ex Post Facto Clause, defendant's sentence for possession of ammunition by convicted felon, in violation of 18 USCS § 922(g), was affirmed. United States v. Nesbitt, 210 Fed. Appx. 975, 2006 U.S. App. LEXIS 31468 (11th Cir. 2006).

Unpublished decision: Although North Carolina may have allowed defendant to possess guns between 1992 when his civil rights were restored after his prior convictions and 1995 complete ban under N.C. Gen. Stat. § 14-415.1(a), that did not require permanently excluding 1980s convictions for enhanced sentence under 18 USCS §§ 921(a)(20), 922(g)(1), 924(e), and USSG § 4B1.4; defendant's Ex Post Facto challenge failed as both federal and state courts had found 1995 indefinite ban to be rationally connected to state's legitimate interest in protecting public. United States v. Hairston, 364 Fed. Appx. 11, 2010 U.S. App. LEXIS 2386 (4th Cir. 2010), cert. denied, *560 U.S. 975, 130 S. Ct. 3436, 177 L. Ed. 2d 343, 2010 U.S. LEXIS 4925 (2010)*.

Federal Gun Control Act (GCA) is simply not retrospective in sense forbidden by Ex Post Facto Clause: it does not punish conduct that occurred before its adoption, and, because civil disability imposed on appellant neither constituted punishment nor punished conduct that occurred prior to GCA's adoption, preventing him from purchasing or possessing firearms did not violate Ex Post Facto Clause. Lehman v. Pa. State Police, 576 Pa. 365, 839 A.2d 265, 2003 Pa. LEXIS 2603 (Pa. 2003).

Unpublished decision: Defendant's convictions for being felon in possession of firearm did not violate Ex Post Facto Clause, U.S. Const. art. I, § 9, cl. 3, based on application to defendant of Mich. Comp. Laws § 750.224f, which was enacted after defendant was released from prison on armed robbery conviction; felon-in-possession convictions punished defendant's possession of firearms after enactment of firearms-possession restriction and did not punish defendant further for armed robbery felony. United States v. Jackson, 454 Fed. Appx. 435, 2011 FED App. 0886N, 2011 U.S. App. LEXIS 26041 (6th Cir. 2011), cert. denied, *568 U.S. 901, 133 S. Ct. 310, 184 L. Ed. 2d 184, 2012 U.S. LEXIS 6532 (2012)*.

32. Presumption of innocence

18 USCS § 922 is not unconstitutional on ground that it violates Fifth Amendment rights of those under indictment for felonies; although such persons are presumed innocent until convicted, government has legitimate and compelling interest in not permitting them to purchase guns unless and until they are acquitted. United States v. O'Neill, 467 F.2d 1372, 1972 U.S. App. LEXIS 7453 (2d Cir. 1972).

18 USCS § 922(h)(1) does not violate the Fifth Amendment Due Process Clause on ground that introduction of indictment for an offense other than crime of which defendant is accused is prejudicial and detracts from presumption of innocence; *18 USCS § 922* does not authorize fact finder to infer guilt from existence of prior indictment or even to discount credibility of a witness because of such indictment; instead the statute represents nothing more than a Congressional determination that one who is under indictment for crimes ought not to receive firearms in interstate commerce unless and until the indictment is dismissed or acquittal is obtained. *United States v. Craven, 478 F.2d 1329, 1973 U.S. App. LEXIS 10045 (6th Cir.)*, cert. denied, *414 U.S. 866, 94 S. Ct. 54, 38 L. Ed. 2d 85, 1973 U.S. LEXIS 799 (1973)*.

Defendant's argument that *18 USCS § 922*, which requires disclosure of pending indictments and predicates criminal sanctions on failure to make such disclosure, deprives him of presumption of innocence guaranteed by Fifth Amendment is without merit since "presumption of innocence" does not mean that no significance at all may be attached to indictment and statutory scheme does not authorize fact finder to infer guilt under Federal Firearms Act (*18 USCS §§ 921* et seq.) from existence of prior indictment, or even to discount creditability of witness because of such indictment. *United States v. Friday, 404 F. Supp. 1343, 1975 U.S. Dist. LEXIS 14710 (E.D. Mich. 1975)*.

33. Self-incrimination

Constitutional privilege against self-incrimination which exists as to private papers can not be maintained in relation to records required to be kept under *18 USCS § 922*. *Shapiro v. United States, 335 U.S. 1, 68 S. Ct. 1375, 92 L. Ed. 1787, 1948 U.S. LEXIS 2703 (1948)*, reh'g denied, *335 U.S. 836, 69 S. Ct. 9, 93 L. Ed. 388, 1948 U.S. LEXIS 1897 (1948)*, limited, *Russell v. United States, 306 F.2d 402, 62-2 U.S. Tax Cas. (CCH) ¶ 15434, 1962-2 U.S. Tax Cas. (CCH) ¶ 15434, 1962 U.S. App. LEXIS 4342 (9th Cir. 1962)* ; *United States v. Shafer, 445 F.2d 579, 1971 U.S. App. LEXIS 9023 (7th Cir.)*, cert. denied, *404 U.S. 986, 92 S. Ct. 448, 30 L. Ed. 2d 370, 1971 U.S. LEXIS 343 (1971)* ; *United States v. Resnick, 488 F.2d 1165, 1974 U.S. App. LEXIS 10306 (5th Cir.)*, cert. denied, *416 U.S. 991, 94 S. Ct. 2400, 40 L. Ed. 2d 769, 1974 U.S. LEXIS 281 (1974)* ; *United States v. Scherer, 523 F.2d 371, 1975 U.S. App. LEXIS 12885 (7th Cir. 1975)*, cert. denied, *424 U.S. 911, 96 S. Ct. 1108, 47 L. Ed. 2d 315, 1976 U.S. LEXIS 486 (1976)* ; *United States v. Cubeta, 369 F. Supp. 242, 1974 U.S. Dist. LEXIS 12835 (D. Conn. 1974)*.

Notice requirements of *18 USCS § 922* to common carrier of intent to carry arms is not unconstitutional as being in violation of Fifth Amendment privilege against self-incrimination inasmuch as common carrier is only party to receive required notice, and it need not inform any government officials to itself escape liability, but rather can simply refuse to transport weapons. *United States v. Wilson, 721 F.2d 967, 14 Fed. R. Evid. Serv. (CBC) 823, 1983 U.S. App. LEXIS 15535 (4th Cir. 1983)*.

Defendant's Fifth Amendment privilege against self-incrimination is not violated by, and cannot be claimed in connection with, reporting requirement of *18 USCS § 922(e)*. *United States v. Flores, 753 F.2d 1499, 1985 U.S. App. LEXIS 29065 (9th Cir. 1985)*.

Statute prohibiting delivery of firearms to common carrier for transportation without written notice to carrier does not violate Fifth Amendment's protection against self-incrimination, since statute is primarily regulatory enacted to assist common carriers in their duty not to transport weapons and ammunition under conditions which violate other laws, and is not directed at highly selective inherently suspect group of people, but rather applies to many people who would not be acting unlawfully. *United States v. Alkhafaji, 754 F.2d 641, 1985 U.S. App. LEXIS 28977 (6th Cir. 1985)*.

In case in which defendant appealed his conviction for violating *18 USCS § 922(g)(1)*, he unsuccessfully argued that government violated his right against self-incrimination by using name tattooed on his arm to link him to car in which ammunition was found; tattoo was not testimonial and it was not compelled; police detective did not describe defendant's tattoo to identify him; rather, content of tattoo, name of person, was elicited because defendant's statement of name on his skin tended to prove that he had relationship with person of that name, and that fact, in combination with other evidence, allowed jurors to infer that defendant had constructive possession of ammunition found in car rented by that person. *United States v. Greer, 631 F.3d 608, 84 Fed. R. Evid. Serv. (CBC) 811, 2011*

U.S. App. LEXIS 2187 (2d Cir. 2011), cert. denied, *563 U.S. 929, 131 S. Ct. 1841, 179 L. Ed. 2d 793, 2011 U.S. LEXIS 2661 (2011)*.

Convictions for violations of *18 USCS §§ 922(g)(1)* and *924(a)(2)* were proper because, even assuming arguendo that it was error to allow testimony regarding defendant's pre-Miranda silence, decision to allow that testimony did not constitute reversible error, because error was not plain; court had not yet addressed conclusively whether use of pre-Miranda silence as substantive evidence of guilt was Fifth Amendment violation. *United States v. Potts, 644 F.3d 233, 2011 U.S. App. LEXIS 12069 (5th Cir. 2011)*, cert. denied, *566 U.S. 923, 132 S. Ct. 1855, 182 L. Ed. 2d 647, 2012 U.S. LEXIS 2661 (2012)*.

Where defendant appealed his conviction for violating *18 USCS §§ 922(g)* and *924(e)*, district court did not err by denying his motion to suppress; magistrate judge's findings were not clearly erroneous that defendant was coherent, responsive, and alert during interview and expressed no outward manifestations that would suggest his Miranda waiver or subsequent admissions were involuntary. *United States v. Daniels, 775 F.3d 1001, 2014 U.S. App. LEXIS 24556 (8th Cir. 2014)*, cert. denied, *577 U.S. 884, 136 S. Ct. 191, 193 L. Ed. 2d 151, 2015 U.S. LEXIS 5354 (2015)*.

Where defendant appealed his conviction for violating *18 USCS §§ 922(g)* and *924(e)*, district court did not abuse its discretion in denying defendant's motion to reopen suppression hearing after correctly concluding that squad car video did not change its ultimate conclusion that defendant's Miranda waiver and subsequent admissions were voluntary. *United States v. Daniels, 775 F.3d 1001, 2014 U.S. App. LEXIS 24556 (8th Cir. 2014)*, cert. denied, *577 U.S. 884, 136 S. Ct. 191, 193 L. Ed. 2d 151, 2015 U.S. LEXIS 5354 (2015)*.

Unpublished decision: In case in which defendant pled guilty to violating *18 USCS § 922(g)(1)*, reserving right to appeal district court's denial of his motion to suppress his incriminating statements, he unsuccessfully argued that his incriminating statements to police officer who allegedly asked defendant to pray with him should be suppressed because officer's invitation to pray constituted custodial interrogation and he had not been advised of his Miranda rights; district court did not clearly err in finding that his incriminating statements were not made in response to police questioning, but in response to his being ignored by his girlfriend. *United States v. Wynn, 499 Fed. Appx. 484, 2012 FED App. 0990N, 2012 U.S. App. LEXIS 18984 (6th Cir. 2012)*.

Defendant's sentence in pleading guilty to unlawful possession of a firearm as previously convicted felon was not unreasonable because the term of imprisonment was within advisory guideline range and chosen sentence aligned with Commission's view of appropriate application of this section. *United States v. Jones, 990 F.3d 1141, 2021 U.S. App. LEXIS 7548 (8th Cir. 2021)*.

34. Supremacy Clause

It is within power of Congress to create explicit federal rule such as *18 USCS § 925*, pursuant to Supremacy Clause, which defines effect to be accorded state pardon with respect to federal disability, such as those contained in *18 USCS § 922*. *United States v. Matassini, 565 F.2d 1297, 1978 U.S. App. LEXIS 13107 (5th Cir. 1978)*.

Federal gun-control legislation does not intrude on state's right to decide who should possess firearms under Tenth Amendment, since statute is not directed at states as such, but at individual behavior, and Supremacy Clause prevails. *United States v. Minnick, 949 F.2d 8, 1991 U.S. App. LEXIS 26866 (1st Cir. 1991)*, cert. denied, *503 U.S. 995, 112 S. Ct. 1698, 118 L. Ed. 2d 408, 1992 U.S. LEXIS 2499 (1992)*.

35. Fourth Amendment

If Gun Control Act of 1968 (*18 USCS §§ 921* et seq.) is to be properly enforced and inspection made effective, inspections without warrant must be deemed reasonable official conduct under Fourth Amendment. *United States v. Biswell, 406 U.S. 311, 92 S. Ct. 1593, 32 L. Ed. 2d 87, 1972 U.S. LEXIS 60 (1972)*, limited, *United States v. Device, Labeled "Theramatic", 641 F.2d 1289, 1981 U.S. App. LEXIS 18799 (9th Cir. 1981)*.

18 USCS § 922(g) does not violate Fourth and Fifth Amendments. *United States v. Johnson, 497 F.2d 548, 1974 U.S. App. LEXIS 8924 (4th Cir. 1974)*.

Deputy was not entitled to summary judgment based on qualified immunity in excessive force action alleging that deputy responded to 911 report that plaintiff had put shotgun barrel in his mouth, found plaintiff alone in garage, and shot him four times; although plaintiff had prior felony conviction and his firearm possession was unlawful, he allegedly did nothing to suggest he would resist arrest. *Weinmann v. McClone, 787 F.3d 444, 2015 U.S. App. LEXIS 8763 (7th Cir. 2015)*.

Unpublished decision: Affidavit established probable cause necessary under *U.S. Const. amend IV* to search defendant's home and car for burglary-related items because affiant could rely on his experience, including two years as ATF agent, to establish link between items to be seized and crimes listed: possession and sale of stolen firearms in violation of *18 USCS § 922(j)*, possession of firearms with obliterated serial numbers in violation of *18 USCS § 922(k)*, and theft of firearms in violation of *18 USCS § 922(u)*. *United States v. Scott, 531 Fed. Appx. 283, 91 Fed. R. Evid. Serv. (CBC) 1050, 2013 U.S. App. LEXIS 13109 (4th Cir. 2013)*, writ denied, *668 Fed. Appx. 49, 2016 U.S. App. LEXIS 15635 (4th Cir. 2016)*.

Where defendant was charged with being felon in possession of firearm and ammunition, trial court did not err by denying his motion to suppress fruits of search conducted at his home because his recorded statements that he had gun at his residence established probable cause for issuance of search warrant; although aspects of affidavit were troubling, it contained information from recording that supported probable cause without relying on information provided by confidential informant. *United States v. Fleury, 842 F.3d 774, 2016 U.S. App. LEXIS 21551 (1st Cir. 2016)*.

In executing warrant to search for drugs, law enforcement officers' seizure of firearms, ammunition, and silencer was proper under plain-view doctrine; because law enforcement knew that defendant was convicted felon and reasonably believed that firearms, ammunition, and silencer in his trailer belonged to him, final prong of plain-view doctrine was satisfied as those items were contraband. *United States v. Coffell, 720 Fed. Appx. 521, 2017 U.S. App. LEXIS 25221 (11th Cir. 2017)*.

36. Eighth Amendment

18 USCS § 922(a)(6) is not violative of Eighth Amendment. *United States v. Ocegueda, 564 F.2d 1363, 1977 U.S. App. LEXIS 5878 (9th Cir. 1977)*.

Sentence of forty-six months for violation of *18 USCS § 922(g)(8)* did not violate Eighth Amendment. *United States v. Baker, 197 F.3d 211, 1999 FED App. 0392P, 1999 U.S. App. LEXIS 30430 (6th Cir. 1999)*, cert. denied, *528 U.S. 1197, 120 S. Ct. 1262, 146 L. Ed. 2d 117, 2000 U.S. LEXIS 1727 (2000)*.

18 USCS § 922(g)(9) did not violate equal protection component of Due Process Clause of Fifth Amendment, Commerce Clause, Tenth Amendment, Second Amendment, or Eighth Amendment. *United States v. Lewis, 236 F.3d 948, 2001 U.S. App. LEXIS 288 (8th Cir. 2001)*.

Mandatory minimum sentence of fifteen years under *18 USCS § 924(e)* for violation of *18 USCS § 922(g)(1)* was not cruel and unusual punishment under Eighth Amendment, though extreme, where defendant, while removing old carpet for his landlady in exchange for rent, discovered one Winchester .22 caliber, which he had placed in small box in his room. *United States v. Yirkovsky, 259 F.3d 704, 2001 U.S. App. LEXIS 17117 (8th Cir. 2001)*, reh'g, en banc, denied, *276 F.3d 384, 2001 U.S. App. LEXIS 28438 (8th Cir. 2001)*, cert. denied, *536 U.S. 964, 122 S. Ct. 2674, 153 L. Ed. 2d 846, 2002 U.S. LEXIS 5020 (2002)*.

Where defendant was convicted of possessing ammunition after having been convicted of at least three violent felony offenses in violation of *18 USCS §§ 922(g)(1)* and *924(e)*, sentence of fifteen years for possession of eight rounds of ammunition was not so disproportionate as to constitute cruel and unusual punishment under Eighth Amendment because defendant had one prior conviction for robbery in first degree with intent to cause serious injury and two

convictions for robbery in first degree with use of dangerous weapon. *United States v. Bullock, 550 F.3d 247, 2008 U.S. App. LEXIS 25355 (2d Cir. 2008)*.

Defendant's claim that 92-month sentence for being felon in possession of firearm violated Second and Eighth Amendments because it was four times longer than aggregate sentences imposed for underlying felony convictions was rejected since: (1) *District of Columbia v. Heller, 554 U.S. 570, 626-27 (2008)*, did not cast doubt on constitutionality of felon-in-possession statutes; (2) constitutional challenges to this section had been rejected; and (3) given defendant's offense and criminal history, sentence did not lead to inference of gross disproportionality. *United States v. Humphrey, 753 F.3d 813, 2014 U.S. App. LEXIS 10454 (8th Cir.)*, cert. denied, *574 U.S. 944, 135 S. Ct. 385, 190 L. Ed. 2d 271, 2014 U.S. LEXIS 6948 (2014)*.

Where defendant appealed his 15-year sentence for violating *18 USCS § § 922(g)(1)* and *924(e)*, his mandatory minimum sentence did not constitute cruel and unusual punishment in light of his lower cognitive abilities as his sentence did not fall within purview of Eighth Amendment; he did not face capital punishment or life imprisonment without possibility of parole, and he was neither juvenile nor mentally disabled. *United States v. McCurry, 832 F.3d 842, 2016 U.S. App. LEXIS 14574 (8th Cir. 2016)*, reh'g, en banc, denied, *2016 U.S. App. LEXIS 18298 (8th Cir. Oct. 7, 2016)*, cert. denied, *137 S. Ct. 1117, 197 L. Ed. 2d 218, 2017 U.S. LEXIS 1234 (2017)*.

Plaintiffs' action for return of firearms that were seized when plaintiff was arrested for assault failed because *18 USCS § 922(g)(9)* did not violate Equal Protection Clause, Commerce Clause, Second Amendment, or Eighth Amendment's Cruel and Unusual Punishment Clause. *Blackburn v. Jansen, 241 F. Supp. 2d 1047, 2003 U.S. Dist. LEXIS 545 (D. Neb. 2003)*.

Defendant's claim that *18 USCS § 922(g)(9)* violated Eighth Amendment's prohibition against cruel and unusual punishments and sentences that were grossly disproportionate to offenses committed failed because proportionality review was not available for any sentence less than life imprisonment without possibility of parole; additionally, defendant's 24-month sentence was clearly proportionate to crimes committed, particularly given their very serious nature; moreover, defendant's sentence was substantially below 10-year statutory maximum set forth in *18 USCS § 924(a)(2)*, further evidencing its reasonableness and proportionality to crimes of conviction. *United States v. Finnell, 256 F. Supp. 2d 493, 2003 U.S. Dist. LEXIS 6066 (E.D. Va. 2003)*.

Unpublished decision: In case in which defendant appealed his 188-month sentence for violating *18 USCS § 922(g)*, he unsuccessfully argued that application of Armed Career Criminal Act, *18 USCS § 924(e)*, in his case was cruel and unusual punishment in violation of Eighth Amendment. *United States v. Jordan, 509 Fed. Appx. 532, 2013 FED App. 0002N, 2013 U.S. App. LEXIS 194 (6th Cir. 2013)*, dismissed, *2020 U.S. App. LEXIS 519 (6th Cir. Jan. 8, 2020)*.

Unpublished decision: In case in which defendant appealed his 180-month sentence for violating *18 USCS § 922(g)(1)*, he argued that his sentence violated Eighth Amendment's ban on cruel and unusual punishment; Armed Career Criminal Act's 15-year mandatory minimum did not violate his right to be free from sentence that was disproportionate to conduct constituting offense of conviction. *United States v. McCormick, 517 Fed. Appx. 411, 2013 FED App. 0261N, 2013 U.S. App. LEXIS 5256 (6th Cir.)*, cert. denied, *571 U.S. 934, 134 S. Ct. 351, 187 L. Ed. 2d 244, 2013 U.S. LEXIS 6563 (2013)*.

37. Ninth Amendment

18 USCS § 922(g)(1) and *922(k)* were not beyond Congress' power under Commerce Clause or in violation of Second, Ninth, or Tenth Amendments; although Utah's constitution gave defendant right to bear arms, his federal weapons prosecution was not improper, since state constitutional provisions cannot override federal criminal statutes unless incorporated into federal law. *United States v. Baer, 235 F.3d 561, 2000 Colo. J. C.A.R. 6667, 2000 U.S. App. LEXIS 32498 (10th Cir. 2000)*.

Holdings of various circuit courts across country, that Ninth Amendment did not impinge upon Congress's authority to restrict firearm ownership, contradicted defendant's claim that *18 USCS § 922(g)(9)* was unconstitutional under

Ninth Amendment because it denied him right to bear arms. *United States v. Finnell, 256 F. Supp. 2d 493, 2003 U.S. Dist. LEXIS 6066 (E.D. Va. 2003)*.

38. Tenth Amendment

Federal gun-control legislation does not intrude on state's right to decide who should possess firearms under Tenth Amendment, since statute is not directed at states as such, but at individual behavior, and Supremacy Clause prevails. *United States v. Minnick, 949 F.2d 8, 1991 U.S. App. LEXIS 26866 (1st Cir. 1991)*, cert. denied, *503 U.S. 995, 112 S. Ct. 1698, 118 L. Ed. 2d 408, 1992 U.S. LEXIS 2499 (1992)*.

18 USCS § 922(q), in full reach of its terms, violates Tenth Amendment, since it requires no nexus with interstate commerce and is therefore beyond power of Congress under Commerce Clause; conviction of high school student who brought firearm to school to deliver to gang member must be reversed, where indictment did not allege any connection to interstate commerce, even where both parties stipulated that gun was manufactured outside state. *United States v. Lopez, 2 F.3d 1342, 1993 U.S. App. LEXIS 23556 (5th Cir. 1993)*, reh'g, en banc, denied, *9 F.3d 105, 1993 U.S. App. LEXIS 30449 (5th Cir. 1993)*, cert. granted, *511 U.S. 1029, 114 S. Ct. 1536, 128 L. Ed. 2d 189, 94 Cal. Daily Op. Service 2647, 94 D.A.R. 5060, 1994 U.S. LEXIS 2872 (1994)*, aff'd, *514 U.S. 549, 115 S. Ct. 1624, 131 L. Ed. 2d 626, 8 Fla. L. Weekly Fed. S 752, 95 Cal. Daily Op. Service 3074, 1995 U.S. LEXIS 3039 (1995)*.

18 USCS § 922(u) does not violate Tenth Amendment, since in plain language it contains interstate commerce nexus as essential element of offense and thus ensures that firearm in question affects interstate commerce. *United States v. Miller, 74 F.3d 159, 1996 U.S. App. LEXIS 602 (8th Cir. 1996)*.

18 USCS § 922(o) does not violate Tenth Amendment, since it is valid exercise of Congress' power under Commerce Clause and it does not compel, let alone commandeer, states to do anything. *United States v. Kenney, 91 F.3d 884, 1996 U.S. App. LEXIS 18754 (7th Cir. 1996)*.

Defendant's federal prosecution under "Project Exile" did not violate principles of federalism embodied in Tenth Amendment or violate rule concerning availability of federal injunctive relief against state prosecutions. *United States v. Nathan, 202 F.3d 230, 2000 U.S. App. LEXIS 684 (4th Cir.)*, cert. denied, *529 U.S. 1123, 120 S. Ct. 1994, 146 L. Ed. 2d 819, 2000 U.S. LEXIS 3402 (2000)*.

18 USCS § 922(g)(1) and *922(k)* were not beyond Congress' power under Commerce Clause or in violation of Second, Ninth, or Tenth Amendments; although Utah's constitution gave defendant right to bear arms, his federal weapons prosecution was not improper, since state constitutional provisions cannot override federal criminal statutes unless incorporated into federal law. *United States v. Baer, 235 F.3d 561, 2000 Colo. J. C.A.R. 6667, 2000 U.S. App. LEXIS 32498 (10th Cir. 2000)*.

Unpublished decision: In case in which defendant appealed his conviction for violating *18 USCS § 922(g)(1)*, he unsuccessfully argued that § 922(g)(1) violated Tenth Amendment; Section 922(g)(8) was constitutional exercise of Congress's Commerce Clause power supplementing complementary state legislation. *United States v. Kline, 494 Fed. Appx. 323, 2012 U.S. App. LEXIS 19259 (4th Cir. 2012)*, cert. denied, *568 U.S. 1136, 133 S. Ct. 963, 184 L. Ed. 2d 747, 2013 U.S. LEXIS 637 (2013)*.

Unpublished decision: Where defendant appealed district court's denial of his motion to dismiss indictment, *18 USCS § 922(g)(1)* did not violate Tenth Amendment. *United States v. Moody, 555 Fed. Appx. 867, 2014 U.S. App. LEXIS 2040 (11th Cir. 2014)*.

Unpublished decision: Where defendant appealed his 180-month statutory minimum sentence for violating *18 USCS §§ 922(g)(1)* and *924(e)(1)*, he unsuccessfully argued that his sentence should be vacated because *18 USCS § 922(g)(1)* violated Tenth Amendment. His actual proffer established that firearm and ammunition were manufactured outside state of Florida, and that created sufficient nexus to interstate commerce to overcome his Tenth Amendment challenge. *United States v. Flores, 562 Fed. Appx. 794, 2014 U.S. App. LEXIS 6079 (11th Cir. 2014)*.

39. § 922(g)

18 USCS § 922(g)(1) did not unconstitutionally interfere with felon's right under state law to bear arms, since § 922(g)(1) rests on state law governing convictions, not on state law regulating felons' possession of firearms, and therefore requires courts to look at state's definition of convictions, not at its substantive regulation of convicted felons; Congress may regulate possession of firearms without violating Tenth Amendment. *United States v. Andaverde, 64 F.3d 1305, 95 Cal. Daily Op. Service 6708, 95 D.A.R. 11493, 1995 U.S. App. LEXIS 23977 (9th Cir. 1995)*, cert. denied, *516 U.S. 1164, 116 S. Ct. 1055, 134 L. Ed. 2d 199, 1996 U.S. LEXIS 1680 (1996)*.

18 USCS § 922(g)(8) does not violate Tenth Amendment. *United States v. Bostic, 168 F.3d 718, 1999 U.S. App. LEXIS 2349 (4th Cir.)*, cert. denied, *527 U.S. 1029, 119 S. Ct. 2383, 144 L. Ed. 2d 785, 1999 U.S. LEXIS 4332 (1999)*.

18 USCS § 922(g)(8) does not offend Commerce Clause or Tenth Amendment, or impinge upon sovereignty of States. *United States v. Jones, 231 F.3d 508, 2000 Cal. Daily Op. Service 8848, 2000 D.A.R. 11717, 2000 U.S. App. LEXIS 27330 (9th Cir. 2000)*.

18 USCS § 922(g)(1) and *922(k)* were not beyond Congress' power under Commerce Clause or in violation of Second, Ninth, or Tenth Amendments; although Utah's constitution gave defendant right to bear arms, his federal weapons prosecution was not improper, since state constitutional provisions cannot override federal criminal statutes unless incorporated into federal law. *United States v. Baer, 235 F.3d 561, 2000 Colo. J. C.A.R. 6667, 2000 U.S. App. LEXIS 32498 (10th Cir. 2000)*.

18 USCS § 922(g)(9) did not violate equal protection component of Due Process Clause of Fifth Amendment, Commerce Clause, Tenth Amendment, Second Amendment, or Eighth Amendment. *United States v. Lewis, 236 F.3d 948, 2001 U.S. App. LEXIS 288 (8th Cir. 2001)*.

18 USCS § 922(g)(1) and (9) are constitutional under Commerce Clause, Second or Tenth Amendment, and are not ex post facto laws or bills of attainder. *United States v. Hemmings, 258 F.3d 587, 2001 U.S. App. LEXIS 15572 (7th Cir. 2001)*.

18 USCS § 922(g)(1) is not unconstitutional under Tenth Amendment because statute is valid exercise of congressional authority to regulate interstate commerce and Tenth Amendment's reservation to states of power not conferred on federal government in no way inhibits activities of federal government in situations in which power has been so conferred. *United States v. Darrington, 351 F.3d 632, 2003 U.S. App. LEXIS 23451 (5th Cir. 2003)*, cert. denied, *541 U.S. 1080, 124 S. Ct. 2429, 158 L. Ed. 2d 994, 2004 U.S. LEXIS 3957 (2004)*.

18 USCS § 922(g)(8) is totally devoid of Tenth Amendment implications and does not intrude upon state actors in administering their domestic relations laws; therefore, statute passed defendant's constitutional challenge under Tenth Amendment. *United States v. Coccia, 446 F.3d 233, 2006 U.S. App. LEXIS 11339 (1st Cir. 2006)*, cert. denied, *549 U.S. 1149, 127 S. Ct. 1021, 166 L. Ed. 2d 769, 2007 U.S. LEXIS 579 (2007)*.

Defendant's claim that *18 USCS § 922(g)(3)* was facially in violation of Second Amendment was rejected because prohibition of possession of firearms by unlawful user of controlled substance was type of long standing prohibition that U.S. Supreme Court had declared presumptively lawful. *United States v. Seay, 620 F.3d 919, 2010 U.S. App. LEXIS 18738 (8th Cir. 2010)*, cert. denied, *562 U.S. 1191, 131 S. Ct. 1027, 178 L. Ed. 2d 849, 2011 U.S. LEXIS 613 (2011)*.

Congress acted within constitutional bounds, including Second Amendment right to bear arms, by prohibiting illegal drug users from firearm possession pursuant to *18 USCS § 922(g)(3)* because doing so was substantially related to important governmental interest in preventing violent crime. *United States v. Yancey, 621 F.3d 681, 2010 U.S. App. LEXIS 18442 (7th Cir. 2010)*.

Supreme Court's decisions in *District of Columbia v. Heller, 554 U.S. 570, 635 (2008)*, and *McDonald v. City of Chicago, 130 S. Ct. 3020, 3042 (2010)*, compelled conclusion that *18 USCS § 922(g)(1)* was facially constitutional; it

was also constitutional as applied to defendant because he presented no facts distinguishing his circumstances from those of other felons who were categorically unprotected by Second Amendment. *United States v. Barton, 633 F.3d 168, 2011 U.S. App. LEXIS 4111 (3d Cir. 2011)*, overruled in part, *Binderup v. AG of United States, 836 F.3d 336, 2016 U.S. App. LEXIS 16407 (3d Cir. 2016)*.

Fraternal Order of Police failed to prove that *18 USCS § 922(g)(9)* or *18 USCS § 925(a)(1)* violated Tenth Amendment. *FOP v. United States, 173 F.3d 898, 335 U.S. App. D.C. 359, 1999 U.S. App. LEXIS 7304 (D.C. Cir.)*, cert. denied, *528 U.S. 928, 120 S. Ct. 324, 145 L. Ed. 2d 253, 1999 U.S. LEXIS 6886 (1999)*.

Unpublished decision: Under binding precedent, *18 USCS § 922(g)(1)* was constitutional both on its face and as applied to defendant who possessed firearm intrastate which had previously traveled in interstate commerce, and since § 922(g)(1) was within Congress's Commerce Clause power, it did not violate Tenth Amendment. *United States v. Edwards, 447 Fed. Appx. 43, 2011 U.S. App. LEXIS 22293 (11th Cir. 2011)*, cert. denied, *565 U.S. 1225, 132 S. Ct. 1606, 182 L. Ed. 2d 213, 2012 U.S. LEXIS 1297 (2012)*.

Unpublished decision: Even if "clearly erroneous" exception to law of case doctrine were applicable to collateral attack on criminal conviction, it would not have permitted reconsideration upon *28 USCS § 2255* motion of defendant's claim that felon-in-possession of firearm statute, *18 USCS § 922(g)(1)*, violated Second Amendment and Commerce Clause; decision on direct appeal of defendant's conviction adhered to circuit precedent upholding § 922(g)(1) against attack on same constitutional basis. *United States v. Gieswein, 495 Fed. Appx. 944, 2012 U.S. App. LEXIS 18577 (10th Cir. 2012)*, cert. denied, *568 U.S. 1139, 133 S. Ct. 958, 184 L. Ed. 2d 753, 2013 U.S. LEXIS 660 (2013)*.

Indictment count charging man under restraining order with violation of *18 USCS § 922(g)(8)* need not be dismissed, where he was required to obey order pending his appeal of it, because statute does not run afoul of Second, Fifth, or Tenth Amendments, and was not unconstitutional exercise of Congress's power under Commerce Clause. *United States v. Visnich, 65 F. Supp. 2d 669, 1999 U.S. Dist. LEXIS 14333 (N.D. Ohio 1999)*.

Motion to dismiss was denied because government established that *18 USCS § 922(g)(9)* regulated conduct falling outside scope of Second Amendment as understood in light of its history and our nation's constitutional development; thus, because statute did not impinge upon Second Amendment, it was not proper to apply any level of heightened constitutional scrutiny. *United States v. Brown, 715 F. Supp. 2d 688, 2010 U.S. Dist. LEXIS 51515 (E.D. Va. 2010)*.

On Second Amendment challenge, *18 USCS § 922(g)(9)* furthered compelling government interest in preventing domestic violence or lessening its severity and was reasonably tailored to address that interest, so it passed constitutional muster; as defendant's challenge to *18 USCS § 924(a)(1)(A)* was premised on finding § 922(g)(9) unconstitutional, that challenge also failed, and his indictment was not defective. *United States v. Tooley, 717 F. Supp. 2d 580, 2010 U.S. Dist. LEXIS 58591 (S.D. W. Va. 2010)*, aff'd, *468 Fed. Appx. 357, 2012 U.S. App. LEXIS 4800 (4th Cir. 2012)*.

Unpublished decision: Defendant's argument that *18 USCS § 922(g)* was unconstitutional both on its face and as applied was rejected, and circuit court declined to revisit issue. *United States v. Dollson, 609 Fed. Appx. 108, 2015 U.S. App. LEXIS 6545 (3d Cir. 2015)*.

18 U.S.C.S. § 922 did not violate Second Amendment as applied to felon convicted of mail fraud as even though felony was non-violent, fact that felon committed felony placed him in category of persons that Congress had found were more likely to abuse firearms; bright line categorical approach used in statute allowed for uniform application, ease of administration and further deterrence of commission of another crime, and application of statute to felon was substantially related to government's important interests in preventing gun violence. *Kanter v. Sessions, 2017 U.S. Dist. LEXIS 213181 (E.D. Wis. Dec. 29, 2017)*, aff'd, *919 F.3d 437, 2019 U.S. App. LEXIS 7722 (7th Cir. 2019)*.

40. § 922(s)

U.S. is permanently enjoined from enforcing severable portion of "Brady Bill" against sheriff, where Congress cannot direct and compel local sheriffs to "make reasonable effort to ascertain" whether federal gun customer's "receipt and

possession would be in violation of law, including research in whatever record keeping systems are available," because *18 USCS § 922(s)(2)* mandate and directive exceeds power granted under Article I, § 8 and contravenes Tenth Amendment. *McGee v. United States, 863 F. Supp. 321, 1994 U.S. Dist. LEXIS 10610 (S.D. Miss. 1994)*, aff'd, *79 F.3d 452, 1996 U.S. App. LEXIS 5289 (5th Cir. 1996)*.

County sheriff is denied preliminary injunction relieving him of duties imposed by *18 USCS § 922(s)*, even though he complains that his assignment of jailor to processing of handgun permit applications required by federal statute reduces manpower available to protect persons in jail, because sheriff fails to show irreparable harm or likelihood of success on merits since Ninth Circuit held § 922(s) did not contravene Tenth Amendment limitation on congressional power. *Frye v. United States, 916 F. Supp. 546, 1995 U.S. Dist. LEXIS 16914 (M.D.N.C. 1995)*.

41. Standing to challenge statute

Manufacturers and dealers of firearms affected by Crime Control Act demonstrated actual controversy sufficient to confer standing, where they alleged immediate, concrete injury-in-fact to their businesses, fairly traceable to challenged prohibitions of Act, and there was substantial likelihood that relief requested would redress claimed injury; challenges were ripe for review and access to courts under Declaratory Judgment Act must be permitted on Equal Protection and Commerce Clause grounds but not for vagueness. *NRA of Am. v. Magaw, 132 F.3d 272, 1997 FED App. 0345P, 1997 U.S. App. LEXIS 32955 (6th Cir. 1997)*.

Wyoming satisfied prudential standing requirements because: (1) due to legal consequences of Bureau of Alcohol, Tobacco, Firearms, and Explosives' (ATF) interpretation, as well as definite nature of ATF's statements regarding Wyo. Stat. Ann. § 7-13-1501, ATF's statements constituted final agency action, and (ii) in light of states' interest in influencing applicability of Gun Control Act, *18 USCS §§ 921*, *922*, Wyoming's alleged injury fell within zone of interests of Act. *Wyoming ex rel. Crank v. United States, 539 F.3d 1236, 2008 U.S. App. LEXIS 18224 (10th Cir. 2008)*.

Appellants' challenges to provisions of Violent Crime Control and Law Enforcement Act of 1994 that singled out by model name products that they alone made were justiciable, since genuine and imminent threat of prosecution created injury in fact and hardship required to ripen controversy. *Navegar, Inc. v. United States, 103 F.3d 994, 322 U.S. App. D.C. 288, 1997 U.S. App. LEXIS 37 (D.C. Cir. 1997)*.

Holder of Nevada medical marijuana registry card lacked standing to challenge prohibition against possession of firearms by persons who were unlawful users of or addicted to any controlled substance; holder had not alleged that she was unlawful drug user or addicted to any controlled substance and had not alleged that she possessed any firearms, so she did not show genuine threat of imminent prosecution. *Wilson v. Lynch, 835 F.3d 1083, 2016 U.S. App. LEXIS 16108 (9th Cir. 2016)*, cert. denied, *137 S. Ct. 1396, 197 L. Ed. 2d 555, 2017 U.S. LEXIS 2173 (2017)*.

42. Miscellaneous

Application of *18 USCS § 922(a)(6)* to convict defendant who, in redeeming guns which he had previously pawned with federally licensed pawnbroker, falsely represented that he had never been convicted of crime punishable by imprisonment for more than one year, does not raise serious constitutional questions, since (1) there was no taking of the defendant's property without just compensation, the rifles having belonged to his wife, and Congress having determined that a convicted felony may not lawfully obtain weapons of such kind, (2) defendant's false answers had not been coerced, and (3) no interstate commerce nexus was required to be demonstrated. *Huddleston v. United States, 415 U.S. 814, 94 S. Ct. 1262, 39 L. Ed. 2d 782, 1974 U.S. LEXIS 121 (1974)*.

18 USCS § 922(s)(2) interim requirement that until national system for instant criminal background checks of proposed handgun transferees is established, chief law enforcement officer (CLEO) of proposed transferee's residence must, in states that do not provide for either state handgun permits or instant background checks, make reasonable effort to ascertain, within 5 business days, whether proposed transferee's receipt or possession of handgun would be in violation of law violates Federal Constitution, although there is no constitutional text speaking

to precise question whether congressional action compelling state officers to execute federal laws is unconstitutional; also extinguished is duty implicit in background-check requirement of § 922(s)(2), pursuant to *18 USCS §§ 922(s)(1)(A)(i)(III)* and *922(s)(1)(A)(i)(IV)*, that CLEO accept notice of contents of, and copy of, form which firearms dealer is required to receive from proposed transferee under *18 USCS § 922(s)(1)(A)(i)(I)* and to provide to CLEO. *Printz v. United States, 521 U.S. 898, 117 S. Ct. 2365, 138 L. Ed. 2d 914, 11 Fla. L. Weekly Fed. S 224, 97 Cal. Daily Op. Service 5096, 97 D.A.R. 8213, 1997 U.S. LEXIS 4044 (1997)*.

18 USCS § 922, which prohibits sale of firearms to persons whom the firearms dealer has reason to know does not reside in state in which dealer's place of business is located, does not unconstitutionally infringe upon defendant's right to travel. *United States v. Lebman, 464 F.2d 68, 1972 U.S. App. LEXIS 9238 (5th Cir.)*, cert. denied, *409 U.S. 950, 93 S. Ct. 271, 34 L. Ed. 2d 220, 1972 U.S. LEXIS 962 (1972)*.

18 USCS § 922(h)(1) is not unconstitutional due to absence of implied scienter requirement, since it criminalizes possession of gun, which is active and potentially dangerous act. *United States v. Indelicato, 800 F.2d 1482, 1986 U.S. App. LEXIS 31385 (9th Cir. 1986)*.

18 USCS § 922(b) does not run afoul of federalism concerns by incorporating state law into definition of federal crimes, since it does not involve attempt to use states as mechanisms to enforce federal regulation, even if purpose of § 922(b) might be to encourage states to publish and circulate statewide and local firearms regulations. *United States v. Meienberg, 263 F.3d 1177, 56 Fed. R. Evid. Serv. (CBC) 1175, 2001 U.S. App. LEXIS 19177 (10th Cir. 2001)*.

18 USCS § 922(g)(1) was not unconstitutional, either facially or as applied to defendant; therefore, appellate court affirmed district court's denial of defendant's motion to dismiss his indictment on grounds of facial and as-applied unconstitutionality of § 922(g)(1). *United States v. Willingham, 310 F.3d 367, 2002 U.S. App. LEXIS 21923 (5th Cir. 2002)*, cert. denied, *537 U.S. 1239, 123 S. Ct. 1368, 155 L. Ed. 2d 208, 2003 U.S. LEXIS 1856 (2003)*.

Where defendant was convicted of knowingly delivering firearm to felon in violation of *18 USCS § 922(d)*, district court's jury instruction defining "dispose of" as to transfer firearm so that transferee acquired possession of it, did not constitute constructive amendment of indictment in violation of Grand Jury Clause; since instruction was legally correct, as § 922(d) covered defendant's actions, there was no reason to believe that defendant was improperly convicted of aiding and abetting defendant's brother's violation of *18 USCS § 922(g)*. *United States v. Jefferson, 334 F.3d 670, 2003 U.S. App. LEXIS 13428 (7th Cir. 2003)*.

Defendant's Sixth Amendment rights were not violated by questioning of federal agents about potential violations of *18 USCS §§ 922(g)* and *924(e)* even though defendant had been provided attorney to represent him on state charges because dual sovereignty doctrine applied and defendant's prior invocation of his right to counsel for state charges did not attach to uncharged federal offenses at time of interview by federal agents. *United States v. Harris, 526 F.3d 1334, 21 Fla. L. Weekly Fed. C 668, 2008 U.S. App. LEXIS 9814 (11th Cir.)*, cert. denied, *555 U.S. 1014, 129 S. Ct. 569, 172 L. Ed. 2d 433, 2008 U.S. LEXIS 8329 (2008)*.

18 USCS § 922(g)(1) is constitutional. *United States v. Souksakhone Phaknikone, 605 F.3d 1099, 22 Fla. L. Weekly Fed. C 770, 82 Fed. R. Evid. Serv. (CBC) 621, 2010 U.S. App. LEXIS 9475 (11th Cir. 2010)*, cert. denied, *562 U.S. 1066, 131 S. Ct. 643, 178 L. Ed. 2d 486, 2010 U.S. LEXIS 9190 (2010)*.

Armed Career Criminal Act enhancement stems only from information about nature of conviction that has passed through Sixth Amendment filters (charging documents and jury instructions that indicate what government must have proved, factual findings to which defendant consented, and so forth); there is simply no Sixth Amendment or due process violation in judges finding facts about nature of prior conviction by preponderance of evidence, provided they stay within Shepard's bounds. *United States v. Washington, 629 F.3d 403, 2011 U.S. App. LEXIS 473 (4th Cir.)*, cert. denied, *565 U.S. 830, 132 S. Ct. 127, 181 L. Ed. 2d 49, 2011 U.S. LEXIS 5661 (2011)*.

Text of *18 USCS § 922(g)(8)* is not limited to persons whose no-contact orders are not subject to collateral attack (rather, order must have been issued after hearing of which defendant received actual notice, and at which defendant had opportunity to participate); defendant was subject to qualifying no-contact order under § 922(g)(8), and that alone subjected him to requirements of that provision, and court therefore rejected his Fifth and Sixth Amendment claims. *United States v. Bena, 664 F.3d 1180, 2011 U.S. App. LEXIS 25283 (8th Cir. 2011)*.

In criminal trial in which defendant entered conditional plea of being felon in possession of firearm under *18 USCS § 922(g)*, district court properly concluded that defendant's Sixth Amendment right to counsel had not been violated by second interview because right had not yet attached since prosecution had not been initiated; district court also properly determined that Sixth Amendment did not attach to federal gun possession charge even if defendant's right to counsel had attached to state charges, including criminal use of firearm under *Conn. Gen. Stat. § 53a-216(a)*, because Sixth Amendment was offense specific, and federal and state offenses were separate offenses. *United States v. Moore, 670 F.3d 222, 2012 U.S. App. LEXIS 3507 (2d Cir.)*, cert. denied, *567 U.S. 943, 133 S. Ct. 48, 183 L. Ed. 2d 691, 2012 U.S. LEXIS 4792 (2012)*.

Defendant's conviction for knowingly possessing firearms while illegally and unlawfully present in United States, violation of *18 USCS §§ 922(g)(5)(A)* and *924(a)(2)*, was affirmed because he gave no real reason why excluding testimony of government witness regarding his pending application for adjustment of status and participation in National Security Entry-Exit Registration System violated his confrontation right, and further, he was permitted to cross-examine witness. *United States v. Al Sabahi, 719 F.3d 305, 2013 U.S. App. LEXIS 11808 (4th Cir.)*, cert. denied, *571 U.S. 969, 134 S. Ct. 464, 187 L. Ed. 2d 311, 2013 U.S. LEXIS 7296 (2013)*.

Court reject defendant's constitutional challenges to statute, because Eighth Circuit previously rejected facial challenges and as applied, defendant stipulated that he had three prior felony convictions, which included two convictions for resisting arrest and one for aggravated assault. *United States v. Woolsey, 759 F.3d 905, 2014 U.S. App. LEXIS 13637 (8th Cir. 2014)*.

For purposes of extradition to Mexico, Mexican charge of possessing firearms reserved for use by armed forces did not charge offense that could not be criminalized in United States due to Second Amendment; alleged proximity of firearms to drug proceeds was sufficient to charge Mexican citizen with firearm possession in furtherance of drug trafficking crime under U.S. law, and one firearm had obliterated serial number and therefore could not be legally possessed under U.S. law. *Gon v. Holt, 774 F.3d 207, 2014 U.S. App. LEXIS 23570 (4th Cir. 2014)*, cert. denied, *576 U.S. 1035, 135 S. Ct. 2859, 192 L. Ed. 2d 895, 2015 U.S. LEXIS 4149 (2015)*.

In case in which plaintiff challenged constitutionality of *18 USCS § 922(a)(9)* & (b)(3), there were too many unanswered questions regarding plaintiff's particular situation even though he was seeking to mount as applied challenge; circuit court, which vacated grant of summary judgment in favor of United States, exercised its discretion to require that case proceed to trial. *Dearth v. Lynch, 791 F.3d 32, 416 U.S. App. D.C. 209, 91 Fed. R. Serv. 3d (Callaghan) 1675, 2015 U.S. App. LEXIS 10544 (D.C. Cir. 2015)*.

Holder of Nevada medical marijuana registry card engaged in conduct protected by First Amendment when she obtained registry card, but prohibition against sale of firearms where there was reasonable cause to believe that person was unlawful user of controlled substance survived intermediate scrutiny; incidental effect on holder's rights was no greater than necessary to reduce gun violence. *Wilson v. Lynch, 835 F.3d 1083, 2016 U.S. App. LEXIS 16108 (9th Cir. 2016)*, cert. denied, *137 S. Ct. 1396, 197 L. Ed. 2d 555, 2017 U.S. LEXIS 2173 (2017)*.

18 USCS § 922(a)(1) is constitutional under both the Commerce Clause, Article I, § 8, clause 3, and the power of Congress to lay and collect taxes, Article I, § 8, clause 1. *United States v. Gross, 313 F. Supp. 1330, 1970 U.S. Dist. LEXIS 11198 (S.D. Ind. 1970)*, aff'd, *451 F.2d 1355, 1971 U.S. App. LEXIS 7325 (7th Cir. 1971)*.

Defendant's Thirteenth Amendment claim failed because Thirteenth Amendment's prohibition against slavery and involuntary servitude was wholly unrelated to *18 USCS § 922(g)(9)*. *United States v. Finnell, 256 F. Supp. 2d 493, 2003 U.S. Dist. LEXIS 6066 (E.D. Va. 2003)*.

Defense motion to dismiss indictment under *18 USCS § 922(j)* for knowing possession of stolen firearm, which indictment was filed 35 months after defendant won acquittal on indictment under *18 USCS § 922(g)(8)* arising out of his possession of same firearm, was denied because defendant, who claimed violations of his Fifth Amendment rights, failed to show actual vindictiveness on part of prosecutor, because no presumption of vindictiveness arose from bare fact that second indictment arose out of same nucleus of facts which had resulted in earlier acquittal, and because defendant failed to show that he was actually prejudiced as result of pre-indictment delay. *United States v. Sheridan, 464 F. Supp. 2d 847, 2006 U.S. Dist. LEXIS 89646 (N.D. Iowa 2006)*.

Bodyguard Statute did not violate defendants' First Amendment freedom of association because statute was not aimed at those who merely associated with prohibited persons, but to defendants who know their employer is prohibited person, and who have received, possessed, or transported firearm in course of employment for prohibited person. *United States v. Lahey, 967 F. Supp. 2d 731, 2013 U.S. Dist. LEXIS 130971 (S.D.N.Y. 2013)*.

Unpublished decision: Where defendant appealed his conviction for violating *21 USCS § 841(a)(1)* and *18 USCS §§ 922(g)(1)* and *924(c)(1)*(A, district court erred in speaking to jury without defendant present, but district court's discussion did not prejudice him; defendant's attorney was present throughout proceedings, and discussion was recorded. *United States v. Austin, 594 Fed. Appx. 894, 2015 U.S. App. LEXIS 3621 (8th Cir. 2015)*.

Classification by Bureau of Alcohol Tobacco, Firearms, and Explosives (ATF) of inventor's device as machine gun did not constitute unconstitutional taking under Fifth Amendment because ATF was exercising valid police authority to enforce and regulate violations of federal firearms laws when it categorized device; inventor did not have protected expectancy interest in manufacturing and selling device. *Akins v. United States, 82 Fed. Cl. 619, 2008 U.S. Claims LEXIS 208 (Fed. Cl. July 24, 2008)*.

Final rule clarifying that term "machinegun" encompassed bump-stock type devices did not result in Fifth Amendment taking because rule's mandate to surrender or destroy bump stocks did not satisfy public use requirement, and Bureau of Alcohol, Tobacco, Firearms and Explosives appropriately acted within confines of police power. *Modern Sportsman, LLC v. United States, 145 Fed. Cl. 575, 2019 U.S. Claims LEXIS 1504 (Fed. Cl. Oct. 23, 2019)*.

B. Vagueness of Statute

43. § 922(a)

18 USCS § 922(a)(1) is not unconstitutionally vague. *United States v. Kowalski, 502 F.2d 203, 1974 U.S. App. LEXIS 7163 (7th Cir. 1974)*, cert. denied, *420 U.S. 979, 95 S. Ct. 1407, 43 L. Ed. 2d 660, 1975 U.S. LEXIS 977 (1975)*.

Defendant's contention that *18 USCS § 922(a)(1)* is too vague and indefinite to constitute valid criminal statute because it provides no standard on number of sales, dollar volume of sales, and number of employees which are necessary to enable one who sells guns to know whether he is dealer, was without merit since there could be no doubt in minds of men of common intelligence that "dealer" means one who is engaged in any business of selling firearms and that "business" is that which occupies time, attention and labor of men for purpose of livelihood or profit. *United States v. Williams, 502 F.2d 581, 1974 U.S. App. LEXIS 7010 (8th Cir. 1974)*.

18 USCS § 922(a)(1), which proscribes dealing in firearms without license, was held not vague as applied to defendant who engaged in more than a dozen firearms transactions in the course of a few months, who frequently built firearms, or had them rebuilt, and exchanged them for other weapons which he subsequently sold or traded, and who traded large quantities of military ammunition for firearms. *United States v. Huffman, 518 F.2d 80, 1975 U.S. App. LEXIS 14361 (4th Cir.)*, cert. denied, *423 U.S. 864, 96 S. Ct. 123, 46 L. Ed. 2d 92, 1975 U.S. LEXIS 2746 (1975)*.

Unpublished decision: Where defendant appealed his conviction of engaging in business of firearms without license, he could not challenge constitutionality of *18 USCS § 922(a)(1)(A)* for vagueness, because his conduct was unquestionably prohibited by statute. *United States v. Burke, 577 Fed. Appx. 338, 2014 U.S. App. LEXIS 15356 (5th Cir. 2014)*, cert. denied, *574 U.S. 865, 135 S. Ct. 171, 190 L. Ed. 2d 121, 2014 U.S. LEXIS 6171 (2014)*, cert. denied, *574 U.S. 1093, 135 S. Ct. 984, 190 L. Ed. 2d 865, 2015 U.S. LEXIS 325 (2015)*.

Unpublished decision: District court did not err by denying defendant's motion to dismiss indictment, which charged him with knowingly making false written statement intended or likely to deceive licensed firearms dealer under *18 USCS § 922(a)(6)*, because § 922(a)(6) was not unconstitutionally vague on ground that defendant reasonably could have believed that he was answering truthfully when he listed himself as actual buyer on ATF form at issue when, in fact, he purchased firearms on behalf of other individuals who provided purchaser money. *United States v. Moore, 134 Fed. Appx. 109, 2005 U.S. App. LEXIS 11236 (8th Cir. 2005)*.

44. § 922(b)

Phrase "sell or deliver" within meaning of *18 USCS § 922(b)* is sufficiently definite as to proscribe conduct when measured by common understanding and practices. *United States v. Brooks, 611 F.2d 614, 1980 U.S. App. LEXIS 20625 (5th Cir. 1980)*, overruled in part, *United States v. Henry, 749 F.2d 203, 1984 U.S. App. LEXIS 15964 (5th Cir. 1984)*.

18 USCS § 922(b)(3) is not unconstitutionally vague. *United States v. Brooks, 611 F.2d 614, 1980 U.S. App. LEXIS 20625 (5th Cir. 1980)*, overruled in part, *United States v. Henry, 749 F.2d 203, 1984 U.S. App. LEXIS 15964 (5th Cir. 1984)*.

45. § 922(g)

18 USCS § 922(g)(1) was not unconstitutionally vague, since it put defendant sufficiently on notice that felons may not possess weapons that have traveled in interstate commerce. *United States v. Carter, 981 F.2d 645, 1992 U.S. App. LEXIS 32517 (2d Cir. 1992)*, cert. denied, *507 U.S. 1023, 113 S. Ct. 1827, 123 L. Ed. 2d 456, 1993 U.S. LEXIS 2651 (1993)*.

18 USCS § 922(g) was not unconstitutionally vague to extent that it proscribed constructive possession, even though judicial interpretation of "dominion," "control," and "ownership" may be inconsistent, since "possession" concretely described conduct proscribed by statute. *United States v. Rogers, 41 F.3d 25, 1994 U.S. App. LEXIS 34288 (1st Cir. 1994)*, cert. denied, *515 U.S. 1126, 115 S. Ct. 2287, 132 L. Ed. 2d 289, 1995 U.S. LEXIS 3881 (1995)*.

18 USCS § 922(g)(2)(A) was not unconstitutionally void for vagueness under Fifth Amendment Due Process Clause because it failed to specify how to measure 1000 foot distance from school because statute itself adequately put her on notice that her possession of firearm was unlawful; by clear terms of statute, she could only have been convicted if she knew or reasonably should have known that her possession of firearm was within school zone, and that scienter requirement ameliorated any vagueness concerns. *United States v. Nieves-Castano, 480 F.3d 597, 2007 U.S. App. LEXIS 7070 (1st Cir. 2007)*.

18 USCS § 922(g)(1)'s constitutionality had consistently been upheld, and National Federation did not overrule those holdings, as it did not address constitutionality of § 922(g)(1), and it did not express intention to overrule precedents upon which cases had relied in finding § 922(g)(1) constitutional. *United States v. Alcantar, 733 F.3d 143, 2013 U.S. App. LEXIS 20452 (5th Cir. 2013)*, cert. denied, *572 U.S. 1028, 134 S. Ct. 1570, 188 L. Ed. 2d 579, 2014 U.S. LEXIS 2010 (2014)*.

Unpublished decision: Where defendant appealed district court's denial of his motion to dismiss indictment, he failed to show *18 USCS § 922(g)* was so vague that person of ordinary intelligence would have to guess at its meaning. *United States v. Moody, 555 Fed. Appx. 867, 2014 U.S. App. LEXIS 2040 (11th Cir. 2014)*.

District court improperly held that *18 USCS § 922(g)(5)(A)* was unconstitutionally vague as applied to defendant where the phrase "illegally or unlawfully in the United States" referred to aliens who were in the United States contrary to or without authorization by law, defendant's DACA status did not change his status as an alien illegally or unlawfully in the United States, neither *8 USCS § 1182(a)(9)(B)* nor 1611(b) did anything to obscure his status for purposes of § 922(g)(5)(A), and DHS's frequently asked questions could not create ambiguity where Congress had defined conduct clearly enough. *United States v. Lopez, 929 F.3d 783, 2019 FED App. 152p, 2019 U.S. App. LEXIS 20471 (6th Cir. 2019)*.

Defendant's participation in conspiracy may be broader than his underlying ACCA predicate convictions, and relevant inquiry was whether defendant's underlying convictions were distinct episodes in course of conduct constituting his participation in drug conspiracy; defendant's participation in conspiracy was broader than his two drug possession offenses, and he returned to it, even after his state drug convictions. *United States v. Torres, 961 F.3d 618, 2020 U.S. App. LEXIS 17695 (3d Cir.)*, cert. denied, *141 S. Ct. 936, 208 L. Ed. 2d 476, 2020 U.S. LEXIS 5831 (2020)*.

General Assembly was aware of how Illinois Supreme Court had construed the "without authority" language in burglary statute, and it chose to replicate that language in residential burglary statute; applying limited authority doctrine to residential burglary by entry as set forth in statute did not result in surplusage, and defendant's convictions would not constitute aggravating offenses under Armed Career Criminal Act. *United States v. Glispie, 2020 IL 125483, 2020 Ill. LEXIS 559 (Ill. 2020)*.

46. —§ 922(g)(3)

18 USCS § 922(g)(3) was not unconstitutionally vague in allowing conviction of habitual daily marijuana user who admitted to ownership of one of three firearms found at his residence, despite his argument that statute failed to distinguish between past and current unlawful users of controlled substance and allowed his conviction even though he was not using drugs at exact moment police found him in possession of firearm. *United States v. Edwards, 182 F.3d 333, 1999 U.S. App. LEXIS 16925 (5th Cir. 1999)*.

Where statute is challenged as unconstitutionally vague in cause of action not involving First Amendment, statute is considered only as applied; thus, *18 USCS § 922(g)(3)* was not unconstitutionally vague as applied to defendant as "unlawful user" of drugs, where government proved he took drugs with regularity, over extended period of time, and contemporaneously with his purchase or possession of firearm. *United States v. Purdy, 264 F.3d 809, 2001 Cal. Daily Op. Service 7693, 2001 D.A.R. 9517, 2001 U.S. App. LEXIS 19408 (9th Cir. 2001)*.

18 USCS § 922(g)(3) was not unconstitutionally vague and overbroad as applied to defendant because ordinary person would have understood that defendant's actions established him as unlawful user where he admitted that he regularly used marijuana, that he would have difficult time complying with release condition barring its use, and he tested positive for marijuana. *United States v. Patterson, 431 F.3d 832, 2005 U.S. App. LEXIS 26146 (5th Cir. 2005)*, cert. denied, *547 U.S. 1138, 126 S. Ct. 2043, 164 L. Ed. 2d 798, 2006 U.S. LEXIS 3806 (2006)*.

In case in which defendant was convicted of violating, inter alia, *18 USCS § 922(g)(1)*, his as-applied constitutional challenge failed; government introduced sufficient evidence to prove that firearm was manufactured and assembled outside state of Georgia. *United States v. Jordan, 635 F.3d 1181, 22 Fla. L. Weekly Fed. C 1900, 2011 U.S. App. LEXIS 5235 (11th Cir.)*, cert. denied, *565 U.S. 925, 132 S. Ct. 356, 181 L. Ed. 2d 225, 2011 U.S. LEXIS 7051 (2011)*, reh'g, en banc, denied, *2011 U.S. App. LEXIS 23685 (11th Cir. May 19, 2011)*, reh'g, en banc, denied, *433 Fed. Appx. 899, 2011 U.S. App. LEXIS 26220 (11th Cir. 2011)*.

In case in which defendant was convicted of violating, inter alia, *18 USCS § 922(g)(1)*, his argument that § 922(g)(1) was facially unconstitutional was foreclosed by precedent of Eleventh Circuit. Section 922(g)(1) was not facially unconstitutional exercise of Congress's power under Commerce Clause because it contained express jurisdictional requirement; jurisdictional requirement was satisfied when firearm in question has minimal nexus to interstate commerce. *United States v. Jordan, 635 F.3d 1181, 22 Fla. L. Weekly Fed. C 1900, 2011 U.S. App. LEXIS 5235 (11th Cir.)*, cert. denied, *565 U.S. 925, 132 S. Ct. 356, 181 L. Ed. 2d 225, 2011 U.S. LEXIS 7051 (2011)*, reh'g, en banc, denied, *2011 U.S. App. LEXIS 23685 (11th Cir. May 19, 2011)*, reh'g, en banc, denied, *433 Fed. Appx. 899, 2011 U.S. App. LEXIS 26220 (11th Cir. 2011)*.

Unpublished decision: *18 USCS § 922(g)(3)* was not unconstitutionally vague as applied to defendant; evidence at trial, including drug-related contraband found in defendant's home, defendant's admission to police that he used marijuana to self-medicate, and defendant's wife's testimony that defendant used marijuana to combat stress, was sufficient to show that defendant was unlawful user of marijuana contemporaneously with his possession of firearms for purposes of § 922(g)(3), and thus, defendant was on notice that manner and extent to which he used marijuana

qualified him as unlawful user under § 922(g)(3). *United States v. Baker, 206 Fed. Appx. 928, 2006 U.S. App. LEXIS 28591 (11th Cir. 2006)*, cert. denied, *552 U.S. 966, 128 S. Ct. 417, 169 L. Ed. 2d 292, 2007 U.S. LEXIS 11225 (2007)*.

Unpublished decision: Proposed jury instruction defining terms "addict" and "unlawful user" was properly denied because defendant failed to request instruction in writing and in timely manner as required under *Fed. R. Crim. P. 30*; fact that terms were undefined did not make *18 USCS § 922(g)(3)* unconstitutionally vague because ordinary people would understand that defendant's conduct by smoking crack cocaine in days and weeks leading up to his arrest constituted unlawful use of controlled substance within meaning of statute. *United States v. Monroe, 233 Fed. Appx. 879, 2007 U.S. App. LEXIS 1491 (11th Cir. 2007)*.

Where defendant conditionally pled guilty to violating *18 USCS § 922(g)(3)* and argued on appeal that it was unconstitutionally vague as applied to facts in his case, district court could not rule on his as applied constitutional challenge without resolving factual issues related to his alleged offense, and trial on merits was needed to decide his pretrial motion to dismiss. *United States v. Turner, 842 F.3d 602, 2016 U.S. App. LEXIS 20913 (8th Cir. 2016)*.

There was no merit to defendant's claims that his conviction for being unlawful user of controlled substance who possessed firearm, in violation of *18 USCS § 922*, had to be set aside because statute was facially vague as to who constituted "unlawful user" of controlled substance and violated his Second Amendment right to possess firearm, and because trial court's instruction defining "unlawful drug user" was inadequate; defendant's admission that he used marijuana almost daily for nearly ten years and had smoked two "blunts" on day police officers stopped his vehicle and discovered he was carrying loaded pistol fell within core of conduct statute prohibited and precluded his facial challenge to statute. *United States v. Cook, 914 F.3d 545, 2019 U.S. App. LEXIS 2767 (7th Cir. 2019)*, remanded, *970 F.3d 866, 2020 U.S. App. LEXIS 26023 (7th Cir. 2020)*.

Term "unlawful user" found in § 922(g)(3) was not unconstitutionally vague as there was no doubt as to essence of what statute forbade. *United States v. Cook, 970 F.3d 866, 2020 U.S. App. LEXIS 26023 (7th Cir. 2020)*.

47. —§ 922(g)(9)

18 USCS § 922(g)(9) is not unconstitutionally vague, since it contains no ambiguity either as to persons to whom prohibitions apply or as to what conduct is prescribed, even though misdemeanant may not know that his conviction will count as predicate offense, since it is fair to presume he will know his relationship with victim. *United States v. Meade, 175 F.3d 215, 1999 U.S. App. LEXIS 9032 (1st Cir. 1999)*.

18 USCS § 922(g)(9) was not unconstitutionally vague as applied to defendant in conjunction with state's general purpose assault statute, since state and federal statute afforded fair and ample warning to persons of ordinary intelligence that prior conviction under state's general purpose assault statute, if it involved domestic partner, would likely qualify as misdemeanor crime of domestic violence sufficient to trigger proscriptions of *18 USCS § 922(g)(9)*. *United States v. Nason, 269 F.3d 10, 2001 U.S. App. LEXIS 22514 (1st Cir. 2001)*.

Where defendant was convicted of violating *18 USCS § 922(g)(9)* for possession of rifle while hunting, based on 17-year-old simple assault conviction in connection with striking his wife in face, § 922(g)(9) was not unconstitutionally vague because overwhelming evidence showed that defendant had actual notice of law prohibiting his possession of firearms, including fact that defendant forfeited custody of his firearms after having protective order obtained against him in course of his divorce. *United States v. Pfeifer, 371 F.3d 430, 2004 U.S. App. LEXIS 11415 (8th Cir. 2004)*, reh'g, en banc, denied, *2004 U.S. App. LEXIS 16248 (8th Cir. Aug. 6, 2004)*.

48. § 922(h)

Certain federal criminal statutes, both of which prohibit receipt by felon of firearm which has traveled in interstate commerce (*18 USCS § 922(h)* and 18 USCS Appx § 1202(a)), but which prescribe different penalties for their violation (*18 USCS § 924(c)* and 18 USCS Appx § 1202(a)), are not void for vagueness since, even though overlapping, they clearly define the conduct prohibited and the punishment authorized, thereby meeting the notice requirements of the due process clause of the Federal Constitution; although the statutes do in fact create uncertainty as to which crime

may be charged and therefore what penalties may be imposed, they do so to no greater extent than would a single statute authorizing various alternative punishments. *United States v. Batchelder, 442 U.S. 114, 99 S. Ct. 2198, 60 L. Ed. 2d 755, 1979 U.S. LEXIS 122 (1979)*.

18 USCS § 922(h) is not unconstitutionally vague for failing to require knowledge of receipt to support conviction. *United States v. Haddad, 558 F.2d 968, 1977 U.S. App. LEXIS 12073 (9th Cir. 1977)*.

Term "unlawful user" of narcotics in *18 USCS § 922(h)(3)*, which prohibits sale of guns to certain classes of persons, is not vague as applied where defendant injected himself with heroin, since use of heroin by laymen is not permissible in any circumstance. *United States v. Ocegueda, 564 F.2d 1363, 1977 U.S. App. LEXIS 5878 (9th Cir. 1977)*.

Bodyguard Statute was not unconstitutionally vague because statutory elements of crime were conveyed by terms with clear definitions and settled legal meanings and defendants here engaged in conduct that was clearly prohibited by statute, and which constituted arguable core of § 922(h) in that they allegedly acted as armed guards at direction of prohibited persons who were their superiors in narcotics conspiracy. *United States v. Lahey, 967 F. Supp. 2d 731, 2013 U.S. Dist. LEXIS 130971 (S.D.N.Y. 2013)*.

49. § 922(o)

Because *18 USCS § 922(o)* prohibited any person to transfer or possess machine gun and *26 USCS § 5845(b)* adequately defined frame or receiver as constituting machine gun without possession of other parts, *18 USCS § 922(o)* was not unconstitutionally vague. *United States v. Williams, 364 F.3d 556, 2004 U.S. App. LEXIS 7289 (4th Cir.)*, cert. denied, *543 U.S. 910, 125 S. Ct. 229, 160 L. Ed. 2d 189, 2004 U.S. LEXIS 6134 (2004)*.

Where defendant was charged with knowingly transferring machinegun in violation of *18 USCS § 922(o)*, *18 USCS §§ 922(o)* and *924(a)(2)* were not unconstitutionally vague as applied to this case because person of ordinary intelligence would have had fair warning of relevant features of weapon that *26 USCS § 5845(b)* covered. *United States v. Olofson, 563 F.3d 652, 2009 U.S. App. LEXIS 9433 (7th Cir.)*, cert. denied, *558 U.S. 948, 130 S. Ct. 418, 175 L. Ed. 2d 272, 2009 U.S. LEXIS 7352 (2009)*.

Indictment against state police officer was dismissed because weapons statutes alleged to have been violated, *18 USCS § 922(o)*, and *26 USCS §§ 5861(b)* and (d), were unconstitutionally vague as applied to officer for his possession of machine gun while serving as police officer, equipment officer and/or lead rifle instructor. *United States v. Vest, 448 F. Supp. 2d 1002, 2006 U.S. Dist. LEXIS 61840 (S.D. Ill. 2006)*.

50. Miscellaneous

18 USCS § 922 is not unconstitutionally vague because, in reading its language, one could reasonably understand that delivery of concealed firearm to custody of common carrier was proscribed. *United States v. Udofot, 711 F.2d 831, 1983 U.S. App. LEXIS 26204 (8th Cir.)*, cert. denied, *464 U.S. 896, 104 S. Ct. 245, 78 L. Ed. 2d 234, 1983 U.S. LEXIS 1845 (1983)*.

Challenges to former *18 USCS § 922(v)(1)* and (w)(1) alleging that statutory definitions were vague were not ripe for decision, where plaintiffs failed to apply to Bureau of Alcohol, Tobacco, and Firearms' Technology Branch for final agency action in regard to interpretation of provision alleged to be vague. *Olympic Arms v. Magaw, 91 F. Supp. 2d 1061, 2000 U.S. Dist. LEXIS 4279 (E.D. Mich. 2000)*, aff'd, *301 F.3d 384, 2002 FED App. 0264P, 2002 U.S. App. LEXIS 15648 (6th Cir. 2002)*.

C. Commerce Clause

51. Generally

Federal regulation of intrastate sales of firearms does not constitute unconstitutional usurpation of state powers, since the transactions encompassed therein involve licensed dealers whose general involvement with interstate commerce is substantial. *United States v. Crandall, 453 F.2d 1216, 1972 U.S. App. LEXIS 11798 (1st Cir. 1972)*.

Congress has power to regulate acquisition of firearms under *18 USCS § 922* without requiring proof of nexus with interstate commerce in each individual case. *United States v. Nelson, 458 F.2d 556, 1972 U.S. App. LEXIS 10698 (5th Cir. 1972)*.

18 USCS § 922 is valid exercise of Congress' power under Commerce Clause, and defendant's conviction thereunder for an intrastate transaction is proper. *United States v. Lebman, 464 F.2d 68, 1972 U.S. App. LEXIS 9238 (5th Cir.)*, cert. denied, *409 U.S. 950, 93 S. Ct. 271, 34 L. Ed. 2d 220, 1972 U.S. LEXIS 962 (1972)*.

Since Congress may constitutionally reach wholly intrastate transactions, defendant may properly be convicted of failure to keep records or receipts of guns found in his store in violation of *18 USCS § 922*, despite government's failure to plead and prove interstate nexus. *United States v. Petrucci, 486 F.2d 329, 1973 U.S. App. LEXIS 7980 (9th Cir. 1973)*, cert. denied, *416 U.S. 937, 94 S. Ct. 1937, 40 L. Ed. 2d 287, 1974 U.S. LEXIS 554 (1974)*.

Congress did not exceed its power in enacting *18 USCS § 922*; enactment was constitutional and no evidence of interstate nexus is required. *United States v. King, 532 F.2d 505, 1976 U.S. App. LEXIS 8785 (5th Cir.)*, cert. denied, *429 U.S. 960, 97 S. Ct. 384, 50 L. Ed. 2d 327, 1976 U.S. LEXIS 3577 (1976)*, reh'g denied, *536 F.2d 390 (5th Cir. 1976)*.

Subsection of *18 USCS § 922*, as amended, which criminalizes certain activities "affecting commerce" is not unconstitutional, since words "affecting commerce" are jurisdictional words of art, and subsection reaches only those firearms that travel in interstate or foreign commerce. *United States v. Wallace, 889 F.2d 580, 29 Fed. R. Evid. Serv. (CBC) 66, 1989 U.S. App. LEXIS 17565 (5th Cir. 1989)*, reh'g denied, *1989 U.S. App. LEXIS 19615 (5th Cir. Dec. 27, 1989)*, cert. denied, *497 U.S. 1006, 110 S. Ct. 3243, 111 L. Ed. 2d 753, 1990 U.S. LEXIS 3335 (1990)*.

52. § 922(a)

18 USCS § 922(a)(6), which makes it unlawful for any person to make false statement in connection with purchase of firearms, does not violate Commerce Clause. *Cody v. United States, 460 F.2d 34, 1972 U.S. App. LEXIS 9651 (8th Cir.)*, cert. denied, *409 U.S. 1010, 93 S. Ct. 454, 34 L. Ed. 2d 303, 1972 U.S. LEXIS 672 (1972)*.

18 USCS § 922(a) is a valid exercise of Congress' power under the Commerce Clause, even though it reaches some wholly intrastate gun transactions. *United States v. Trioli, 308 F. Supp. 358, 1970 U.S. Dist. LEXIS 13091 (D. Mass. 1970)*.

53. —§ 922(a)(1)

18 USCS § 922(a)(1), which makes it unlawful for unlicensed person to engage in business of dealing in firearms, is valid exercise by Congress of its powers under Commerce Clause of Constitution. *Mandina v. United States, 472 F.2d 1110, 1973 U.S. App. LEXIS 11759 (8th Cir.)*, cert. denied, *412 U.S. 907, 93 S. Ct. 2299, 36 L. Ed. 2d 972, 1973 U.S. LEXIS 2372 (1973)* ; *United States v. Hornbeck, 489 F.2d 1325, 1973 U.S. App. LEXIS 6253 (7th Cir. 1973)*, cert. denied, *416 U.S. 907, 94 S. Ct. 1614, 40 L. Ed. 2d 112, 1974 U.S. LEXIS 718 (1974)*.

Congress acted constitutionally in providing punishment under *18 USCS § 922(a)(1)* for unlicensed intrastate firearms sales; Congress can constitutionally regulate a class of activities if that class has effect on interstate commerce. *United States v. Day, 476 F.2d 562, 1973 U.S. App. LEXIS 10683 (6th Cir. 1973)*.

Unpublished decision: Where defendant argued that his conviction had to be vacated because *18 USCS § 922(a)*(1(A) exceeded Congress's authority under Commerce Clause because first section of statute lacked interstate commerce nexus, Fifth Circuit rejected that precise argument in King decision. *United States v. Burke, 577 Fed. Appx. 338, 2014*

U.S. App. LEXIS 15356 (5th Cir. 2014), cert. denied, *574 U.S. 865, 135 S. Ct. 171, 190 L. Ed. 2d 121, 2014 U.S. LEXIS 6171 (2014)*, cert. denied, *574 U.S. 1093, 135 S. Ct. 984, 190 L. Ed. 2d 865, 2015 U.S. LEXIS 325 (2015)*.

18 USCS § 922(a)(1) is constitutional under both the Commerce Clause, Article I, § 8, clause 3, and the power of Congress to lay and collect taxes, Article I, § 8, clause 1. *United States v. Gross, 313 F. Supp. 1330, 1970 U.S. Dist. LEXIS 11198 (S.D. Ind. 1970)*, aff'd, *451 F.2d 1355, 1971 U.S. App. LEXIS 7325 (7th Cir. 1971)*.

Indictment charging defendant with violation of *18 USCS § 922(a)(1)(A)*, which prohibits unlicensed person from engaging in business of importing, manufacturing, or dealing in firearms, is not dismissed on ground that statute is unconstitutional, because economic activity of dealing in business of firearms substantially affects interstate commerce, and licensing requirement is legitimate exercise of Congress's authority under Commerce Clause. *United States v. Boone, 904 F. Supp. 868, 1995 U.S. Dist. LEXIS 19846 (N.D. Ind. 1995)*, aff'd, *108 F.3d 1380, 1997 U.S. App. LEXIS 9160 (7th Cir. 1997)*.

Unpublished decision: Defendant's convictions for dealing in firearms without license and unlawful sale of firearms to out-of-state residents were upheld because neither *18 USCS § 922(a)(1)(A)* nor § 922(a)(5) exceeded Congress's power under Commerce Clause because both implicated interstate commerce on their face. *United States v. Mascak, 143 Fed. Appx. 72, 2005 U.S. App. LEXIS 16516 (9th Cir. 2005)*, cert. denied, *546 U.S. 1081, 126 S. Ct. 840, 163 L. Ed. 2d 715, 2005 U.S. LEXIS 9330 (2005)*, app. after remand, *195 Fed. Appx. 668, 2006 U.S. App. LEXIS 19521 (9th Cir. 2006)*.

54. § 922(d)

18 USCS § 922(d) does not exceed Congress' legislative authority under Commerce Clause, even though it requires no jurisdictional nexus with interstate commerce, since it is essential part of larger regulation of economic activity and addresses disposal of firearms which, even when consummated in completely intrastate transaction, might through repetition elsewhere substantially affect interstate commerce. *United States v. Monteleone, 77 F.3d 1086, 43 Fed. R. Evid. Serv. (CBC) 1035, 1996 U.S. App. LEXIS 3336 (8th Cir. 1996)*.

18 USCS § 922(d) is valid exercise of Congress' commerce power over economic activity of distribution and sale of firearms nationwide. *United States v. Peters, 403 F.3d 1263, 18 Fla. L. Weekly Fed. C 367, 2005 U.S. App. LEXIS 4811 (11th Cir. 2005)*.

Defendant's conviction was affirmed because Congress had rational basis for concluding that intrastate transfer of firearms would undercut its regulation of interstate firearms market, and *18 USCS § 922(d)(1)* was proper exercise of Congress's Commerce Clause power. *United States v. Rose, 522 F.3d 710, 2008 FED App. 0152P, 2008 U.S. App. LEXIS 7765 (6th Cir. 2008)*, cert. denied, *555 U.S. 890, 129 S. Ct. 194, 172 L. Ed. 2d 155, 2008 U.S. LEXIS 5504 (2008)*.

Defendant's argument that prohibition under this section against selling firearms to prohibited person was unconstitutional under Commerce Clause, *U.S. Const. art. I, § 8, cl. 3*, failed because Sixth Circuit precedent held that such sales constituted activities having substantial relation to interstate commerce and that there was established interstate market for guns. *United States v. Bacon, 884 F.3d 605, 2018 FED App. 0046P, 2018 U.S. App. LEXIS 5834 (6th Cir. 2018)*, reh'g, en banc, denied, *2018 U.S. App. LEXIS 9821 (6th Cir. Apr. 18, 2018)*, cert. denied, *139 S. Ct. 471, 202 L. Ed. 2d 359, 2018 U.S. LEXIS 6624 (2018)*.

55. § 922(g)

Argument that *18 USCS§ 922(g)* violated Commerce Clause, where crime's only connection to interstate commerce was firearm's crossing of state lines, lacked merit and already had been explicitly rejected by court; if firearm traveled across state lines, minimal nexus with interstate commerce was met and statute could be constitutionally applied. United States v McCane (2009, CA10 Okla) 573 F3d 1037cert den *130 S. Ct. 1686, 176 L. Ed. 2d 179 (2010)*.

Congress does have power under Commerce Clause to regulate mere possession of firearms which have at some time traveled in interstate commerce, even if defendant never personally transported them, since *18 USCS § 922(g)* is clearly tied to interstate commerce. *United States v. Shelton, 66 F.3d 991, 1995 U.S. App. LEXIS 27842 (8th Cir. 1995)*, reh'g, en banc, denied, *1995 U.S. App. LEXIS 33245 (8th Cir. Nov. 28, 1995)*, reh'g denied, *1995 U.S. App. LEXIS 32661 (8th Cir. Nov. 21, 1995)*, cert. denied, *517 U.S. 1125, 116 S. Ct. 1364, 134 L. Ed. 2d 530, 1996 U.S. LEXIS 2265 (1996)*.

18 USCS § 922(g) does not violate Commerce Clause, since it contains as jurisdictional element requirement that firearm must have been at some time in interstate commerce. *United States v. Bolton, 68 F.3d 396, 1995 U.S. App. LEXIS 29225 (10th Cir. 1995)*, cert. denied, *516 U.S. 1137, 116 S. Ct. 966, 133 L. Ed. 2d 887, 1996 U.S. LEXIS 1320 (1996)*.

18 USCS § 922(g) is not unconstitutional, since it requires as element legitimate nexus with interstate commerce. *United States v. Sorrentino, 72 F.3d 294, 1995 U.S. App. LEXIS 36631 (2d Cir. 1995)*, overruled in part, *United States v. Abad, 514 F.3d 271, 2008 U.S. App. LEXIS 1940 (2d Cir. 2008)*.

18 USCS § 922(g) is constitutional, since it explicitly requires weapons to have connection to interstate commerce. *United States v. McAllister, 77 F.3d 387, 9 Fla. L. Weekly Fed. C 903, 1996 U.S. App. LEXIS 4002 (11th Cir.)*, cert. denied, *519 U.S. 905, 117 S. Ct. 262, 136 L. Ed. 2d 187, 1996 U.S. LEXIS 6018 (1996)*.

Existence of jurisdictional element in *18 USCS § 922(g)*, requiring government to prove nexus between firearm and interstate commerce in order to obtain conviction, satisfied minimal nexus required for Commerce Clause. *United States v. Wells, 98 F.3d 808, 1996 U.S. App. LEXIS 27697 (4th Cir. 1996)*.

18 USCS § 922(g) does not exceed Congress's authority under Commerce Clause. *United States v. Santiago, 238 F.3d 213, 2001 U.S. App. LEXIS 733 (2d Cir. 2001)*.

Defendant's argument, questioning validity of *18 USCS § 922(g)* as exercise of Congress's Commerce Clause power, was without merit under existing law. *United States v. Dunn, 345 F.3d 1285, 16 Fla. L. Weekly Fed. C 1125, 2003 U.S. App. LEXIS 19457 (11th Cir. 2003)*, reh'g, en banc, denied, *88 Fed. Appx. 394, 2003 U.S. App. LEXIS 27294 (11th Cir. 2003)*, cert. denied, *542 U.S. 906, 124 S. Ct. 2837, 159 L. Ed. 2d 270, 2004 U.S. LEXIS 4220 (2004)*.

Defendant's constitutional challenge to *18 USCS § 922(g)* under Commerce Clause was without merit where court had characterized facial challenges to § 922(g)'s constitutionality under Commerce Clause as "hopeless." *United States v. Coccia, 446 F.3d 233, 2006 U.S. App. LEXIS 11339 (1st Cir. 2006)*, cert. denied, *549 U.S. 1149, 127 S. Ct. 1021, 166 L. Ed. 2d 769, 2007 U.S. LEXIS 579 (2007)*.

District court properly denied defendant's dismissal motion, which contended that district court lacked jurisdiction over his *18 USCS § 922(g)* offense because § 922(g) was unconstitutional under Commerce Clause, *U.S. Const. art. I, § 8, cl. 3*; Court of Appeals had rejected similar facial constitutional challenges to § 922(g), and it was clear that statute's jurisdictional elements were met because defendant conceded that gun that he was found possessing in Illinois was manufactured in Ohio. *United States v. Juarez, 454 F.3d 717, 2006 U.S. App. LEXIS 18585 (7th Cir. 2006)*, cert. denied, *551 U.S. 1166, 127 S. Ct. 3053, 168 L. Ed. 2d 765, 2007 U.S. LEXIS 8863 (2007)*.

Firearm that defendant sold to confidential informant satisfied minimal nexus to interstate commerce that was required in *18 USCS § 922(g)* when firearm in question was manufactured in Montana and, thus, it necessarily traveled in interstate commerce prior to defendant's possession of it in Illinois; therefore, district court properly denied defendant's constitutional challenge to *18 USCS § 922(g)(1)*. *United States v. Van Sach, 458 F.3d 694, 71 Fed. R. Evid. Serv. (CBC) 1, 2006 U.S. App. LEXIS 21055 (7th Cir. 2006)*, reh'g, en banc, denied, *2006 U.S. App. LEXIS 24481 (7th Cir. Sept. 26, 2006)*, cert. denied, *549 U.S. 1174, 127 S. Ct. 1139, 166 L. Ed. 2d 905, 2007 U.S. LEXIS 1129 (2007)*.

For charges brought under *18 USCS § 922(g)* to be constitutional under Interstate Commerce Clause, government needed only show minimal nexus that firearm had been, at some time, in interstate commerce; fact that firearm had

been manufactured in Minnesota and ammunition was made in Illinois, then shipped for sale to Hawaii was sufficient to create required minimum connection. *United States v Paopao (2006, CA9 Hawaii) 465 F3d 404*, reprinted as amd on other grounds *(2006, CA9 Hawaii) 469 F3d 760*, cert den *(2007) 550 US 938, 127 S Ct 2249, 167 L Ed 2d 1097* and amd on other grounds, reh den, reh den, reh, en banc, den *469 F.3d 760 (CA9 Hawaii 2006)*.

Unpublished decision: In case in which defendant moved to dismiss indictment for lack of federal subject matter jurisdiction, on ground that weapon described in indictment was never in interstate commerce because it had been manufactured overseas and imported into Pennsylvania, where it remained until his arrest, motion to dismiss was terminated as moot due to his guilty plea; renewing that argument would be frivolous because *18 USCS § 922(g)(1)* was constitutional exercise of Congress's Commerce Clause powers, even after Lopez, Morrison, and Jones decisions. *United States v. Tucker, 511 Fed. Appx. 166, 2013 U.S. App. LEXIS 1798 (3d Cir. 2013)*.

Unpublished decision: Where defendant appealed district court's denial of his motion to dismiss indictment, *18 USCS § 922(g)(1)* was not unconstitutional exercise of Congress's Commerce Clause power as applied to purely intrastate conduct, such as mere possession of firearm. Florida decision, which held that individual mandate of Affordable Care Act exceeded Congress's regulatory powers under Commerce Clause, did nothing to abrogate or reverse Eleventh Circuit's prior holdings regarding constitutionality of *18 USCS § 922(g)*. *United States v. Moody, 555 Fed. Appx. 867, 2014 U.S. App. LEXIS 2040 (11th Cir. 2014)*.

Unpublished decision: Where defendant appealed his conviction for being felon in possession of firearm and ammunition, in light of binding precedent from U.S. Supreme Court and Tenth Circuit, district court correctly rejected defendant's argument that his conviction could not stand because Congress lacked authority under Commerce Clause to prohibit his possession of firearm and ammunition. *United States v. Deiter, 576 Fed. Appx. 814, 2014 U.S. App. LEXIS 15909 (10th Cir. 2014)*.

18 U.S.C.S. § 922(g) was constitutional exercise of Congress's power under Commerce Clause because it explicitly required connection to interstate commerce with "in or affecting" language. *United States v. Johnson, 981 F.3d 1171, 28 Fla. L. Weekly Fed. C 2222, 2020 U.S. App. LEXIS 37636 (11th Cir. 2020)*.

Indictee is not entitled to dismissal due to unconstitutionality of statute he was indicted under, where alleged felon in possession of firearm in violation of *18 USCS § 922(g)* argues shift in Commerce Clause jurisprudence calls into question statute's validity, because § 922(g) does provide requisite jurisdictional limitation that allows case-by-case inquiry as to whether particular firearm at issue affects interstate commerce, so that statute falls within realm of Congress's Commerce Clause authority. *United States v. Bell, 897 F. Supp. 1039, 1995 U.S. Dist. LEXIS 13409 (M.D. Tenn. 1995)*.

Indictment charging defendants with violations of *18 USCS § 922(g)* is not dismissed, because statute's jurisdictional element that firearm at some time had traveled in interstate commerce is sufficient to establish constitutionality of statute under Commerce Clause. *United States v. Taylor, 897 F. Supp. 1500, 1995 U.S. Dist. LEXIS 13287 (D. Conn. 1995)*, aff'd, *1997 U.S. App. LEXIS 26238 (2d Cir. Sept. 23, 1997)*.

Since defendant and Government stipulated, for purposes of defendant's motion to dismiss charges of violating *18 USCS § 922(g)*, that firearm and ammunition were recovered in defendant's possession in Hawaii and were manufactured in different state, items moved across state lines and were in stream of interstate commerce, and minimum nexus test applied to determine statute's constitutionality under Commerce Clause; minimum nexus test was clearly satisfied. *United States v. Castillias, 351 F. Supp. 2d 1045, 2004 U.S. Dist. LEXIS 26538 (D. Haw. 2004)*, aff'd, *189 Fed. Appx. 603, 2006 U.S. App. LEXIS 16861 (9th Cir. 2006)*.

Unpublished decision: In possession of firearm by felon case, constitutional challenge based on Commerce Clause was rejected based on precedent; firearms statute demonstrated intent to assert full Commerce Clause power, statute was not unconstitutional based on use of word "commerce" rather than "interstate or foreign commerce," and minimal nexus test had been upheld. *United States v. Erity, 631 Fed. Appx. 671, 2015 U.S. App. LEXIS 19305 (11th Cir. 2015)*.

56. —§ 922(g)(1)

18 USCS § 922(g)(1) is not unconstitutional under Commerce Clause, since it explicitly requires proof of nexus between weapon and interstate commerce. *United States v. Bell, 70 F.3d 495, 1995 U.S. App. LEXIS 32315 (7th Cir. 1995)*.

18 USCS § 922(g)(1) is valid exercise of legislative power under Commerce Clause, since it requires government in each case to prove that felon possessed firearm "in or affecting commerce." *United States v Turner, 77 F.3d 887, 1996 FED App. 73P (CA6 Tenn 1996)*.

Fact that firearm had previously traveled in interstate commerce was sufficient to establish minimal nexus with interstate commerce required of *18 USCS § 922(g)(1)* by Commerce Clause. *United States v. Bates, 77 F.3d 1101, 1996 U.S. App. LEXIS 3816 (8th Cir.*, cert. denied, *519 U.S. 884, 117 S. Ct. 215, 136 L. Ed. 2d 149, 1996 U.S. LEXIS 5711 (1996)*, reh'g denied, *1996 U.S. App. LEXIS 7569 (8th Cir. Apr. 11, 1996)*.

18 USCS § 922(g)(1) is valid exercise of Congress' power under Commerce Clause, since it requires defendant to have possessed firearm "in or affecting commerce." *United States v. Gateward, 84 F.3d 670, 1996 U.S. App. LEXIS 12304 (3d Cir.)*, cert. denied, *519 U.S. 907, 117 S. Ct. 268, 136 L. Ed. 2d 192, 1996 U.S. LEXIS 6056 (1996)*.

Congress acted within its authority when it enacted *18 USCS §§ 922(g)(1)* and *922(k)*, since both provisions require nexus between interstate commerce and firearms. *United States v. Hernandez, 85 F.3d 1023, 1996 U.S. App. LEXIS 13805 (2d Cir. 1996)*.

18 USCS § 922(g)(1) is constitutional, even though term "commerce" is not defined as "interstate or foreign commerce" since "in or affecting commerce" indicates Congress's intent to assert its full Commerce Clause power. *United States v. Nichols, 124 F.3d 1265, 11 Fla. L. Weekly Fed. C 627, 1997 U.S. App. LEXIS 28470 (11th Cir. 1997)*, cert. denied, *522 U.S. 1136, 118 S. Ct. 1096, 140 L. Ed. 2d 151, 1998 U.S. LEXIS 1260 (1998)*.

18 USCS § 922(g)(1) and *922(k)* were not beyond Congress' power under Commerce Clause or in violation of Second, Ninth, or Tenth Amendments; although Utah's constitution gave defendant right to bear arms, his federal weapons prosecution was not improper, since state constitutional provisions cannot override federal criminal statutes unless incorporated into federal law. *United States v. Baer, 235 F.3d 561, 2000 Colo. J. C.A.R. 6667, 2000 U.S. App. LEXIS 32498 (10th Cir. 2000)*.

18 USCS § 922(g)(1) is Constitutional under Commerce Clause, since it regulates possession of goods moved in interstate commerce. *United States v. Dorris, 236 F.3d 582, 2001 Colo. J. C.A.R. 176, 2000 U.S. App. LEXIS 33660 (10th Cir. 2000)*, cert. denied, *532 U.S. 986, 121 S. Ct. 1635, 149 L. Ed. 2d 495, 2001 U.S. LEXIS 3137 (2001)*.

Congress did not exceed its authority under Commerce Clause in enacting *18 USCS § 922(g)(1)*. *United States v. Davis, 242 F.3d 1162, 2001 Cal. Daily Op. Service 2234, 2001 D.A.R. 2813, 2001 U.S. App. LEXIS 4107 (9th Cir.)*, cert. denied, *534 U.S. 878, 122 S. Ct. 178, 151 L. Ed. 2d 123, 2001 U.S. LEXIS 6395 (2001)*.

Decision invalidating Violence Against Women Act did not affect constitutionality of *18 USCS § 922(g)(1)* which includes express jurisdictional element. *United States v. Stuckey, 255 F.3d 528, 2001 U.S. App. LEXIS 15080 (8th Cir.)*, cert. denied, *534 U.S. 1011, 122 S. Ct. 498, 151 L. Ed. 2d 409, 2001 U.S. LEXIS 10239 (2001)*.

18 USCS § 922(g)(1) and (9) are constitutional under Commerce Clause, Second or Tenth Amendment, and are not ex post facto laws or bills of attainder. *United States v. Hemmings, 258 F.3d 587, 2001 U.S. App. LEXIS 15572 (7th Cir. 2001)*.

Where court had already rejected felon's Commerce Clause attenuation argument based on construction of Lopez vis-à-vis felon-in-possession statute, and because statute contained jurisdictional element, court affirmed his conviction for flashing gun at car-wreck scene. *United States v. Lemons, 302 F.3d 769, 2002 U.S. App. LEXIS 18704 (7th Cir.)*, cert. denied, *537 U.S. 1049, 123 S. Ct. 642, 154 L. Ed. 2d 523, 2002 U.S. LEXIS 8747 (2002)*.

Defendant's argument that *18 USCS § 922* was unconstitutional because defendant's activities did not involve interstate commerce lacked merit because *18 USCS § 922(g)(1)* by its language only regulates those weapons affecting interstate commerce by being subject of interstate trade. *United States v. Carnes, 309 F.3d 950, 2002 FED App. 0375P, 2002 U.S. App. LEXIS 22477 (6th Cir. 2002)*, cert. denied, *537 U.S. 1240, 123 S. Ct. 1371, 155 L. Ed. 2d 211, 2003 U.S. LEXIS 1874 (2003)*.

18 USCS § 922(g)(1) was constitutional because it explicitly included jurisdictional element, and district court found requisite nexus between defendant's possession of gun and interstate commerce—i.e., gun had been manufactured in California and shipped to Illinois. *United States v. Bass, 325 F.3d 847, 2003 U.S. App. LEXIS 6519 (7th Cir. 2003)*, cert. denied, *540 U.S. 998, 124 S. Ct. 506, 157 L. Ed. 2d 401, 2003 U.S. LEXIS 7956 (2003)*.

Defendant's argument that *18 USCS § 922(g)(1)* was unconstitutional under Commerce Clause, *U.S. Const. art. I, § 8, cl. 3*, because it failed to require that felon's possession of firearms "substantially" affect interstate commerce was without merit because *18 USCS § 922(g)(1)* represented valid exercise of Congress' legislative power under Commerce Clause. *United States v. Loney, 331 F.3d 516, 2003 FED App. 0181P, 2003 U.S. App. LEXIS 11289 (6th Cir. 2003)*.

18 USCS § 922(g)(1) does not violate Commerce Clause because interstate commerce requirement is met where firearm traveled in interstate commerce. *United States v. Darrington, 351 F.3d 632, 2003 U.S. App. LEXIS 23451 (5th Cir. 2003)*, cert. denied, *541 U.S. 1080, 124 S. Ct. 2429, 158 L. Ed. 2d 994, 2004 U.S. LEXIS 3957 (2004)*.

18 USCS § 922(g)(1) was not beyond Congress' power under Commerce Clause. *United States v. Jones, 390 F.3d 1291, 2004 U.S. App. LEXIS 25198 (10th Cir. 2004)*, reinstated, *425 F.3d 1274, 2005 U.S. App. LEXIS 22068 (10th Cir. 2005)*.

Defendant was properly convicted of being felon in possession of five firearms in violation of *18 USCS § 922(g)(1)*; *18 USCS § 922(g)(1)* was not unconstitutional because statute's requirement that firearm be "shipped or transported in interstate or foreign commerce" constituted jurisdictional element that justified Congress's passage of provision pursuant to its powers under Commerce Clause, *U.S. Const. art. I, § 8, cl. 3*. *United States v. Olson, 408 F.3d 366, 2005 U.S. App. LEXIS 8626 (7th Cir. 2005)*.

Defendant's constitutional challenge to felon-in-possession statute failed; because *18 USCS § 922(g)(1)* required proof that defendant possessed firearm in or affecting commerce, it represented valid exercise of congressional authority under Commerce Clause. *United States v. Williams, 410 F.3d 397, 2005 U.S. App. LEXIS 10712 (7th Cir. 2005)*.

Conviction under *18 USCS § 922(g)(1)* comports with Commerce Clause so long as defendant possessed gun that previously had moved in interstate commerce. *United States v. Henry, 429 F.3d 603, 2005 FED App. 0450P, 2005 U.S. App. LEXIS 25125 (6th Cir. 2005)*.

Where jury convicted defendant of possessing ammunition as convicted felon in violation of *18 USCS § 922(g)(1)*, defendant's Commerce Clause challenge to § 922(g)(1)'s prohibition of felons' intrastate possession of ammunition that once traveled in interstate commerce was rejected because appellate court was bound by prior holdings. *United States v. Campbell, 603 F.3d 1218, 2010 U.S. App. LEXIS 9488 (10th Cir.)*, cert. denied, *562 U.S. 939, 131 S. Ct. 351, 178 L. Ed. 2d 228, 2010 U.S. LEXIS 7473 (2010)*.

Because community control under *Fla. Stat. § 948.001* was similar form of release to probation, for defendant's sentencing purposes it warranted enhancement under USSG § 4A1.2(k); conviction under *18 USCS § 922(g)(1)* did not violate Commerce Clause where weapons were manufactured in another state. *United States v. Wright, 607 F.3d 708, 22 Fla. L. Weekly Fed. C 878, 2010 U.S. App. LEXIS 10732 (11th Cir. 2010)*.

Defendant's argument that conviction for possession of firearm by felon exceeds Congress's Commerce Clause power, because fact of firearm's origin in Austria supplies insufficient nexus to interstate commerce, was no longer open in First Circuit; this statute is constitutional when applied to possession of gun that previously traveled interstate.

United States v. Torres-Colón, 790 F.3d 26, 2015 U.S. App. LEXIS 9871 (1st Cir.), cert. denied, *577 U.S. 882, 136 S. Ct. 185, 193 L. Ed. 2d 148, 2015 U.S. LEXIS 5425 (2015)*.

Unpublished decision: In case in which defendant appealed his conviction for violating 18 USCS § 922(g)(1), his argument was meritless that his conviction exceeded scope of Congress's authority under Commerce Clause; Section 922(g)(1) was legitimate exercise of Congress's authority to regulate interstate commerce because statute expressly requires proof of nexus with interstate commerce. United States v. Cook, 457 Fed. Appx. 285, 2011 U.S. App. LEXIS 24289 (4th Cir. 2011), cert. denied, *566 U.S. 929, 132 S. Ct. 1874, 182 L. Ed. 2d 657, 2012 U.S. LEXIS 2577 (2012)*.

Unpublished decision: In case in which defendant appealed his conviction for violating 18 USCS § 922(g)(1), Eleventh Circuit had already rejected argument that §§ 922(g)(1) was constitutionally invalid because term commerce was not defined as interstate or foreign commerce; phrase in or affecting commerce indicated Congressional intent to assert its full Commerce Clause power. United States v. Morris, 457 Fed. Appx. 900, 2012 U.S. App. LEXIS 2798 (11th Cir. 2012).

Unpublished decision: In case in which district court, relying on Scarborough decision by U.S. Supreme Court and Patton decision by the Tenth Circuit in denying defendant's motion to dismiss, he appealed, arguing again that 18 USCS § 922(g)(1) was unconstitutional because Congress exceeded its authority under Commerce Clause in enacting statute; like district court, appellate court was bound by U.S. Supreme Court and Tenth Circuit precedent upholding constitutionality of § 922(g)(1). United States v. Kirby, 490 Fed. Appx. 113, 2012 U.S. App. LEXIS 14373 (10th Cir.), cert. denied, *568 U.S. 1018, 133 S. Ct. 629, 184 L. Ed. 2d 409, 2012 U.S. LEXIS 8772 (2012)*.

Unpublished decision: In case in which defendant appealed his conviction for violating 18 USCS § 922(g)(1), his argument was foreclosed by United States Eighth Circuit precedent that Congress exceeded its power under Commerce Clause in enacting § 922(g)(1), and that § 922(g)(1) impermissibly infringed on his rights under Second Amendment. United States v. Jones, 485 Fed. Appx. 848, 2012 U.S. App. LEXIS 18098 (8th Cir. 2012), reh'g, en banc, denied, 2012 U.S. App. LEXIS 21133 (8th Cir. Oct. 11, 2012), cert. denied, *568 U.S. 1184, 133 S. Ct. 1302, 185 L. Ed. 2d 228, 2013 U.S. LEXIS 1530 (2013)*.

Unpublished decision: In case in which defendant argued that 18 USCS § 922(g)(1) was unconstitutional because it exceeded Congress's authority under Commerce Clause and Tenth Amendment, that argument was squarely foreclosed by Scott decision and N. Ala. Express, Inc. decision. United States v. Keaton, 510 Fed. Appx. 824, 2013 U.S. App. LEXIS 3829 (11th Cir. 2013), cert. denied, *571 U.S. 852, 134 S. Ct. 126, 187 L. Ed. 2d 89, 2013 U.S. LEXIS 5586 (2013)*.

Unpublished decision: Where defendant appealed his conviction, his argument lacked merit that 18 USCS § 922(g)(1) exceeded Congress's authority under Commerce Clause. Nexus component of § 922(g) was established when government could demonstrate that firearm was manufactured outside state where defendant possessed it. United States v. Westmoreland, 542 Fed. Appx. 221, 2013 U.S. App. LEXIS 20630 (4th Cir. 2013), cert. denied, *571 U.S. 1184, 134 S. Ct. 1045, 188 L. Ed. 2d 135, 2014 U.S. LEXIS 822 (2014)*.

Challenge to constitutionality of statute based on interstate commerce failed because issue had been rejected previously in United States Court of Appeals for Third Circuit. United States v. Thompson, 675 Fed. Appx. 221, 2017 U.S. App. LEXIS 776 (3d Cir.), cert. denied, *137 S. Ct. 2106, 197 L. Ed. 2d 904, 2017 U.S. LEXIS 2830 (2017)*.

Defendant did not show plain error as to constitutionality of subsection(g)(1) as neither Supreme Court nor Eleventh Circuit Court of Appeals had held that amended version was unconstitutional; defendant's firearm had moved in interstate commerce because it was manufactured in Arizona and he possessed it in Florida. United States v. Thomas, 767 Fed. Appx. 758, 2019 U.S. App. LEXIS 9295 (11th Cir. 2019).

Indictment charging defendant with violating 18 USCS § 922(g)(1) is not dismissed, because requirement of § 922(g) that defendant's possession of firearm or ammunition must have been "in or affecting commerce" supplied critical element that renders statute within Congress's authority to legislate under Commerce Clause, unlike 18 USCS §

922(g), which Supreme Court held was in excess of Congress's power. United States v. Snow, 899 F. Supp. 1059, 1995 U.S. Dist. LEXIS 15549 (W.D.N.Y. 1995).

Indictee's constitutional challenge to 18 USCS § 922(g)(1) is denied, even though question may remain open whether or not Supreme Court will eventually find section beyond Congress's reach under Commerce Clause, because statute's essential element that possessed firearm previously traveled in interstate commerce satisfies Commerce Clause requirements for regulated activity under current Third Circuit precedent. United States v. Dejesus, 150 F. Supp. 2d 684, 2001 U.S. Dist. LEXIS 10071 (D.N.J. 2001).

Law of Eleventh Circuit is that limitation of 18 USCS § 922(g) to firearms that have moved in interstate commerce renders statute constitutional and that government need show no further nexus to interstate commerce; therefore, defendant was not entitled to dismissal of his indictment under 18 USCS § 922(g)(1) on ground that it violated Commerce Clause. United States v. Shivers, 390 F. Supp. 2d 1067, 2005 U.S. Dist. LEXIS 28357 (N.D. Fla. 2005), aff'd, 164 Fed. Appx. 913, 2006 U.S. App. LEXIS 2407 (11th Cir. 2006).

Unpublished decision: District court did not err when it found that defendant who pled guilty to possessing firearm after he was convicted of felony, in violation of 18 USCS § 922, was subject to sentencing under Armed Career Criminal Act, 18 USCS § 924, because he had three prior violent felony convictions; there was no merit to defendant's claim that his conviction under 18 USCS § 1791 for possessing "approximately six inch metal stabbing weapon" while he was in prison was not "violent felony" for purposes of § 924, and his claim that § 922 was unconstitutional under Commerce Clause of U.S. Constitution was foreclosed. United States v. De La Cruz, 582 Fed. Appx. 327, 2014 U.S. App. LEXIS 17711 (5th Cir. 2014).

57. — —"Facial" and "as applied" constitutionality

18 USCS § 922(g)(1) was not unconstitutional as applied to defendant, where serial number of gun confiscated from him in San Francisco revealed it had been stolen in Sparks, Nevada, since past connection is enough under minimal nexus standard. *United States v. Hanna, 55 F.3d 1456, 95 Cal. Daily Op. Service 6293, 95 D.A.R. 10695, 1995 U.S. App. LEXIS 21064 (9th Cir. 1995)*, app. after remand, 96 F.3d 453, 96 Cal. Daily Op. Service 7017, 96 D.A.R. 11512, 1996 U.S. App. LEXIS 24656 (9th Cir. 1996).

Neither holding nor reasoning involved in recent decision invalidating Gun Free School Zones Act, 18 USCS § 922(g), required constitutional invalidation of 18 USCS § 922(g)(1); nor was § 922(g)(1) unconstitutional as applied to defendant on commerce grounds, where weapon he possessed in one state was manufactured in another. United States v. Rawls, 85 F.3d 240, 1996 U.S. App. LEXIS 14731 (5th Cir. 1996).

18 USCS § 922(g)(1) is constitutional on its face under Commerce Clause, since it contains requirement of minimal jurisdictional nexus, and as applied to defendant who stipulated that gun he possessed had previously moved in interstate commerce. United States v. Chesney, 86 F.3d 564, 1996 FED App. 0166P, 44 Fed. R. Evid. Serv. (CBC) 1172, 1996 U.S. App. LEXIS 14508 (6th Cir. 1996), cert. denied, *520 U.S. 1282, 117 S. Ct. 2470, 138 L. Ed. 2d 225, 1997 U.S. LEXIS 3849 (1997)*.

Convicted felon tried in state court for possession of firearm and aggravated assault with deadly weapon stemming from domestic dispute cannot argue that 18 USCS § 922(g)(1) was unconstitutional as applied to him, where one of firearms was manufactured in Belgium and other, in another state. United States v. Kuban, 94 F.3d 971, 1996 U.S. App. LEXIS 22404 (5th Cir. 1996), cert. denied, *519 U.S. 1070, 117 S. Ct. 716, 136 L. Ed. 2d 635, 1997 U.S. LEXIS 285 (1997)*.

18 USCS § 922(g)(1) was constitutional exercise of Congress's authority under Commerce Clause on its face and as applied, where firearm had been manufactured in Spain and imported through New Jersey, since past connection to interstate commerce was sufficient. United States v. Rousseau, 257 F.3d 925, 2001 Cal. Daily Op. Service 5634, 2001 D.A.R. 6877, 2001 U.S. App. LEXIS 14818 (9th Cir.), cert. denied, *534 U.S. 1013, 122 S. Ct. 503, 151 L. Ed. 2d 413, 2001 U.S. LEXIS 10270 (2001)*.

18 USCS § 922(g)(1) was constitutional both facially and as applied to defendant, where firearm in question had "minimal nexus" with interstate commerce. *United States v. Scott, 263 F.3d 1270, 14 Fla. L. Weekly Fed. C 1244, 2001 U.S. App. LEXIS 19208 (11th Cir. 2001)*, cert. denied, *534 U.S. 1166, 122 S. Ct. 1182, 152 L. Ed. 2d 124, 2002 U.S. LEXIS 1257 (2002)*.

18 USCS § 922(g)(1) remains constitutional, since it contains plain jurisdictional element; as applied to defendant, there was stipulated evidence that gun traveled in interstate commerce. *United States v. Daugherty, 264 F.3d 513, 2001 U.S. App. LEXIS 19201 (5th Cir. 2001)*, reh'g, en banc, denied, *275 F.3d 41, 2001 U.S. App. LEXIS 22379 (5th Cir. 2001)*, cert. denied, *534 U.S. 1150, 122 S. Ct. 1113, 151 L. Ed. 2d 1007, 2002 U.S. LEXIS 1121 (2002)*.

18 USCS § 922(g)(1) is constitutional, since it only regulates weapons affecting interstate commerce by being subject of interstate trade, even though it does not require that act of gun possession have substantial effect on interstate commerce; § 922(g)(1) was constitutional as applied to defendant, since proof that gun had traveled in interstate commerce at some time in past was sufficient to satisfy interstate commerce element of *18 USCS § 922(g)(1)*. *United States v. Singletary, 268 F.3d 196, 2001 U.S. App. LEXIS 21276 (3d Cir. 2001)*, cert. denied, *535 U.S. 976, 122 S. Ct. 1450, 152 L. Ed. 2d 391, 2002 U.S. LEXIS 2257 (2002)*.

Court rejected defendant's Commerce Clause, *U.S. Const. art. I, § 8, cl. 3*, challenge to *18 USCS § 922(g)(1)* because court had previously held that statute's jurisdictional element placed it within ambit of Congress' Commerce Clause powers; statute was not unconstitutional as applied to defendant because he was state resident and all of firearms and ammunition found in his home were manufactured outside of state; evidence that firearms and ammunition were all manufactured outside state provided requisite nexus to, and proof that firearms traveled in, interstate commerce for purposes of applying § 922(g)(1). *United States v. Leuschen, 395 F.3d 155, 2005 U.S. App. LEXIS 1094 (3d Cir.)*, cert. denied, *544 U.S. 1041, 125 S. Ct. 2280, 161 L. Ed. 2d 1074, 2005 U.S. LEXIS 4092 (2005)*.

Under circuit court of appeals precedent, if firearm traveled across state lines, minimal nexus with interstate commerce was met and statute could be constitutionally applied; court required no further showing of actual effect of defendant's actions on interstate commerce and rejected defendant's "as applied" challenge to *18 USCS § 922(g)(1)*. *United States v. Urbano, 563 F.3d 1150, 2009 U.S. App. LEXIS 9019 (10th Cir.)*, cert. denied, *558 U.S. 962, 130 S. Ct. 434, 175 L. Ed. 2d 297, 2009 U.S. LEXIS 7253 (2009)*.

Unpublished decision: In case in which defendant appealed his conviction for violating, inter alia, *18 USCS § 922(g)(1)*, his argument that district court lacked jurisdiction over his criminal prosecution because § 922(g)(1) was unconstitutional under Commerce Clause was meritless; his facial argument failed since United States Court of Appeals for Third Circuit had already decided that § 922(g)(1) was constitutional, and he waived his as applied argument. *United States v. Yarbrough, 452 Fed. Appx. 186, 2011 U.S. App. LEXIS 23198 (3d Cir. 2011)*, cert. denied, *565 U.S. 1273, 132 S. Ct. 1775, 182 L. Ed. 2d 554, 2012 U.S. LEXIS 2076 (2012)*.

Unpublished decision: In connection with defendant's conviction of being felon in possession of firearm, *18 USCS § 922(g)* was not facially unconstitutional exercise of Congress's power under Commerce Clause because it contained express jurisdictional requirement, i.e., requirement that felon possess firearm in or affecting commerce; nor was it unconstitutional as applied because evidence established that his possession of firearm had minimal nexus to interstate commerce. *United States v. Bailey, 453 Fed. Appx. 901, 2011 U.S. App. LEXIS 25107 (11th Cir. 2011)*.

Unpublished decision: Felon-in-possession statute did not violate Commerce Clause facially or as applied to appellant; past transport of weapon in interstate commerce was sufficient to permit federal jurisdiction, and evidence that firearm at issue was manufactured in Vermont and possessed by appellant in Pennsylvania satisfied interstate commerce requirement. *United States v. Harris, 459 Fed. Appx. 206, 2012 U.S. App. LEXIS 1651 (3d Cir. 2012)*.

Unpublished decision: In case in which defendant appealed his conviction for violating *18 USCS § 922(g)(1)*, his claim that § 922(g)(1) was facially unconstitutional was foreclosed by precedent of Eleventh Circuit; that court had previously rejected claim that § 922(g)(1) was unconstitutional in light of Lopez decision; jurisdictional element in § 922(g), requiring that felon's possession of any firearm or ammunition be in or affecting commerce, distinguished §

922(g) from statute at issue in Lopez decision and defeated facial challenge to its constitutionality. *United States v. Morris, 457 Fed. Appx. 900, 2012 U.S. App. LEXIS 2798 (11th Cir. 2012)*.

Unpublished decision: In case in which defendant appealed his conviction for violating *18 USCS § 922(g)(1)*, his claim that § 922(g)(1) was unconstitutional as applied was foreclosed by precedent of Eleventh Circuit; Lopez decision had not abrogated minimal nexus requirement that U.S. Supreme Court had established in Scarborough decision. *United States v. Morris, 457 Fed. Appx. 900, 2012 U.S. App. LEXIS 2798 (11th Cir. 2012)*.

Unpublished decision: In case in which defendant appealed his conviction for violating *18 USCS § 922(g)(1)*, his claim that § 922(g)(1) was facially unconstitutional was foreclosed by precedent of Eleventh Circuit; that court had previously rejected claim that § 922(g)(1) was unconstitutional in light of Lopez decision; jurisdictional element in § 922(g), requiring that felon's possession of any firearm or ammunition be in or affecting commerce, distinguished § 922(g) from statute at issue in Lopez decision and defeated facial challenge to its constitutionality. *United States v. Morris, 457 Fed. Appx. 900, 2012 U.S. App. LEXIS 2798 (11th Cir. 2012)*.

Unpublished decision: In case in which defendant appealed his conviction for violating *18 USCS § 922(g)(1)*, his claim that § 922(g)(1) was unconstitutional as applied was foreclosed by precedent of Eleventh Circuit; Lopez decision had not abrogated minimal nexus requirement that U.S. Supreme Court had established in Scarborough decision. *United States v. Morris, 457 Fed. Appx. 900, 2012 U.S. App. LEXIS 2798 (11th Cir. 2012)*.

Unpublished decision: In case in which defendant appealed his conviction for violating *18 USCS § 922(g)(1)*, Eleventh Circuit had already rejected argument that §§ 922(g)(1) was constitutionally invalid because term commerce was not defined as interstate or foreign commerce; phrase in or affecting commerce indicated Congressional intent to assert its full Commerce Clause power. *United States v. Morris, 457 Fed. Appx. 900, 2012 U.S. App. LEXIS 2798 (11th Cir. 2012)*.

Unpublished decision: Because defendant conceded Government presented evidence gun had traveled in interstate commerce, *18 USCS § 922(g)* was not unconstitutional as applied to defendant. *United States v. Pritchard, 458 Fed. Appx. 846, 2012 U.S. App. LEXIS 3734 (11th Cir.)*, cert. denied, *567 U.S. 912, 132 S. Ct. 2759, 183 L. Ed. 2d 628, 2012 U.S. LEXIS 4452 (2012)*.

Unpublished decision: In case in which defendant appealed his conviction for violating *18 USCS § 922(g)(1)*, he raised unsuccessful as-applied challenge under Commerce Clause, arguing that all matters in question took place in Virginia; at trial, government presented evidence that gun he purchased from ATF agent was manufactured in Austria and imported into United States by Glock facility in Smyrna, Georgia. *United States v. Kline, 494 Fed. Appx. 323, 2012 U.S. App. LEXIS 19259 (4th Cir. 2012)*, cert. denied, *568 U.S. 1136, 133 S. Ct. 963, 184 L. Ed. 2d 747, 2013 U.S. LEXIS 637 (2013)*.

Unpublished decision: In case in which defendant appealed his conviction for violating *18 USCS § 922(g)(1)*, relying on Lopez decision, he argued that § 922 violated Commerce Clause; in Wells decision, United States Court of Appeals of Fourth Circuit considered and rejected challenge to constitutionality of § 922(g)(1) based on Lopez decision; existence of jurisdictional element, requiring government to show that nexus existed between firearm and interstate commerce to obtain conviction under § 922(g), distinguished Lopez decision and satisfied minimal nexus required for Commerce Clause. *United States v. Kline, 494 Fed. Appx. 323, 2012 U.S. App. LEXIS 19259 (4th Cir. 2012)*, cert. denied, *568 U.S. 1136, 133 S. Ct. 963, 184 L. Ed. 2d 747, 2013 U.S. LEXIS 637 (2013)*.

Unpublished decision: Where defendant appealed his sentence for violating *18 USCS § 922(g)(1)*, his argument was foreclosed by Daugherty decision that § 922(g)(1) was unconstitutional on its face, and as applied to him, because Commerce Clause did not authorize Congress to criminalize purely local possession of firearm merely because it was shipped or transported in interstate commerce at some point in past. *United States v. Hoover, 548 Fed. Appx. 300, 2013 U.S. App. LEXIS 24972 (5th Cir. 2013)*, cert. denied, *572 U.S. 1052, 134 S. Ct. 1804, 188 L. Ed. 2d 769, 2014 U.S. LEXIS 2513 (2014)*.

Unpublished decision: Where defendant appealed his sentence for violating *18 USCS § 922(g)(1)*, his argument was foreclosed by Daugherty decision that § 922(g)(1) was unconstitutional on its face, and as applied to him, because Commerce Clause did not authorize Congress to criminalize purely local possession of firearm merely because it was shipped or transported in interstate commerce at some point in past. *United States v. Hoover, 548 Fed. Appx. 300, 2013 U.S. App. LEXIS 24972 (5th Cir. 2013)*, cert. denied, *572 U.S. 1052, 134 S. Ct. 1804, 188 L. Ed. 2d 769, 2014 U.S. LEXIS 2513 (2014)*.

Unpublished decision: Where defendant was convicted for two counts of possession of firearm by convicted felon, his argument that *18 USCS § 922(g)(1)* was unconstitutional because it did not require sufficient interstate nexus to satisfy Commerce Clause was foreclosed by judicial precedent; defendant's guilty plea waived his "as applied" constitutional challenge. *United States v. Hall, 567 Fed. Appx. 896, 2014 U.S. App. LEXIS 10134 (11th Cir. 2014)*.

Unpublished decision: Defendant's as-applied Commerce Clause challenge to his conviction under *18 USCS § 922(g)(1)* failed where government demonstrated that firearm possessed by defendant previously traveled in interstate commerce. *United States v. Pericles, 382 Fed. Appx. 801, 2010 U.S. App. LEXIS 11827 (11th Cir.)*, cert. denied, *562 U.S. 940, 131 S. Ct. 356, 178 L. Ed. 2d 230, 2010 U.S. LEXIS 7305 (2010)*.

Unpublished decision: Where defendant was convicted and sentenced for being felon in possession of firearm, he conceded that his argument about constitutionality of *18 USCS § 922(g)* was foreclosed by Eleventh Circuit's precedent; court had repeatedly that § 922(g) was constitutional, facially and as applied, as lawful exercise of Congress's power under Commerce Clause. *United States v. Barnes, 596 Fed. Appx. 821, 2015 U.S. App. LEXIS 78 (11th Cir.)*, cert. denied, *577 U.S. 893, 136 S. Ct. 223, 193 L. Ed. 2d 169, 2015 U.S. LEXIS 4949 (2015)*.

Unpublished decision: Where defendant appealed his conviction for being felon in possession of firearm, his argument that in or affecting commerce element of *18 USCS § 922(g)(1)*, as applied to him, was unconstitutional under Commerce Clause was foreclosed by Gallimore decision, which was controlling Fourth Circuit precedent. *United States v. Baize, 622 Fed. Appx. 198, 2015 U.S. App. LEXIS 5168 (4th Cir. 2015)*.

Unpublished decision: Where defendant appealed his conviction for possession of firearm by convicted felon, Eleventh Circuit had determined *18 USCS § 922(g)(1)* was not facially unconstitutional exercise of Congress' power under Commerce Clause, and it had determined that § 922(g)(1) was not unconstitutionally applied to defendant when firearm in question traveled in interstate commerce. *United States v. James, 631 Fed. Appx. 803, 2015 U.S. App. LEXIS 19878 (11th Cir. 2015)*, cert. denied, *136 S. Ct. 2509, 195 L. Ed. 2d 845, 2016 U.S. LEXIS 4136 (2016)*.

District court did not plainly err by failing sua sponte to vacate defendant's conviction based on his challenges to the constitutionality of *18 U.S.C.S. § 922(g)* where a challenge to the facial validity of the statute was foreclosed by case law. Section 922(g)(1) was constitutional as applied where defendant admitted during his change of plea hearing that the rifle he possessed in Florida had been manufactured in Illinois. *United States v. Sanchez-Rosado, 805 Fed. Appx. 855, 2020 U.S. App. LEXIS 7167 (11th Cir. 2020)*, cert. denied, *2021 U.S. LEXIS 3174 (U.S. June 21, 2021)*.

Where defendant appealed his 180-month sentence for violating *18 USCS §§ 922(g)(1)* and *924(e)(1)*, he acknowledged that United States Court of Appeals for Eleventh Circuit had repeatedly held that § 922(g) was facially constitutional under Commerce Clause, and § 922(g) was constitutional as applied to him. *United States v. Hale, 705 Fed. Appx. 876, 2017 U.S. App. LEXIS 16059 (11th Cir. 2017)*, cert. denied, *138 S. Ct. 1030, 200 L. Ed. 2d 287, 2018 U.S. LEXIS 1155 (2018)*.

Where defendant appealed conviction for violating *18 USCS § 922(g)(1)*, arguing that § 922(g) exceeded Congress's Commerce Clause power both facially and as-applied, it was well-settled that § 922(g) was not constitutionally invalid under Commerce Clause; binding precedent precluded defendant's challenge to constitutionality of § 922(g). *United States v. Dixon, 718 Fed. Appx. 924, 2018 U.S. App. LEXIS 489 (11th Cir.)*, cert. denied, *139 S. Ct. 374, 202 L. Ed. 2d 287, 2018 U.S. LEXIS 6117 (2018)*.

Where defendant appealed his conviction for violating *18 USCS § 922(g)(1)*, United States Court of Appeals for the Fourth Circuit had consistently rejected his argument that § 922(g)(1) was unconstitutional as applied to him because it exceeded Congress' authority under Commerce Clause in light of Lopez decision. *United States v. Terry, 726 Fed. Appx. 939, 2018 U.S. App. LEXIS 4853 (4th Cir.)*, cert. denied, *139 S. Ct. 119, 202 L. Ed. 2d 74, 2018 U.S. LEXIS 5619 (2018)*.

18 USCS § 922(g)(1) was not facially unconstitutional exercise of Congress's power under Commerce Clause because it contained express jurisdictional requirement that was satisfied when firearm involved in offense has at least minimal nexus to interstate commerce. *United States v. Garcia, 735 Fed. Appx. 621, 2018 U.S. App. LEXIS 13943 (11th Cir. 2018)*, cert. denied, *139 S. Ct. 791, 202 L. Ed. 2d 585, 2019 U.S. LEXIS 357 (2019)*.

18 USCS § 922(g)(1) was not unconstitutional as applied to defendant as government submitted factual basis, and defendant admitted at change of plea hearing that firearm in question was manufactured outside Florida, establishing minimal nexus to interstate commerce. *United States v. Garcia, 735 Fed. Appx. 621, 2018 U.S. App. LEXIS 13943 (11th Cir. 2018)*, cert. denied, *139 S. Ct. 791, 202 L. Ed. 2d 585, 2019 U.S. LEXIS 357 (2019)*.

Where defendant appealed his conviction for violating *18 U.S.C.S. § 922(g)(1)*, United States Court of Appeals for the Fourth Circuit had consistently rejected his argument that § 922(g)(1) was unconstitutional as applied to him because it exceeded Congress' authority under Commerce Clause in light of Lopez decision. *United States v. Terry, 726 Fed. Appx. 939, 2018 U.S. App. LEXIS 4853 (4th Cir.)*, cert. denied, *139 S. Ct. 119, 202 L. Ed. 2d 74, 2018 U.S. LEXIS 5619 (2018)*.

Not only was defendant's facial challenge to *18 USCS § 922(g)(1)* directly foreclosed by Eleventh Circuit's Scott decision, but parties stipulated that firearm and ammunition had traveled through interstate commerce before offense was committed. *United States v. Senecharles, 660 Fed. Appx. 812, 2016 U.S. App. LEXIS 16072 (11th Cir. 2016)*.

Sheriff's duty under Oregon concealed handgun licensing law to issue concealed handgun licenses to qualified applicants without regard to their use of medical marijuana is not preempted by *18 USCS § 922(g)(3)*; neither is sheriff excused from that duty on ground that issuance of concealed handgun license to medical marijuana user would violate § 922(t)(1), prohibiting making of any statement that is likely to deceive gun dealer regarding lawfulness of sale of firearm. *Willis v. Winters, 253 P.3d 1058 (Or. 2011)*, cert. denied, *565 U.S. 1110, 132 S. Ct. 999, 181 L. Ed. 2d 733, 2012 U.S. LEXIS 209 (2012)*, cert. denied, *565 U.S. 1110, 132 S. Ct. 1001, 181 L. Ed. 2d 733, 2012 U.S. LEXIS 190 (2012)*.

Under Oregon law, concealed handgun license should have been granted to otherwise qualified applicant who used medical marijuana; county sheriff improperly denied application on ground that, under *21 USCS §§ 812(b)(1)*, (c)(10), 841(a)(1), use of marijuana was unlawful, resulting in prohibition from possessing firearms under *18 USCS § 922(g)(3)*. *Willis v. Winters, 253 P.3d 1058 (Or. 2011)*, cert. denied, *565 U.S. 1110, 132 S. Ct. 999, 181 L. Ed. 2d 733, 2012 U.S. LEXIS 209 (2012)*, cert. denied, *565 U.S. 1110, 132 S. Ct. 1001, 181 L. Ed. 2d 733, 2012 U.S. LEXIS 190 (2012)*.

58. —§ 922(g)(8)

18 USCS § 922(g)(8) was not unconstitutional facially or as applied to defendant who possessed two firearms which had previously traveled in interstate commerce, since statute expressly required nexus between illegal firearm and interstate commerce. *United States v. Pierson, 139 F.3d 501, 1998 U.S. App. LEXIS 7562 (5th Cir. 1998)*, cert. denied, *525 U.S. 896, 119 S. Ct. 220, 142 L. Ed. 2d 181, 1998 U.S. LEXIS 5985 (1998)*, remanded, *108 Fed. Appx. 202, 2004 U.S. App. LEXIS 18588 (5th Cir. 2004)*.

18 USCS § 922(g)(8) is constitutional exercise of Congress's power under Commerce Clause, and its application to defendant was constitutional as well, where firearm found in his possession had traveled in interstate commerce. *United States v. Cunningham, 161 F.3d 1343, 1998 U.S. App. LEXIS 30753 (11th Cir. 1998)*.

18 USCS § 922(g)(8) does not violate Commerce Clause, since it requires firearm to have been shipped or transported in interstate commerce. *United States v. Bostic, 168 F.3d 718, 1999 U.S. App. LEXIS 2349 (4th Cir.)*, cert. denied, *527 U.S. 1029, 119 S. Ct. 2383, 144 L. Ed. 2d 785, 1999 U.S. LEXIS 4332 (1999)*.

Congress properly exercised its power to regulate commerce in enacting *18 USCS § 922(g)(8)*, since that statute both explicitly relates to commerce and ensures that only those activities affecting interstate commerce fall within its scope. *United States v. Baker, 197 F.3d 211, 1999 FED App. 0392P, 1999 U.S. App. LEXIS 30430 (6th Cir. 1999)*, cert. denied, *528 U.S. 1197, 120 S. Ct. 1262, 146 L. Ed. 2d 117, 2000 U.S. LEXIS 1727 (2000)*.

18 USCS § 922(g)(8) does not offend Commerce Clause or Tenth Amendment, or impinge upon sovereignty of States. *United States v. Jones, 231 F.3d 508, 2000 Cal. Daily Op. Service 8848, 2000 D.A.R. 11717, 2000 U.S. App. LEXIS 27330 (9th Cir. 2000)*.

If commonly understood definitions of terms in protective order included acts involving "physical force," protective order was sufficient to support a conviction; defendant's protective order prohibited him from committing family violence against victim or engaging in conduct likely to abuse her, and commonly understood definitions of these terms included acts involving physical force, and thus, jury plausibly found that order satisfied statute, and appellate court declined to reverse defendant's conviction on this basis. *United States v. McGinnis, 956 F.3d 747, 2020 U.S. App. LEXIS 12731 (5th Cir. 2020)*, cert. denied, *141 S. Ct. 1397, 209 L. Ed. 2d 134, 2021 U.S. LEXIS 1146 (2021)*.

18 USCS § 922(g)(8) did not exceed Congress's authority under Commerce Clause, as statute expressly limited its application to firearms "in or affecting commerce" and it directly regulated commerce in firearms. *United States v. Bunnell, 106 F. Supp. 2d 60, 2000 U.S. Dist. LEXIS 9939 (D. Me. 2000)*, aff'd, *280 F.3d 46, 2002 U.S. App. LEXIS 2414 (1st Cir. 2002)*.

Congress acted within its Commerce Clause power in enacting *18 USCS § 922(g)(8)*, as statute requires government to prove that firearms and ammunition in question moved in interstate commerce. *United States v. Visnich, 109 F. Supp. 2d 757, 2000 U.S. Dist. LEXIS 15530 (N.D. Ohio 2000)*, remanded, *30 Fed. Appx. 524, 2002 U.S. App. LEXIS 3534 (6th Cir. 2002)*.

59. —§ 922(g)(9)

18 USCS § 922(g)(1) and (9) are constitutional under Commerce Clause, Second or Tenth Amendment, and are not ex post facto laws or bills of attainder. *United States v. Hemmings, 258 F.3d 587, 2001 U.S. App. LEXIS 15572 (7th Cir. 2001)*.

Fraternal Order of Police failed to prove that *18 USCS § 922(g)(9)* was beyond Congress's powers under Commerce Clause. *FOP v. United States, 173 F.3d 898, 335 U.S. App. D.C. 359, 1999 U.S. App. LEXIS 7304 (D.C. Cir.)*, cert. denied, *528 U.S. 928, 120 S. Ct. 324, 145 L. Ed. 2d 253, 1999 U.S. LEXIS 6886 (1999)*.

18 USCS § 922(g)(9) did not exceed Congress's Commerce Clause authority, as statute contained jurisdictional element that required government to demonstrate that firearm was possessed "in or affecting commerce" or was received after having "been shipped or transported in interstate or foreign commerce." *National Ass'n of Gov't Employees v. Barrett, 968 F. Supp. 1564, 1997 U.S. Dist. LEXIS 9407 (N.D. Ga. 1997)* sub. nom.*Hiley v. Barrett, 155 F.3d 1276, 12 Fla. L. Weekly Fed. C 144, 1998 U.S. App. LEXIS 23253 (11th Cir. 1998)*.

Plaintiffs' action for return of firearms that were seized when plaintiff was arrested for assault failed because *18 USCS § 922(g)(9)* did not violate Equal Protection Clause, Commerce Clause, Second Amendment, or Eighth Amendment's Cruel and Unusual Punishment Clause. *Blackburn v. Jansen, 241 F. Supp. 2d 1047, 2003 U.S. Dist. LEXIS 545 (D. Neb. 2003)*.

60. § 922(j)

18 USCS § 922(j) is constitutional exercise of Congress's commerce power and was constitutional as applied to defendant who stipulated that three of five firearms named in indictment were manufactured in either New York or Connecticut, so that weapons necessarily traveled in interstate commerce in that he burglarized Texas home. *United States v. Luna, 165 F.3d 316, 1999 U.S. App. LEXIS 619 (5th Cir.)*, cert. denied, *526 U.S. 1126, 119 S. Ct. 1783, 143 L. Ed. 2d 811, 1999 U.S. LEXIS 3426 (1999)*.

Court affirmed defendant's conviction for receiving and possessing stolen firearm, knowing or having reasonable cause to believe firearm was stolen, violation of *18 USCS § 922(j)*; § 922(j) was valid exercise of Congress's power under Commerce Clause; statute contained jurisdictional element requiring nexus to interstate commerce, and it contained language virtually identical to language upheld by United States Supreme Court against Commerce Clause challenges. *United States v. Pritchett, 327 F.3d 1183, 16 Fla. L. Weekly Fed. C 490, 2003 U.S. App. LEXIS 6747 (11th Cir.)*, cert. denied, *540 U.S. 893, 124 S. Ct. 235, 157 L. Ed. 2d 169, 2003 U.S. LEXIS 5868 (2003)*.

Unpublished decision: Pursuant to United States Court of Appeals for *Eleventh Circuit, 8* USCS § 922(j) is proper exercise of Congress' power under Commerce Clause and is subject to minimal nexus requirement; minimal nexus with interstate commerce exists when firearm in question was manufactured outside of state in which it was found and traveled to that state before accused took possession of it. *United States v. Laroche, 170 Fed. Appx. 124, 2006 U.S. App. LEXIS 6042 (11th Cir.)*, reh'g, en banc, denied, *179 Fed. Appx. 688, 2006 U.S. App. LEXIS 24223 (11th Cir. 2006)*.

61. § 922(k)

18 USCS § 922(k) does not unconstitutionally exceed Congress's power to legislate under Commerce Clause, since it contains specific requirement that firearm with obliterated serial number have been shipped or transported in interstate or foreign commerce. *United States v. Diaz-Martinez, 71 F.3d 946, 1995 U.S. App. LEXIS 35074 (1st Cir. 1995)*.

Congress acted within its authority when it enacted *18 USCS §§ 922(g)(1)* and *922(k)*, since both provisions require nexus between interstate commerce and firearms. *United States v. Hernandez, 85 F.3d 1023, 1996 U.S. App. LEXIS 13805 (2d Cir. 1996)*.

Prohibitions of *18 USCS § 922(k)* do not exceed Congress's Commerce Clause authority to legislate. *United States v. Mack, 164 F.3d 467, 99 D.A.R. 390, 1999 U.S. App. LEXIS 298 (9th Cir. 1999)*.

18 USCS § 922(g)(1) and *922(k)* were not beyond Congress' power under Commerce Clause or in violation of Second, Ninth, or Tenth Amendments; although Utah's constitution gave defendant right to bear arms, his federal weapons prosecution was not improper, since state constitutional provisions cannot override federal criminal statutes unless incorporated into federal law. *United States v. Baer, 235 F.3d 561, 2000 Colo. J. C.A.R. 6667, 2000 U.S. App. LEXIS 32498 (10th Cir. 2000)*.

District court did not improperly deny defendant's motion to dismiss, on interstate commerce grounds, charges of possession of firearm with obliterated serial number pursuant to *18 USCS § 922(k)*; section 922(k) was constitutional exercise of Congress's Commerce Clause powers. *United States v. Teleguez, 492 F.3d 80, 2007 U.S. App. LEXIS 17525 (1st Cir. 2007)*.

Defendant's conviction for possessing firearm with obliterated serial number did not violate Commerce Clause, *U.S. Const. art. I, § 8, cl. 3*, because interstate commerce element, to which defendant admitted when entering guilty plea, ensured that firearm in question affected interstate commerce. *United States v. Bacon, 884 F.3d 605, 2018 FED App. 0046P, 2018 U.S. App. LEXIS 5834 (6th Cir. 2018)*, reh'g, en banc, denied, *2018 U.S. App. LEXIS 9821 (6th Cir. Apr. 18, 2018)*, cert. denied, *139 S. Ct. 471, 202 L. Ed. 2d 359, 2018 U.S. LEXIS 6624 (2018)*.

62. § 922(o)

18 USCS § 922(o), which regulates possession of machine guns, is within authority granted to Congress by Commerce Clause, since Congress can regulate class of activities that affect interstate commerce without proof that any particular intrastate activity within that class had effect on interstate commerce. *United States v. Hale, 978 F.2d 1016, 36 Fed. R. Evid. Serv. (CBC) 1034, 1992 U.S. App. LEXIS 25736 (8th Cir. 1992)*, reh'g denied, *1992 U.S. App. LEXIS 30741 (8th Cir. Nov. 20, 1992)*, cert. denied, *507 U.S. 997, 113 S. Ct. 1614, 123 L. Ed. 2d 174, 1993 U.S. LEXIS 2337 (1993)*.

18 USCS § 922(o), which prohibits possession of machine guns, is valid exercise of Congress' power under interstate commerce clause, since Congress concluded that mere possession threatens lives and safety of law enforcement officials and public at large. *United States v. Pearson, 8 F.3d 631, 1993 U.S. App. LEXIS 28310 (8th Cir. 1993)*, cert. denied, *511 U.S. 1126, 114 S. Ct. 2132, 128 L. Ed. 2d 863, 1994 U.S. LEXIS 4142 (1994)*.

18 USCS § 922(o), which prohibits illegal possession or transfer of machineguns, represents permissible exercise of Congressional authority under Commerce Clause, since machineguns are by their very nature intrastate commodity. *United States v. Wilks, 58 F.3d 1518, 1995 U.S. App. LEXIS 16568 (10th Cir. 1995)*.

Prohibition of transfer or possession of post-1986 machineguns in *18 USCS § 922(o)* is rational exercise of authority granted Congress under Commerce Clause, since it is regulation of use of channels of interstate commerce, even though some of activity it makes unlawful is purely intrastate, since federal regulation of intrastate incidents of transfer and possession is essential to effective interstate control of same. *United States v. Kirk, 70 F.3d 791, 1995 U.S. App. LEXIS 31386 (5th Cir. 1995)*, reh'g, en banc, granted, *78 F.3d 160, 1996 U.S. App. LEXIS 4082 (5th Cir. 1996)*, cert. denied, *522 U.S. 808, 118 S. Ct. 47, 139 L. Ed. 2d 13, 1997 U.S. LEXIS 4593 (1997)*.

18 USCS § 922(o) is proper exercise of authority granted to Congress under Commerce Clause, since it regulates use of channels of interstate commerce by attempting to control interstate market for machineguns. *United States v. Rambo, 74 F.3d 948, 96 Cal. Daily Op. Service 523, 96 D.A.R. 843, 1995 U.S. App. LEXIS 39110 (9th Cir. 1995)*, cert. denied, *519 U.S. 819, 117 S. Ct. 72, 136 L. Ed. 2d 32, 1996 U.S. LEXIS 4776 (1996)*.

18 USCS § 922(o) is constitutional exercise of Congress' power to regulate activities in and affecting commerce, since there is rational basis for legislative judgment that possession and transfer of machineguns acquired after 1986 have substantial effect on interstate commerce, and because Congress has power to regulate machineguns as things in interstate commerce, moving in channels of interstate commerce. *United States v. Beuckelaere, 91 F.3d 781, 1996 FED App. 0248P, 1996 U.S. App. LEXIS 18911 (6th Cir. 1996)*, reh'g, en banc, denied, *1996 U.S. App. LEXIS 23608 (6th Cir. Sept. 6, 1996)*.

18 USCS § 922(o) is constitutional exercise of Congress' power, since it is recognizable as essential part of larger regulation of economic activity in which regulatory scheme could be undercut unless intrastate activity were regulated, and since there is rational basis to regulate local conduct of machine gun possession to effectuate § 922(o)'s purpose of freezing number of legally possessed machine guns at 1986 levels. *United States v. Kenney, 91 F.3d 884, 1996 U.S. App. LEXIS 18754 (7th Cir. 1996)*.

18 USCS § 922(o) was not unconstitutional on Commerce Clause grounds. *United States v. Rybar, 103 F.3d 273, 1996 U.S. App. LEXIS 33855 (3d Cir. 1996)*, cert. denied, *522 U.S. 807, 118 S. Ct. 46, 139 L. Ed. 2d 13, 1997 U.S. LEXIS 4588 (1997)*.

18 USCS § 922(o) is constitutional, since it regulates activity that may rationally be viewed as substantially affecting interstate commerce, where cumulative effect of even intrastate possession of single machine gun would substantially affect commerce. *United States v. Franklyn, 157 F.3d 90, 1998 U.S. App. LEXIS 22094 (2d Cir. 1998)*, cert. denied, *525 U.S. 1027, 119 S. Ct. 563, 142 L. Ed. 2d 469, 1998 U.S. LEXIS 7755 (1998)*, cert. denied, *525 U.S. 1112, 119 S. Ct. 887, 142 L. Ed. 2d 786, 1999 U.S. LEXIS 720 (1999)*.

18 USCS § 922(o) does not violate Commerce Clause, since it regulates "things in interstate commerce" and activities that substantially affect interstate commerce. *United States v. Haney, 264 F.3d 1161, 2001 Colo. J. C.A.R. 4447,*

2001 U.S. App. LEXIS 19324 (10th Cir. 2001), cert. denied, *536 U.S. 907, 122 S. Ct. 2362, 153 L. Ed. 2d 183, 2002 U.S. LEXIS 4266 (2002)*.

Congress did not exceed its powers under Commerce Clause when it enacted *18 USCS § 922(o)(1)*. *United States v. Fleischli, 305 F.3d 643, 2002 U.S. App. LEXIS 18705 (7th Cir. 2002)*, reh'g, en banc, denied, *2002 U.S. App. LEXIS 22414 (7th Cir. Oct. 23, 2002)*, cert. denied, *538 U.S. 1001, 123 S. Ct. 1923, 155 L. Ed. 2d 828, 2003 U.S. LEXIS 3284 (2003)*.

Appellate court reconsidered its prior decision and determined that guns, like drugs, were regulated by detailed and comprehensive statutory regime designed to protect individual firearm ownership while supporting federal, state and local law enforcement officials in their fight against crime and violence; therefore, Congress had rational basis for concluding that in aggregate, possession of homemade machine-guns could substantially affect interstate commerce in machine-guns and *18 USCS § 922(o)* could constitutionally be applied to defendant's possession of homemade machine-guns. *United States v. Stewart, 451 F.3d 1071, 2006 U.S. App. LEXIS 16462 (9th Cir. 2006)*.

Ban on intrastate possession of machine guns under *18 USCS § 922(o)* was essential part of larger regulation of economic activity intended to regulate interstate commerce in dangerous weapons, in which regulatory scheme could be undercut unless intrastate activity were regulated, such that ban was valid exercise of congressional authority under Commerce Clause. *United States v. Swida, 180 F. Supp. 2d 652, 2002 U.S. Dist. LEXIS 462 (M.D. Pa.)*, aff'd, *51 Fed. Appx. 905, 2002 U.S. App. LEXIS 22344 (3d Cir. 2002)*.

63. § 922(q)

Gun-Free School Zones Act of 1990 (*18 USCS § 922(q)(1)(A)* [redesignated *18 USCS § 922(q)(2)(A)*]) exceeds authority of Congress to regulate commerce among states under Commerce Clause, because it is not regulation of use of channels of interstate commerce nor attempt to prohibit interstate transportation of commodity through channels of commerce, and it can not be sustained as regulation of activity that substantially affects interstate commerce, since it is basically criminal statute that has nothing to do with commerce or economic enterprise. *United States v. Lopez, 514 U.S. 549, 115 S. Ct. 1624, 131 L. Ed. 2d 626, 8 Fla. L. Weekly Fed. S 752, 95 Cal. Daily Op. Service 3074, 1995 U.S. LEXIS 3039 (1995)*.

Absent any nexus to commerce, conviction under *18 USCS § 922(q)* is unconstitutional. *United States v. Knowles, 29 F.3d 947, 1994 U.S. App. LEXIS 21236 (5th Cir. 1994)*.

Nexus to interstate commerce alleged in separate count cannot be incorporated by reference into count for violating Gun Free Schools Act, *18 USCS § 922(q)*, where incorporation was not express, since conviction under *18 USCS § 922(q)* has been ruled unconstitutional where there is no nexus to commerce. *United States v. Knowles, 29 F.3d 947, 1994 U.S. App. LEXIS 21236 (5th Cir. 1994)*.

18 USCS § 922(q), as amended, is constitutional exercise of Congress's Commerce Clause power, since it contains language that ensures, on case-by-case basis, that firearm in question affects interstate commerce. *United States v. Danks, 221 F.3d 1037, 1999 U.S. App. LEXIS 18761 (8th Cir. 1999)*, cert. denied, *528 U.S. 1091, 120 S. Ct. 823, 145 L. Ed. 2d 693, 2000 U.S. LEXIS 349 (2000)*.

18 USCS § 922(q)(2)(A) resolves shortcomings that rendered its prior version unconstitutional under Commerce Clause because it incorporates jurisdictional element that ensures, through case-by-case inquiry, that firearm possession in question affects interstate commerce. *United States v. Dorsey, 418 F.3d 1038, 67 Fed. R. Evid. Serv. (CBC) 1227, 2005 U.S. App. LEXIS 16717 (9th Cir. 2005)*, overruled in part, *Arizona v. Gant, 556 U.S. 332, 129 S. Ct. 1710, 173 L. Ed. 2d 485, 2009 U.S. LEXIS 3120 (2009)*.

Defendant did not show plain error as to constitutionality of subsection(q) as neither Supreme Court nor Eleventh Circuit Court of Appeals had held that amended version was unconstitutional; defendant's firearm had moved in interstate commerce because it was manufactured in Arizona and he possessed it in Florida. *United States v. Thomas, 767 Fed. Appx. 758, 2019 U.S. App. LEXIS 9295 (11th Cir. 2019)*.

Motion to dismiss indictment under Gun-Free School Zones Act, *18 USCS §§ 921(a)(25)* and *922(q)* is granted, where accused was charged with knowing possession of firearm in school zone, because *18 USCS § 922(q)*, which prohibits possession of firearms within 1,000 feet of any school, public or parochial, does not fall within the authority of the Commerce Clause of the Constitution, and is therefore unconstitutional and outside the authority of Congress. *United States v. Morrow, 834 F. Supp. 364, 1993 U.S. Dist. LEXIS 15031 (N.D. Ala. 1993)*.

Indictment charging violation of *18 USCS § 922(q)* must be dismissed, where man arrested for possessing unloaded .25 caliber semiautomatic pistol on junior high school premises challenges constitutionality of section criminalizing possession of firearm in school zone, because absence of any link between section and commerce was expressly noted in testimony before Congress, and section, in its present form, is beyond powers granted to Congress under Commerce Clause and is unconstitutional. *United States v. Trigg, 842 F. Supp. 450, 1994 U.S. Dist. LEXIS 918 (D. Kan. 1994)*.

64. § 922(x)

18 USCS § 922(x)(2) is constitutional under Commerce Clause, since § 922(x) as whole regulates commerce, and as general matter possession of handgun by juvenile could have substantial effect on interstate commerce. *United States v. Michael R., 90 F.3d 340, 96 Cal. Daily Op. Service 5075, 96 D.A.R. 8187, 1996 U.S. App. LEXIS 16119 (9th Cir. 1996)*.

18 USCS § 922(x)(2)(A) did not exceed Congress's Commerce Clause authority because prohibition statute suppressed demand and was essential part of regulating national market in firearms. *United States v. Rene E., 583 F.3d 8, 2009 U.S. App. LEXIS 21896 (1st Cir. 2009)*, cert. denied, *558 U.S. 1133, 130 S. Ct. 1109, 175 L. Ed. 2d 921, 2010 U.S. LEXIS 446 (2010)*.

Unpublished decision: District court properly revoked juvenile's probation, although not for reasons relied upon by district court; juvenile's argument—that information filed against him failed to state federal offense—alleged jurisdictional defect and thus could be raised at any time, but *18 USCS § 922(x)(2)* was valid exercise of Congress's Commerce Clause authority, and information filed against juvenile did not have to describe interstate commerce nexus. *United States v. Justin D., 156 Fed. Appx. 936, 2005 U.S. App. LEXIS 26816 (9th Cir. 2005)*.

Unpublished decision: Denial of motion to dismiss petition for revocation of juvenile defendant's probation was affirmed because *18 USCS § 922(x)(2)* was valid constitutional exercise of congressional commerce powers because statute regulated commerce and had substantial effect on interstate commerce by attacking supply and demand of handguns and ammunition with respect to juveniles. *United States v. K.T.A., 158 Fed. Appx. 874, 2005 U.S. App. LEXIS 27929 (9th Cir. 2005)*.

65. Miscellaneous

18 USCS § 922(b) is valid exercise of Congress' power to regulate interstate commerce, since firearms transactions, even those which are purely intrastate, substantially affect interstate commerce in firearms. *United States v. Meienberg, 263 F.3d 1177, 56 Fed. R. Evid. Serv. (CBC) 1175, 2001 U.S. App. LEXIS 19177 (10th Cir. 2001)*.

18 USCS §§ 921(a)(30) and former 922(v) do not violate Commerce Clause, since Violent Crime Control and Law Enforcement Act of 1994 (Act), of which they are part, regulates activities having substantial effect on interstate commerce. *Navegar, Inc. v. United States, 192 F.3d 1050, 338 U.S. App. D.C. 213, 1999 U.S. App. LEXIS 25052 (D.C. Cir. 1999)*, reh'g, en banc, denied, *200 F.3d 868, 339 U.S. App. D.C. 410, 2000 U.S. App. LEXIS 975 (D.C. Cir. 2000)*, cert. denied, *531 U.S. 816, 121 S. Ct. 53, 148 L. Ed. 2d 21, 2000 U.S. LEXIS 5058 (2000)*.

Unpublished decision: In case in which defendant appealed his conviction for violating *18 USCS § 922(a)(6)* and (g)(4), he asserted that his conviction for violating § 922(g)(4) exceeded Congress's authority under Commerce Clause because firearms at issue in his case lacked sufficient nexus with interstate commerce; he conceded that his claim was foreclosed by the Fourth Circuit's holding in Gallimore decision, and his questioning of vitality of that decision in light of U.S. Supreme Court's holdings in Morrison, Jones, and Lopez decisions lacked merit as appellate

court ruled in Gallimore decision in wake of those three U.S. Supreme Court cases. *United States v. Kaminsky, 494 Fed. Appx. 345, 2012 U.S. App. LEXIS 19291 (4th Cir. 2012)*, cert. denied, *568 U.S. 1137, 133 S. Ct. 967, 184 L. Ed. 2d 751, 2013 U.S. LEXIS 672 (2013)*.

Under Commerce Clause of Constitution, Congress has power to prohibit importation into United States of surplus military firearms. *Century Arms, Inc. v. Kennedy, 323 F. Supp. 1002, 1971 U.S. Dist. LEXIS 14429 (D. Vt.)*, aff'd, *449 F.2d 1306, 1971 U.S. App. LEXIS 7218 (2d Cir. 1971)*.

Indictment charging defendant with unlawfully receiving firearm shipped in interstate commerce in violation of *18 USCS § 922(n)* is not dismissed on grounds that statute is unconstitutional, because mere possession of firearm that once traveled in interstate commerce provides sufficient interstate commerce nexus for purposes of Commerce Clause. *United States v. McCord, 904 F. Supp. 1029, 1995 U.S. Dist. LEXIS 17860 (D. Neb. 1995)*.

D. Due Process

66. § 922(a)

18 USCS § 922(a)(6) does not violate defendant's right to due process. *United States v. Thomas, 484 F.2d 909, 1973 U.S. App. LEXIS 7773 (6th Cir. 1973)*, cert. denied, *414 U.S. 912, 94 S. Ct. 253, 38 L. Ed. 2d 151, 1973 U.S. LEXIS 1018 (1973)*, cert. denied, *415 U.S. 924, 94 S. Ct. 1428, 39 L. Ed. 2d 480, 1974 U.S. LEXIS 1257 (1974)* ; *United States v. Fauntleroy, 488 F.2d 79, 1973 U.S. App. LEXIS 6689 (4th Cir. 1973)* ; *United States v. Snell, 508 F.2d 21, 1975 U.S. App. LEXIS 16088 (5th Cir.)*, cert. denied, *423 U.S. 825, 96 S. Ct. 40, 46 L. Ed. 2d 41, 1975 U.S. LEXIS 2336 (1975)*.

Where defendant had protective order issued against defendant based upon family violence and was charged with violating *18 USCS § 922(a)(6)* for making false statement in attempting to purchase guns, defendant received adequate notice of restriction on his right to bear arms. *United States v. Miles, 238 F. Supp. 2d 297, 2002 U.S. Dist. LEXIS 23658 (D. Me. 2002)*.

67. § 922(g)

Refusal of Bureau of Prisons to consider defendant convicted of *18 USCS § 922(g)* violation for reduction in sentence did not violate Equal Protection Clause or Due Process Clause, since *18 USCS § 3621(e)(2)(B)* does not create constitutionally protected liberty interest. *Cook v. Wiley, 208 F.3d 1314, 13 Fla. L. Weekly Fed. C 610, 2000 U.S. App. LEXIS 6788 (11th Cir. 2000)*.

Unpublished decision: Holding that defendant need not know of his prohibited status to violate *18 USCS § 922(g)(1)* persuades Fifth Circuit that § 922(g)(6) does not require it either; two subsections have parallel language, and it would be illogical to impose mens rea requirement on only one of subsections; accordingly, Government was not required to prove, as element of § 922(g), that defendant knew he had been dishonorably discharged from Air Force at time of offense. *United States v. Butler, 637 F.3d 519, 2011 U.S. App. LEXIS 5806 (5th Cir.)*, cert. denied, *565 U.S. 1092, 132 S. Ct. 844, 181 L. Ed. 2d 548, 2011 U.S. LEXIS 8996 (2011)*.

Unpublished decision: *18 USCS § 922(g)(5)(A)* does not violate Due Process Clause due to lack of requirement of proof that defendant knew it was illegal to possess firearm; prohibited conduct of possession of firearm is not passive activity. *United States v. Mirza, 454 Fed. Appx. 249, 2011 U.S. App. LEXIS 21707 (5th Cir. 2011)*, cert. denied, *565 U.S. 1251, 132 S. Ct. 1725, 182 L. Ed. 2d 262, 2012 U.S. LEXIS 1908 (2012)*.

Defendant, twice involuntarily committed to mental institution, had notice of potential criminal liability attached to his possession of firearm under *18 USCS § 922(g)(4)* in conformance with due process requirement of Fifth Amendment through "knowing violation" requirement of *18 USCS § 924(a)(2)*. *United States v. Milheron, 231 F. Supp. 2d 376, 2002 U.S. Dist. LEXIS 22495 (D. Me. 2002)*.

68. —§ 922(g)(1)

State felon's conviction under *18 USCS § 922(g)(1)* did not violate his due process or equal protection rights by differentiating between convicted felons who are on probation and those who are not, since Congress could rationally conclude that convicted felons who have successfully completed their probation, and presumptively, been reintegrated into society, may better be trusted with right to possess firearms than those who have yet to prove themselves rehabilitated. *United States v. Andaverde, 64 F.3d 1305, 95 Cal. Daily Op. Service 6708, 95 D.A.R. 11493, 1995 U.S. App. LEXIS 23977 (9th Cir. 1995)*, cert. denied, *516 U.S. 1164, 116 S. Ct. 1055, 134 L. Ed. 2d 199, 1996 U.S. LEXIS 1680 (1996)*.

Due process did not entitle felon to hearing to determine whether he was dangerous because results of such hearing would have had no bearing on whether he was subject to disability imposed by *18 USCS § 922(g)(1)*; and because substantive classification drawn by Congress—which kept firearms out of hands of all convicted felons, not just those who represent ongoing threat to society—was not so arbitrary or unreasonable as to violate Fifth Amendment, felon's constitutional challenge to effective suspension of *18 USCS § 925(c)* was rejected. *Black v. Snow, 272 F. Supp. 2d 21, 2003 U.S. Dist. LEXIS 12638 (D.D.C. 2003)*, aff'd, *110 Fed. Appx. 130, 2004 U.S. App. LEXIS 20346 (D.C. Cir. 2004)*.

Unpublished decision: Resentencing was required because defendant was sentenced under Armed Career Criminal Act and U.S. Supreme Court held that residual clause was unconstitutionally vague, in violation of Due Process. *United States v. Perez, 653 Fed. Appx. 492, 2016 U.S. App. LEXIS 11333 (9th Cir. 2016)*.

69. —§ 922(g)(8)

18 USCS § 922(g)(8) did not violate defendant's due process rights. *United States v. Baker, 197 F.3d 211, 1999 FED App. 0392P, 1999 U.S. App. LEXIS 30430 (6th Cir. 1999)*, cert. denied, *528 U.S. 1197, 120 S. Ct. 1262, 146 L. Ed. 2d 117, 2000 U.S. LEXIS 1727 (2000)*.

Due process did not require that defendant convicted of violation of *18 USCS § 922(g)(8)* had actual knowledge of federal statute. *United States v. Reddick, 203 F.3d 767, 2000 Colo. J. C.A.R. 793, 2000 U.S. App. LEXIS 2046 (10th Cir. 2000)*.

Conviction under *18 USCS § 922(g)(8)* did not violate defendant's due process rights by failing to require government to prove that defendant convicted of state domestic violence misdemeanor had actual knowledge that his possession of firearm was illegal, since issuance of order of protection should have alerted defendant to possibility of other limitations on his conduct, including prohibition on his possession of firearms, especially where firearm was ultimate instrument to accomplish acts which restraining order specifically prohibited; thus, his conduct was not presumptively innocent. *United States v. Kafka, 222 F.3d 1129, 2000 Cal. Daily Op. Service 7078, 2000 D.A.R. 9363, 2000 U.S. App. LEXIS 21188 (9th Cir. 2000)*, cert. denied, *532 U.S. 924, 121 S. Ct. 1365, 149 L. Ed. 2d 293, 2001 U.S. LEXIS 2257 (2001)*.

Provision penalizing possession of firearms by defendant subject to domestic violence orders was not unconstitutional as applied to one who claimed to have no knowledge of domestic violence orders, since *18 USCS § 922(g)(8)* does not require defendant to have actual knowledge of firearms restrictions; rather, his status alone was sufficient to preclude him from claiming lack of fair warning. *United States v. Napier, 233 F.3d 394, 2000 FED App. 0397P, 2000 U.S. App. LEXIS 29531 (6th Cir. 2000)*.

18 USCS § 922(g)(8) passed constitutional muster regarding notice under due process clause because both proscribed conduct and affected class of persons were explicitly set forth. *United States v. Coccia, 446 F.3d 233, 2006 U.S. App. LEXIS 11339 (1st Cir. 2006)*, cert. denied, *549 U.S. 1149, 127 S. Ct. 1021, 166 L. Ed. 2d 769, 2007 U.S. LEXIS 579 (2007)*.

Prior court order against defendant, which imposed mandate of no violent, threatening or abusive contact with assault victim, satisfied requirements of *11 USCS § 922(g)(8)* and did not violate defendant's Fifth Amendment rights because

order was issued after hearing of which defendant received actual notice and at which he had opportunity to participate. *United States v. Larson, 843 F. Supp. 2d 641, 2012 U.S. Dist. LEXIS 19817 (W.D. Va. 2012)*.

18 USCS § 922(g)(8)(C)(ii) was constitutional as applied to defendant under Due Process Clause of Fifth Amendment, where there was no question of his awareness that on date he was arrested he "actively possessed" firearm of kind covered by § 922(g)(8)(C)(ii) while subject to temporary restraining order, or that he misapprehended actual contents of that order; further, he had been afforded notice of § 922(g)(8)(C)(ii)'s restriction on persons subject to restraining orders nearly year prior to order when he filled out Bureau of Alcohol, Tobacco, and Firearms Form 4473. *United States v. Emerson, 270 F.3d 203, 2001 U.S. App. LEXIS 22386 (5th Cir. 2001)*, reh'g, en banc, denied, *281 F.3d 1281, 2001 U.S. App. LEXIS 27683 (5th Cir. 2001)*, cert. denied, *536 U.S. 907, 122 S. Ct. 2362, 153 L. Ed. 2d 184, 2002 U.S. LEXIS 4269 (2002)*.

70. —§ 922(g)(9)

18 USCS § 922(g)(9) is constitutional, even though it does not require government to prove that defendant had actual knowledge that his possession of firearm was illegal; § 922(g)(9) was constitutional as applied to defendant who pled guilty to state misdemeanor domestic violence offense and served probation, after which state returned to him his weapon, three months before effective date of § 922(g)(9), since his conviction on domestic violence offense sufficiently placed him on notice that government might regulate his ability to own or possess firearm. *United States v Beavers, 206 F.3d 706, 2000 FED App. 58P (CA6 Mich 2000)*.

Defendant's conviction under *18 USCS § 922(g)(9)* did not violate Ex Post Facto Clause or Due Process Clause. *United States v. Mitchell, 209 F.3d 319, 2000 U.S. App. LEXIS 5109 (4th Cir.)*, cert. denied, *531 U.S. 849, 121 S. Ct. 123, 148 L. Ed. 2d 78, 2000 U.S. LEXIS 5516 (2000)*.

In "present social circumstances," it was simply disingenuous for defendant to claim that his conviction under *18 USCS § 922(g)(9)* for possession of firearm subsequent to conviction for state domestic violence misdemeanor six months prior to enactment of § 922(g)(9) involved kind of unfair surprise that Fifth Amendment prohibits. *United States v. Hutzell, 217 F.3d 966, 2000 U.S. App. LEXIS 15624 (8th Cir. 2000)*, cert. denied, *532 U.S. 944, 121 S. Ct. 1408, 149 L. Ed. 2d 349, 2001 U.S. LEXIS 2521 (2001)*.

18 USCS § 922(g)(9) did not require defendant's actual knowledge of its requirements, and his conviction did not violate due process despite his professed lack of actual knowledge, nor did it violate equal protection, since right to bear arms is not fundamental right held by private citizens but is held by states, and distinction between felons and misdemeanants is at least minimally rational. *United States v. Hancock, 231 F.3d 557, 2000 Cal. Daily Op. Service 8582, 2000 D.A.R. 11441, 2000 U.S. App. LEXIS 26827 (9th Cir. 2000)*, cert. denied, *532 U.S. 989, 121 S. Ct. 1641, 149 L. Ed. 2d 500, 2001 U.S. LEXIS 3176 (2001)*.

71. § 922(h)

18 USCS § 922(h) and *18 USCS § 1202(a)* are not unconstitutional as violating due process or equal protection on theory that they permit excessive prosecutorial discretion in selection of penalties, since prosecutor's discretion to choose between two sections is not unfettered, decision to proceed under § 922(h) does not empower government to predetermine ultimate criminal sanctions, and there is not appreciable difference between discretion prosecutor exercises when deciding to charge under one of two statutes with different elements, and discretion he exercises when choosing one of two statutes with identical elements; prosecutor may be influenced by penalties available on conviction, but this fact standing alone does not give rise to violation of due process or equal protection. *United States v. Batchelder, 442 U.S. 114, 99 S. Ct. 2198, 60 L. Ed. 2d 755, 1979 U.S. LEXIS 122 (1979)*.

18 USCS § 922(h) does not create unconstitutional irrebuttable presumption that any person under indictment for specified offenses has propensity for violence. *United States v. Weingartner, 485 F. Supp. 1167, 1979 U.S. Dist. LEXIS 9341 (D.N.J. 1979)*.

18 USCS § 922(h)(1) is not unconstitutional as violative of Fifth Amendment. *United States v Powers, 23 Crim. L. Rep. (BNA) 2044 (CA8 Mo 2/28/78)*.

72. Miscellaneous

Distinction between residents and nonresidents found in *18 USCS § 922*, which makes it unlawful for firearms dealer to sell firearm to person whom he knows or has reason to know is not resident of state in which his business is located, does not violate Due Process Clause of Constitution. *United States v. Lebman, 464 F.2d 68, 1972 U.S. App. LEXIS 9238 (5th Cir.)*, cert. denied, *409 U.S. 950, 93 S. Ct. 271, 34 L. Ed. 2d 220, 1972 U.S. LEXIS 962 (1972)*.

18 USCS § 922(e) is not unconstitutional because it does not require manufacturer or seller of firearms to give notice to purchaser that it is crime to deliver weapons to airplane for transportation without giving written notice; violation of Due Process Clause under similar circumstances only occurs where conduct made criminal was wholly passive and there were no circumstances which might move one to inquire as to necessity of registration. *United States v. Keuylian, 602 F.2d 1033, 1979 U.S. App. LEXIS 13972 (2d Cir. 1979)*.

Although Ex Post Facto Clause applies of its own force only to legislative acts, and not to judicial decisions, right which clause protects against legislative action, that fair warning of conduct which is criminally culpable, is protected against federal judicial action by due process clause of Fifth Amendment. *United States v. Goodheim, 651 F.2d 1294, 1981 U.S. App. LEXIS 11079 (9th Cir. 1981)*, reh'g denied, *664 F.2d 754, 109 L.R.R.M. (BNA) 2974, 92 Lab. Cas. (CCH) ¶ 13166, 1981 U.S. App. LEXIS 15390 (9th Cir. 1981)*, app. after remand, *686 F.2d 776, 11 Fed. R. Evid. Serv. (CBC) 792, 1982 U.S. App. LEXIS 25876 (9th Cir. 1982)*.

Criminalization of possession of unregistered machine gun was not fundamentally unfair and did not render defendant's conviction unconstitutional, even though it prevented him from complying with registration requirement of National Firearms Act, *26 USCS §§ 5812*, *5822*, since Constitution does not forbid making same conduct illegal under two statutes, and government is permitted to prosecute under either one. *Hunter v. United States, 73 F.3d 260, 96 Cal. Daily Op. Service 293, 96 D.A.R. 461, 1996 U.S. App. LEXIS 404 (9th Cir. 1996)*.

Federal government's action in waiting nearly year, until defendant had been convicted on state offense of attempted home invasion, to bring charges resulting in sentences for possession of firearm by ex-felon and for possession of sawed-off short-barrel shotgun did not violate his right to due process, since federal government was not bound by state's agreement not to prosecute on gun charges. *United States v. Sparks, 87 F.3d 276, 96 Cal. Daily Op. Service 4489, 96 D.A.R. 7308, 1996 U.S. App. LEXIS 14939 (9th Cir. 1996)*, app. after remand, *127 F.3d 1108, 1997 U.S. App. LEXIS 35170 (9th Cir. 1997)*.

Due process did not entitle defendant to notice that his conduct of possessing firearm while subject to domestic violence protective order was illegal, where he was aware of all circumstances surrounding his conviction. *United States v. Bostic, 168 F.3d 718, 1999 U.S. App. LEXIS 2349 (4th Cir.)*, cert. denied, *527 U.S. 1029, 119 S. Ct. 2383, 144 L. Ed. 2d 785, 1999 U.S. LEXIS 4332 (1999)*.

Because defendant's prior California felony burglary conviction was predicate felony for purposes of *18 USCS § 922(g)(1)*, regardless of sentence actually imposed, defendant's conviction for being felon in possession of firearm in violation of § 922(g)(1) was upheld on appeal; law of forum determined what constituted conviction, pursuant to *18 USCS § 921(a)(20)*, and, under California law, guilty plea resulted in conviction. *United States v. Tankersley, 374 F.3d 721, 2004 U.S. App. LEXIS 14308 (8th Cir. 2004)*, reh'g, en banc, denied, *2004 U.S. App. LEXIS 17835 (8th Cir. Aug. 20, 2004)*.

Prohibition against sales of firearms to any person if there was reasonable cause to believe that such person was unlawful user of controlled substance did not violate procedural due process rights of Nevada medical marijuana registry card holder, as holder did not have constitutionally protected liberty interest in simultaneously holding registry card and purchasing firearm. *Wilson v. Lynch, 835 F.3d 1083, 2016 U.S. App. LEXIS 16108 (9th Cir. 2016)*, cert. denied, *137 S. Ct. 1396, 197 L. Ed. 2d 555, 2017 U.S. LEXIS 2173 (2017)*.

E. Equal Protection

73. § 922(g)

Provisions of *18 USCS § 922(g)* do not violate Equal Protection Clause because they create unreasonable classifications which tend to discriminate against persons because of state in which they live, since there is wide disparity between states on severity of punishment for essentially same criminal act. *United States v. Weatherford, 471 F.2d 47, 1972 U.S. App. LEXIS 6217 (7th Cir. 1972)*, cert. denied, *411 U.S. 972, 93 S. Ct. 2144, 36 L. Ed. 2d 695, 1973 U.S. LEXIS 2593 (1973)*.

Defendant, previously committed to mental institution, did not have viable equal protection and substantive due process claim based on disparate treatment of similarly situated persons due to differing state laws governing commitment, where he failed to identify any person in possession of firearm who had been committed to mental institution and had not subsequently been convicted under *18 USCS § 922(g)(4)*. *United States v. Whiton, 48 F.3d 356, 1995 U.S. App. LEXIS 3526 (8th Cir. 1995)*, reh'g, en banc, denied, *1995 U.S. App. LEXIS 9000 (8th Cir. Apr. 19, 1995)*, cert. denied, *516 U.S. 886, 116 S. Ct. 227, 133 L. Ed. 2d 156, 1995 U.S. LEXIS 6426 (1995)*.

18 USCS § 922(g)(8), together with USSG § 2K2.1(A)(4)(B), did not deny defendant equal protection of laws by enhancing his sentence simply because he possessed assault weapon rather than ordinary firearm, since Congress had conceivable basis for adopting provisions in question. *United States v. Baker, 197 F.3d 211, 1999 FED App. 0392P, 1999 U.S. App. LEXIS 30430 (6th Cir. 1999)*, cert. denied, *528 U.S. 1197, 120 S. Ct. 1262, 146 L. Ed. 2d 117, 2000 U.S. LEXIS 1727 (2000)*.

Refusal of Bureau of Prisons to consider defendant convicted of *18 USCS § 922(g)* violation for reduction in sentence did not violate Equal Protection Clause or Due Process Clause, since *18 USCS § 3621(e)(2)(B)* does not create constitutionally protected liberty interest. *Cook v. Wiley, 208 F.3d 1314, 13 Fla. L. Weekly Fed. C 610, 2000 U.S. App. LEXIS 6788 (11th Cir. 2000)*.

18 USCS § 922(g)(5) survives rational scrutiny and is, therefore, also constitutional under Fifth Amendment. *United States v. Carpio-Leon, 701 F.3d 974, 2012 U.S. App. LEXIS 25566 (4th Cir. 2012)*, cert. denied, *571 U.S. 831, 134 S. Ct. 58, 187 L. Ed. 2d 50, 2013 U.S. LEXIS 5427 (2013)*.

Unpublished decision: *18 USCS § 922(g)(5)(A)* does not violate Equal Protection Clause, as it does not impermissibly discriminate based on alienage; there is rational basis between statute and legitimate government purpose *United States v. Mirza, 454 Fed. Appx. 249, 2011 U.S. App. LEXIS 21707 (5th Cir. 2011)*, cert. denied, *565 U.S. 1251, 132 S. Ct. 1725, 182 L. Ed. 2d 262, 2012 U.S. LEXIS 1908 (2012)*.

Unpublished decision: Where defendant was convicted for possessing ammunition, his argument that *18 USCS §§ 922(g)* and *924(e)* were unconstitutional under Fifth Amendment was rejected because his equal protection claim failed; Congress made rational decision that certain individuals should be required to separate themselves fully from certain wares common to criminal enterprise, and it was not for court to invalidate that decision. *United States v. Phillips, 177 Fed. Appx. 942, 2006 U.S. App. LEXIS 10812 (11th Cir. 2006)*, cert. denied, *553 U.S. 1045, 128 S. Ct. 2456, 171 L. Ed. 2d 251, 2008 U.S. LEXIS 4069 (2008)*.

74. —§ 922(g)(1)

Subsection of *18 USCS § 922* prohibiting convicted felons from shipping, transporting, possessing, or receiving firearms does not violate equal protection rights of felons, since legislature may prohibit convicted felon from engaging in activities far more fundamental than possession of firearm. *United States v. Sherbondy, 865 F.2d 996, 1988 U.S. App. LEXIS 17033 (9th Cir. 1988)*.

Provision in *18 USCS § 922* prohibiting convicted felons from possessing firearms which have been involved in interstate commerce does not violate equal protection clause by discriminating against convicted felons who live in states without firearms manufacturers. *United States v. Walker, 930 F.2d 789, 32 Fed. R. Evid. Serv. (CBC) 988,*

1991 U.S. App. LEXIS 5832 (10th Cir. 1991), disapproved, *Stinson v. United States, 508 U.S. 36, 113 S. Ct. 1913, 123 L. Ed. 2d 598, 7 Fla. L. Weekly Fed. S 235, 93 Cal. Daily Op. Service 3203, 93 D.A.R. 5458, 1993 U.S. LEXIS 3124 (1993)*.

18 USCS § 922(g)(1) does not violate equal protection guarantee of Fifth Amendment by relying on non-uniform state laws to determine whether felon's civil rights are restored. *United States v. Collins, 61 F.3d 1379, 95 Cal. Daily Op. Service 5758, 95 D.A.R. 9809, 1995 U.S. App. LEXIS 19181 (9th Cir.)*, cert. denied, *516 U.S. 1000, 116 S. Ct. 543, 133 L. Ed. 2d 446, 1995 U.S. LEXIS 8275 (1995)*.

State felon's conviction under *18 USCS § 922(g)(1)* did not violate his due process or equal protection rights by differentiating between convicted felons who are on probation and those who are not, since Congress could rationally conclude that convicted felons who have successfully completed their probation, and presumptively, been reintegrated into society, may better be trusted with right to possess firearms than those who have yet to prove themselves rehabilitated. *United States v. Andaverde, 64 F.3d 1305, 95 Cal. Daily Op. Service 6708, 95 D.A.R. 11493, 1995 U.S. App. LEXIS 23977 (9th Cir. 1995)*, cert. denied, *516 U.S. 1164, 116 S. Ct. 1055, 134 L. Ed. 2d 199, 1996 U.S. LEXIS 1680 (1996)*.

Exception to *18 USCS § 922(g)(1)* for restoration of civil rights did not apply to misdemeanant who never lost his civil rights; this result did not violate his rights under equal protection, where Congress had acted rationally, and he could have applied for pardon from governor to avoid consequences of prior misdemeanor conviction so as to fit within exception to *18 USCS § 921(a)(33)*. *United States v. Smith, 171 F.3d 617, 1999 U.S. App. LEXIS 5082 (8th Cir. 1999)*.

18 USCS app. § 1202(a)(1) (repealed) and *18 USCS § 922(g)(1)* are similar for purposes of equal protection analysis, though their interstate commerce requirements may be different. *United States v. Darrington, 351 F.3d 632, 2003 U.S. App. LEXIS 23451 (5th Cir. 2003)*, cert. denied, *541 U.S. 1080, 124 S. Ct. 2429, 158 L. Ed. 2d 994, 2004 U.S. LEXIS 3957 (2004)*.

18 USCS § 922(g)(1) does not amount to equal protection violation because Congress could rationally conclude that any felony conviction, even allegedly invalid one, is sufficient basis on which to prohibit possession of firearm. *United States v. Darrington, 351 F.3d 632, 2003 U.S. App. LEXIS 23451 (5th Cir. 2003)*, cert. denied, *541 U.S. 1080, 124 S. Ct. 2429, 158 L. Ed. 2d 994, 2004 U.S. LEXIS 3957 (2004)*.

18 USCS § 922(g)(1) did not violate equal protection guarantee of Fifth Amendment because there was some rational basis for statutory distinctions made between felons and non-felons. United States v Vongxay *594 F.3d 1111 (CA9 Cal 2010)*.

After defendant pled guilty to being felon in possession of firearm, in violation of *18 USCS § 922(g)(1)*, he appealed his sentence, specifically two-level stolen firearm enhancement of USSG § 2K2.1(b)(4)(A), claiming that he did not know firearm he used in shooting was stolen, but lack of scienter requirement in strict liability enhancement was permissible under Griffiths and rational basis existed to support Guidelines' differential treatment of stolen explosives and stolen firearms such that USSG § 2K2.1(b)(4)(A) did not violate equal protection. *United States v. Thomas, 628 F.3d 64, 2010 U.S. App. LEXIS 25610 (2d Cir. 2010)*.

Interstate commerce requirement of *18 USCS § 922(g)(1)* is jurisdictional in nature, which satisfies Equal Protection Clause; it is reasonable ground of classification that state has power to legislate with respect to persons in certain situations and not with respect to those in different one. *United States v. Robinson, 290 F. Supp. 2d 808, 2003 U.S. Dist. LEXIS 19960 (E.D. Mich. 2003)*.

Unpublished decision: *18 USCS § 922(g)(1)* is not facially unconstitutional as violative of Equal Protection Clause as made applicable to federal government; there is rational basis for penalizing convicted felons for possession of firearms, while persons not convicted of felonies may possess such arms, as legislature can rationally find greater

danger is posed by felons' possession of firearms than possession by unconvicted, ordinary persons. *United States v. Muhammad, 250 Fed. Appx. 208, 2007 U.S. App. LEXIS 23858 (9th Cir. 2007)*.

75. —§ 922(g)(9)

18 USCS § 922(g)(9) in prohibiting persons convicted of domestic violence from possessing firearms does not violate equal protection component of Fifth Amendment's due process clause, even as to defendant whose misdemeanor conviction was ten years ago, and even if persons convicted of other sorts of misdemeanors pose similar danger to society if armed, since rationale for keeping guns out of hands of those convicted of domestic violence crimes is eminently reasonable. *United States v. Lewitzke, 176 F.3d 1022, 1999 U.S. App. LEXIS 9045 (7th Cir.)*, cert. denied, *528 U.S. 914, 120 S. Ct. 267, 145 L. Ed. 2d 223, 1999 U.S. LEXIS 6436 (1999)*.

18 USCS § 922(g)(9) did not violate equal protection component of Due Process Clause of Fifth Amendment, Commerce Clause, Tenth Amendment, Second Amendment, or Eighth Amendment. *United States v. Lewis, 236 F.3d 948, 2001 U.S. App. LEXIS 288 (8th Cir. 2001)*.

Because plaintiff, domestic violence misdemeanant, failed to establish that he was similarly situated to those subject to section that disarmed those adjudicated as mental defective and those who had been involuntarily committed to mental health facility, his equal protection claim failed. *Stimmel v. Sessions, 879 F.3d 198, 2018 FED App. 0003P, 2018 U.S. App. LEXIS 213 (6th Cir. 2018)*.

Because no Supreme Court or Eleventh Circuit case had held that *18 U.S.C.S. § 922(g)*'s application to domestic-violence misdemeanants who never lost civil rights but not to felons and to domestic-violence misdemeanants whose rights were abrogated but then restored violated equal protection, no plain error on that issue existed. *United States v. Johnson, 981 F.3d 1171, 28 Fla. L. Weekly Fed. C 2222, 2020 U.S. App. LEXIS 37636 (11th Cir. 2020)*.

Plaintiffs' action for return of firearms that were seized when plaintiff was arrested for assault failed because *18 USCS § 922(g)(9)* did not violate Equal Protection Clause, Commerce Clause, Second Amendment, or Eighth Amendment's Cruel and Unusual Punishment Clause. *Blackburn v. Jansen, 241 F. Supp. 2d 1047, 2003 U.S. Dist. LEXIS 545 (D. Neb. 2003)*.

76. § 922(h)

18 USCS § 922(h) and *18 USCS § 1202(a)* are not unconstitutional as violating due process or equal protection on theory that they permit excessive prosecutorial discretion in selection of penalties, since prosecutor's discretion to choose between two sections is not unfettered, decision to proceed under § 922(h) does not empower government to predetermine ultimate criminal sanctions, and there is not appreciable difference between discretion prosecutor exercises when deciding to charge under one of two statutes with different elements, and discretion he exercises when choosing one of two statutes with identical elements; prosecutor may be influenced by penalties available on conviction, but this fact standing alone does not give rise to violation of due process or equal protection. *United States v. Batchelder, 442 U.S. 114, 99 S. Ct. 2198, 60 L. Ed. 2d 755, 1979 U.S. LEXIS 122 (1979)*.

18 USCS § 922(h)(1) is not unconstitutional because it fails to distinguish between persons whose prior convictions were for serious crimes involving violence and persons whose prior convictions were for serious crimes not involving violence. *United States v. Giles, 640 F.2d 621, 1981 U.S. App. LEXIS 18969 (5th Cir. 1981)*.

18 USCS § 922(h) does not deny equal protection to person under indictment for nonviolent offenses. *United States v. Weingartner, 485 F. Supp. 1167, 1979 U.S. Dist. LEXIS 9341 (D.N.J. 1979)*.

77. Miscellaneous

18 USCS § 922(a)(6) does not violate Equal Protection Clause of Fourteenth Amendment. *Cody v. United States, 460 F.2d 34, 1972 U.S. App. LEXIS 9651 (8th Cir.)*, cert. denied, *409 U.S. 1010, 93 S. Ct. 454, 34 L. Ed. 2d 303, 1972 U.S. LEXIS 672 (1972)*.

It was not violation of equal protection clause for defendant to be convicted under *18 USCS § 922* and sentenced to term of 3 years, when he could have been charged under 18 USCS Appx. § 1202 which provides for maximum punishment of 2 years. *United States v. Fournier, 483 F.2d 68, 1973 U.S. App. LEXIS 8623 (5th Cir. 1973)*.

Provisions of *18 USCS § 922* which allows convicted felons in state of manufacture of gun to legally receive firearms that have not been shipped or transported in interstate commerce while other convicted felons are criminally liable if they receive firearms that previously have been shipped or transported in interstate commerce does not create distinction which violates defendant's constitutional right to equal protection of law. *United States v. Wynde, 579 F.2d 1088, 1978 U.S. App. LEXIS 10509 (8th Cir.)*, cert. denied, *439 U.S. 871, 99 S. Ct. 204, 58 L. Ed. 2d 184, 1978 U.S. LEXIS 3181 (1978)*.

18 USCS § 922 was not unconstitutional in imposing criminal sanction based on defendant's status as convicted felon, nor did it violate his equal protection rights by selectively exempting some felonies from its scope through enactment of *18 USCS § 921(a)(20)(A)*. *United States v. Jester, 139 F.3d 1168, 1998 U.S. App. LEXIS 6801 (7th Cir. 1998)*.

Semi-automatic assault weapons ban under Title XI of Violent Crime Control and Law Enforcement Act of 1994 is legitimate exercise of congressional authority to regulate significant threat to public health and safety and does not violate Equal Protection Clause. *NRA v. Buckles, 301 F.3d 384, 2002 FED App. 0264P, 2002 U.S. App. LEXIS 15648 (6th Cir. 2002)*.

18 USCS § 922(g)(5) withstood defendant's Second Amendment and Equal Protection challenges because crime control and public safety were indisputably "important" interests, and courts had to defer to Congress as it lawfully exercised its constitutional power to distinguish between citizens and non-citizens, or between lawful and unlawful aliens, and to ensure safety and order. *United States v. Huitron-Guizar, 678 F.3d 1164, 2012 U.S. App. LEXIS 9256 (10th Cir.)*, cert. denied, *568 U.S. 893, 133 S. Ct. 289, 184 L. Ed. 2d 170, 2012 U.S. LEXIS 6414 (2012)*.

Laws were rationally related to legitimate state interest; appellants failed to show Congress irrationally imposed age qualifications on commercial arms sales; government may discriminate on basis of age without offending constitutional guarantee of equal protection if age classification in question is rationally related to legitimate state interest. *NRA of Am. v. Bureau of Alcohol, 700 F.3d 185, 2012 U.S. App. LEXIS 22197 (5th Cir. 2012)*, amended, *2012 U.S. App. LEXIS 26949 (5th Cir. Oct. 25, 2012)*, reh'g, en banc, denied, *714 F.3d 334, 2013 U.S. App. LEXIS 8779 (5th Cir. 2013)*, cert. denied, *571 U.S. 1196, 134 S. Ct. 1364, 188 L. Ed. 2d 296, 2014 U.S. LEXIS 1558 (2014)*.

Prohibition against sales of firearms to any person if there was reasonable cause to believe that such person was unlawful user of controlled substance did not violate equal protection rights of Nevada medical marijuana registry card holder; challenged provision did not interfere with exercise of any fundamental rights and survived rational basis scrutiny because it was reasonably related to reducing gun violence. *Wilson v. Lynch, 835 F.3d 1083, 2016 U.S. App. LEXIS 16108 (9th Cir. 2016)*, cert. denied, *137 S. Ct. 1396, 197 L. Ed. 2d 555, 2017 U.S. LEXIS 2173 (2017)*.

18 USCS § 922 does not deny defendant equal protection by prohibiting receipt of firearms transported in interstate commerce, but not of firearms transported in intrastate commerce, since decision of Congress to focus on interstate transport of firearms and to leave area of intrastate transport to whatever regulations states might respectively deem appropriate does not violate Equal Protection Clause of Constitution. *United States v. Ziegenhagen, 420 F. Supp. 72, 1976 U.S. Dist. LEXIS 13907 (E.D. Wis. 1976)*.

F. Right to Keep and Bear Arms

1. In General

78. Generally

In view of broad, corrective purposes of *18 USCS §§ 921* et seq., established principle that there is no absolute constitutional right of individual to possess firearm applies in prosecution for engaging in business of dealing in

firearms without license. *United States v. Swinton, 521 F.2d 1255, 1975 U.S. App. LEXIS 12926 (10th Cir. 1975)*, cert. denied, *424 U.S. 918, 96 S. Ct. 1121, 47 L. Ed. 2d 324, 1976 U.S. LEXIS 550 (1976)*.

18 USCS § 922(g)(1) did not unconstitutionally interfere with felon's right under state law to bear arms, since § 922(g)(1) rests on state law governing convictions, not on state law regulating felons' possession of firearms, and therefore requires courts to look at state's definition of convictions, not at its substantive regulation of convicted felons; Congress may regulate possession of firearms without violating Tenth Amendment. *United States v. Andaverde, 64 F.3d 1305, 95 Cal. Daily Op. Service 6708, 95 D.A.R. 11493, 1995 U.S. App. LEXIS 23977 (9th Cir. 1995)*, cert. denied, *516 U.S. 1164, 116 S. Ct. 1055, 134 L. Ed. 2d 199, 1996 U.S. LEXIS 1680 (1996)*.

Government bears burden of showing that *18 USCS § 922(g)(3)*'s limited imposition on Second Amendment rights proportionately advances goal of preventing gun violence. *United States v. Carter, 669 F.3d 411, 2012 U.S. App. LEXIS 1243 (4th Cir. 2012)*.

Defendant's claim that *18 USCS § 922(g)(9)* violated Fourteenth Amendment—because Fourteenth Amendment conferred absolute right on all American citizens to own firearms—was without merit because Fourteenth Amendment applied only to states, and not federal government; moreover, basis of defendant's argument was contradicted by numerous cases. *United States v. Finnell, 256 F. Supp. 2d 493, 2003 U.S. Dist. LEXIS 6066 (E.D. Va. 2003)*.

Holdings of various circuit courts across country, that Ninth Amendment did not impinge upon Congress's authority to restrict firearm ownership, contradicted defendant's claim that *18 USCS § 922(g)(9)* was unconstitutional under Ninth Amendment because it denied him right to bear arms. *United States v. Finnell, 256 F. Supp. 2d 493, 2003 U.S. Dist. LEXIS 6066 (E.D. Va. 2003)*.

Individual contended that *18 USCS § 922(g)(4)* was unconstitutional as it permanently denied any person who had been committed to mental institution of right to possess any firearm or ammunition; however, in light of Congressional intent to keep firearms away from persons considered potentially dangerous, there was rational basis to prohibit possession of firearms by individuals who were committed to mental health institutions and § 922(g)(4) was not unconstitutional for reasons urged; because individuals who have been adjudicated as mental defective or committed to mental institution are not suspect class, test for determining constitutionality of *18 USCS § 922(g)(4)* depends upon finding rational basis for its prohibition. *United States v. One Vyatskie Polyany Mach. Bldg. Plant "MOLOT" Vepr Rifle, 473 F. Supp. 2d 374, 2007 U.S. Dist. LEXIS 9211 (E.D.N.Y. 2007)*.

2. Second Amendment

79. § 922(a)

18 USCS § 922(a)(6) does not violate Second Amendment right to bear arms. *Cody v. United States, 460 F.2d 34, 1972 U.S. App. LEXIS 9651 (8th Cir.)*, cert. denied, *409 U.S. 1010, 93 S. Ct. 454, 34 L. Ed. 2d 303, 1972 U.S. LEXIS 672 (1972)*.

18 USCS § 922(a)(1) was not violative of defendant's rights under Second Amendment to Constitution, and charge alleging that defendant engaged in selling firearms without license did not violate his right to keep and bear arms. *United States v. King, 532 F.2d 505, 1976 U.S. App. LEXIS 8785 (5th Cir.)*, cert. denied, *429 U.S. 960, 97 S. Ct. 384, 50 L. Ed. 2d 327, 1976 U.S. LEXIS 3577 (1976)*, reh'g denied, *536 F.2d 390 (5th Cir. 1976)*.

18 USCS § 922(a)(3) did not substantially burden defendant's right to keep and bear arms; in light of ample alternative means of acquiring firearms for self-defense purposes, § 922(a)(3) did not impose substantial burden on exercise of defendant's Second Amendment rights; since § 922(a)(3) did not burden defendant's Second Amendment rights in way so substantial as to justify heightened scrutiny, his facial challenge to statute also failed. *United States v. Decastro, 682 F.3d 160, 2012 U.S. App. LEXIS 11213 (2d Cir. 2012)*, cert. denied, *568 U.S. 1092, 133 S. Ct. 838, 184 L. Ed. 2d 665, 2013 U.S. LEXIS 475 (2013)*.

Heightened scrutiny is appropriate only as to those regulations that substantially burden Second Amendment; because *18 USCS § 922(a)(3)* only minimally affects ability to acquire firearm, it is not subject to any form of heightened scrutiny. *United States v. Decastro, 682 F.3d 160, 2012 U.S. App. LEXIS 11213 (2d Cir. 2012)*, cert. denied, *568 U.S. 1092, 133 S. Ct. 838, 184 L. Ed. 2d 665, 2013 U.S. LEXIS 475 (2013)*.

In-state sales requirement for handguns, *18 USCS § 922(a)(3)* and (b)(3), remained justified by a compelling government interest and was narrowly drawn to serve that interest after the Gun Control Act was amended; because the requirement did not discriminate based on residency, it was not subject to strict or any scrutiny under the Equal Protection Clause. *Mance v. Sessions, 880 F.3d 183, 2018 U.S. App. LEXIS 1279 (5th Cir.)*, sub. op., *896 F.3d 699, 2018 U.S. App. LEXIS 20270 (5th Cir. 2018)*, reh'g, en banc, denied, *896 F.3d 390, 2018 U.S. App. LEXIS 20271 (5th Cir. 2018)*.

District court erred in finding in favor of DC residents who sought to buy handguns from a Texas firearms dealer and in holding that the in-state sales requirement for handguns, *18 USCS § 922* and *27 C.F.R. § 478.99(a)*, violated the Second Amendment; the requirement was narrowly tailored to prevent circumvention of state handgun restrictions. *Mance v. Sessions, 896 F.3d 699, 2018 U.S. App. LEXIS 20270 (5th Cir. 2018)*.

Where defendant had protective order issued against defendant based upon family violence and was charged with violating *18 USCS § 922(a)(6)* for making false statement in attempting to purchase guns, defendant's Second Amendment claim failed because (1) it was reasonable to restrict firearm access of those who are deemed to necessitate protective orders due to family violence, and (2) state court made specific finding of violence in issuing protective order. *United States v. Miles, 238 F. Supp. 2d 297, 2002 U.S. Dist. LEXIS 23658 (D. Me. 2002)*.

80. § 922(g)

Defendant argued that in light of U.S. Supreme Court's decision in Heller, in which Court held that Second Amendment provided individual with right to possess and use handgun for lawful purposes within home, *18 USCS § 922(g)* violated Second Amendment; Supreme Court, however, explicitly stated in Heller that nothing in its opinion was to be taken to cast doubt on longstanding prohibitions on possession of firearms by felons, and defendant's argument was rejected. United States v McCane (2009, CA10 Okla) 573 F3d 1037cert den *130 S. Ct. 1686, 176 L. Ed. 2d 179 (2010)*.

18 USCS § 922(g)(3) did not violate Second Amendment because Congress could prohibit those who posed risk to society from exercising right to bear arms and unlawful users of controlled substances posed societal risk if permitted to bear arms. *United States v. Patterson, 431 F.3d 832, 2005 U.S. App. LEXIS 26146 (5th Cir. 2005)*, cert. denied, *547 U.S. 1138, 126 S. Ct. 2043, 164 L. Ed. 2d 798, 2006 U.S. LEXIS 3806 (2006)*.

In case in which defendant conceded that his argument that *18 USCS § 922(g)* infringed his Second Amendment right to bear arms was foreclosed by Darrington decision, his attempt to revive it by pointing to Heller decision failed since Heller decision did not provide basis for reconsidering Darrington decision; in Heller decision, U.S. Supreme Court stated that nothing in their opinion should be taken to cast doubt on longstanding prohibitions on possession of firearms by felons. *United States v. Anderson, 559 F.3d 348, 2009 U.S. App. LEXIS 2774 (5th Cir.)*, cert. denied, *557 U.S. 913, 129 S. Ct. 2814, 174 L. Ed. 2d 308, 2009 U.S. LEXIS 4358 (2009)*.

18 USCS § 922(g)(5)—which, in part, forbade possession of firearm by illegal alien—was constitutional under Second Amendment because phrase "the people" in Second Amendment of Constitution did not include aliens illegally in United States. *United States v. Portillo-Munoz, 643 F.3d 437, 2011 U.S. App. LEXIS 11976 (5th Cir. 2011)*, cert. denied, *566 U.S. 963, 132 S. Ct. 1969, 182 L. Ed. 2d 821, 2012 U.S. LEXIS 3243 (2012)*.

U.S. Supreme Court had said that its Heller and McDonald opinions did not cast doubt on such longstanding regulatory measures as prohibition on possession of firearms by felons, and since two of defendant's prior convictions were for serious drug offenses (distribution and possession with intent to distribute Class controlled substances) and drug dealing was notoriously linked to violence, even if it were assumed that some felonies would be found so tame

and technical as to be insufficient to justify ban, drug dealing was not likely to be among them, so defendant's constitutional challenge to *18 USCS § 922(g)* failed. *United States v. Torres-Rosario, 658 F.3d 110, 2011 U.S. App. LEXIS 19481 (1st Cir. 2011)*, cert. denied, *565 U.S. 1271, 132 S. Ct. 1766, 182 L. Ed. 2d 549, 2012 U.S. LEXIS 2204 (2012)*.

Defendant's motion to dismiss indictment charging him with illegal possession of firearm by unauthorized alien was properly denied because Second Amendment did not preclude certain restrictions on right to bear arms, including one imposed by this section; Congress's interest in prohibiting persons who were difficult to track and who had interest in eluding law enforcement was strong enough to support conclusion that this section did not impermissibly restrict defendant's Second Amendment right to bear arms. *United States v. Meza-Rodriguez, 798 F.3d 664, 2015 U.S. App. LEXIS 14670 (7th Cir. 2015)*, cert. denied, *136 S. Ct. 1655, 194 L. Ed. 2d 772, 2016 U.S. LEXIS 2690 (2016)*.

Unpublished decision: *18 USCS § 922(g)(5)(A)* does not violate Second Amendment because right to keep and bear arms does not extend to individuals who are unlawfully in United States. *United States v. Mirza, 454 Fed. Appx. 249, 2011 U.S. App. LEXIS 21707 (5th Cir. 2011)*, cert. denied, *565 U.S. 1251, 132 S. Ct. 1725, 182 L. Ed. 2d 262, 2012 U.S. LEXIS 1908 (2012)*.

Unpublished decision: Where defendant pleaded guilty to felon in possession of firearm and was sentenced to 120 months of imprisonment, Second Amendment did not preclude his conviction nor sentence imposed pursuant to this section. *United States v. Powell, 574 Fed. Appx. 390, 2014 U.S. App. LEXIS 12085 (5th Cir.)*, cert. denied, *574 U.S. 1048, 135 S. Ct. 767, 190 L. Ed. 2d 630, 2014 U.S. LEXIS 8236 (2014)*.

Defendant, dishonorably discharge from military, was properly convicted for possession of ammunition under this section because, under intermediate scrutiny under *U.S. Const. amend II*, statute was substantially related to achievement of important governmental interest of public safety. *United States v. Jimenez, 895 F.3d 228, 2018 U.S. App. LEXIS 18673 (2d Cir. 2018)*.

Defendant's *18 USCS § 922(g)* conviction did not violate the Second Amendment given judicial precedent specifically preserving the constitutionality of felon-in-possession statutes. *United States v. Massey, 849 F.3d 262, 2017 U.S. App. LEXIS 3227 (5th Cir.)*, cert. denied, *138 S. Ct. 500, 199 L. Ed. 2d 384, 2017 U.S. LEXIS 7177 (2017)*.

Section 922(g)(3)'s ban on possession of firearm by unlawful user of controlled substance did not impermissibly burden defendant's Second Amendment rights. *United States v. Cook, 970 F.3d 866, 2020 U.S. App. LEXIS 26023 (7th Cir. 2020)*.

28 U.S.C.S. § 922(g)(5)(B), prohibiting nonimmigrant visa holders from possessing firearms, reasonably serves the important governmental interest of public safety and crime control. It carves out exceptions for visa holders who are less likely to threaten public safety. Section 922(y)(2), for example, exempts those that come to the United States for hunting or sporting purposes. Section 922(y)(3) creates a broad waiver for visa holders to possess firearms if they have resided in the United States for a continuous period of not less than 180 days, if they receive a statement of support from their embassy or consulate, and the Attorney General confirms that they do not jeopardize the public safety. *18 U.S.C.S. § 922(y)(3)(B)(i)*-(ii), (C)(ii). *United States v. Singh, 979 F.3d 697, 2020 U.S. App. LEXIS 33927 (9th Cir. 2020)*, cert. denied, *210 L. Ed. 2d 833, 2021 U.S. LEXIS 2609 (U.S. 2021)*.

District court properly dismissed a suit alleging the Government mishandled personal information when conducting routine background checks because individuals and organizations failed to identify how the Government's search procedure caused them injury; Incorporating the Terrorist Screening Database into the National Instant Criminal Background Check System protocol is merely one method that the Government may use to determine whether a prospective purchaser possesses a disqualifying attribute. *Robinson v. Sessions, 721 Fed. Appx. 20, 2018 U.S. App. LEXIS 1144 (2d Cir.)*, cert. denied, *138 S. Ct. 2584, 201 L. Ed. 2d 296, 2018 U.S. LEXIS 3227 (2018)*.

District court properly dismissed a complaint alleging the Government mishandled personal information when conducting routine background checks because individuals and organizations failed to identify a direct injury in fact

they sustained or would sustain; the individuals and organizations did not explain how they had been subjected to harm, and there was no evidence they were unable to purchase a firearm, were delayed in purchasing one, or were listed on the Terrorist Screening Database. *Robinson v. Sessions, 721 Fed. Appx. 20, 2018 U.S. App. LEXIS 1144 (2d Cir.)*, cert. denied, *138 S. Ct. 2584, 201 L. Ed. 2d 296, 2018 U.S. LEXIS 3227 (2018)*.

Defendant, dishonorably discharge from military, was properly convicted for possession of ammunition under this section because, under intermediate scrutiny under *U.S. Const. amend II*, statute was substantially related to achievement of important governmental interest of public safety. *United States v. Jimenez, 895 F.3d 228, 2018 U.S. App. LEXIS 18673 (2d Cir. 2018)*.

Because plaintiff could not distinguish his circumstances from those of members in historically-barred class of persons who had previously been adjudicated as mentally ill or committed to mental institution, *18 USCS § 922(g)(4)* as applied to him did not burden conduct falling within scope of Second Amendment. *Beers v. AG United States, 927 F.3d 150, 2019 U.S. App. LEXIS 18519 (3d Cir. 2019)*, remanded, *140 S. Ct. 2758, 206 L. Ed. 2d 933, 2020 U.S. LEXIS 2662 (2020)*.

Where defendant, whose sole commitment to mental institution was emergency hospitalization pursuant to *Me. Rev. Stat. Ann. tit. 34-B, § 3863*, was indicted under *18 USCS § 922(g)(4)* for possession of gun by someone who has been committed to mental institution, there was no Second Amendment violation because prohibitions against firearm possession by mental incompetents were long-standing and emergency hospitalization under § 3863 implicated potential for harm that Congress sought to regulate under § 922(g)(4). *United States v. Murphy, 681 F. Supp. 2d 95, 2010 U.S. Dist. LEXIS 11364 (D. Me. 2010)*.

81. —§ 922(g)(1)

18 USCS § 922(g)(1) and *922(k)* were not beyond Congress' power under Commerce Clause or in violation of Second, Ninth, or Tenth Amendments; although Utah's constitution gave defendant right to bear arms, his federal weapons prosecution was not improper, since state constitutional provisions cannot override federal criminal statutes unless incorporated into federal law. *United States v. Baer, 235 F.3d 561, 2000 Colo. J. C.A.R. 6667, 2000 U.S. App. LEXIS 32498 (10th Cir. 2000)*.

18 USCS § 922(g)(1) and (9) are constitutional under Commerce Clause, Second or Tenth Amendment, and are not ex post facto laws or bills of attainder. *United States v. Hemmings, 258 F.3d 587, 2001 U.S. App. LEXIS 15572 (7th Cir. 2001)*.

Dismissal of defendant's motion to dismiss charge against him for being felon in possession of firearm in violation of *18 USCS § 922(g)(1)* was affirmed because § 922(g)(1) did not violate defendant's Second Amendment right to bear arms. *United States v. Wilson, 315 F.3d 972, 2003 U.S. App. LEXIS 305 (8th Cir.*, cert. denied, *539 U.S. 968, 123 S. Ct. 2661, 156 L. Ed. 2d 672, 2003 U.S. LEXIS 5169 (2003)*, reh'g, en banc, denied, *2003 U.S. App. LEXIS 3908 (8th Cir. Mar. 5, 2003)*.

18 USCS § 922(g)(1) does not violate Second Amendment, as Second Amendment's protection of right of individuals to privately possess and bear firearms does not preclude government from prohibiting possession of firearms by felons, and it is clear that felons, infants, and those of unsound mind may be prohibited from possessing firearms. *United States v. Darrington, 351 F.3d 632, 2003 U.S. App. LEXIS 23451 (5th Cir. 2003)*, cert. denied, *541 U.S. 1080, 124 S. Ct. 2429, 158 L. Ed. 2d 994, 2004 U.S. LEXIS 3957 (2004)*.

District of Columbia v. Heller, 128 S. Ct. 2783 (2008), does not render *18 USCS § 922(g)(1)* unconstitutional; even given Second Amendment's individual right to bear arms, felons' Second Amendment rights can be reasonably restricted. United States v Vongxay *594 F.3d 1111 (CA9 Cal 2010)*.

Defendant's conviction and sentence under *18 USCS § 922(g)(1)* for possession of firearm and ammunition by convicted felon was not unconstitutional because statutory restrictions of firearm possession, such as § 922(g)(1), were constitutional avenue to restrict Second Amendment right of certain classes of people including felons. *United*

States v. Rozier, 598 F.3d 768, 22 Fla. L. Weekly Fed. C 586, 2010 U.S. App. LEXIS 4556 (11th Cir.), cert. denied, *560 U.S. 958, 130 S. Ct. 3399, 177 L. Ed. 2d 313, 2010 U.S. LEXIS 4708 (2010)*.

Where defendant argued that defendant's conviction for possession of firearms by felon, without any further showing of violent intent, violated defendant's Second Amendment rights, defendant's arguments were foreclosed by existing precedent since criminal prohibitions on felons (violent or nonviolent) possessing firearms did not violate individual right to bear arms. United States v. Scroggins, 599 F.3d 433, 2010 U.S. App. LEXIS 4551 (5th Cir.), cert. denied, *562 U.S. 867, 131 S. Ct. 158, 178 L. Ed. 2d 95, 2010 U.S. LEXIS 6601 (2010)*.

Defendant was unable to prove his claim that 18 USCS § 922(g)(1), as applied to him, violated his Second Amendment right to possess firearms; because defendant was convicted felon, categorical ban on firearm possession by convicted felons applied to him; Government's stated objective to keep firearms out of hands of violent felons—persons Government believed were most likely to misuse firearms—and substantial link between this objective and defendant's conviction for robbery, violent felony, provided strong showing necessary to uphold ban against defendant; because defendant was convicted of violent felony, his claim that 18 USCS § 922(g)(1) unconstitutionally infringed on his right to possess firearm was without merit. United States v. Williams, 616 F.3d 685, 2010 U.S. App. LEXIS 16194 (7th Cir.), cert. denied, *562 U.S. 1092, 131 S. Ct. 805, 178 L. Ed. 2d 532, 2010 U.S. LEXIS 9533 (2010)*.

Charge properly brought under 18 USCS § 922(g)(1) and § 2 does not violate Second Amendment. United States v. Huet, 665 F.3d 588, 2012 U.S. App. LEXIS 133 (3d Cir.), cert. denied, *568 U.S. 941, 133 S. Ct. 422, 184 L. Ed. 2d 256, 2012 U.S. LEXIS 7860 (2012)*.

18 USCS § 922(g)(1) did not violate Second Amendment as applied to defendant because, in light of defendant's extensive and violent criminal history— felony convictions for selling or delivering cocaine, three common law robberies, and two assaults with deadly weapon on government official—defendant's conduct was plainly outside scope of Second Amendment. United States v. Moore, 666 F.3d 313, 2012 U.S. App. LEXIS 1335 (4th Cir. 2012), limited, Harley v. Wilkinson, 988 F.3d 766, 2021 U.S. App. LEXIS 5086 (4th Cir. 2021).

In criminal case in which defendant was convicted for being felon in possession of firearm in violation of 18 USCS § 922(g)(1), defendant's as-applied challenge to § 922(g)(1) based on Second Amendment failed because defendant did not rebut presumptively lawful status of statute since circumstances of firearm possession did not distinguish defendant's challenge from typical application of § 922(g)(1). United States v. Smoot, 690 F.3d 215, 2012 U.S. App. LEXIS 16860 (4th Cir. 2012), cert. denied, *568 U.S. 1135, 133 S. Ct. 962, 184 L. Ed. 2d 747, 2013 U.S. LEXIS 694 (2013)*, limited, Harley v. Wilkinson, 988 F.3d 766, 2021 U.S. App. LEXIS 5086 (4th Cir. 2021).

Because disarmament of common-law misdemeanants as class was substantially related to important governmental objective of crime prevention, easily meeting intermediate scrutiny, court rejected plaintiff gun advocates' Second Amendment challenge to application of 18 USCS § 922(g)(1) to that class of offenders. Schrader v. Holder, 704 F.3d 980, 403 U.S. App. D.C. 284, 2013 U.S. App. LEXIS 730 (D.C. Cir., cert. denied, *571 U.S. 989, 134 S. Ct. 512, 187 L. Ed. 2d 365, 2013 U.S. LEXIS 8013 (2013)*, reh'g denied, 2013 U.S. App. LEXIS 5039 (D.C. Cir. Mar. 13, 2013), reh'g, en banc, denied, 2013 U.S. App. LEXIS 5044 (D.C. Cir. Mar. 13, 2013).

Because defendant was convicted of three violent felonies, applying 18 USCS § 922(g)(1) was substantially related to Government's important interest in keeping firearms away from violent felons and, therefore, § 922(g)(1) was constitutional as applied to defendant. United States v. Shields, 789 F.3d 733, 2015 U.S. App. LEXIS 10058 (7th Cir.), cert. denied, *577 U.S. 964, 136 S. Ct. 420, 193 L. Ed. 2d 329, 2015 U.S. LEXIS 7020 (2015)*.

Unpublished decision: In case in which defendant appealed his conviction for violating 18 USCS § 922(g)(1), he unsuccessfully argued that his conviction under § 922(g)(1) as applied violated Second Amendment; while defendant's criminal history was not as egregious as those of defendants in Moore decision or Smoot decision, his criminal record included 2008 Virginia state felony conviction for eluding law enforcement officer, in violation of Va. Code Ann. § 46.2-817; that conviction was sufficient to find § 922(g)(1) constitutional as applied. United States v.

Kline, 494 Fed. Appx. 323, 2012 U.S. App. LEXIS 19259 (4th Cir. 2012), cert. denied, *568 U.S. 1136, 133 S. Ct. 963, 184 L. Ed. 2d 747, 2013 U.S. LEXIS 637 (2013)*.

Unpublished decision: In case in which defendant appealed his conviction for violating *18 USCS § 922(g)(1)*, he unsuccessfully argued that his conviction under § 922(g)(1) as applied violated Second Amendment; he urged court to consider that there was no reason to believe he intended to do anything but take home firearm he purchased from undercover agent, resulting in present offense, and use it for self-protection, thereby removing him from realm of ordinary challenges, but that assertion was far too vague and unsubstantiated to remove his case from typical felon in possession case. *United States v. Kline, 494 Fed. Appx. 323, 2012 U.S. App. LEXIS 19259 (4th Cir. 2012)*, cert. denied, *568 U.S. 1136, 133 S. Ct. 963, 184 L. Ed. 2d 747, 2013 U.S. LEXIS 637 (2013)*.

Unpublished decision: Because binding precedent had held that *18 USCS § 922(g)(1)* was constitutional avenue to restrict Second Amendment right of convicted felons, defendant's challenge to his conviction on Second Amendment grounds failed. *United States v. Baird, 514 Fed. Appx. 898, 2013 U.S. App. LEXIS 6053 (11th Cir. 2013)*.

Challengers of constitutionality of ban on possession of firearms by convicted felons as applied to challengers sufficiently showed that they were unconstitutionally deprived of fundamental right to bear arms, since their state convictions for misdemeanors which met statutory definition of felonies were not serious or violent crimes, challengers had no criminal history in lengthy periods after their convictions, and there was no showing that banning challengers' possession of firearms promoted government's interest in responsible use of firearms. *Binderup v. AG of United States, 836 F.3d 336, 2016 U.S. App. LEXIS 16407 (3d Cir. 2016)*, cert. denied, *137 S. Ct. 2323, 198 L. Ed. 2d 746, 2017 U.S. LEXIS 4098 (2017)*.

Felon dispossession statutes did not violate Second Amendment as applied to plaintiff because they were substantially related to important government interest of keeping firearms away those convicted of serious crimes. *Kanter v. Barr, 919 F.3d 437, 2019 U.S. App. LEXIS 7722 (7th Cir. 2019)*.

Neither Heller decision nor McDonald decision changes constitutional status of *18 U.S.C.S. § 922(g)* in its prohibition of firearms by felons. *United States v. Griffith, 928 F.3d 855, 2019 U.S. App. LEXIS 18704 (10th Cir. 2019)*.

Applying *18 USCS § 922(g)(1)* to defendant, which made it unlawful for him to possess a firearm due to his prior DUI conviction, did not violate his Second Amendment rights where drunk driving was a serious crime, and despite the first-degree misdemeanor label under state law, Pennsylvania's decision to impose a mandatory minimum jail term and a maximum penalty of up to five years' imprisonment for a second DUI at the highest BAC reflected the seriousness of the offense. *Holloway v. AG United States, 948 F.3d 164, 2020 U.S. App. LEXIS 1561 (3d Cir. 2020)*, cert. denied, *209 L. Ed. 2d 546, 2021 U.S. LEXIS 2027 (U.S. 2021)*.

Neither Heller decision nor McDonald decision changes constitutional status of *18 USCS § 922(g)* in its prohibition of firearms by felons. *United States v. Griffith, 928 F.3d 855, 2019 U.S. App. LEXIS 18704 (10th Cir. 2019)*.

Applying *18 U.S.C.S. § 922(g)(1)* to plaintiff did not violate her Second Amendment right to possess firearms because she had pleaded guilty to federal felony of tax fraud, which was serious crime, and thus, she was categorically excluded from class of citizens entitled to possess firearm. *Folajtar v. AG of the United States, 980 F.3d 897, 2020 U.S. App. LEXIS 37006 (3d Cir. 2020)*, cert. denied, *209 L. Ed. 2d 546, 2021 U.S. LEXIS 1872 (U.S. 2021)*.

While Second Amendment protects right to keep firearms for the purpose of self-defense, it does not, however, protect possession of firearms by convicted felons, Congress has expressly criminalized such possession, and *18 USCS § 922(g)(1)* is constitutional avenue to restrict Second Amendment right of certain classes of people. *United States v. Little, 780 Fed. Appx. 719, 2019 U.S. App. LEXIS 19433 (11th Cir.)*, cert. denied, *140 S. Ct. 436, 205 L. Ed. 2d 261, 2019 U.S. LEXIS 6549 (2019)*.

18 USCS § 922(g)(1) does not violate Second Amendment; holding by federal district court that Second Amendment affords individual right to keep and bear arms does not extend to felons where proscribed by statute and vast weight

of authority holds that § 922(g)(1) is constitutional. *United States v. Cole, 276 F. Supp. 2d 146, 2003 U.S. Dist. LEXIS 14029 (D.D.C. 2003)*.

Unpublished decision: Where defendant appealed his conditional guilty plea conviction to being felon in possession of firearm by arguing that Eighth Circuit's four-part Poe test for justification defense was too stringent in light of U.S. Supreme Court's Heller decision, U.S. Supreme Court clarified that right to bear arms was not without limitation, stating that nothing in Heller decision should be taken to cast doubt on long-standing prohibitions on possession of firearms by felons. *United States v. Cooney, 571 Fed. Appx. 505, 2014 U.S. App. LEXIS 13882 (8th Cir. 2014)*, reh'g, en banc, denied, *2014 U.S. App. LEXIS 16969 (8th Cir. Sept. 2, 2014)*, cert. denied, *574 U.S. 1100, 135 S. Ct. 1007, 190 L. Ed. 2d 880, 2015 U.S. LEXIS 42 (2015)*.

Unpublished decision: Defendant's claim that he was not participating in any criminal conduct at time of his arrest was contrary to jury's factual findings and did not remove defendant's situation from run-of-the-mill challenge to constitutionality of *18 USCS § 922* as violative of Second Amendment, which had been rejected; further, defendant's criminal history revealed that he could not meet law-abiding citizen requirement of Second Amendment. *United States v. Taylor, 594 Fed. Appx. 784, 2014 U.S. App. LEXIS 23140 (4th Cir. 2014)*, cert. denied, *135 S. Ct. 2339, 191 L. Ed. 2d 999, 2015 U.S. LEXIS 3372 (2015)*.

81.5 —§922(g)(4)

Federal prohibition on plaintiff's possession of firearms because of his past involuntary commitment withstood Second Amendment scrutiny because those who were no longer mentally ill, but who were committed involuntarily years ago, unquestionably posed less of risk of violence now than when state court found them to be mentally ill and dangerous, but scientific evidence reasonably supported congressional judgment that they nevertheless still posed increased risk of violence; Second Amendment allowed Congress to further its goal of preventing gun violence by barring plaintiff from possessing firearm. *Mai v. United States, 952 F.3d 1106, 2020 U.S. App. LEXIS 7562 (9th Cir. 2020)*, reh'g denied, *974 F.3d 1082, 2020 U.S. App. LEXIS 28653 (9th Cir. 2020)*, cert. denied, *209 L. Ed. 2d 590, 2021 U.S. LEXIS 2191 (U.S. 2021)*.

18 U.S.C.S. § 922(g)(4) as applied to defendant did not violate Second Amendment as his commitment to restore him to competency under *W. Va. Code § 27-6A-3(f)* fell squarely within definition of "committed" as used in § 922(g)(4). *United States v. Collins, 982 F.3d 236, 2020 U.S. App. LEXIS 37807 (4th Cir. 2020)*.

18 USCS § 922(g)(4), as applied, violated a corrections officer's right to keep and bear arms under the Second Amendment; although the officer had been involuntarily committed 10 years earlier at age 15, he had used weapons on a daily basis without incident during his four-year service in the U.S. Army and during his profession. *Keyes v. Lynch, 195 F. Supp. 3d 702, 2016 U.S. Dist. LEXIS 89501 (M.D. Pa. 2016)*.

82. —§ 922(g)(8)

Defendant, convicted of possessing firearm while subject to domestic violence protective order in violation of *18 USCS § 922(g)(8)*, failed to offer evidence or argument in support of any of four elements necessary to establish violation of right to bear arms under Second Amendment. *United States v. Bayles, 310 F.3d 1302, 2002 U.S. App. LEXIS 23671 (10th Cir. 2002)*.

Indictment of defendant under *18 USCS § 922(g)(8)* for possessing firearms while subject to domestic protection order did not violate Second Amendment as applied; § 922(g)(8), viewed under intermediate scrutiny, was substantially related to important government objective; defendant was subject to protective order that satisfied requirements of § 922(g)(8), and defendant could not collaterally attack merits of protective order. *United States v. Reese, 627 F.3d 792, 2010 U.S. App. LEXIS 25224 (10th Cir. 2010)*, cert. denied, *563 U.S. 990, 131 S. Ct. 2476, 179 L. Ed. 2d 1214, 2011 U.S. LEXIS 3768 (2011)*.

18 USCS § 922(g)(8) was consistent with common-law tradition that right to bear arms was limited to peaceable or virtuous citizens, statute was focused on threat presented by specific category of presumptively dangerous

individuals, and prohibition applied only so long as person was "subject to" qualifying court order (in Iowa, order terminated at conclusion of criminal case, or after prescribed period if action resulted in conviction or deferred judgment and defendant ceases to pose danger to victim); on facial challenge, Second Amendment did not preclude that type of regulatory measure. *United States v. Bena, 664 F.3d 1180, 2011 U.S. App. LEXIS 25283 (8th Cir. 2011)*.

Indictment for firearm possession while being subject to domestic violence protective order (DVPO) did not violate Second Amendment because there had been judicial finding that defendant was likely to commit domestic abuse, government had substantial objective in reducing gun violence, and application of *18 USCS § 922(g)(8)* was strictly limited to duration of DPVO. *United States v. Chapman, 666 F.3d 220, 2012 U.S. App. LEXIS 57 (4th Cir. 2012)*.

It had not been held that Second Amendment extended beyond home or to perpetrators of domestic abuse, but even if it did, defendant's *18 USCS § 922(g)(8)* conviction survived intermediate scrutiny as § 922(g)(8) was "reasonable fit" with important government interest of preventing domestic gun violence. *United States v. Mahin, 668 F.3d 119, 2012 U.S. App. LEXIS 2083 (4th Cir. 2012)*.

It had not been held that Second Amendment extended beyond home or to perpetrators of domestic abuse, but even if it did, defendant's *18 USCS § 922(g)(8)* conviction survived intermediate scrutiny as § 922(g)(8) was "reasonable fit" with important government interest of preventing domestic gun violence; further, § 922(g)(8)(A)'s "procedural due process" requirements were notable "narrowing feature" of statute, and § 922(g)(8)(C)(i), (ii), required that underlying protective order either include finding that such person represented credible threat to physical safety of intimate partner, or by its terms explicitly prohibited use, attempted use, or threatened use of physical force against such intimate partner. *United States v. Mahin, 668 F.3d 119, 2012 U.S. App. LEXIS 2083 (4th Cir. 2012)*.

Unpublished decision: There was reasonable fit between *18 USCS § 922(g)(8)* and substantial governmental objective of reducing domestic gun violence; *18 USCS § 922(g)(8)* provided for time-limited restriction, which was applicable only while restraining order was in effect, it required that specific procedural safeguards be present at restraining order stage before that order could trigger firearm restriction, and it required that restraining order contain finding that defendant had been adjudged to be specific and credible threat to physical safety of another or that it explicitly prohibited use of force or threatened force that would reasonably be expected to cause bodily injury. *United States v. Mudlock, 483 Fed. Appx. 823, 2012 U.S. App. LEXIS 12617 (4th Cir. 2012)*, cert. denied, *568 U.S. 1093, 133 S. Ct. 842, 184 L. Ed. 2d 665, 2013 U.S. LEXIS 481 (2013)*.

Unpublished decision: *18 USCS § 922(g)(8)*, as applied to defendant, did not violate Second Amendment because, although statute might have been somewhat over-inclusive, there was reasonable fit between substantial government interest of reducing domestic gun violence and disarming individual who was subject to court order. *United States v. Elkins, 495 Fed. Appx. 330, 2012 U.S. App. LEXIS 21536 (4th Cir. 2012)*, cert. denied, *568 U.S. 1108, 133 S. Ct. 894, 184 L. Ed. 2d 694, 2013 U.S. LEXIS 116 (2013)*.

Unpublished decision: *18 USCS § 922(g)(8)*, as applied to defendant, did not violate Second Amendment because, on basis that protective order issued against him did not specifically articulate that he was credible threat, because protective order did not have to recite talismanic incantation that subject of order posed "credible threat." *United States v. Elkins, 495 Fed. Appx. 330, 2012 U.S. App. LEXIS 21536 (4th Cir. 2012)*, cert. denied, *568 U.S. 1108, 133 S. Ct. 894, 184 L. Ed. 2d 694, 2013 U.S. LEXIS 116 (2013)*.

Indictment count charging man under restraining order with violation of *18 USCS § 922(g)(8)* need not be dismissed, where he was required to obey order pending his appeal of it, because statute does not run afoul of Second, Fifth, or Tenth Amendments, and was not unconstitutional exercise of Congress's power under Commerce Clause. *United States v. Visnich, 65 F. Supp. 2d 669, 1999 U.S. Dist. LEXIS 14333 (N.D. Ohio 1999)*.

18 USCS § 922(g)(8) is not unconstitutional under *U.S. Const. amend. II* because (1) § 922(g)(8)'s prohibition against possessing weapons does not come into play unless and until state court issues domestic abuse restraining order; (2) restrictions cited by *U.S. Supreme Court in District of Columbia v. Heeler, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008)*, do not constitute precise list of permitted restrictions, but rather merely provide examples of types of

regulations on gun possession that pass constitutional muster; (3) defendant who is subject to state-court issued restraining order is similar to other dangerous individuals, such as convicted felons, who have historically been barred from possessing firearms; (4) Second Amendment does not require that only those persons found imminently likely to engage in gun violence may be dispossessed of their firearms; (5) courts have consistently rejected procedural challenges to § 922(g)(8)(A), even though statute does not afford protections equal to those afforded criminally accused; (5) controlling Seventh Circuit precedent holds that § 922(g)(8) procedures are sufficient; and (6) even though standard may not apply, § 922(g)(8) would survive strict scrutiny because reducing domestic violence is compelling government interest, and § 922(g)(8)'S temporary prohibition, while state court order is outstanding, is narrowly tailored to that compelling interest. *United States v. Luedtke, 589 F. Supp. 2d 1018, 2008 U.S. Dist. LEXIS 96597 (E.D. Wis. 2008)*.

While Second Amendment did not historically protect individuals subject to domestic protective orders, as defendant had committed act of family violence under *Va. Code Ann. § 16.1-253.1*, and as deprivation of defendant's right to bear arms was only temporary, defendant's prosecution under *18 USCS § 922(g)(8)* was not unconstitutional. *United States v. Elkins, 780 F. Supp. 2d 473, 2011 U.S. Dist. LEXIS 47105 (W.D. Va. 2011)*, aff'd, *495 Fed. Appx. 330, 2012 U.S. App. LEXIS 21536 (4th Cir. 2012)*.

Prior court order against defendant, which imposed mandate of no violent, threatening or abusive contact with assault victim, satisfied requirements of *11 USCS § 922(g)(8)* and did not violate defendant's Second Amendment rights because order contained explicit prohibition contemplated by § 922(g)(8)(C)(ii)—order mandated no violent, threatening, or abusive contact with victim. *United States v. Larson, 843 F. Supp. 2d 641, 2012 U.S. Dist. LEXIS 19817 (W.D. Va. 2012)*.

18 USCS § 922(g)(8)(C)(ii) is facially constitutional under Second Amendment. *United States v. Emerson, 270 F.3d 203, 2001 U.S. App. LEXIS 22386 (5th Cir. 2001)*, reh'g, en banc, denied, *281 F.3d 1281, 2001 U.S. App. LEXIS 27683 (5th Cir. 2001)*, cert. denied, *536 U.S. 907, 122 S. Ct. 2362, 153 L. Ed. 2d 184, 2002 U.S. LEXIS 4269 (2002)*.

83. —§ 922(g)(9)

18 USCS § 922(g)(9) addressed thorny problem of domestic violence, problem Congress recognized was not remedied by "longstanding" felon-in-possession laws, and there was no reason to exclude § 922(g)(9) from list of longstanding prohibitions on which U.S. Supreme Court's Heller decision did not cast doubt; thus, § 922(g)(9) was presumptively lawful longstanding prohibition on possession of firearms and did not violate Second Amendment. *United States v. White, 593 F.3d 1199, 22 Fla. L. Weekly Fed. C 419, 2010 U.S. App. LEXIS 542 (11th Cir. 2010)*.

18 USCS § 922(g)(9) did not violate equal protection component of Due Process Clause of Fifth Amendment, Commerce Clause, Tenth Amendment, Second Amendment, or Eighth Amendment. *United States v. Lewis, 236 F.3d 948, 2001 U.S. App. LEXIS 288 (8th Cir. 2001)*.

18 USCS § 922(g)(1) and (9) are constitutional under Commerce Clause, Second or Tenth Amendment, and are not ex post facto laws or bills of attainder. *United States v. Hemmings, 258 F.3d 587, 2001 U.S. App. LEXIS 15572 (7th Cir. 2001)*.

18 USCS § 922(g)(9) which prohibited persons convicted of misdemeanor crime of domestic violence from possessing firearms did not violate *U.S. Const. amend. II* because statutory prohibitions on weapons possession by some persons were proper and there was substantial relation between § 922(g)(9) and objective of preventing armed mayhem. *United States v. Skoien, 614 F.3d 638, 2010 U.S. App. LEXIS 14262 (7th Cir. 2010)*, cert. denied, *562 U.S. 1303, 131 S. Ct. 1674, 179 L. Ed. 2d 645, 2011 U.S. LEXIS 2138 (2011)*.

Denial of motion to dismiss defendant's indictment charging him with violation of *18 USCS § 922(g)(9)* based on his prior conviction of misdemeanor crime of domestic violence under *W. Va. Code § 61-2-28(a)*, and as defined under *18 USCS § 921(a)(33)(a)*, was improper because government was required to prove under intermediate scrutiny standard whether there was reasonable fit under Second Amendment between permanent disarmament of all

domestic-violence misdemeanants under § 922(g)(9) and substantial government objective of reducing domestic gun violence. *United States v. Chester, 628 F.3d 673, 2010 U.S. App. LEXIS 26508 (4th Cir. 2010)*.

Reducing domestic gun violence was substantial government objective, and based on domestic violence offenders' recidivism rates and that 40% to 50% of all female homicides were committed by intimate partners, defendant's Second Amendment as-applied challenge to his *18 USCS § 922(g)(9)* conviction failed; under intermediate scrutiny, there was reasonable fit between reducing domestic gun violence and keeping guns away from such offenders. *United States v. Staten, 666 F.3d 154, 2011 U.S. App. LEXIS 24079 (4th Cir. 2011)*, cert. denied, *566 U.S. 950, 132 S. Ct. 1937, 182 L. Ed. 2d 794, 2012 U.S. LEXIS 2735 (2012)*.

Although defendant questioned whether applying *18 USCS § 922(g)(9)* to prior non-violent offensive physical contact misdemeanor conviction violated defendant's Second Amendment rights, as defendant attempted to assert as-applied challenge to same kind of fact situation envisioned in Booker, it failed; further, sufficient nexus existed between important government interest and disqualification of domestic violence misdemeanants like defendant. *United States v. Armstrong, 706 F.3d 1, 2013 U.S. App. LEXIS 1350 (1st Cir. 2013)*, reaff'd, *778 F.3d 176, 2015 U.S. App. LEXIS 1638 (1st Cir. 2015)*.

Prohibition of gun possession by domestic violence misdemeanants did not violate Second Amendment because it was substantially related to important government interest of preventing domestic gun violence. *United States v. Chovan, 735 F.3d 1127, 2013 U.S. App. LEXIS 23199 (9th Cir. 2013)*, cert. denied, *574 U.S. 878, 135 S. Ct. 187, 190 L. Ed. 2d 146, 2014 U.S. LEXIS 6380 (2014)*.

No Second Amendment violation arose from defendant's conviction for possessing firearm following misdemeanor domestic violence conviction because there was sufficient nexus between important government interest in preventing gun violence in home and disqualification of domestic violence misdemeanants. *United States v. Carter, 752 F.3d 8, 2014 U.S. App. LEXIS 8153 (1st Cir. 2014)*.

Unpublished decision: District court was to determine in first instance, in individualized determination, whether *18 USCS § 922(g)(9)* was unconstitutional as applied to defendant's conviction due to his argument that it imposed undue burden on his Second Amendment right to bear arms. *United States v. Glisson, 460 Fed. Appx. 259, 2012 U.S. App. LEXIS 279 (4th Cir.)*, cert. denied, *568 U.S. 829, 133 S. Ct. 108, 184 L. Ed. 2d 50, 2012 U.S. LEXIS 7175 (2012)*.

Domestic violence misdemeanant restriction to firearms possession did not unconstitutionally burden plaintiff's Second Amendment rights; record contained sufficient evidence to reasonably conclude that disarming domestic violence misdemeanants was substantially related to government's compelling interest of preventing gun violence and, particularly, domestic gun violence. *Stimmel v. Sessions, 879 F.3d 198, 2018 FED App. 0003P, 2018 U.S. App. LEXIS 213 (6th Cir. 2018)*.

Plaintiffs' action for return of firearms that were seized when plaintiff was arrested for assault failed because *18 USCS § 922(g)(9)* did not violate Equal Protection Clause, Commerce Clause, Second Amendment, or Eighth Amendment's Cruel and Unusual Punishment Clause. *Blackburn v. Jansen, 241 F. Supp. 2d 1047, 2003 U.S. Dist. LEXIS 545 (D. Neb. 2003)*.

Where defendant was indicted for possession of firearm by person previously convicted of misdemeanor crime of domestic violence, in violation of *18 USCS § 922(g)(9)*, dismissal of indictment was not warranted, because law prohibiting persons who have been convicted of misdemeanor crime of domestic violence survived Second Amendment scrutiny. *United States v. Booker, 570 F. Supp. 2d 161, 2008 U.S. Dist. LEXIS 61464 (D. Me. 2008)*, aff'd, *644 F.3d 12, 2011 U.S. App. LEXIS 8925 (1st Cir. 2011)*.

Strict scrutiny analysis was applied to *18 USCS § 922(g)(9)* to determine whether restrictions placed on defendant's Second Amendment right to keep and bear arms were constitutional; Congress and U.S. Court of Appeals for Tenth Circuit had sufficiently narrowed scope of § 922(g)(9)'s deprivation of Second Amendment rights so that it could be

presumed that those included within scope posed prospective risk of violence to intimate partner or child; thus, § 922(g)(9) was narrowly tailored and presumptively lawful. *United States v. Engstrum, 609 F. Supp. 2d 1227, 2009 U.S. Dist. LEXIS 31323 (D. Utah 2009)*, amended, *2009 U.S. Dist. LEXIS 33072 (D. Utah Apr. 17, 2009)*.

Under intermediate level of scrutiny, indictment charging defendant with possessing firearm after having been convicted of misdemeanor crime of domestic violence, violation of *18 USCS § 922(g)(9)*, did not violate Second Amendment because problem of gun violence against victims of domestic abuse was matter of grave national concern, Congress had authority to legislate in area even though it touched on exercise of constitutional right, only five years had elapsed from time of domestic violence conviction and time of possession alleged in indictment, and individualized determination had been made that defendant used or attempted to use force against his line-in girlfriend. *United States v. Pettengill, 682 F. Supp. 2d 49, 2010 U.S. Dist. LEXIS 8801 (D. Me. 2010)*.

United States District Court for District of Maryland, joining majority view, upholds *18 USCS § 922(g)(9)* against Second Amendment challenge. *Ross v. Fed. BATF, 807 F. Supp. 2d 362, 2011 U.S. Dist. LEXIS 86104 (D. Md. 2011)*.

84. § 922(k)

18 USCS § 922(g)(1) and *922(k)* were not beyond Congress' power under Commerce Clause or in violation of Second, Ninth, or Tenth Amendments; although Utah's constitution gave defendant right to bear arms, his federal weapons prosecution was not improper, since state constitutional provisions cannot override federal criminal statutes unless incorporated into federal law. *United States v. Baer, 235 F.3d 561, 2000 Colo. J. C.A.R. 6667, 2000 U.S. App. LEXIS 32498 (10th Cir. 2000)*.

Defendant's conviction under *18 USCS § 922(k)* stood because provision passed constitutional muster under intermediate scrutiny, which applied because any burden on Second Amendment rights did not severely limit firearms possession, but rather regulated manner in which persons could lawfully exercise Second Amendment rights. *United States v. Marzzarella, 614 F.3d 85, 2010 U.S. App. LEXIS 15655 (3d Cir. 2010)*, cert. denied, *562 U.S. 1158, 131 S. Ct. 958, 178 L. Ed. 2d 790, 2011 U.S. LEXIS 327 (2011)*.

Because firearms with intact serial numbers were norm and are readily available in society through ordinary commercial channels, court held that *18 USCS § 922(k)* did not meaningfully burden "core" Second Amendment right recognized by U.S. Supreme Court in Heller—possession of operable firearm for purposes of self-defense within home; because defendant cited no other case or source of law which arguably placed validity of *18 USCS § 922(k)* in question, defendant's motion to dismiss his indictment was denied. *United States v. Marzzarella, 595 F. Supp. 2d 596, 2009 U.S. Dist. LEXIS 2836 (W.D. Pa. 2009)*, aff'd, *614 F.3d 85, 2010 U.S. App. LEXIS 15655 (3d Cir. 2010)*.

85. § 922(o)

Petitioner's *28 USCS § 2255* challenge to his conviction for unlawful possession of unregistered machine guns, *18 USCS § 922(o)*, and *26 USCS § 5861(d)*, was directly foreclosed by caselaw which holds that Second Amendment does not protect those weapons not typically possessed by law-abiding citizens for lawful purposes. *Hamblen v. United States, 591 F.3d 471, 2009 FED App. 0439P, 2009 U.S. App. LEXIS 28608 (6th Cir. 2009)*, cert. denied, *559 U.S. 1115, 130 S. Ct. 2426, 176 L. Ed. 2d 939, 2010 U.S. LEXIS 3811 (2010)*.

Combination of *18 USCS § 922(o)* and *26 USCS § 5861(d)* did not violate defendant's Second Amendment rights to keep and bear arms, since Second Amendment does not confer broad right to unregulated possession of all types of weapons. *United States v. Bournes, 105 F. Supp. 2d 736, 2000 U.S. Dist. LEXIS 12738 (E.D. Mich. 2000)*.

86. Miscellaneous

18 USCS § 922(x)(2)(A), with its narrow scope and its exceptions, did not violate Second Amendment because regulating juvenile access to handguns was permissible on public safety grounds and did not offend constitutional guarantees of right to keep and bear arms, and ban was subject to several exceptions, which permitted juveniles to

possess handguns for legitimate purposes, including hunting and self defense. *United States v. Rene E., 583 F.3d 8, 2009 U.S. App. LEXIS 21896 (1st Cir. 2009)*, cert. denied, *558 U.S. 1133, 130 S. Ct. 1109, 175 L. Ed. 2d 921, 2010 U.S. LEXIS 446 (2010)*.

Me. Rev. Stat. Ann. tit. 34-B, § 3863 proceedings do not qualify as commitment for federal purposes; specifically, for purpose of conviction of possessing firearms after having been committed to mental institution in violation of *18 USCS § 922(g)(4)*. *United States v. Rehlander, 666 F.3d 45, 2012 U.S. App. LEXIS 766 (1st Cir. 2012)*.

18 USCS § 922(g)(4) does not bar firearms possession for those who are or were mentally ill and dangerous, but only for any person who has been adjudicated as mental defective or has been committed to mental institution; temporary hospitalization under *Me. Rev. Stat. Ann. tit. 34-B, § 3863* does not constitute "commitment" under § 922—just as it clearly does not constitute commitment under Maine law itself. *United States v. Rehlander, 666 F.3d 45, 2012 U.S. App. LEXIS 766 (1st Cir. 2012)*.

Challenged ban which prevented law-abiding 18-to-20-year-old adults from purchasing handguns from federally licensed dealers passed constitutional muster under intermediate scrutiny; government satisfied its burden of showing reasonable means-ends fit between challenged federal laws and important government interest; Congress designed its scheme to solve particular problem: violent crime associated with trafficking of handguns from federal firearms licensees to young adults and Congress's intended scheme reasonably fit that objective. *NRA of Am. v. Bureau of Alcohol, 700 F.3d 185, 2012 U.S. App. LEXIS 22197 (5th Cir. 2012)*, amended, *2012 U.S. App. LEXIS 26949 (5th Cir. Oct. 25, 2012)*, reh'g, en banc, denied, *714 F.3d 334, 2013 U.S. App. LEXIS 8779 (5th Cir. 2013)*, cert. denied, *571 U.S. 1196, 134 S. Ct. 1364, 188 L. Ed. 2d 296, 2014 U.S. LEXIS 1558 (2014)*.

Prohibition against sales of firearms to any person if there was reasonable cause to believe that such person was unlawful user of controlled substance did not violate Second Amendment rights of Nevada medical marijuana registry card holder, as degree of fit between challenged provision and aim of preventing gun violence survived intermediate scrutiny; it was reasonable to assume that registry card holders were more likely to be marijuana users than persons who did not hold registry card. *Wilson v. Lynch, 835 F.3d 1083, 2016 U.S. App. LEXIS 16108 (9th Cir. 2016)*, cert. denied, *137 S. Ct. 1396, 197 L. Ed. 2d 555, 2017 U.S. LEXIS 2173 (2017)*.

United States Court of Appeals for the Fourth Circuit holds that a state law felon cannot pass the first step of the Chester inquiry when bringing an as-applied challenge to a law disarming felons, unless that person has received a pardon or the law forming the basis of conviction has been declared unconstitutional or otherwise unlawful. *Hamilton v. Pallozzi, 848 F.3d 614, 2017 U.S. App. LEXIS 2821 (4th Cir.)*, cert. denied, *138 S. Ct. 500, 199 L. Ed. 2d 384, 2017 U.S. LEXIS 7187 (2017)*.

United States Court of Appeals for the Fourth Circuit rejects rehabilitation, recidivism, and passage of time evidence at step one of Chester for the additional greater consequences it has on our criminal justice system. *Hamilton v. Pallozzi, 848 F.3d 614, 2017 U.S. App. LEXIS 2821 (4th Cir.)*, cert. denied, *138 S. Ct. 500, 199 L. Ed. 2d 384, 2017 U.S. LEXIS 7187 (2017)*.

By confining the step one analysis to the challenger's criminal history, the United States Court of Appeals for the Fourth Circuit considers only the conviction or convictions causing the disability to the challenger; as a result, the Fourth Circuit also holds that evidence of rehabilitation, likelihood of recidivism, and passage of time are not bases for which a challenger might remain in the protected class of law-abiding, responsible citizen. *Hamilton v. Pallozzi, 848 F.3d 614, 2017 U.S. App. LEXIS 2821 (4th Cir.)*, cert. denied, *138 S. Ct. 500, 199 L. Ed. 2d 384, 2017 U.S. LEXIS 7187 (2017)*.

Federal laws and regulations that prevented federally licensed gun dealers from selling handguns to any 18-, 19-, or 20-year-old were unconstitutional under Second Amendment because laws were both over-and under-inclusive in contravention of the principles espoused in Craig v. Boren, and lacked reasonable fit required to pass intermediate scrutiny. *Hirschfeld v. Bureau of Alcohol, Firearms, Tobacco & Explosives, 2021 U.S. App. LEXIS 20705 (4th Cir. July 13, 2021)*.

Claimant lacked standing to challenge *26 USCS §§ 5811* and *5812*, and failed to state claim to this provision and *26 USCS §§ 5821* and *5822*, because claimant had not explained why $200 tax paid by firearm transferor would necessarily be passed on to him, core of Second Amendment's guarantee of acquiring firearms to protect one's hearth and home was not substantially burdened, and there was reasonable fit between relatively light burdens and important government objective of curbing gun violence. *Bezet v. United States, 714 Fed. Appx. 336, 2017 U.S. App. LEXIS 21395 (5th Cir. 2017)*, cert. denied, *138 S. Ct. 2579, 201 L. Ed. 2d 294, 2018 U.S. LEXIS 3344 (2018)*.

Defendant's argument that his conviction for selling firearms to prohibited person was unconstitutional under Second Amendment failed because there was no historical indication that Second Amendment encompassed sale of firearm to felon. *United States v. Bacon, 884 F.3d 605, 2018 FED App. 0046P, 2018 U.S. App. LEXIS 5834 (6th Cir. 2018)*, reh'g, en banc, denied, *2018 U.S. App. LEXIS 9821 (6th Cir. Apr. 18, 2018)*, cert. denied, *139 S. Ct. 471, 202 L. Ed. 2d 359, 2018 U.S. LEXIS 6624 (2018)*.

Bodyguard Statute did not impose substantial burden on Second Amendment right to possess or to use firearm for lawful purposes because defendant must know both that his employer is convicted felon and that defendant is possessing firearm in course of his employment for convicted felon; thus, § 922(h) is reasonably related to important governmental objective of reducing gun violence by fully disarming felons. *United States v. Lahey, 967 F. Supp. 2d 731, 2013 U.S. Dist. LEXIS 130971 (S.D.N.Y. 2013)*.

Unpublished decision: Dismissal of suit challenging prohibitions on possession of firearm by felon was proper because court was correct in concluding that claimant did not state constitutional claim concerning either *18 USCS § 922(g)(1)* or *Wis. Stat. 941.29*; Second Amendment claims could not rest on facial overbreadth challenge and claimant had felony conviction for robbery. *Baer v. Lynch, 636 Fed. Appx. 695, 2016 U.S. App. LEXIS 3390 (7th Cir. 2016)*.

IV. ELEMENTS OF OFFENSES

A. In General

87. Intent and willfulness

Willfulness is not element of prosecutions for violations of Gun Control of 1968, *18 USCS §§ 921* et seq. *United States v. Petrucci, 486 F.2d 329, 1973 U.S. App. LEXIS 7980 (9th Cir. 1973)*, cert. denied, *416 U.S. 937, 94 S. Ct. 1937, 40 L. Ed. 2d 287, 1974 U.S. LEXIS 554 (1974)*.

Violation of *18 USCS § 922* requires only general intent. *United States v. Nichols, 21 F.3d 1016, 1994 U.S. App. LEXIS 7133 (10th Cir.)*, cert. denied, *513 U.S. 1005, 115 S. Ct. 523, 130 L. Ed. 2d 428, 1994 U.S. LEXIS 8112 (1994)*.

Because disavowal of intent requirement in *United States v. Colonna, 360 F.3d 1169 (10th Cir. 2004)* was incompatible with U.S. Supreme Court's decision in Henderson, that point of law was overruled. *United States v. Little, 829 F.3d 1177, 2016 U.S. App. LEXIS 13172 (10th Cir. 2016)*.

Intent is not element of actual possession under *18 USCS § 922*, and once government has shown that defendant had firearm under his immediate physical control, any contention that he did not know nature of what he possessed is effectively precluded. *United States v. Jones, 484 F.3d 783, 73 Fed. R. Evid. Serv. (CBC) 363, 2007 U.S. App. LEXIS 8575 (5th Cir. 2007)*.

Where defendants were convicted of being felons in possession of firearms prior to U.S. Supreme Court decision in Rehaif v. United States, court had broad discretion under prong four of plain error test to leave errors uncorrected because it had no doubt as to ultimate result of further proceedings. Convictions were not subject to reversal under plain error principles because, inter alia, defendants could not demonstrate that instruction of omitted element of crime affected substantial rights where omission did not contribute to verdict. *United States v. Maez, 960 F.3d 949, 2020 U.S. App. LEXIS 17196 (7th Cir. 2020)*, cert. denied, *2021 U.S. LEXIS 3168 (U.S. June 21, 2021)*.

In conviction for unlawful possession of firearm as convicted felon, district court did not abuse its discretion in admitting prior acts evidence because use of prior conviction was relevant to defendant's knowledge and intent; both 2005 conviction and 2016 arrest involved gun in car, which made evidence of 2005 conviction probative of defendant's knowledge and criminal intent to possess gun. *United States v. Smith, 978 F.3d 613, 113 Fed. R. Evid. Serv. (CBC) 1757, 2020 U.S. App. LEXIS 33617 (8th Cir. 2020)*, reh'g denied, *2020 U.S. App. LEXIS 39984 (8th Cir. Dec. 21, 2020)*.

88. Aiding and abetting

Defendant may be properly convicted of aiding and abetting in violation of *18 USCS § 922* when he merely removes gun from display rack and hands weapon to store owner in order to facilitate sale. *United States v. Newman, 628 F.2d 362, 1980 U.S. App. LEXIS 13146 (5th Cir. 1980)*.

There can be no criminal liability for aiding and abetting possession of firearm by convicted felon without knowledge or reason to believe in possessor's status as felon. *United States v. Xavier, 2 F.3d 1281, 29 V.I. 279, 1993 U.S. App. LEXIS 20933 (3d Cir. 1993)*, app. after remand, *27 F.3d 560, 1994 U.S. App. LEXIS 15737 (3d Cir. 1994)*.

There was factual basis for defendant's plea of guilty to aiding and abetting her convicted-felon husband's illegal possession of firearm, although she stated that she did not want to assist him in purchasing handgun, since she also agreed with AUSA's assertion that she had discussed purchase of gun with friend and was one who actually paid for gun with cash. *United States v. Woolley, 123 F.3d 627, 1997 U.S. App. LEXIS 21735 (7th Cir. 1997)*.

In order for aiding-and-abetting liability to attach under *18 USCS § 922(g)*, government must show that defendant knew or had cause to know that principal was convicted felon. *United States v. Gardner, 488 F.3d 700, 2007 FED App. 0195P, 2007 U.S. App. LEXIS 12203 (6th Cir. 2007)*.

Because *18 USCS § 922(g)(1)* is not specific intent statute, individual can be convicted as aider and abettor under § 922(g)(1) and *18 USCS § 2* if she knew or had reason to know that she was aiding and abetting possession of firearm by convicted felon. *United States v. Huet, 665 F.3d 588, 2012 U.S. App. LEXIS 133 (3d Cir.)*, cert. denied, *568 U.S. 941, 133 S. Ct. 422, 184 L. Ed. 2d 256, 2012 U.S. LEXIS 7860 (2012)*.

Aiding and abetting instruction in defendant's *18 USCS § 922(j)* prosecution did not err because evidence that defendant helped another commit crime showed willful participation. *United States v. Seabrooks, 839 F.3d 1326, 2016 U.S. App. LEXIS 18763 (11th Cir. 2016)*, cert. denied, *137 S. Ct. 2265, 198 L. Ed. 2d 704, 2017 U.S. LEXIS 3927 (2017)*).

Defendant was entitled to acquittal, pursuant to *Fed. R. Crim. P. 29*, on charge of aiding and abetting his codefendant's possession of firearm and ammunition, under *18 USCS §§ 2* and *922(g)(1)*, because there was insufficient evidence presented at trial that defendant knew his codefendant was felon, and thus could not have been aware of unlawful nature of his codefendant being felon in possession of firearm and ammunition. *United States v. Ecklin, 837 F. Supp. 2d 589, 2011 U.S. Dist. LEXIS 147900 (E.D. Va. 2011)*.

89. Miscellaneous

18 USCS § 922 provides no exception based on motive for purchase of gun to rigid requirement that purchaser be qualified. *United States v. Cornett, 484 F.2d 1365, 1973 U.S. App. LEXIS 7636 (6th Cir. 1973)*.

District court did not err by denying defendant's motion to withdraw his guilty plea to possessing shotgun, because there was ample basis for plea; defendant was responsible for his co-conspirator's possession and use of shotgun to advance joint venture of fleeing from correctional center. *United States v. Newman, 755 F.3d 543, 2014 U.S. App. LEXIS 11683 (7th Cir.)*, cert. denied, *574 U.S. 967, 135 S. Ct. 423, 190 L. Ed. 2d 306, 2014 U.S. LEXIS 7085 (2014)*.

Defendant's 75-month sentence for being felon in possession of firearm was remanded to allow district court to clarify its reasoning and make reviewable record because it would have been error if district court enhanced defendant's

sentence under force clause of Armed Career Criminal Act and Sentencing Guidelines where state statute underlying defendant's conviction for resisting arrest by fleeing did not require use or threat of force, reasonable probability existed that, absent any error, defendant would have received shorter sentence, and he established all requisites for plain-error relief. *United States v. Robinson, 826 F.3d 1044, 2016 U.S. App. LEXIS 11189 (8th Cir. 2016)*.

Defendant's conviction for being felon in possession of firearm was plain error under Rehaif decision since neither grand jury nor petit jury considered whether he knew he belonged to relevant category of persons barred from possessing firearms. *United States v. Green, 973 F.3d 208, 2020 U.S. App. LEXIS 27540 (4th Cir. 2020)*, remanded, *2021 U.S. LEXIS 3143 (U.S. June 21, 2021)*.

Defendant had previously been convicted of felony, served substantial prison term, and then served additional time when he violated supervised release conditions; phone call told jury that defendant understood he was legally barred from possessing "it," firearm found in codefendant's car. *United States v. Everett, 977 F.3d 679, 113 Fed. R. Evid. Serv. (CBC) 1521, 2020 U.S. App. LEXIS 32051 (8th Cir. 2020)*, reh'g denied, *2020 U.S. App. LEXIS 37671 (8th Cir. Dec. 2, 2020)*.

For purpose of satisfying requirements of *18 USCS § 922(t)(1)(C)*, licensees may accept combination of valid, government-issued documents; government-issued photo identification document bearing name, photograph, and date of birth of transferee may be supplemented by another valid, government-issued document showing transferee's current residence address. ATF Rul 2001-5 (2001 ATF Quarterly Bull, Vol. 4, p. 36).

B. Licensing Requirements

90. Intent, knowledge or willfulness

Gun Control Act, *18 USCS §§ 921* et seq., is violated if an unlicensed individual imports or deals in firearms, whether or not he does so with guilty knowledge or not. United States v 16179 Molso Italian . *22 Caliber Winlee Derringer Convertible Starter Guns, 443 F.2d 463 (CA2 NY 1971)*.

Specific intent or knowledge by defendant that he is violating law is not essential element of crime of unlawful firearms dealing under *18 USCS § 922*. *United States v. Powell, 513 F.2d 1249, 1975 U.S. App. LEXIS 15051 (8th Cir.)*, cert. denied, *423 U.S. 853, 96 S. Ct. 99, 46 L. Ed. 2d 77, 1975 U.S. LEXIS 2617 (1975)*.

18 USCS § 922 subsections (a)(4), which makes transportation in interstate commerce of short-barreled shotgun unlawful, and (b)(4) which makes it unlawful for any individual licensed to sell or deliver firearms to sell or deliver short-barreled shotgun except as specifically authorized by Secretary of Treasury [now Attorney General] do not have willfulness as element and do not require specific intent. *United States v. Davis, 583 F.2d 190, 1978 U.S. App. LEXIS 7965 (5th Cir. 1978)*.

Specific intent or knowledge of defendant that he is violating law is not essential element of crime of unlawful firearms dealing under *18 USCS § 922*. *United States v. Miller, 644 F.2d 1241, 7 Fed. R. Evid. Serv. (CBC) 1746, 1981 U.S. App. LEXIS 18831 (8th Cir.)*, cert. denied, *454 U.S. 850, 102 S. Ct. 289, 70 L. Ed. 2d 140, 1981 U.S. LEXIS 3494 (1981)*.

18 USCS §§ 922(a)(6) and *924(a)* do not require proof of specific intent. *United States v. Hawkins, 794 F.2d 589, 1986 U.S. App. LEXIS 27367 (11th Cir. 1986)*.

"Knowingly," as used in *18 USCS § 922*, contemplates not only "actual" knowledge but also includes deliberate disregard for truth or falsity of statement with conscious purpose to avoid learning truth, since Congress intended to prevent circumvention of criminal sanctions by deliberately closing eyes to obvious risk of engaging in unlawful conduct, and no unfair risks of vagueness result from this interpretation. *United States v. Hester, 880 F.2d 799, 1989 U.S. App. LEXIS 11017 (4th Cir. 1989)*.

Licensed firearms dealer's violations of Gun Control Act of 1968 were willful, and thus, ATF was authorized to revoke its license, because evidence as to training and acknowledgements of dealer's owner, magnitude of dealer's violations, dealer's periodic compliance, length of time dealer was licensed, and owner's statements to investigators was more than sufficient to show that dealer both knew of its legal obligations and plainly disregarded them. *CEW Props. v. United States DOJ, 979 F.3d 1271, 2020 U.S. App. LEXIS 35410 (10th Cir. 2020)*.

Sufficient evidence supported defendant's conviction for being a felon in possession of a firearm, in violation of *18 USCS § 922(g)*, because the jury was entitled to infer knowledge of prohibited status from his stipulation that he had a prior felony conviction; recorded prison calls with his father further suggested that the guns were his and that he knew that he was not supposed to have them. *United States v. Conley, 802 Fed. Appx. 919, 2020 FED App. 87N, 2020 U.S. App. LEXIS 3820 (6th Cir. 2020)*.

91. Intrastate, interstate or foreign commerce

Licensing provisions of *18 USCS § 922* apply to and regulate intrastate sales of gun that has moved in intrastate commerce. *Barrett v. United States, 423 U.S. 212, 96 S. Ct. 498, 46 L. Ed. 2d 450, 1976 U.S. LEXIS 37 (1976)*.

No showing that unlicensed dealing in firearms involved interstate or foreign commerce is required to sustain a conviction under *18 USCS § 922*; wholly intrastate unlicensed transactions are also proscribed. *United States v. Ruisi, 460 F.2d 153, 1972 U.S. App. LEXIS 9420 (2d Cir.)*, cert. denied, *409 U.S. 914, 93 S. Ct. 234, 34 L. Ed. 2d 176, 1972 U.S. LEXIS 1084 (1972)*.

Since *18 USCS § 922* prescribes 2 classes of conduct, (1) shipping, transporting or receiving of firearms or ammunition in course of business involving interstate or foreign commerce and (2) importing, manufacturing or dealing in firearms or ammunition without a license, which does not require interstate commerce nexus, indictment need not allege that activity of defendant had anything to do with interstate or foreign commerce where he was charged with latter class of conduct. *United States v. Redus, 469 F.2d 185, 1972 U.S. App. LEXIS 7216 (9th Cir. 1972)*.

18 USCS § 922 specifically showed that Congress intended to proscribe unlicensed intrastate dealing in firearms. *Mandina v. United States, 472 F.2d 1110, 1973 U.S. App. LEXIS 11759 (8th Cir.)*, cert. denied, *412 U.S. 907, 93 S. Ct. 2299, 36 L. Ed. 2d 972, 1973 U.S. LEXIS 2372 (1973)*.

18 USCS § 922 was not intended to punish only those who deal in firearms in interstate commerce; the phrase "in interstate or foreign commerce" does not modify "importing, manufacturing or dealing in firearms". *United States v. Day, 476 F.2d 562, 1973 U.S. App. LEXIS 10683 (6th Cir. 1973)*.

18 USCS § 922 applies to intrastate as well as interstate firearm activities. *United States v. Hornbeck, 489 F.2d 1325, 1973 U.S. App. LEXIS 6253 (7th Cir. 1973)*, cert. denied, *416 U.S. 907, 94 S. Ct. 1614, 40 L. Ed. 2d 112, 1974 U.S. LEXIS 718 (1974)*.

Phrase "interstate or foreign commerce" is single, unitary concept that does not differentiate between interstate commerce and foreign commerce, but simply expresses notion of commerce between anyplace within state and any place out of that state. *United States v. Young, 730 F.2d 221, 1984 U.S. App. LEXIS 23832 (5th Cir. 1984)*.

It was sufficient to establish nexus to interstate commerce for *18 USCS § 922* that gun had at one time crossed state lines, since § 922 shares minimal nexus standard with predecessor statute, 18 USCS App. § 1202. *United States v. Sherbondy, 865 F.2d 996, 1988 U.S. App. LEXIS 17033 (9th Cir. 1988)*.

Unpublished decision: Where defendant appealed his conviction of engaging in business of firearms without license, arguing that government government did not introduce sufficient evidence to establish nexus between his activity and interstate commerce under *18 USCS § 922(a)(1)(A)*, under King decision, such nexus was not required element of § 922(a)(1)(A). *United States v. Burke, 577 Fed. Appx. 338, 2014 U.S. App. LEXIS 15356 (5th Cir. 2014)*, cert. denied,

574 U.S. 865, 135 S. Ct. 171, 190 L. Ed. 2d 121, 2014 U.S. LEXIS 6171 (2014), cert. denied, *574 U.S. 1093, 135 S. Ct. 984, 190 L. Ed. 2d 865, 2015 U.S. LEXIS 325 (2015)*.

Unpublished decision: In prosecution of defendant for being felon in possession of firearm, government satisfied its burden that firearm had been transported across state lines by presenting stipulation that firearm was manufactured in another state. *United States v. Dollson, 609 Fed. Appx. 108, 2015 U.S. App. LEXIS 6545 (3d Cir. 2015)*.

Where revocation of supervised release was principally based on transcripts of calls between defendant and his son, and guns were never produced in evidence, reinstatement of supervised release was required because government offered no proof that firearm defendant was charged with possessing under this section had traveled in or affected interstate commerce; there was no indication in record that interstate-commerce element was even acknowledged. *United States v. Bates, 804 Fed. Appx. 345, 2020 FED App. 127N, 2020 U.S. App. LEXIS 6955 (6th Cir. 2020)*.

92. Business of dealing in firearms

One sale ordinarily is not enough to constitute "engaging in the business of dealing in firearms" within meaning of *18 USCS § 922*; "dealing" means regular course of conduct carried out over period of time or on more than few unrelated occasions. *United States v. Tarr, 589 F.2d 55, 1978 U.S. App. LEXIS 6848 (1st Cir. 1978)*.

Test in Fifth Circuit for determining whether accused is engaged in business of dealing in firearms is whether he has guns on hand or is ready and able to procure them for purpose of selling them from time to time to such persons as might be accepted as customers. *United States v. Berry, 644 F.2d 1034, 8 Fed. R. Evid. Serv. (CBC) 428, 1981 U.S. App. LEXIS 13420 (5th Cir. 1981)*.

Word "dealers" in *18 USCS § 922(a)(1)* requires that all dealers in firearms obtain a federal license irrespective of whether their particular dealings in firearms, in fact, are shown to affect commerce. *United States v. Fancher, 323 F. Supp. 1069, 1970 U.S. Dist. LEXIS 9355 (D.S.D. 1970)*.

Firearms "dealer" within meaning of *18 USCS § 922* means anyone who is engaged in business of selling firearms. *United States v. 57 Miscellaneous Firearms, 422 F. Supp. 1066, 1976 U.S. Dist. LEXIS 12203 (W.D. Mo. 1976)*.

18 USCS § 922(a) was violated by defendant, even though he acted through licensed firearms dealers who recorded transactions. *United States v. Buss, 461 F. Supp. 1016, 1978 U.S. Dist. LEXIS 14220 (W.D. Pa. 1978)*, aff'd, *601 F.2d 576, 1979 U.S. App. LEXIS 14123 (3d Cir. 1979)*.

Unlicensed gun collector who profits from sales of non-collector guns and spends considerable time at gun shows, gun stores and other locations where sales of guns occur engages in business dealing firearms under *18 USCS § 922*. *United States v. Reminga, 493 F. Supp. 1351, 1980 U.S. Dist. LEXIS 14566 (W.D. Mich. 1980)*.

93. —Primary or profit-making business

Under *18 USCS § 922*, it was not required that defendant's primary business must be dealing in firearms or that he made profit from it. *United States v. Wilkening, 485 F.2d 234, 1973 U.S. App. LEXIS 7756 (8th Cir. 1973)*.

Dealing in firearms need not be defendant's primary business nor must he make certain amount of profit from it in order to be found guilty of violation of *18 USCS § 922*. *United States v. Powell, 513 F.2d 1249, 1975 U.S. App. LEXIS 15051 (8th Cir.)*, cert. denied, *423 U.S. 853, 96 S. Ct. 99, 46 L. Ed. 2d 77, 1975 U.S. LEXIS 2617 (1975)*.

Conviction under *18 USCS § 922* for dealing in firearms does not require proof that defendant's primary business is dealing in firearms or that the dealing in firearms is on a profit-making basis. *United States v. Swinton, 521 F.2d 1255, 1975 U.S. App. LEXIS 12926 (10th Cir. 1975)*, cert. denied, *424 U.S. 918, 96 S. Ct. 1121, 47 L. Ed. 2d 324, 1976 U.S. LEXIS 550 (1976)*.

Actual profit need not be shown in prosecution for knowingly engaging in business of firearms without being licensed to do so. *United States v. Angelini, 607 F.2d 1305, 1979 U.S. App. LEXIS 10580 (9th Cir. 1979)*.

It is clear that dealing in firearms need not be defendant's primary business or that he make certain amount of profit from it in order to be guilty of violation of *18 USCS § 922*. *United States v. 57 Miscellaneous Firearms, 422 F. Supp. 1066, 1976 U.S. Dist. LEXIS 12203 (W.D. Mo. 1976)*.

94. Premises for conducting business

Gun dealer who sold guns off premises for which he had license was not in violation of *18 USCS § 922(a)(1)(A)*, although his conduct was improper and perhaps violative of other statutory provisions, since reading of case law indicates that such person was licensed for purposes of record-keeping requirements, and government may not have it both ways. *United States v Caldwell, 49 F.3d 251, 1995 FED App. 93P (CA6 Mich 1995)*.

Firearms dealer is required by *18 USCS § 922* to have appropriate business premises from which to conduct such business or from which he intends to conduct such business within a reasonable period of time; licensed dealer may attend a gun show and display his commodities but he may not conduct sales at the gun show unless he is licensed at that particular location, and because of the inadequacy of the facilities available at gun shows and the temporary nature of such shows a firearms license is not issued for a gun show operation for want of appropriate business premises. *United States v. Jackson, 352 F. Supp. 672, 1972 U.S. Dist. LEXIS 11218 (S.D. Ohio 1972)*, aff'd, *480 F.2d 927 (6th Cir. 1973)*.

Firearms dealer who sells firearms and ammunition at gun shows at locations other than where he is licensed to deal in firearms violates *18 USCS § 922(a)(1)*. *Powers v. Bureau of Alcohol, Tobacco & Firearms, Dep't of Treasury, 505 F. Supp. 695, 1980 U.S. Dist. LEXIS 16504 (N.D. Fla. 1980)*.

C. Prohibitions on Firearms Dealers

95. Intent or knowledge

Defendant's argument that government must show some element of scienter or guilty knowledge in prosecution for violation of *18 USCS § 922(a)* is without merit. United States v 16179 Molso Italian . *22 Caliber Winlee Derringer Convertible Starter Guns, 443 F.2d 463 (CA2 NY 1971)*.

Congress will not be presumed to have required scienter as element of crime for purpose of statute, such as *18 USCS § 922(a)* and (h), which regulates dangerous or harmful objects. *United States v. Turcotte, 558 F.2d 893, 1977 U.S. App. LEXIS 12400 (8th Cir. 1977)*.

Court will not accept defendant's guilty plea to unlawfully dealing in firearms in violation of *18 USCS § 922(a)(1)(A)*, where defendant admitted that he dealt in firearms unlawfully, but denied knowing that firearms transaction was unlawful, because for purposes of § 922(a)(1)(A), willfulness requires showing that defendant intended violation of known legal duty. *United States v. Young, 875 F. Supp. 350, 1995 U.S. Dist. LEXIS 1616 (W.D. Va. 1995)*.

96. Recordkeeping requirements

Defendant need not know that his sale of firearms violated *18 USCS § 922* in order to obtain conviction for failure to complete required forms; § 922(m) requires that government prove only that defendant knew he did not complete required forms, not that he knowingly violated law. *United States v. Currier, 621 F.2d 7, 1980 U.S. App. LEXIS 19239 (1st Cir. 1980)*.

Recording requirements of *18 USCS § 922* apply not only to dealer's commercial inventory but also to firearms kept in dealer's personal collection, since weapons originally acquired for personal use become part of business inventory moment they are placed on market for resale. *United States v. Endicott, 803 F.2d 506, 1986 U.S. App. LEXIS 32883 (9th Cir. 1986)*.

Willful failure to keep records in violation of *18 USCS § 922(b)(5)* is felony, punished under *18 USCS § 924(a)(1)(D)*. *United States v Choice, 201 F.3d 837, 2000 FED App. 29P (CA6 Mich 2000)*.

Licensee willfully violated Gun Control Act of 1968, *18 USCS §§ 921*–*928*. by intentionally, knowingly, or recklessly violating known legal obligations under *18 USCS § 923(e)*, *18 USCS § 922(m)*, and *27 CFR § 478.124(c)(4)* to provide information required in blocks 24 and 27 of Form 4473 on 6 occasions; indeed, licensee was plainly indifferent to its obligations, of which its president confirmed his familiarity, because, after compliance inspection revealed significant problems in completion of 4473 forms, licensee did not take steps to ensure future compliance and follow-up inspection revealed errors new and old in forms, including failure to enter name of manufacturer on 2 forms, type of firearm on 3 forms, and both on 1 form. *Armalite, Inc. v. Lambert, 544 F.3d 644, 2008 FED App. 0373P, 2008 U.S. App. LEXIS 21570 (6th Cir. 2008)*, reh'g denied, *2008 U.S. App. LEXIS 27697 (6th Cir. Dec. 15, 2008)*.

Gun dealer's challenge to revocation of its federal firearms license was properly rejected because dealer willfully violated record keeping requirements under Gun Control Act of 1968, *18 USCS §§ 921* et seq., since, inter alia, "willful" did not require intentional act, and any computer malfunction did not explain dealer's failure to print acquisition and disposition report every six months as required. *Shawano Gun & Loan, LLC v. Hughes, 650 F.3d 1070, 2011 U.S. App. LEXIS 11451 (7th Cir. 2011)*.

Corporation is criminally liable for agent's acts of knowingly making false entries on forms in connection with sale of firearms to foreign citizens in violation of *18 USCS § 922* where acts were done deliberately, with knowledge, with intent to benefit corporation and performed in scope of agent's duties; fact that corporate president gave specific instructions to all gun sales personnel prohibiting them from making false statements on forms is of no legal persuasion. *United States v. Gibson Products Co., 426 F. Supp. 768, 1976 U.S. Dist. LEXIS 12348 (S.D. Tex. 1976)*.

Applicant seeking Federal Firearms License to sell firearms willfully violated *18 USCS § 922(m)* and regulation that required only person completing sale to sign federal form, and, thus, applicant was properly denied license, where applicant had signed form as owner of store even when another salesperson had made actual sale. *Trader Vic's Ltd v. O'Neill, 169 F. Supp. 2d 957, 2001 U.S. Dist. LEXIS 22204 (N.D. Ind. 2001)*.

97. Sales to nonresidents

Unlicensed seller of firearm cannot be convicted under *18 USCS § 922(a)(5)* where both purchaser and seller are residents of same state, although seller has reasonable cause to believe that purchaser is resident of another state. *United States v. Kraase, 484 F.2d 549, 1973 U.S. App. LEXIS 8768 (7th Cir. 1973)*.

Alien who has not established residence in state where licensed dealer is located falls within class of persons to whom dealer is not permitted to sell firearms under *18 USCS § 922(b)(3)*. *United States v. Camacho, 528 F.2d 464, 1976 U.S. App. LEXIS 13521 (9th Cir.)*, cert. denied, *425 U.S. 995, 96 S. Ct. 2208, 48 L. Ed. 2d 819, 1976 U.S. LEXIS 1783 (1976)*.

There is no violation of *18 USCS § 922* where gun is sold to undercover agent from same state, although agent represents that he is from another state; intent of Congress in enacting *18 USCS § 922* was only to regulate sales where purchaser was in actuality out-of-state resident and "reasonable cause to believe" language is only to lighten government's burden of proving subjective intent. *United States v. Plyman, 551 F.2d 965, 1977 U.S. App. LEXIS 13541 (5th Cir. 1977)*.

18 USCS § 922(b) is violated by sham sale of firearm to resident when transaction is really with nonresident. *United States v. Brooks, 611 F.2d 614, 1980 U.S. App. LEXIS 20625 (5th Cir. 1980)*, overruled in part, *United States v. Henry, 749 F.2d 203, 1984 U.S. App. LEXIS 15964 (5th Cir. 1984)*.

Fact that nonresident undercover agent participating in illegal gun sales turned firearms over to resident special agent shortly after each purchase does not shield defendants from consequences of their acts since proof of either sale or delivery to nonresident supports convictions under *18 USCS § 922(b)(3)*. *United States v. Newman, 628 F.2d 362, 1980 U.S. App. LEXIS 13146 (5th Cir. 1980)*.

Sale of firearms to Lebanon by one who has lawfully registered as exporter of firearms with State Department under *22 USCS §§ 2751–2794* does not constitute illegal dealing in firearms in violation of *18 USCS § 922(a)(1)*. *United States v. Mowad, 641 F.2d 1067, 1981 U.S. App. LEXIS 20097 (2d Cir.)*, cert. denied, *454 U.S. 817, 102 S. Ct. 94, 70 L. Ed. 2d 86, 1981 U.S. LEXIS 3118 (1981)*.

Gun Control Act does not authorize licensee selling rifle or shotgun to nonlicensee under contiguous State provisions to ship, transport, or deliver firearm in interstate commerce to purchaser; in order to effect lawful delivery of such firearm, firearm must either be delivered to purchaser in State in which seller is licensed to do business, or be delivered to licensee in purchaser's State of residence from whom purchaser may acquire firearm. ATF Rul 85-3, 1 ATF Qtrly Bull 63, US Dept Treas 1985.

98. Miscellaneous

Firearms dealers' convictions were affirmed where there was no fatal inconsistency manifested by jury verdicts that found firearms dealers liable for *18 USCS § 922(b)(5)* felonies of willfully failing to transcribe accurate information about firearms purchase, and that found firearms dealers guilty of aiding and abetting purchaser's *18 USCS § 924(a)(1)(A)* felonious provision of knowingly false information. *United States v. Carney, 387 F.3d 436, 65 Fed. R. Evid. Serv. (CBC) 608, 2004 U.S. App. LEXIS 21006 (6th Cir. 2004)*.

Although licensed dealers are prohibited from selling handguns to those under age 21 by *18 USCS § 922*, handgun may be legally acquired by one under age of 21 by purchase from another person who is not federally-licensed firearms dealer, so long as transaction is isolated one and both parties reside in same state and are in compliance with local ordinances; when purchase of handgun is for legally acceptable purpose of hunting, target shooting, personal protection, or any other legal activity, fact that buyer is between ages of 18 and 21 does not conflict with purposes of Gun Control Act of 1968. *Kreshesky v. Codd, 89 Misc. 2d 439, 391 N.Y.S.2d 792, 1976 N.Y. Misc. LEXIS 2846 (N.Y. Sup. Ct. 1976)*.

D. Transfers of Firearms or Ammunition to Persons Under Disabilities

99. Convicted felons

Accused was "convicted," as used in *18 USCS § 922(d)(1)*, where he had pleaded guilty and had been sentenced, even though sentence was subsequently suspended. *United States v. Beebe, 467 F.2d 222, 1972 U.S. App. LEXIS 7335 (10th Cir. 1972)*, cert. denied, *416 U.S. 904, 94 S. Ct. 1607, 40 L. Ed. 2d 108, 1974 U.S. LEXIS 676 (1974)*.

18 USCS § 922(d)(1) contains no language limiting its application to firearms transported in interstate commerce and when juxtaposed with other subsections containing such language indicates clear Congressional intent that interstate transportation need not be alleged nor proven. *United States v. Green, 471 F.2d 775, 1972 U.S. App. LEXIS 6194 (7th Cir. 1972)*.

Convictions purged from accused's record under state expungement statutes did not affect prosecution for violation of *18 USCS § 922(d)(1)*, as state statute referred to had been subsequently amended to provide that dismissal of accusation did not prevent conviction under any applicable statute. *United States v. Andrino, 497 F.2d 1103, 1974 U.S. App. LEXIS 8748 (9th Cir.)*, cert. denied, *419 U.S. 1048, 95 S. Ct. 621, 42 L. Ed. 2d 642, 1974 U.S. LEXIS 3586 (1974)*.

Defendant's conviction for selling handgun to convicted felon under *18 USCS § 922(d)* was affirmed where there was evidence at trial that purchaser himself told defendant more than once that he had prior felony conviction, and referred explicitly to his "felony conviction" at least three times during his interactions with defendant. *United States v. Peters, 403 F.3d 1263, 18 Fla. L. Weekly Fed. C 367, 2005 U.S. App. LEXIS 4811 (11th Cir. 2005)*.

Unpublished decision: District court's decision to deny defendant's motion for bifurcation was not premised upon erroneous interpretation of governing law, nor did it amount to abuse of discretion because defendant's prior conviction was not merely consequential fact, it was element of crime charged (possession of firearm by convicted

felon,); bifurcation would have deprived jury of knowledge of very crime with which defendant was charged, which was untenable result. *United States v. Higdon, 493 Fed. Appx. 261, 2012 U.S. App. LEXIS 17218 (3d Cir.)*, cert. denied, *568 U.S. 990, 133 S. Ct. 552, 184 L. Ed. 2d 359, 2012 U.S. LEXIS 8494 (2012)*.

Defendant was properly convicted of unlawful disposition of firearm to felon because agent's testimony that confidential informant (firearms transferee) had felony criminal history and that agent knew informant prior to operation provided jury basis to find that informant was felon. *United States v. Francis, 891 F.3d 888, 2018 U.S. App. LEXIS 15043 (10th Cir. 2018)*.

District court erred in convicting defendant of being felon in possession of firearm based on defendant's 2016 North Carolina conditional-discharge plea because conditional-discharge plea was not conviction for purposes of this section and thus, defendant was not felon. *United States v. Smith, 939 F.3d 612, 2019 U.S. App. LEXIS 29218 (4th Cir. 2019)*.

In conviction for being felon in possession of firearm; simple possession of methamphetamine; and possessing firearm in furtherance of narcotics offense, district court did not err in denying motion to suppress evidence because officers possessed reasonable suspicion prior to their permissible discovery of firearm since defendant's presence in stolen vehicle coupled with driver's recalcitrant actions during stop reasonably prompted concerns as to officer safety and public safety. *United States v. Brooks, 982 F.3d 1177, 2020 U.S. App. LEXIS 39628 (8th Cir. 2020)*, reh'g denied, *2021 U.S. App. LEXIS 2703 (8th Cir. Feb. 1, 2021)*.

Defendant's (D) conviction of selling firearm to convicted felon was supported by sufficient evidence as: (1) D knew that buyer one (B1) sold and smoked marijuana and was around when B1 discussed criminal legal issues; (2) buyer two (B2) had prepared false tax return for D; (3) D knew couple had experienced home invasion; (4) D sold guns and related item to couple for significantly more than retail value for guns; (4) D told B2 to call him first, not police, should she ever need to use gun; and (5) D lied to the police about how he disposed of gun when it was found at traffic stop. *United States v. Lumpkin, 677 Fed. Appx. 992, 2017 FED App. 0081N, 2017 U.S. App. LEXIS 1563 (6th Cir. 2017)*.

Accused was "convicted" within meaning of *18 USCS § 922(d)* once his guilt had been established, either by plea or verdict, notwithstanding subsequent suspension of execution of sentence pronounced. *United States v. Rosenstengel, 323 F. Supp. 499, 1971 U.S. Dist. LEXIS 14396 (E.D. Mo. 1971)*.

Existence of alleged constitutional infirmity underlying conviction does not constitute defense to prosecution under *18 USCS § 922(d)*, where it is not of kind affecting guilt or innocence of accused, and technical flaw sufficing to upset conviction, without regard to guilt or innocence, does not affect undesirability of accused as gun owner, as Congress intended to deprive of access to weapons all guilty persons in fact convicted of specific type of offense described. *United States v. McDowell, 328 F. Supp. 606, 1971 U.S. Dist. LEXIS 13300 (W.D. Pa. 1971)*.

100. Under indictment for crime

It is not necessary that a defendant, charged under provisions of *18 USCS § 922*, be convicted of a crime punishable by imprisonment for a term exceeding one year, but only that he was indicted for such a crime at the time charged with a violation of *18 USCS § 922*. *United States v. Quiroz, 449 F.2d 583, 1971 U.S. App. LEXIS 7735 (9th Cir. 1971)*.

18 USCS § 922(d)(1) contains no language limiting its application to firearms transported in interstate commerce and when juxtaposed with other subsections containing such language indicates clear Congressional intent that interstate transportation need not be alleged nor proven. *United States v. Green, 471 F.2d 775, 1972 U.S. App. LEXIS 6194 (7th Cir. 1972)*.

Under *18 USCS § 922*, Congress intended to restrain disposition of firearms to those reasonably believed to have been involved in felonious activity, and indictment alone is sufficient reason to limit person's access to firearms, at least until charges are dropped or person is acquitted. *United States v. Allen, 556 F.2d 720, 1977 U.S. App. LEXIS 13066 (4th Cir. 1977)*.

101. Mentally incompetent persons

Defendant who had been found not guilty of criminal offense of "maiming" by reason of his insanity, and committed to state hospital as criminally insane person was prohibited from purchasing firearms by *18 USCS § 922(d)(4)*. *United States v. Buffaloe, 449 F.2d 779, 1971 U.S. App. LEXIS 7637 (4th Cir. 1971)*.

Patient who had been involuntarily hospitalized in 2005 under *N.Y. Mental Hyg. Law § 9.39* was properly denied firearms under this section since: (1) admission was based on recommendation of at least two physicians, at least one of whom was psychiatrist, and included treatment, which was sort of determination that federal statute should include in its definition of "commitment" insofar as it was concerned with preventing firearms from getting into hands of those whose mental illness might lead them to commit acts of violence; (2) admission process was the sort of process that ensured determination was not arbitrary; and (3) § 9.39 was understood as commitment by New York courts. *Phelps v. Bosco, 711 Fed. Appx. 63, 2018 U.S. App. LEXIS 3374 (2d Cir. 2018)*.

Claim of estate of child who was killed by bullet fired from gun sold by defendant retail gun dealer, alleging negligence per se arising out of alleged violation of *18 USCS § 922(d)(4)*, is denied summarily, where defendant's employee sold gun to buyer who mistakenly left gun in bus station rest room, because plaintiff failed to proffer evidence to support inference that when employee sold gun to buyer, employee knew or had reasonable cause to believe that buyer had been adjudicated mental defective or had been committed to mental institution. *Jamison v. Dance's Sporting Goods, 854 F. Supp. 248, 1994 U.S. Dist. LEXIS 7515 (S.D.N.Y. 1994)*.

Though Congress did not define term "mental defective" as used in *18 USCS § 922(g)(4)*, U.S. Court of Appeals for Eighth Circuit defines term to refer to person who has never possessed normal degree of intellectual capacity; for these purposes, "mental defective" is to be contrasted with "insane person," which is defined as person who has faculties which were originally normal but were impaired by mental disease. *United States v. B.H., 466 F. Supp. 2d 1139, 2006 U.S. Dist. LEXIS 88976 (N.D. Iowa 2006)*.

E. Transportation of Firearms or Ammunition Aboard Carriers

102. Generally

Essential elements to establish violation of *18 USCS § 922(e)* are: (1) knowing delivery, (2) to common carrier, (3) for transportation or shipment in interstate commerce, (4) to persons other than licensed importers, manufacturers, dealers, or collectors, (5) package or container which defendant knows to contain firearms or ammunition, (6) without giving written notice to carrier that firearm or ammunition is to be shipped or transported, or delivering said firearm or ammunition into custody of pilot, captain, conductor or operator of common carrier for duration of trip. *United States v. Burton, 351 F. Supp. 1372, 1972 U.S. Dist. LEXIS 10883 (W.D. Mo. 1972)*, aff'd, *475 F.2d 469, 1973 U.S. App. LEXIS 11050 (8th Cir. 1973)*.

103. Intent or knowledge

In prosecution for violation of *18 USCS § 922*, Government does not have to prove that appellant "knowingly" violated law, but only that appellant "knowingly" delivered firearms or ammunition to carrier and trial court consequently does not err in refusing to instruct jury that specific intent is element of offense under § 922. *United States v. Udofot, 711 F.2d 831, 1983 U.S. App. LEXIS 26204 (8th Cir.)*, cert. denied, *464 U.S. 896, 104 S. Ct. 245, 78 L. Ed. 2d 234, 1983 U.S. LEXIS 1845 (1983)*.

Failure to provide written notice to carrier before shipping firearms (*18 USCS § 922(e)*) does not require proof of specific intent. *United States v. Flores, 753 F.2d 1499, 1985 U.S. App. LEXIS 29065 (9th Cir. 1985)*.

Although *18 USCS § 922(e)*, which requires that written notice be given to carrier prior to shipping of firearm, does not explicitly state that person must "know" package or container contains firearm or ammunition, it is implicit in wording of statute and Congressional intent that such knowledge is required. *United States v. Burton, 351 F. Supp.*

1372, 1972 U.S. Dist. LEXIS 10883 (W.D. Mo. 1972), aff'd, *475 F.2d 469, 1973 U.S. App. LEXIS 11050 (8th Cir. 1973)*.

104. Custody of carrier

Airplane passenger's transfer of his luggage containing firearm to pilot without informing him of its content did not satisfy the requirement of *18 USCS § 922(e)* that passenger "deliver said firearm. . . into the custody of the pilot"; term "custody" in § 922(e) means a transfer of control in a manner which gives the carrier actual notice of the presence of a firearm. *United States v. Williams, 485 F.2d 1383, 1973 U.S. App. LEXIS 7622 (4th Cir. 1973)*, cert. denied, *416 U.S. 941, 94 S. Ct. 1947, 40 L. Ed. 2d 293, 1974 U.S. LEXIS 589 (1974)*.

Passenger complies with requirements of *18 USCS § 922(e)* by delivering firearm to responsible agent of airline for delivery to pilot with notice that it is firearm that is being transferred; it is not necessary for passenger to personally deliver firearm into hands of pilot. *United States v. One Heckler-Koch Rifle, 629 F.2d 1250, 1980 U.S. App. LEXIS 14499 (7th Cir. 1980)*.

Airline passenger who checks luggage containing weapons does not thereby relinquish custody and make constructive delivery of weapons to pilot; accordingly, passenger may be convicted for failure to notify airline of firearm shipment. *United States v. Garcia Vazquez, 777 F.2d 494, 1985 U.S. App. LEXIS 25112 (9th Cir. 1985)*.

18 USCS § 922 requires passenger who relinquishes firearm into "custody" of airline to transfer control of firearm in manner which gives carrier actual notice of presence of firearm. *United States v. Dunn, 813 F.2d 1124, 1987 U.S. App. LEXIS 4109 (11th Cir. 1987)*.

105. Passenger exception

Defense of exception under *18 USCS § 922(e)* relating to passenger's delivery of firearm into custody of pilot is unavailing where delivery into common carrier's custody is not done in such manner as to make carrier aware that firearm is being delivered. *United States v. Williams, 485 F.2d 1383, 1973 U.S. App. LEXIS 7622 (4th Cir. 1973)*, cert. denied, *416 U.S. 941, 94 S. Ct. 1947, 40 L. Ed. 2d 293, 1974 U.S. LEXIS 589 (1974)*.

Airline passenger did not comply with requirements of exception of *18 USCS § 922(e)* where, before boarding airplane, he delivered suitcase to airline for transportation and shipment without giving notice that firearm or ammunition was to be transported or shipped. *United States v. Williams, 485 F.2d 1383, 1973 U.S. App. LEXIS 7622 (4th Cir. 1973)*, cert. denied, *416 U.S. 941, 94 S. Ct. 1947, 40 L. Ed. 2d 293, 1974 U.S. LEXIS 589 (1974)*.

Defendant failed to establish that he came within exception under *18 USCS § 922(e)* since no evidence was presented as to whether defendant owned or legally possessed firearm; since statute was set up to deal with growing problem of violent crime, phrase "owns or legally possesses" reflects intent of Congress that only people who own or legally possess firearms be allowed to come within exception. *United States v. Henry, 615 F.2d 1223, 1980 U.S. App. LEXIS 20280 (9th Cir. 1980)*.

Passenger exception under *18 USCS § 922(e)* does not require personal delivery into custody of airline pilot but may be satisfied by delivery to responsible agent of airline for delivery to pilot with notice that it is firearm being transferred; passenger's allegation he made such constructive delivery raises issues of fact as to identity and responsibility of person to whom delivery was made and circumstances and understanding accompanying delivery. *United States v. One Heckler-Koch Rifle, 629 F.2d 1250, 1980 U.S. App. LEXIS 14499 (7th Cir. 1980)*.

To comply with passenger exception of *18 USCS § 922*, passenger must give carrier at least actual notice that item to be transported is firearm or ammunition; court's instruction is not improper statement of law where court states that delivery of packaged firearm or one concealed in luggage to agent of common carrier without giving oral or written notice does not qualify for exception. *United States v. Udofot, 711 F.2d 831, 1983 U.S. App. LEXIS 26204 (8th Cir.)*, cert. denied, *464 U.S. 896, 104 S. Ct. 245, 78 L. Ed. 2d 234, 1983 U.S. LEXIS 1845 (1983)*.

F. Stolen Firearms or Ammunition

106. Interstate or foreign commerce

It is essential element of offense under *18 USCS § 922(j)* that stolen firearms be in interstate commerce when offense is committed; under § 922(j), there is no precise rule for determining when interstate movement has come to an end, and question is one of fact, to be determined by jury. *United States v. Jones, 564 F.2d 1315, 1977 U.S. App. LEXIS 5898 (9th Cir. 1977)*.

There is no doubt that Congress intended *18 USCS § 922(j)* to apply to firearms that have traveled in interstate commerce, both prior to or after being stolen. *United States v. Honaker, 5 F.3d 160, 1993 U.S. App. LEXIS 23954 (6th Cir. 1993)*, cert. denied, *510 U.S. 1180, 114 S. Ct. 1226, 127 L. Ed. 2d 571, 1994 U.S. LEXIS 2113 (1994)*, app. after remand, *57 F.3d 1071, 1995 U.S. App. LEXIS 21001 (6th Cir. 1995)*.

18 USCS § 922(j), as amended, was intended by Congress to apply to cases where stolen firearms traveled in interstate commerce only prior to their theft. *United States v. Sanders, 165 F.3d 248, 1999 U.S. App. LEXIS 720 (3d Cir. 1999)*.

Unpublished decision: Where defendant was convicted of violating *18 USCS § 922(j)*, there was no authority for defendant's argument that firearm was removed from stream of commerce when it became part of collection. *United States v. Laroche, 170 Fed. Appx. 124, 2006 U.S. App. LEXIS 6042 (11th Cir.)*, reh'g, en banc, denied, *179 Fed. Appx. 688, 2006 U.S. App. LEXIS 24223 (11th Cir. 2006)*.

107. Miscellaneous

Defendant's conviction for violation of *18 USCS § 922(j)* cannot be sustained where no evidence existed to suggest that defendant stole gun or had any connection with theft. *United States v. Ruffin, 490 F.2d 557, 1974 U.S. App. LEXIS 10541 (8th Cir. 1974)*, disapproved, *Barrett v. United States, 423 U.S. 212, 96 S. Ct. 498, 46 L. Ed. 2d 450, 1976 U.S. LEXIS 37 (1976)*.

Violation of *18 USCS § 922(j)* continues so long as defendant knowingly possesses (actually or constructively) firearm he knows to be stolen. *United States v. Al-Rekabi, 454 F.3d 1113, 2006 U.S. App. LEXIS 17944 (10th Cir. 2006)*.

Even though *18 USCS § 922(u)* firearm theft is not sufficiently close to burglary to qualify as enumerated under ACCA, it is sufficiently similar to burglary to be deemed similar in kind and risk. *United States v. Schmidt, 623 F.3d 257, 2010 U.S. App. LEXIS 21438 (5th Cir. 2010)*, cert. denied, *564 U.S. 1047, 131 S. Ct. 2858, 180 L. Ed. 2d 904, 2011 U.S. LEXIS 4798 (2011)*.

At trial on charge of possession of stolen firearm, evidence as to defendant's heroin use and trafficking was admissible because it was highly probative of defendant's motive and intent regarding his possession of firearm; two heroin customers testified that defendant wanted to hold onto gun in case he was arrested for drug trafficking and needed leverage, which he thought stolen police gun could provide. *United States v. Habibi, 783 F.3d 1, 96 Fed. R. Evid. Serv. (CBC) 1415, 2015 U.S. App. LEXIS 4613 (1st Cir. 2015)*.

Evidence was sufficient to convict defendant because he coordinated movement of guns to his codefendant's possession so as to facilitate their sale; he knew guns were stolen, as he stated that he got guns from his buddy who stole them from his dad, burglary victim who identified recovered guns as his own; another codefendant testified that defendant threatened him at gunpoint at their codefendant's apartment when defendant arrived to get his money or his guns. *United States v. Hemsher, 893 F.3d 525, 106 Fed. R. Evid. Serv. (CBC) 880, 2018 U.S. App. LEXIS 16634 (8th Cir. 2018)*, reh'g, en banc, denied, *2018 U.S. App. LEXIS 21670 (8th Cir. Aug. 3, 2018)*.

Neither the unambiguous language of *18 U.S.C.S. § 922(j)*, nor judicial interpretations of the statute, require the government to prove that the firearm was stolen prior to the defendant's possession of it. *United States v. Richardson, 787 Fed. Appx. 1015, 2019 U.S. App. LEXIS 27519 (11th Cir. 2019)*.

Even though both *18 U.S.C.S. §§ 922(j)* and *922(u)* use variations of the word steal, they criminalize different actions. Specifically, § 922(u) criminalizes the theft of a gun from a federal firearms licensee. Because the actus reus is the taking of the gun, that section uses the word steal. By contrast, § 922(j) criminalizes possession of a stolen gun. Because the actus reus is possession, the word stolen works merely as an adjective that describes the firearm. Thus, the fact that § 922(u) uses the verb steal does not support the inference that Congress intended for § 922(j) to apply only if the firearm was stolen prior to the defendant's possession of it. *United States v. Richardson, 787 Fed. Appx. 1015, 2019 U.S. App. LEXIS 27519 (11th Cir. 2019)*.

Where defendant admitted that he went with others to residence, assisted in stealing firearms from residence, and stored those firearms, for period of time, in apartment that he shared with another, magistrate found probable cause for firearms possession offense under *18 USCS § 922(j)* charged against defendant in criminal complaint. *United States v. Say, 233 F. Supp. 2d 221, 2002 U.S. Dist. LEXIS 23445 (D. Mass. 2002)*.

G. Serial Number Removal, Obliteration or Alteration

108. Generally

Conviction under *18 USCS § 922(k)* requires not only knowing possession of firearm, but also knowledge that serial numbers on it have been altered or removed, as of time of possession, since penalty provision for § 922(k), *18 USCS § 924 (a)(1)(B)*, only applies when defendant "knowingly violates" § 922(k). *United States v. Hooker, 997 F.2d 67, 39 Fed. R. Evid. Serv. (CBC) 443, 1993 U.S. App. LEXIS 18834 (5th Cir. 1993)*, remanded, *187 F.3d 680, 1999 U.S. App. LEXIS 22517 (5th Cir. 1999)*.

Firearms dealer charged with possession of handguns with obliterated serial numbers who obtained them from police on representation he would destroy them was not exempt from punishment under *26 USCS § 5861(d)*, *18 USCS § 922(k)*, since his desuetude belied his true purpose, and plain language of statutes indicates their application to "any person," with reasonable exception for local law enforcement agencies and their employees. *United States v. Osborne, 164 F.3d 434, 1999 U.S. App. LEXIS 209 (8th Cir. 1999)*.

Defendant's argument that material alteration rendering weapon difficult or impossible to trace was necessary to justify conviction under *18 USCS § 922(k)* conviction was rejected; any change that made serial number appreciably more difficult to discern was enough, assuming always that defendant made change or was otherwise aware of it. *United States v. Adams, 305 F.3d 30, 2002 U.S. App. LEXIS 19618 (1st Cir. 2002)*.

Title 18 USCS § 922(k) restricts possession only of weapons which have been made less susceptible to tracing. *United States v. Marzzarella, 614 F.3d 85, 2010 U.S. App. LEXIS 15655 (3d Cir. 2010)*, cert. denied, *562 U.S. 1158, 131 S. Ct. 958, 178 L. Ed. 2d 790, 2011 U.S. LEXIS 327 (2011)*.

Because there was no evidence defendant possessed gun with obliterated serial number long enough to discover serial number was obliterated, which was *18 USCS § 922(k)*'s knowledge element, that conviction was error. *United States v. Haile, 685 F.3d 1211, 23 Fla. L. Weekly Fed. C 1244, 2012 U.S. App. LEXIS 13396 (11th Cir. 2012)*, cert. denied, *569 U.S. 903, 133 S. Ct. 1723, 185 L. Ed. 2d 785, 2013 U.S. LEXIS 2621 (2013)*, cert. denied, *569 U.S. 903, 133 S. Ct. 1724, 185 L. Ed. 2d 785, 2013 U.S. LEXIS 2618 (2013)*.

H. Machinegun Transfer or Possession

109. Generally

Defendant was properly convicted of "causing" unauthorized transportation of machine gun in interstate commerce when he set entire process of interstate delivery in motion by sending luggage containing gun to bus terminal and requesting its interstate shipment, even though government agents, acting with knowledge of gun's location, intervened and physically placed weapon in possession of air carrier resulting in its interstate shipment. *United States v. Smith, 542 F.2d 711, 1976 U.S. App. LEXIS 6765 (7th Cir. 1976)*.

Attorney who accepted machine gun as fee from client cannot be guilty of possessing and transferring unregistered firearm in violation of National Firearms Act, since he cannot register firearm due to passage of *18 USCS § 922(o)*, although he could have been charged under § 922(o), which criminalizes possession. *United States v. Dalton, 960 F.2d 121, 1992 U.S. App. LEXIS 5355 (10th Cir. 1992)*, remanded, *990 F.2d 1166, 1993 U.S. App. LEXIS 7533 (10th Cir. 1993)*.

Defendant's possession of machine gun in his vehicle in violation of *18 USCS § 922(o)(1)* could not have been authorized by Utah law, since exception found in *18 USCS § 922(o)(2)(A)* "is properly read to permit only lawful possession of machine guns by federal or state agents acting in official capacity." *United States v. Warner, 5 F.3d 1378, 1993 U.S. App. LEXIS 24917 (10th Cir. 1993)*, cert. denied, *510 U.S. 1126, 114 S. Ct. 1090, 127 L. Ed. 2d 405, 1994 U.S. LEXIS 1650 (1994)*.

District court erred when it dismissed, pursuant to *Fed. R. Crim. P. 12 (b)*, indictment that charged defendant with possession of machine gun in violation of *18 USCS §§ 922(o)(1)*, 942(a)(2) because semiautomatic rifle, which defendant modified by adding electrically-operated trigger mechanism, was "machine gun" for purposes of *26 USCS § 5845(b)*; added switch initiated firing sequence, pulling switch was only action necessary to fire multiple shots, and it was irrelevant that original trigger was still functional. *United States v. Camp, 343 F.3d 743, 2003 U.S. App. LEXIS 17237 (5th Cir. 2003)*.

Argument that defendant's conviction for aiding and abetting possession of machine gun, under *18 U.S.C. §§ 2*, *922(o)*, was improper because judge rather than jury decided that Glock qualified as machine gun failed because jury was instructed as to statutory definition and told that to convict under § 922(o), it had to find that government proved that defendant knowingly possessed machine gun and knew or was aware of essential characteristics of firearm which made it machine gun, which is accurate rendition of elements. *United States v. De La Paz-Rentas, 613 F.3d 18, 2010 U.S. App. LEXIS 14853 (1st Cir.)*, cert. denied, *562 U.S. 944, 131 S. Ct. 367, 178 L. Ed. 2d 237, 2010 U.S. LEXIS 7446 (2010)*, cert. denied, *562 U.S. 1073, 131 S. Ct. 670, 178 L. Ed. 2d 499, 2010 U.S. LEXIS 9167 (2010)*.

Where trustee appealed district court's entry of summary judgment in favor of government in case in which he was challenging de facto ban on machine guns in *18 USCS § 922(o)*, irrespective of whether he was trustee, he was also natural person prohibited from performing any acts forbidden of natural persons under Gun Control Act (Act); his inability to comply with Act prevented Bureau of Alcohol, Tobacco, and Forearm from granting his application for machine gun under National Firearms Act. *United States v. One (1) Palmetto State Armory PA-15 Machinegun Receiver/Frame, 822 F.3d 136, 2016 U.S. App. LEXIS 9050 (3d Cir. 2016)*.

Where appellant argued that de facto ban on possession of machine gun found in *18 USCS § 922(o)* was unconstitutional facially, under U.S. Supreme Court's Heller decision and Third Circuit's Marzzarella decision, *Second Amendment to U.S. Constitution* did not protect possession of machine guns. *United States v. One (1) Palmetto State Armory PA-15 Machinegun Receiver/Frame, 822 F.3d 136, 2016 U.S. App. LEXIS 9050 (3d Cir. 2016)*.

Unpublished decision: Defendant, as target of undercover government operation involving conversion by defendant of legal semi-automatic rifles into illegal automatic rifles, was not entitled to exemption afforded to those acting under authority of government to legally possess machine gun because statute did not except unwary targets of undercover operations, like defendant, from criminal liability for possessing machine guns. *United States v. Neuner, 535 Fed. Appx. 373, 2013 U.S. App. LEXIS 13981 (5th Cir. 2013)*, cert. denied, *571 U.S. 1149, 134 S. Ct. 959, 187 L. Ed. 2d 820, 2014 U.S. LEXIS 95 (2014)*.

Machine gun traffickers are denied relief from sentence, even though they claim it is legal impossibility for them to be convicted under *18 USCS § 922(o)* because firearms dealers they bought "flats" from to make guns failed to register parts prior to selling them, because traffickers point to no statute or regulation violated by firearms dealers, and no statute or regulation excusing their making, possessing, and transferring of machine guns. *United States v. Bascue, 5 F. Supp. 2d 1139, 1998 U.S. Dist. LEXIS 7716 (D. Or. 1998)*.

"Sere," which is, among other things, small piece of machined metal with precise configuration necessary to enable automatic operation of certain weapons, is "machine gun" within meaning of *18 USCS § 922(o)* because of enabling capability of sere. *United States v. Aguilar-Espinosa, 57 F. Supp. 2d 1359, 1999 U.S. Dist. LEXIS 10873 (M.D. Fla. 1999)*.

Final Rule, Bump-Stock-Type Devices, 83 Fed. Reg. 66514 (Dec. 26, 2018), was held a validly issued legislative rule that did not violate principles of non-delegation or separation of powers and defendants' interpretations of the terms single function of the trigger and automatically in the statutory definition of machinegun properly included bump stocks within that definition. *Cargill v. Barr, 502 F. Supp. 3d 1163, 2020 U.S. Dist. LEXIS 240730 (W.D. Tex. 2020)*.

I. School Zone Offenses

110. Generally

Individual who fired several shots at passing vehicle from grass adjacent to sidewalk within 1000 feet of school was guilty of violating *18 USCS § 922(q)(2)(A)*, even though he was technically on private property, where some of bullets hit school buildings and passed through school area, since private property exemption must be construed narrowly in order to carry out obvious purpose of statute. *United States v. Campbell, 12 F.3d 147, 1994 U.S. App. LEXIS 26 (8th Cir. 1994)*.

Defendant's pointing of fully-loaded handgun at neck of student on high school grounds did not violate *18 USCS § 922(q)(2)(A)*, since he came within exception of *18 USCS § 922(q)(2)(B)(ii)*, where he was licensed to possess handgun, and state had verified that he was qualified to receive license. *United States v. Tait, 202 F.3d 1320, 13 Fla. L. Weekly Fed. C 396, 2000 U.S. App. LEXIS 1445 (11th Cir. 2000)*.

Evidence was insufficient to support conviction for possession of firearm in school zone because only evidence that defendant knew or should have known that he was in school zone was proximity of school to restaurant; there was no evidence that school's sign was visible from restaurant. *United States v. Guzmán-Montañez, 756 F.3d 1, 2014 U.S. App. LEXIS 11041 (1st Cir. 2014)*.

Any error in accepting defendant's guilty plea to possession of firearm in school zone absent government's proffer of facts showing that defendant possessed firearm outside his residence was not plain error, as defendant did not show that possession outside home was element of offense rather than affirmative defense; law was sufficiently unsettled that any error was not obvious. *United States v. Alvira-Sanchez, 804 F.3d 488, 2015 U.S. App. LEXIS 18945 (1st Cir. 2015)*, cert. denied, *136 S. Ct. 2030, 195 L. Ed. 2d 232, 2016 U.S. LEXIS 3180 (2016)*.

Evidence was legally insufficient to convict defendant of possession of firearm within school zone under *18 USCS § 922(q)* where, although government introduced evidence of measurements showing that tavern robbed by defendant and his companion was within 100 feet of school, there was no evidence that defendant knew or had reason to know that he was in school zone because (1) defendant testified that he was unfamiliar with area, (2) there was no evidence to show relative locations of school and tavern to establish that defendant would have seen school on way to or from bar, (3) there was no evidence of any school zone signs or similar identification that would support inference that defendant should have know that school was within 100 feet of tavern, and (4) there was no evidence that defendant had to pass by school to get to or from bar. *United States v. Haywood, 363 F.3d 200, 45 V.I. 800, 2004 U.S. App. LEXIS 6797 (3d Cir. 2004)*.

J. Prohibitions on Purchasers of Firearms or Ammunition

1. False Statements

a. In General

111. Generally

Essence of violation of *18 USCS § 922(a)(6)*, which makes it unlawful for any person to make any false statement in connection with acquisition of firearm with respect to lawfulness of sale, is defendant's failure to tell truth. *United States v. Edwards, 568 F.2d 68, 1977 U.S. App. LEXIS 5568 (8th Cir. 1977)*.

The scope of *18 USCS § 922(a)(6)* is not so vague as to require application of rule of lenity; statute explicitly prohibits purchaser from making any false statements with respect to any fact material to lawfulness of sale or other disposition" of firearm. *United States v. Morales, 687 F.3d 697, 2012 FED App. 0249P, 2012 U.S. App. LEXIS 16347 (6th Cir. 2012)*.

18 USCS § 922(a)(6) requires full and honest disclosure with respect to any fact material to lawfulness of sale. *United States v. Seidenberg, 420 F. Supp. 695, 1976 U.S. Dist. LEXIS 13457 (D. Md. 1976)*, aff'd, *577 F.2d 738 (4th Cir. 1978)*.

112. Intent

Since proof of specific intent is not required for conviction under *18 USCS § 922*, which prohibits making false statement in connection with purchase of firearms, trial court did not err in refusing to allow defendant to testify that he did not know that federal law prohibited him from purchasing firearm. *United States v. Cornett, 484 F.2d 1365, 1973 U.S. App. LEXIS 7636 (6th Cir. 1973)*.

In prosecution for making false statements with intent to deceive firearms dealer, in violation of *18 USCS § 922*, permitting firearms dealers who sold guns to defendant to testify that defendant paid by check and that each check was returned for lack of funds was proper since such evidence tended to show that defendant was engaged in submitting known false statements to dealers with requisite intent of deceiving. *United States v. Cochran, 546 F.2d 27, 1977 U.S. App. LEXIS 10332 (5th Cir. 1977)*.

Phrase "likely to deceive" in *18 USCS § 922(a)(6)* does not establish specific intent element but only requires proof that defendant imparted false information with general intention of deceiving or being deceived by dealer. *United States v. Elias, 937 F.2d 1514, 1991 U.S. App. LEXIS 13901 (10th Cir. 1991)*.

Specific intent is not an element of offense under *18 USCS § 922* of making false statement to a firearms dealer. *United States v. Graves, 394 F. Supp. 429, 1975 U.S. Dist. LEXIS 12373 (W.D. Pa. 1975)*, rev'd, *1976 U.S. App. LEXIS 11775 (3d Cir. Apr. 15, 1976)*.

113. Knowledge

Use of word "knowingly" within meaning of *18 USCS § 922(a)(6)* indicates legislative intent to make knowledge key element of offense. *United States v. Squires, 440 F.2d 859, 1971 U.S. App. LEXIS 11129 (2d Cir. 1971)*.

18 USCS § 922 does not require showing that one knowingly violated law, it simply requires evidence that he knowingly made false statement. *United States v. Beebe, 467 F.2d 222, 1972 U.S. App. LEXIS 7335 (10th Cir. 1972)*, cert. denied, *416 U.S. 904, 94 S. Ct. 1607, 40 L. Ed. 2d 108, 1974 U.S. LEXIS 676 (1974)* ; *United States v. Cornett, 484 F.2d 1365, 1973 U.S. App. LEXIS 7636 (6th Cir. 1973)*.

While *18 USCS § 922(a)(6)* requires false statements be make "knowingly," this scienter requirement can be met when there is finding of reckless disregard as to truth of statement, and when there is conscious purpose to avoid learning truth. *United States v. Wright, 537 F.2d 1144, 1976 U.S. App. LEXIS 8394 (1st Cir.)*, cert. denied, *429 U.S. 924, 97 S. Ct. 325, 50 L. Ed. 2d 292, 1976 U.S. LEXIS 3354 (1976)*.

In prosecution for violation of *18 USCS § 922* government need only show that defendant make statement he knew to be false, not that he knew he was violating law. *United States v. Williams, 685 F.2d 319, 1982 U.S. App. LEXIS 16384 (9th Cir. 1982)*.

To obtain conviction under *18 USCS § 922(a)(6)*, government is required to prove that defendant knowingly made false statement to licensed firearms dealer. *United States v. Phillippi, 442 F.3d 1061, 69 Fed. R. Evid. Serv. (CBC) 984, 2006 U.S. App. LEXIS 8170 (7th Cir. 2006)*.

While defendants' indictments were defective for failing to include mens rea element of *18 U.S.C.S. § 922(g)*, they were sufficient to confer subject matter jurisdiction as they tracked statutory language and stated approximately time and place of alleged crime. *United States v. Moore, 954 F.3d 1322, 28 Fla. L. Weekly Fed. C 983, 2020 U.S. App. LEXIS 10079 (11th Cir. 2020)*, cert. denied, *2021 U.S. LEXIS 3260 (U.S. June 21, 2021)*, cert. dismissed, *141 S. Ct. 729, 208 L. Ed. 2d 508, 2021 U.S. LEXIS 1 (2021)*.

Failure to include knowledge-of-status element in defendant's indictment was plain error affecting his substantial rights, and district court's failure to instruct jury that it had to find defendant knew his prohibited status, and Government's failure to present sufficient evidence on that point at trial, was plain error affecting defendant's substantial rights. *United States v. Medley, 972 F.3d 399, 2020 U.S. App. LEXIS 26721 (4th Cir. 2020)*.

Defendant's claim that the district court should have sua sponte reconsidered the validity of his guilty based on his counsel's statement at sentencing that he purchased the two stolen firearms and did not know they were stolen was without merit because the defendant admitted that he had knowledge the weapons were stolen when asked by the district court; moreover, the defendant did not alleged or shown that a reasonable probability that, but for the error, he would not have entered the plea. *United States v. Amalfitano, 837 Fed. Appx. 748, 2020 U.S. App. LEXIS 39871 (11th Cir. 2020)*.

District court did not lack jurisdiction over defendant's case because since text of statute implied knowledge-of-status element, indictment that tracked this text sufficiently stated crime against United States. *United States v. Morales, 987 F.3d 966, 28 Fla. L. Weekly Fed. C 2406, 2021 U.S. App. LEXIS 3260 (11th Cir. 2021)*.

District court did not plainly err when it instructed defendant as to the elements of this provision because neither Fifth Circuit precedent nor the pattern jury instructions included the knowledge requirement; even if Rehaif v. United States compelled the inclusion of the scienter requirement for which defendant advocated for prosecutions, that was not the crime of which she pleaded guilty; and § 371 did not contain the knowingly requirement included in *18 U.S.C.S. § 924(a)(2)*. *United States v. Diaz, 989 F.3d 390, 2021 U.S. App. LEXIS 5979 (5th Cir. 2021)*.

Scienter requirement of *18 USCS § 922* can be met where there is reckless disregard as to truth of statements to which one subscribes and where there is conscious purpose to avoid learning truth. *United States v. Kozerski, 518 F. Supp. 1082, 1981 U.S. Dist. LEXIS 13519 (D.N.H. 1981)*, aff'd, *740 F.2d 952, 1984 U.S. App. LEXIS 23761 (1st Cir. 1984)*.

114. —Illiterate purchaser

Defendant's conviction for knowingly making false statements in the purchase of firearms in violation of *18 USCS § 922* was affirmed despite defendant's contention that he was illiterate when he signed the forms and could not read the question pertaining to his criminal record, since evidence showed that the store's sales manager read aloud the question and told defendant that if he did not understand a question, he would explain it to defendant, and that defendant indicated that he understood the questions. *United States v. Fauntleroy, 488 F.2d 79, 1973 U.S. App. LEXIS 6689 (4th Cir. 1973)*.

Defendant could properly be convicted for violation of *18 USCS § 922* for making false statement on form during purchase of firearm even though he was illiterate and salesclerk filled out form in question for him, since illiteracy did not preclude defendant's understanding of questions on form which evidence indicated were read aloud to him; person signing document sufficiently adopts writing as his own so that if false, he can be held responsible for making false written statement. *United States v. Heath, 536 F.2d 1069, 1976 U.S. App. LEXIS 7646 (5th Cir. 1976)*.

115. —Other particular cases

Knowledge that dealer has federal license is not an essential element of the crime of acquiring firearms in violation of *18 USCS § 922(a)(6)*, rather, fact that dealer is licensed serves only to establish basis for federal jurisdiction. *United States v. Green, 544 F.2d 746, 1976 U.S. App. LEXIS 6195 (4th Cir. 1976)*.

Defendant had actual knowledge of his legal disability with respect to purchase or possession of firearms where, during purchase of firearms, he had read and signed form which clearly indicated that person is prohibited from such purchase by virtue of prior conviction if judge could have given sentence of imprisonment in excess of 1 year; furthermore, defendant had demonstrated awareness of his legal disability in certain statements made to others and by arranging for friend to purchase guns for him. *United States v. Nord, 586 F.2d 1288, 1978 U.S. App. LEXIS 7661 (8th Cir. 1978)*.

Since defendant did not and could not show that stipulation he offered was adequate substitute for government's evidence because government's evidence had additional purpose beyond proof of his felony status and government introduced evidence of two felony charges against defendant to show not only that he was subject to felony information but also that he knew that his statement to sporting goods store was false, defendant's case fell outside scope of Old Chief case; defendant's conviction for violating *18 USCS § 922(a)(6)* was affirmed. *United States v. Phillippi, 442 F.3d 1061, 69 Fed. R. Evid. Serv. (CBC) 984, 2006 U.S. App. LEXIS 8170 (7th Cir. 2006)*.

Where defendant was convicted of simple battery of defendant's biological child and appealed conviction, defendant's subsequent denial in obtaining firearm that he was convicted of crime of domestic violence was nonetheless knowingly false. *United States v. Blosser, 235 F. Supp. 2d 1178, 2002 U.S. Dist. LEXIS 24608 (D. Kan. 2002)*.

Where defendant had protective order issued against defendant based upon family violence and was charged with violating *18 USCS § 922(a)(6)* for making false statement in attempting to purchase guns, *18 USCS § 922(g)(8)* met constitutional requirements for "knowing" standard, and defendant possessed requisite knowledge to meet this standard. *United States v. Miles, 238 F. Supp. 2d 297, 2002 U.S. Dist. LEXIS 23658 (D. Me. 2002)*.

116. Interstate or foreign commerce

18 USCS § 922(a)(6) is not rendered unconstitutional where prohibited transaction is not within interstate commerce. *United States v. Crandall, 453 F.2d 1216, 1972 U.S. App. LEXIS 11798 (1st Cir. 1972)*.

Conviction under *18 USCS § 922* for making a false written statement will be upheld even though purchase of a firearm is a strictly intrastate transaction, since Congressional purpose is to regulate all sales, and not just those sales in which the government can prove some specific connection with interstate commerce. *United States v. Nelson, 458 F.2d 556, 1972 U.S. App. LEXIS 10698 (5th Cir. 1972)*.

In prosecution for violation of *18 USCS § 922* government need not allege and prove transaction in interstate commerce since purpose of Gun Control Act was to regulate acquisition of firearms by felons without regard to nexus of each acquisition with interstate commerce. *United States v. Garner, 465 F.2d 265, 1972 U.S. App. LEXIS 8205 (7th Cir. 1972)*.

Violation of *18 USCS § 922(a)(6)* does not require that there have been any connection with interstate commerce. *United States v. Green, 471 F.2d 775, 1972 U.S. App. LEXIS 6194 (7th Cir. 1972)*.

No interstate commerce nexus need be demonstrated in prosecution for violation of *18 USCS § 922(a)(6)*. *United States v. Andrino, 497 F.2d 1103, 1974 U.S. App. LEXIS 8748 (9th Cir.)*, cert. denied, *419 U.S. 1048, 95 S. Ct. 621, 42 L. Ed. 2d 642, 1974 U.S. LEXIS 3586 (1974)* ; *United States v. Letky, 371 F. Supp. 1286, 1974 U.S. Dist. LEXIS 12063 (W.D. Pa. 1974)*.

Nexus with interstate commerce required for conviction under *18 USCS § 922(a)(6)* was satisfied by proof that firearm involved had been previously transported in interstate commerce. *United States v. Calhoun, 510 F.2d 861, 1975 U.S. App. LEXIS 16433 (7th Cir.)*, cert. denied, *421 U.S. 950, 95 S. Ct. 1683, 44 L. Ed. 2d 104, 1975 U.S. LEXIS 1499 (1975)*.

117. Acquisition or attempted acquisition

As used in *18 USCS § 922(a)(6)*, the word "acquisition" is not ambiguous, but clearly includes any person who comes into possession, control, or power of disposal of a firearm. *Huddleston v. United States, 415 U.S. 814, 94 S. Ct. 1262, 39 L. Ed. 2d 782, 1974 U.S. LEXIS 121 (1974)*.

Under *18 USCS § 922(a)(6)*, the term "acquisition" plainly encompasses all acts that relate to the purchase and sale; though the Form was completed after payment and delivery of the firearm was made, it was still "in connection with the acquisition" of that firearm. *United States v. Peplinski, 472 F.2d 84, 1972 U.S. App. LEXIS 6172 (8th Cir. 1972)*.

Offense of making false statement to firearms dealer in connection with acquisition or attempted acquisition of firearm, in violation of *18 USCS § 922*, is committed whether or not firearm is successfully acquired. *United States v. Gardner, 579 F.2d 474, 1978 U.S. App. LEXIS 10268 (8th Cir. 1978)*.

18 USCS § 922(a)(6) may not be treated as "attempt" crime, where defendant does not acquire gun but arguably takes only preliminary steps toward purchase, since phrase "in connection with the acquisition or attempted acquisition of any firearm" does not suggest intent on part of Congress to create separate offenses, but rather indicates that Congress deems it immaterial whether firearm is ultimately acquired. *United States v. Guerrero, 234 F.3d 259, 2000 U.S. App. LEXIS 29650 (5th Cir. 2000)*, reh'g denied, *2001 U.S. App. LEXIS 2806 (5th Cir. Jan. 29, 2001)*, cert. denied, *532 U.S. 1074, 121 S. Ct. 2234, 150 L. Ed. 2d 224, 2001 U.S. LEXIS 4286 (2001)*.

118. —Redemption of pawned item

18 USCS § 922(a)(6) covers a pawnor's redemption of firearm from pawnshop which is federally licensed firearms dealer; thus, convicted felon who, upon completing Treasury forms in redeeming guns which he had previously pawned with licensed pawnbroker, falsely represented that he had not been convicted of crime punishable by imprisonment for more than one year, is properly convicted of violating *18 USCS § 922*. *Huddleston v. United States, 415 U.S. 814, 94 S. Ct. 1262, 39 L. Ed. 2d 782, 1974 U.S. LEXIS 121 (1974)*.

Attempted redemption from a pawnshop constitutes an "attempted acquisition" within the meaning of *18 USCS § 922(a)(6)*. *United States v. Beebe, 467 F.2d 222, 1972 U.S. App. LEXIS 7335 (10th Cir. 1972)*, cert. denied, *416 U.S. 904, 94 S. Ct. 1607, 40 L. Ed. 2d 108, 1974 U.S. LEXIS 676 (1974)*.

Provision making it a criminal offense to knowingly make a false statement or representation with respect to information required to be kept by a licensed person in respect to gun transactions, is applicable to the transaction in which an individual who has previously pawned guns with a licensed dealer redeems them. *United States v. Rosen, 352 F. Supp. 727, 1973 U.S. Dist. LEXIS 15363 (D. Idaho 1973)*.

119. Materiality of statement

Defendant was properly convicted of making false statements in connection with purchase of firearms by supplying false name, address, and date of birth, despite his contention that such misrepresentations were not material to lawfulness of sale since he was not prohibited buyer under terms of *18 USCS § 922*. *United States v. Crandall, 453 F.2d 1216, 1972 U.S. App. LEXIS 11798 (1st Cir. 1972)*.

Conviction under *18 USCS § 922* for knowingly making a false statement on required license form would not be reversed on ground that only falsehood which defendant caused to be entered on form was with respect to his name, since materiality of representation is not an element required for conviction. *United States v. Sullivan, 459 F.2d 993, 1972 U.S. App. LEXIS 9355 (8th Cir. 1972)*.

Materiality of false statements under *18 USCS § 922(a)(6)* derives from provisions of *18 USCS § 922(d)*. *United States v. Green, 471 F.2d 775, 1972 U.S. App. LEXIS 6194 (7th Cir. 1972)* ; *United States v. McDowell, 328 F. Supp. 606, 1971 U.S. Dist. LEXIS 13300 (W.D. Pa. 1971)*.

Defendant was properly convicted of making false statement to licensed firearms dealer in connection with purchase of firearm in violation of *18 USCS § 922* where he gave fictitious address, although government presented no evidence to refute his claim that he was resident of state. *United States v. Gudger, 472 F.2d 566, 1972 U.S. App. LEXIS 6134 (5th Cir. 1972)*.

Defendant's false answer to question as to whether he had been dishonorably discharged from Armed Services was false statement "material to the lawfulness of the sale" within meaning of *18 USCS § 922*. *United States v. Thomas, 484 F.2d 909, 1973 U.S. App. LEXIS 7773 (6th Cir. 1973)*, cert. denied, *414 U.S. 912, 94 S. Ct. 253, 38 L. Ed. 2d 151, 1973 U.S. LEXIS 1018 (1973)*, cert. denied, *415 U.S. 924, 94 S. Ct. 1428, 39 L. Ed. 2d 480, 1974 U.S. LEXIS 1257 (1974)*.

False street address supplied by defendant was material to lawfulness of sale of gun because when defendant falsely represented his address on Bureau of Alcohol, Tobacco, Firearms, and Explosives Form 4733, dealer failed to record defendant's address in violation of § 922(b)(5); thus, defendant's indictment was sufficient to support his conviction for violating § 922(a)(6). *United States v. Queen, 408 F.3d 337, 2005 U.S. App. LEXIS 8465 (7th Cir. 2005)*.

Identity of purchaser is constant that is always material to lawfulness of purchase of firearm under *18 USCS § 922(a)(6)*, and thus, it can be reasoned that although lawfulness of sale may change depending on identity of purchaser, fact that identity of purchaser is material to lawfulness of sale does not; under § 922(a)(6), identity of true purchaser is fact material to lawfulness of sale, regardless of eligibility of true purchaser. *United States v. Frazier, 605 F.3d 1271, 22 Fla. L. Weekly Fed. C 851, 2010 U.S. App. LEXIS 9970 (11th Cir. 2010)*.

Identity of actual purchaser of firearm is constant that is always material to lawfulness of firearm acquisition under *18 USCS § 922(a)(6)*. *United States v. Abramski, 706 F.3d 307, 2013 U.S. App. LEXIS 1881 (4th Cir. 2013)*, cert. granted, *571 U.S. 951, 134 S. Ct. 421, 187 L. Ed. 2d 278, 2013 U.S. LEXIS 7375 (2013)*, aff'd, *573 U.S. 169, 134 S. Ct. 2259, 189 L. Ed. 2d 262, 24 Fla. L. Weekly Fed. S 859, 2014 U.S. LEXIS 4170 (2014)*.

120. Purchases involving third parties

18 USCS § 922, which prohibits false statements in connection with purchase of firearms, requires only that false statement be made "in connection with the acquisition," whether or not that statement is made by actual purchaser. *United States v. White, 451 F.2d 696, 1971 U.S. App. LEXIS 7532 (5th Cir. 1971)*, cert. denied, *405 U.S. 998, 92 S. Ct. 1268, 31 L. Ed. 2d 468, 1972 U.S. LEXIS 3369 (1972)*.

In prosecution under indictment charging that defendant violated *18 USCS § 922* by falsely stating in connection with acquisition of firearm that he had not been convicted of felony, defendant's claim that he bought gun for his brother may be considered in mitigation of punishment, but not as defense. *United States v. Cornett, 484 F.2d 1365, 1973 U.S. App. LEXIS 7636 (6th Cir. 1973)*.

In prosecution of licensed firearms dealer and one of several individuals who signed dealer's federal firearms record book under *18 USCS § 922* and *18 USCS § 923*, fact that individuals who signed book used their true names and addresses did not preclude conviction where the signing parties did not either purchase the weapons or take delivery of them and the purpose of using their true names and addresses in book rather than names of actual transferees was to conceal fact that large number of weapons was being collected for shipment to Northern Ireland. *United States v. Grady, 544 F.2d 598, 1 Fed. R. Evid. Serv. (CBC) 408, 1976 U.S. App. LEXIS 6509 (2d Cir. 1976)*.

18 USCS § 922 requires only false statement "in connection with acquisition" of firearms whether or not statement is made by actual purchaser; where false statement was made by defendant who was ex-felon, it was immaterial whether or not he actually made acquisition of firearm himself or whether acquisition was made by his father since it is making false statement which is proscribed by *18 USCS § 922*. *United States v. Frazier, 547 F.2d 272, 1977 U.S. App. LEXIS 14664 (5th Cir. 1977)*.

Person is not purchaser for purposes of *18 USCS § 922* where at all relevant times they were acting under control and direction of third party in that guns purchased were designated by third party and paid for with third party's money

for which they received fixed commission. *United States v. Lawrence, 680 F.2d 1126, 1982 U.S. App. LEXIS 18087 (6th Cir. 1982)*.

While judicially-created "straw man" doctrine prohibited third-party purchases of firearms for person prohibited by Gun Control Act from purchasing and possessing firearms themselves, doctrine did not prohibit such purchases for minor where made with parent's knowledge and consent. *United States v. Moore, 84 F.3d 1567, 96 Cal. Daily Op. Service 3958, 96 D.A.R. 6451, 1996 U.S. App. LEXIS 13220 (9th Cir.)*, reh'g, en banc, granted, *100 F.3d 93, 96 Cal. Daily Op. Service 8092, 96 D.A.R. 13389, 1996 U.S. App. LEXIS 29332 (9th Cir. 1996)*.

Evidence sufficiently showed that soldier purchased guns for ineligible buyer, that soldier was not buying guns for himself or as gift, and that soldier misrepresented that he was "actual buyer" on ATF form; thus, soldier's conviction for violation of *18 USCS § 922(a)(6)* was affirmed. *United States v. Ortiz, 318 F.3d 1030, 16 Fla. L. Weekly Fed. C 201, 2003 U.S. App. LEXIS 516 (11th Cir. 2003)*.

Where defendant purchased handguns and rifles from five federal firearms licensed dealers on behalf of others who provided money for guns, knew that guns would be resold on black market but agreed to buy guns in exchange for "some quick money," and, at each location, signed ATF Form 4473 representing that he was actual buyer of firearm, defendant's motion to dismiss indictment charging him with making false statement to federally licensed firearms dealer, in violation of *18 USCS § 922(a)(6)*, was properly denied and his conviction was proper because statute was not unconstitutionally vague and defendant's "straw purchase" clearly violated statute. *United States v. Blake, 394 F.3d 1089, 2005 U.S. App. LEXIS 952 (8th Cir. 2005)*.

Where purchaser is in fact eligible to purchase firearm, his identity is no less material to lawfulness of transaction; in misrepresenting identity of actual purchaser of firearms, defendant violates *18 USCS § 922(a)(6)*. *United States v. Morales, 687 F.3d 697, 2012 FED App. 0249P, 2012 U.S. App. LEXIS 16347 (6th Cir. 2012)*.

Defendant was properly convicted of making false statements during purchase of firearm from federally licensed dealer, in violation of *18 USCS § 922(a)(6)*, because court rejected defendant's argument that *18 USCS § 922(a)(6)* did not apply to straw man sales involving two eligible purchasers. *United States v. Morales, 687 F.3d 697, 2012 FED App. 0249P, 2012 U.S. App. LEXIS 16347 (6th Cir. 2012)*.

Girlfriend and sister of man who pleaded guilty to violation of *18 USCS § 922(a)(6)* are acquitted on account of insufficient evidence, where they were asked to and did buy weapons for man ostensibly because he had misplaced his driver's license, when in fact he was supplying out-of-state buyers ineligible to purchase for themselves, because evidence was insufficient to show they knowingly made false statements when signing their own names to ATF Form 4473, which only ambiguously warns "straw purchasers." *United States v. Williams, 860 F. Supp. 1155, 1994 U.S. Dist. LEXIS 19215 (W.D. La. 1994)*.

Defendant firearms dealers could not be convicted of conspiring to conceal "straw purchases" in violation of *18 USCS § 922(a)(6)*, where alleged "straw purchasers," as well as alleged actual purchasers, were eligible to purchase firearms. *United States v. Dollar, 25 F. Supp. 2d 1320, 1998 U.S. Dist. LEXIS 20921 (N.D. Ala. 1998)*.

Because licensed firearm dealers were required to obtain name of actual buyer of firearm, act of falsifying identity of actual buyer on Alcohol, Tobacco, Firearms, and Explosives Form 4473 constituted violation of *18 USCS §§ 922(a)(6)*, *924(a)(1)(A)* and not merely unpublished agency interpretation of statutes. *United States v. Abramski, 778 F. Supp. 2d 678, 2011 U.S. Dist. LEXIS 48726 (W.D. Va. 2011)*.

Unpublished decision: Merit Systems Protection Board properly affirmed petitioner's removal by federal agency for lack of candor after agency found that he violated criminal statute by making false statement in connection with purchase of firearm. Board had substantial evidence to infer that petitioner's false response on form was made with intent to mislead dealer as to fact that he was purchasing gun in order to immediately transfer it to another person who could not have purchased it on her own. *Scott v. Dep't of Agric., 610 Fed. Appx. 993, 2015 U.S. App. LEXIS 6086 (Fed. Cir. 2015)*.

b. Particular False Statements

(1). In General

121. Under indictment for crime

Statement by defendant that he is not under indictment for any crime punishable by imprisonment for more than one year is not false under *18 USCS § 922(a)(6)*, where prior to purchase of firearm defendant had been charged for crime by information, since, indictment is not information. *United States v. Isaacs, 539 F.2d 686, 1976 U.S. App. LEXIS 7705 (9th Cir. 1976)*.

Defendant made knowingly false statement on firearms transaction record that he was not under indictment when he purchased firearm, although he was under invalid indictment—which was later quashed by Texas court since defendant had had opportunity to clear his status before obtaining firearm. *United States v. Chambers, 922 F.2d 228, 1991 U.S. App. LEXIS 437 (5th Cir. 1991)*, reh'g denied, *1991 U.S. App. LEXIS 2931 (5th Cir. Feb. 21, 1991)*.

Although jury was not instructed on essential element of *18 USCS § 922(n)* crime, i.e., that defendant must have known he was under indictment when he made false statement on firearms purchase form by checking "no" box, error was harmless, where jury, by returning guilty verdicts on *18 USCS § 922(a)(6)* counts, found beyond reasonable doubt that he knew his statement was false, and thus must have found that he was under indictment. *United States v. Forbes, 64 F.3d 928, 1995 U.S. App. LEXIS 25905 (4th Cir. 1995)*.

Since defendant did not and could not show that stipulation he offered was adequate substitute for government's evidence because government's evidence had additional purpose beyond proof of his felony status and government introduced evidence of two felony charges against defendant to show not only that he was subject to felony information but also that he knew that his statement to sporting goods store was false, defendant's case fell outside scope of Old Chief case; defendant's conviction for violating *18 USCS § 922(a)(6)* was affirmed. *United States v. Phillippi, 442 F.3d 1061, 69 Fed. R. Evid. Serv. (CBC) 984, 2006 U.S. App. LEXIS 8170 (7th Cir. 2006)*.

Where defendant entered a plea of guilty to a direct information charging him with receiving stolen property (a crime punishable by imprisonment for a term exceeding one year) in a state court, and at that time, the court withheld adjudication of guilt and imposition of sentence and placed defendant on probation pursuant to state law, and thereafter, while still on probation, defendant purchased a gun and on the form that he was required to fill out defendant stated that he was not then under indictment or information in any court for a crime punishable by imprisonment for a term exceeding one year, court granted defendant's motion to dismiss the indictment charging him with knowingly making a false written statement in connection with the purchase of the gun, since at time of purchase of gun defendant had been "convicted" under state law, and thus was in fact no longer under indictment or information when he purchased gun. *United States v. Hartsfield, 387 F. Supp. 16, 1975 U.S. Dist. LEXIS 14174 (M.D. Fla. 1975)*.

Statement by person acquiring firearm from licensed firearms dealer, which statement falsely denies that person is under indictment for crime punishable by imprisonment for more than one year, is material to lawfulness of sale of firearm and is proscribed under *18 USCS § 922(a)(6)*. *United States v. Friday, 404 F. Supp. 1343, 1975 U.S. Dist. LEXIS 14710 (E.D. Mich. 1975)*.

122. Commitment to mental institution

Commitment of a defendant in a criminal proceeding to a state institution, subsequent to being found not guilty by reason of insanity, is a commitment to a mental institution under the terms of *18 USCS § 922* and conviction for failure to reveal the commitment is proper. *United States v. Buffaloe, 449 F.2d 779, 1971 U.S. App. LEXIS 7637 (4th Cir. 1971)*.

Fact that defendant's commitment to mental institution may have been unconstitutional is not to be considered in prosecution for violation of *18 USCS § 922* which makes it unlawful for any person, in connection with acquisition of

firearms to knowingly make false statement with respect to any fact material to lawfulness of sale, since it penalizes person not for being committed but for failing to tell truth about commitment. *United States v. Seidenberg, 420 F. Supp. 695, 1976 U.S. Dist. LEXIS 13457 (D. Md. 1976)*, aff'd, *577 F.2d 738 (4th Cir. 1978)*.

123. Miscellaneous

Purchaser's previous discharge from Armed Forces under dishonorable conditions is material to lawfulness of sale of firearm under 18 USCS Appendix § 1202(a)(2) and any false statement with respect to such discharge is proscribed under *18 USCS § 922(a)(6)*. *United States v. Thomas, 484 F.2d 909, 1973 U.S. App. LEXIS 7773 (6th Cir. 1973)*, cert. denied, *414 U.S. 912, 94 S. Ct. 253, 38 L. Ed. 2d 151, 1973 U.S. LEXIS 1018 (1973)*, cert. denied, *415 U.S. 924, 94 S. Ct. 1428, 39 L. Ed. 2d 480, 1974 U.S. LEXIS 1257 (1974)*.

Alien who fails to maintain student status required by visa violates *18 USCS § 922* by denying, in conjunction with firearm purchase, that he is alien illegally in United States. *United States v. Igbatayo, 764 F.2d 1039, 1985 U.S. App. LEXIS 20553 (5th Cir.)*, cert. denied, *474 U.S. 862, 106 S. Ct. 177, 88 L. Ed. 2d 147, 1985 U.S. LEXIS 3821 (1985)*.

(2). Conviction of Crime

124. Generally

False statement by person acquiring firearm from licensed firearms dealer concerning previous conviction for crime punishable by imprisonment for term exceeding one year is material to lawfulness of sale of firearm to such person and is proscribed by *18 USCS § 922(a)(6)*. *United States v. Green, 471 F.2d 775, 1972 U.S. App. LEXIS 6194 (7th Cir. 1972)*.

If intent of Congress to limit acquisition of firearms, as reflected in *18 USCS § 922* is to be effected, term "convicted" must be given nonrestrictive interpretation, and once guilt has been established, by plea or verdict, and only sentencing remains, defendant has been "convicted" within meaning of that word in Treasury Form 4473 (firearms transaction record). *United States v. Place, 561 F.2d 213, 1977 U.S. App. LEXIS 11681 (10th Cir.)*, cert. denied, *434 U.S. 1000, 98 S. Ct. 643, 54 L. Ed. 2d 496, 1977 U.S. LEXIS 4348 (1977)*.

Fact that defendant was not convicted in federal court is of no significance for purposes of determining violation of *18 USCS § 922*. *United States v. Kozerski, 518 F. Supp. 1082, 1981 U.S. Dist. LEXIS 13519 (D.N.H. 1981)*, aff'd, *740 F.2d 952, 1984 U.S. App. LEXIS 23761 (1st Cir. 1984)*.

125. Validity of conviction

Dismissal of the indictment charging defendant with making false statement in purchase of a firearm in violation of *18 USCS §§ 922(a)(6)* and *924(a)*, could not be based on fact that defendant's state court conviction, which he lied about at time of purchase, was reversed on appeal. *United States v. Williams, 484 F.2d 428, 1973 U.S. App. LEXIS 8316 (8th Cir. 1973)*.

18 USCS § 922(a)(6) making it an offense to make false and fictitious statement in connection with acquisition of firearm compels disclosure of all convictions which have not been set aside, whether ultimately shown to have been valid or not. *Cassity v. United States, 521 F.2d 1320, 1975 U.S. App. LEXIS 12969 (6th Cir. 1975)*.

Technical error by state trial judge in imposing sentence prior to time of filing of motion for new trial did not render judgment absolutely void, and hence conviction could properly serve as underlying felony in subsequent prosecution of defendant for making false statements to firearms dealer concerning his lack of prior criminal record in violation of *18 USCS § 922(a)(6)* and *924*; appellant's motion contending that this technical error constituted newly discovered evidence, entitling him to new trial on federal charge since it rendered underlying felony conviction invalid, was properly denied. *United States v. Cody, 529 F.2d 564, 1976 U.S. App. LEXIS 12914 (8th Cir. 1976)*.

Defendant's conviction for violation of *18 USCS § 922(a)(6)* for making false statement during purchase of firearm concerning his prior felony record was reversed and remanded for evidentiary hearing on validity of defendant's guilty plea in prior state felony conviction, since defendant raised question as to voluntariness and intelligence of that plea by introducing record of prior conviction which did not affirmatively disclose that he was advised of or voluntarily waived rights to jury trial, to confront witnesses, or to refrain from self-incrimination. *United States v. Pricepaul, 540 F.2d 417, 1976 U.S. App. LEXIS 12149 (9th Cir. 1976)*.

In prosecution for making false written statement in connection with acquisition of firearm from licensed dealer in violation of *18 USCS § 922(a)(6)*, where gun-purchaser certified that he had never been convicted of a felony and where he had not previously attempted to challenge validity of his prior state felony conviction on which he had received a sentence of five years imprisonment, conviction would be affirmed and it was not necessary for appellate court to determine whether prior conviction was valid. *United States v. Ransom, 545 F.2d 481, 1977 U.S. App. LEXIS 10530 (5th Cir.)*, reh'g denied, *547 F.2d 574 (5th Cir. 1977)*, cert. denied, *434 U.S. 908, 98 S. Ct. 310, 54 L. Ed. 2d 196, 1977 U.S. LEXIS 3695 (1977)*.

Defendant's conviction for possession of a firearm by a convicted felon was proper because the testimony of two witnesses linking his booking information to records of his prior convictions was both reliable and credible, as determined by the jury. *United States v. Underwood, 726 Fed. Appx. 945, 2018 U.S. App. LEXIS 6061 (4th Cir. 2018)*.

126. —Constitutional validity or invalidity

Even if accused's prior felony conviction was constitutionally defective, his conviction under *18 USCS § 922* will be unaffected as accused is not penalized for being convicted felon, but rather for failing to tell truth about conviction. *Cassity v. United States, 521 F.2d 1320, 1975 U.S. App. LEXIS 12969 (6th Cir. 1975)*.

Defendant's prior felony conviction which was constitutionally infirm cannot be used as basis for charge of failing to disclose prior conviction in violation of *18 USCS § 922(a)(6)*. *United States v. O'Neal, 545 F.2d 85, 1976 U.S. App. LEXIS 6863 (9th Cir. 1976)*, disapproved, *Lewis v. United States, 445 U.S. 55, 100 S. Ct. 915, 63 L. Ed. 2d 198, 1980 U.S. LEXIS 85 (1980)*.

Person who is convicted felon must divulge fact of conviction, regardless of whether or not he believed it to be constitutional in order to avoid violation of *18 USCS § 922*; where defendant simply contended that outstanding state convictions for larceny of automobile used as basis for conviction under *18 USCS § 922(a)(6)* had not been constitutionally obtained, and neither sought to overturn conviction by direct attack nor any mode of collateral attack to attempt to expunge it from his record through pardon or administrative relief, his conviction for violation of *18 USCS § 922* was not precluded where he certified on firearms registration form that he had not been convicted of crime punishable by imprisonment for term of at least one year, although, in fact, he knew he had been convicted of felony. *United States v. Graves, 554 F.2d 65, 1977 U.S. App. LEXIS 14486 (3d Cir. 1977)*.

Congress intended to restrict disposition of firearms to those withstanding felony convictions even though convictions may later be found unconstitutional; defendant violated *18 USCS § 922* when he denied ever having been convicted of felony in connection with planting and retrieval of gun, notwithstanding contention that prior felony convictions were obtained in violation of his right to counsel. *United States v. Allen, 556 F.2d 720, 1977 U.S. App. LEXIS 13066 (4th Cir. 1977)*.

In prosecution for knowingly making false statements in acquisition of firearm, in contravention of *18 USCS § 922*, in that defendant stated that he had never been convicted by any court of crime punishable by prison term exceeding one year when in actuality he had been convicted of such crime by state court earlier, conviction would be affirmed, even though after indictment but before trial of federal offense, state court voided conviction on constitutional grounds as of date of conviction since defendant's statement was false at time it was made. *United States v. Vice, 562 F.2d 1004, 1977 U.S. App. LEXIS 10783 (5th Cir. 1977)*, cert. denied, *435 U.S. 951, 98 S. Ct. 1578, 55 L. Ed. 2d 801, 1978 U.S. LEXIS 1360 (1978)*.

Prior conviction in spite of alleged constitutional defect, may support classification prosecution under *18 USCS § 922* for making false statement concerning prior felony convictions in process of acquiring firearm. *United States v. Edwards, 568 F.2d 68, 1977 U.S. App. LEXIS 5568 (8th Cir. 1977)*.

Defendant could be convicted under *18 USCS § 922(a)* for falsely representing status as convicted felon even though conviction was later found to be unconstitutional based on invalid guilty plea. *United States v. Johnson, 612 F.2d 305, 1980 U.S. App. LEXIS 21725 (7th Cir. 1980)*.

State conviction obtained in violation of defendant's Sixth Amendment right to representation by counsel cannot be used as basis for prosecution under *18 USCS § 922* for making false statement in connection with purchase of firearm. *Marcum v. United States, 350 F. Supp. 1115, 1972 U.S. Dist. LEXIS 11022 (S.D. W. Va. 1972)*.

Statement falsely denying prior conviction of crime punishable by imprisonment for more than one year is not proscribed under *18 USCS § 922(a)(6)*, where such prior conviction was constitutionally invalid. *United States v. Megura, 394 F. Supp. 246, 1975 U.S. Dist. LEXIS 12911 (D. Conn. 1975)*.

18 USCS § 922 is violated by denial of conviction of felony, even though conviction is later claimed or shown to have been unconstitutional. *United States v. Kozerski, 518 F. Supp. 1082, 1981 U.S. Dist. LEXIS 13519 (D.N.H. 1981)*, aff'd, *740 F.2d 952, 1984 U.S. App. LEXIS 23761 (1st Cir. 1984)*.

Defendant, charged with making material false statement concerning his lack of prior felony conviction in purchasing firearm, was properly convicted even though underlying prior conviction referred to in indictment was obtained under judicial procedure later determined by courts to be "fundamentally unfair". *United States v. Mason, 68 F.R.D. 619, 1975 U.S. Dist. LEXIS 16243 (D. Md. 1975)*.

127. Sentence actually imposed

Statement falsely denying prior conviction of crime punishable by imprisonment for more than one year is proscribed under *18 USCS § 922(a)(6)*, even though sentence actually imposed is less than one year. *United States v. Willis, 505 F.2d 748, 1974 U.S. App. LEXIS 6381 (9th Cir. 1974)*, cert. denied, *420 U.S. 963, 95 S. Ct. 1355, 43 L. Ed. 2d 441, 1975 U.S. LEXIS 840 (1975)*.

Defendant's statement that he had not been convicted of crime punishable by more than one year's imprisonment was materially false, where he had been convicted of state offense of corrupting morals of minor, which was misdemeanor punishable by term of up to five years' imprisonment, even though he was given two years' probation, since sentence actually imposed need not be prison term of length required by statute. *United States v. Essig, 10 F.3d 968, 1994 U.S. App. LEXIS 168 (3d Cir. 1994)*.

128. Suspension of sentence

Plea of nolo contendere and subsequent imposition of suspended sentence and one-year probation term is not equivalent to conviction under *18 USCS § 922(a)(6)*. *United States v. Dotson, 555 F.2d 134, 1977 U.S. App. LEXIS 12600 (5th Cir. 1977)*.

Statement falsely denying prior conviction of crime punishable by imprisonment for more than one year is proscribed under *18 USCS § 922(a)(6)*, even though sentence has been suspended. *United States v. Rosenstengel, 323 F. Supp. 499, 1971 U.S. Dist. LEXIS 14396 (E.D. Mo. 1971)*.

129. Expungement of conviction

Expungement of defendant's state felony conviction by state court subsequent to his federal conviction under *18 USCS § 922* for making false statement to gun dealer has no effect on federal conviction. *United States v. Cody, 702 F.2d 147, 1983 U.S. App. LEXIS 29625 (8th Cir. 1983)*.

Defendant could not be convicted under *18 USCS § 924(a)* for allegedly falsely representing to firearms dealer that he was not felon, as his prior felony conviction had been set aside under Youth Corrections Act (*18 USCS § 5021*) and thereby expunged for all purposes; it does not matter if defendant actually believed he was making false statement if, in fact, legally he was not. *United States v. Fryer, 402 F. Supp. 831, 1975 U.S. Dist. LEXIS 15522 (N.D. Ohio 1975)*, aff'd, *545 F.2d 11, 1976 U.S. App. LEXIS 6109 (6th Cir. 1976)*, disapproved, *United States v. McMains, 540 F.2d 387, 1976 U.S. App. LEXIS 7773 (8th Cir. 1976)*.

130. Restoration of civil rights

State statute restoring rights of citizenship to felons does not effect validity of felon conviction under *18 USCS § 922(a)(6)*. *Cody v. United States, 460 F.2d 34, 1972 U.S. App. LEXIS 9651 (8th Cir.)*, cert. denied, *409 U.S. 1010, 93 S. Ct. 454, 34 L. Ed. 2d 303, 1972 U.S. LEXIS 672 (1972)*.

Restoration of civil rights, unlike full and complete pardon, does not change felon's status for purposes of *18 USCS § 922* unless expressly provided otherwise by state. *Decker v. Gibson Prods. Co., 679 F.2d 212, 1982 U.S. App. LEXIS 18168 (11th Cir. 1982)*.

Defendant's statement that he had not been convicted of crime punishable by more than one year was materially false, where his civil right to sit on jury had not been restored, although his rights to vote and hold public office had, since *18 USCS § 921(a)(20)* requires restoration of civil rights that has same practical effect as pardon or expungement of record. *United States v. Essig, 10 F.3d 968, 1994 U.S. App. LEXIS 168 (3d Cir. 1994)*.

State restoration of defendant's civil rights, received solely by virtue of his having satisfied his sentence, did not remove felony conviction for purpose of requirements of *18 USCS § 922* since purpose of statute, keeping firearms out of hands of categories of potentially irresponsible persons including convicted felons, would be emasculated if every person receiving restoration of civil rights after completing state sentence was deemed not to have been convicted within meaning of these federal laws. *United States v. Ziegenhagen, 420 F. Supp. 72, 1976 U.S. Dist. LEXIS 13907 (E.D. Wis. 1976)*.

In prosecution under *18 USCS §§ 922(g)(9)* and *922(a)(6)*, once district court held that defendant qualified as person whose civil rights had been restored, and thus was exempt from firearms disability imposed by 1996 amendment ("Lautenberg Amendment") to Gun Control Act of 1968, *18 USCS §§ 921*–*930*, government conceded that because exemption of *18 USCS § 921(a)(33)(B)(ii)* applied to defeat possession charge, same result applied to charge of making false statement in connection with purchase of firearm because exemption meant that, in fact, defendant had not been convicted of misdemeanor crime of domestic violence, as defined by federal firearms regulatory scheme or, alternatively, defendant's denial of conviction, even if false, was not "material" to sale of firearm under *18 USCS § 922(a)(6)*. *United States v. Brown, 235 F. Supp. 2d 931, 2002 U.S. Dist. LEXIS 24285 (S.D. Ind. 2002)*.

131. Miscellaneous

Plea of nolo contendere and subsequent imposition of suspended sentence and one-year probation term is not equivalent to conviction under *18 USCS § 922(a)(6)*. *United States v. Dotson, 555 F.2d 134, 1977 U.S. App. LEXIS 12600 (5th Cir. 1977)*.

Court rejected plaintiff gun advocates' statutory arguments in challenging *18 USCS § 922(g)(1)*'s application to class of misdemeanants because common-sense meaning of term "punishable" referred to any punishment capable of being imposed, not necessarily punishment specified by statute; because common-law offenses carried no statutory maximum term of imprisonment, they were capable of being punished by term of imprisonment exceeding one year and thus fell within § 922(g)(1)'s purview, and because such offenses were also capable of being punished by more than two years' imprisonment, they were ineligible for *18 USCS § 921(a)(20)(B)*'s misdemeanor exception. *Schrader v. Holder, 704 F.3d 980, 403 U.S. App. D.C. 284, 2013 U.S. App. LEXIS 730 (D.C. Cir.*, cert. denied, *571 U.S. 989, 134 S. Ct. 512, 187 L. Ed. 2d 365, 2013 U.S. LEXIS 8013 (2013)*, reh'g denied, *2013 U.S. App. LEXIS 5039 (D.C. Cir. Mar. 13, 2013)*, reh'g, en banc, denied, *2013 U.S. App. LEXIS 5044 (D.C. Cir. Mar. 13, 2013)*.

Change in Pennsylvania's drug laws which reduced crime of simple possession of marijuana from felony to misdemeanor did not make defendant, convicted felon under former statute, eligible to purchase and possess firearms under *18 USCS §§ 922* and *924* in light of traditionally tight construction given few exceptions to broad reach of these statutes and fact that defendant's case was final at time of change in law. *United States v. Tobin, 408 F. Supp. 760, 1976 U.S. Dist. LEXIS 16758 (W.D. Pa.)*, aff'd, *546 F.2d 420 (3d Cir. 1976)*.

2. False Identification

132. Generally

Falsification of identity is element of violation of *18 USCS § 922(a)(6)*, and may be proven by evidence of use of false name, age or place of residence by defendant; such misstatement is material to sale, since under § 922(b)(5) any such sale is unlawful unless seller records name, age, and place of residence of purchaser, and unless these matters are correctly recorded, sale is illegal, so that any misstatement with respect thereto is misrepresentation of material fact. *United States v. Buck, 548 F.2d 871, 1 Fed. R. Evid. Serv. (CBC) 806, 1977 U.S. App. LEXIS 14651 (9th Cir.)*, cert. denied, *434 U.S. 890, 98 S. Ct. 263, 54 L. Ed. 2d 175, 1977 U.S. LEXIS 3536 (1977)*.

Subsection of *18 USCS § 922* which prohibits use of false identification creates but single offense, gravamen of which is use of deceit in order to obtain firearm; trial court erred in concluding that subsection creates 2 separate crimes, one "in connection with the acquisition" and the other in connection with "attempted acquisition" of firearm. *United States v. Brozyna, 571 F.2d 742, 1978 U.S. App. LEXIS 12664 (2d Cir. 1978)*.

Knowingly making false statement or representation of identity is material per se; there is no requirement that misrepresentation effectively conceal prior felony conviction, nonresidency in state or some other condition firearms law seeks to regulate. *United States v. Anaya, 615 F. Supp. 823, 1985 U.S. Dist. LEXIS 17448 (N.D. Ill. 1985)*.

K. Transportation, Shipment, Possession or Receipt of Firearms or Ammunition by Persons Under Disabilities

1. In General

133. Intent, knowledge or willfulness

18 USCS § 922 does not prescribe any particular state of mind as an element of the offense of transporting firearm in interstate commerce after being convicted of felony. *United States v. Weiler, 458 F.2d 474, 1972 U.S. App. LEXIS 10112 (3d Cir. 1972)*.

Under *18 USCS § 922(h)* felon need not even know that gun traveled in interstate commerce. *United States v. Butler, 541 F.2d 730, 1976 U.S. App. LEXIS 7286 (8th Cir. 1976)*.

It is clear from wording of *18 USCS § 922(h)* that knowledge is not element of crime. *United States v. Haddad, 558 F.2d 968, 1977 U.S. App. LEXIS 12073 (9th Cir. 1977)*.

Specific intent is not one of elements necessary for conviction under *18 USCS § 922(h)*. *United States v. Holmes, 594 F.2d 1167, 1979 U.S. App. LEXIS 16786 (8th Cir.)*, cert. denied, *444 U.S. 873, 100 S. Ct. 154, 62 L. Ed. 2d 100, 1979 U.S. LEXIS 3128 (1979)*.

In order to be guilty of violation of *18 USCS § 922*, defendant need not be aware of interstate character of weapon. *Lambert v. United States, 600 F.2d 476, 1979 U.S. App. LEXIS 12682 (5th Cir. 1979)*.

Scienter was not element of *18 USCS § 922(h)*; therefore, it was duty of defendant to determine for self that past crime did not carry possible term of imprisonment exceeding one year or risk violating statute when he purchased firearm. *United States v. Pruner, 606 F.2d 871, 1979 U.S. App. LEXIS 11209 (9th Cir. 1979)*.

Willfulness is not element of offense under *18 USCS § 922(g)*. *United States v. Lehmann, 613 F.2d 130, 1980 U.S. App. LEXIS 19772 (5th Cir. 1980)*.

Knowledge of law is not element of offense of shipping, transporting, possessing, or receiving firearm by convicted felon under *18 USCS § 922*. *United States v. Sherbondy, 865 F.2d 996, 1988 U.S. App. LEXIS 17033 (9th Cir. 1988)*.

Defendant argued that indictment was fatally flawed for failure to allege mens rea for felon status element of *18 USCS §§ 922(g)(1)* and *924(a)(2)*; however, defendant did not need to have knowledge that gun possession violated law. *United States v. Enslin, 315 F.3d 1205, 2003 Cal. Daily Op. Service 319, 2003 D.A.R. 406, 2003 U.S. App. LEXIS 392 (9th Cir. 2003)*.

Defendant may be convicted under *18 USCS § 922(g)* without knowledge of law or intent to violate it. *United States v. Pfeifer, 371 F.3d 430, 2004 U.S. App. LEXIS 11415 (8th Cir. 2004)*, reh'g, en banc, denied, *2004 U.S. App. LEXIS 16248 (8th Cir. Aug. 6, 2004)*.

Since being felon in possession of firearm was general intent offense, defendant was capable of having necessary intent despite is inebriated state. *United States v. Williams, 403 F.3d 1188, 2005 U.S. App. LEXIS 6346 (10th Cir. 2005)*, cert. denied, *546 U.S. 896, 126 S. Ct. 178, 163 L. Ed. 2d 213, 2005 U.S. LEXIS 6510 (2005)*, app. after remand, *184 Fed. Appx. 730, 2006 U.S. App. LEXIS 14847 (10th Cir. 2006)*.

Defendant did not show reasonable probability that he would not have entered plea if he had been told of this statute's knowledge-of-status requirement because no reasonable juror could have believed defendant did not know he had been convicted of crime punishable by imprisonment for term exceeding 1 year; he had served six years in prison for aggravated robbery in Ohio. *United States v. Hobbs, 2020 U.S. App. LEXIS 8831, 2020 FED App. 0087P (6th Cir.) (March 20, 2020)*.

Defendant's guilty pleas to possession of a firearm by a convicted felon, *18 U.S.C.S. § 922(g)(1)*, were not knowing and intelligent because he was not informed that an element of the offense was that he knew he belonged to a class of persons barred from possessing a firearm; the error was structural, and therefore satisfied the plain error elements. *United States v. Gary, 954 F.3d 194, 2020 U.S. App. LEXIS 9724 (4th Cir. 2020)* sub. nom.*Greer v. United States, 141 S. Ct. 2090, 210 L. Ed. 2d 121, 28 Fla. L. Weekly Fed. S. 853, 2021 U.S. LEXIS 3118 (2021)*.

District court did not plainly err when it accepted factual basis for defendant's guilty plea for being convicted felon in possession of firearm without informing him of knowledge of felon status as required by Rehaif because there was overwhelming evidence that defendant knew he was felon when he possessed firearms at issue, and any error under Rehaif did not remotely, let alone seriously, affect fairness, integrity, or public reputation of judicial proceedings. *United States v. Lavalais, 960 F.3d 180, 2020 U.S. App. LEXIS 16421 (5th Cir. 2020)*, cert. denied, *2021 U.S. LEXIS 3159 (U.S. June 21, 2021)*.

In a case in which a federal prisoner was convicted of being a felon in possession of firearms, the district court properly denied the prisoner's claims for which he sought a certificate of appealability (COA) because no COA should issue on his claim that a Rehaif error was a jurisdictional defect as that claim was foreclosed by binding judicial precedent; the prisoner could not meet plain-error review as the record showed that it would have been implausible for him to not know that he was a felon; and the prisoner procedurally defaulted his Rehaif claim as he failed to raise a similar claim in his criminal proceedings, and he could not show cause and prejudice or a fundamental miscarriage of justice to overcome the default. *Drinkard v. United States, 2020 U.S. App. LEXIS 17875 (11th Cir. June 5, 2020)*.

Defendants could not meet their burden to show that Rehaif error affected their substantial rights because notion that either was unaware, that he had been convicted of felony, or that government would have been unable to prove it, was unrealistic, and jury applying the beyond-a-reasonable-doubt standard could infer that defendants knew that they were convicted felons from mere existence of their felony convictions. *United States v. Burden, 964 F.3d 339, 2020 U.S. App. LEXIS 20802 (5th Cir. 2020)*, cert. denied, *2021 U.S. LEXIS 3282 (U.S. June 21, 2021)*.

Defendant's substantial rights were not affected by Rehaif error because he failed to show reasonable probability that, but for error, outcome of proceeding would have been different, and merely identifying defense theory, possibility, was not sufficient to show reasonable probability of success without any evidence that defense theory would, in fact, apply in case. *United States v. Crumble, 965 F.3d 642, 2020 U.S. App. LEXIS 21556 (8th Cir. 2020)*, cert. denied, *2021 U.S. LEXIS 3181 (U.S. June 21, 2021)*.

Failure to include knowledge of status element in jury instructions did not require reversal of defendant's conviction for possessing firearm as felon because undisputed portions of defendant's PSR provided strong circumstantial evidence of knowledge. *United States v. Pulliam, 973 F.3d 775, 113 Fed. R. Evid. Serv. (CBC) 944, 2020 U.S. App. LEXIS 28109 (7th Cir. 2020)*.

District court's failure to list scienter requirement for defendant's § 922(g) offense was error that was clear and obvious under Rehaif, but defendant was not entitled to relief because he had not shown reasonable probability that, but for error, he would not have entered the plea, and therefore, he had not shown that district court's Rehaif error affected his substantial rights. *United States v. Montgomery, 974 F.3d 587, 2020 U.S. App. LEXIS 28798 (5th Cir. 2020)*, cert. denied, *2021 U.S. LEXIS 3297 (U.S. June 21, 2021)*.

Defendant's pro se pretrial motion to dismiss *18 U.S.C.S. § 922(g)* indictment for failure to state offense and failure to include necessary element of offense was sufficient to trigger Du Bo's automatic-dismissal rule, even if he did not specifically identify element he believed was missing. That district court had little reason before Rehaif to recognize that omitting defendant's knowledge of felon status from indictment was material error was irrelevant because defendant did enough to give government chance to respond to deficiency theory and to give district court opportunity to correct error in first instance. *United States v. Qazi, 975 F.3d 989, 2020 U.S. App. LEXIS 29651 (9th Cir. 2020)*.

Defendant's guilty plea to possessing firearm as convicted felon remained valid, even in light of Rehaif, because it was plain that defendant knew of his unlawful status when he possessed firearm and there was no reasonable probability that he would have not pled guilty had he been properly informed that such knowledge was requirement for conviction. *United States v. Bryant, 976 F.3d 165, 2020 U.S. App. LEXIS 30466 (2d Cir. 2020)*, cert. denied, *2021 U.S. LEXIS 3376 (U.S. June 21, 2021)*.

Although district court committed Rehaif error by failing to instruct jury that it had to find that defendant knew of his status as person prohibited from possessing firearm, error was not plain as defendant failed to show reasonable probability error affected his substantial rights and seriously affected fairness of proceedings as record left no question that defendant knew he was member of class prohibited by § 922(g)(1). *United States v. Brooks-Davis, 984 F.3d 695, 2021 U.S. App. LEXIS 346 (8th Cir. 2021)*, reh'g denied, *2021 U.S. App. LEXIS 5879 (8th Cir. Feb. 26, 2021)*.

Defendant was properly convicted of being felon in possession of firearm because rational jury could have readily inferred that defendant knew at time he possessed firearm that he was previously convicted of crime punishable by more than year of imprisonment. *United States v. Walking Bull, 2021 U.S. App. LEXIS 23649 (8th Cir. Aug. 10, 2021)*.

Codefendant's Rehaif challenges failed because indictment was sufficient to put defendant on notice of crime he was charged with committing even though it did not include knowledge-of-status element, and failure to instruct jury on knowledge-of-status element did not affect defendant's substantial rights or fairness or integrity of proceedings because there was clear evidence in record from which to infer that defendant knew he was felon. *United States v. Cousins, 841 Fed. Appx. 885, 2021 FED App. 38N, 2021 U.S. App. LEXIS 1365 (6th Cir. 2021)*.

Defendant's Rehaif claim failed because government's failure to allege scienter-of-status element in indictment did not deprive district court of jurisdiction, and defendant failed to show it was reasonably probable that he would not have pled guilty to illegal possession charge had district court told him government was required to prove beyond reasonable doubt scienter-of-status element. *United States v. Farmer, 988 F.3d 55, 2021 U.S. App. LEXIS 4305 (1st Cir. 2021)*.

Under Rehaif, in prosecution under *18 U.S.C.S §§ 922(g)*, *924(a)(2)*, government did not need to prove that defendant knew his status under § 922(g) prohibited him from possessing firearm, but instead, only knowledge required for conviction was that defendant knew he possessed firearm and had relevant status under § 922(g) at time of his possession. *United States v. Benton, 988 F.3d 1231, 2021 U.S. App. LEXIS 5217 (10th Cir. 2021)*.

Defendant was properly convicted of being felon in possession of firearm because rational jury could conclude that defendant had been convicted of crime punishable by more than one year of imprisonment and that he had knowledge of that fact as required by Rehaif. *United States v. Johnson, 990 F.3d 392, 2021 U.S. App. LEXIS 6257 (5th Cir. 2021)*.

Defendant's Rehaif error failed because given defendant's acknowledgement of his felony conviction and favorable nature of his plea agreement, he had not demonstrated reasonable probability that he would have altered his plea if district court had informed him of Rehaif's status element. *United States v. Austin, 991 F.3d 51, 2021 U.S. App. LEXIS 7316 (1st Cir. 2021)*.

Defendant's prior firearm-related arrest was properly admitted as it was relevant to show knowledge and intent, which defendant placed at issue by pleading not guilty to felon-in-possession charge, even though government proceeded solely on actual-possession theory; probative value of prior firearm-related arrest was not substantially outweighed by its prejudicial effect and trial court gave appropriate limiting instruction. *United States v. Graham, 680 Fed. Appx. 489, 2017 U.S. App. LEXIS 3110 (8th Cir. 2017)*, reh'g, en banc, denied, *2017 U.S. App. LEXIS 6136 (8th Cir. Apr. 7, 2017)*.

Defendant's indictment and plea colloquy were not deficient because subsection (g)(1) did not require government to prove that he knew his prohibited status when he possessed firearm; only element with "knowing" mens rea requirement was possessing firearm. *United States v. Thomas, 767 Fed. Appx. 758, 2019 U.S. App. LEXIS 9295 (11th Cir. 2019)*.

Where defendant had protective order issued against defendant based upon family violence and was charged with violating *18 USCS § 922(a)(6)* for making false statement in attempting to purchase guns, *18 USCS § 922(g)(8)* met constitutional requirements for "knowing" standard, and defendant possessed requisite knowledge to meet this standard. *United States v. Miles, 238 F. Supp. 2d 297, 2002 U.S. Dist. LEXIS 23658 (D. Me. 2002)*.

134. —§ 922(n)

Scienter is element of offense stated in *18 USCS § 922*, which makes it offense for "person under indictment" to receive firearms. *United States v. Renner, 496 F.2d 922, 1974 U.S. App. LEXIS 8426 (6th Cir.)*, limited, *United States v. Barrett, 504 F.2d 629, 1974 U.S. App. LEXIS 6444 (6th Cir. 1974)*.

"Willfully" in *18 USCS § 924(a)(1)(D)* means defendant must have acted with knowledge that his conduct was unlawful; absent disability such as mental incapacity or illiteracy, defendant's signature on ATF form should be sufficient certification to prove his knowledge of law under *18 USCS §§ 922(n)* and *924(a)(1)(D)*; if defendant knows he has been indicted or deliberately avoids ascertaining his status, and thereafter purchases firearm, he will have satisfied knowledge requirement of *18 USCS § 922(n)*. *United States v. Hayden, 64 F.3d 126, 1995 U.S. App. LEXIS 24228 (3d Cir. 1995)*.

Although jury was not instructed on essential element of *18 USCS § 922(n)* crime, i.e., that defendant must have known he was under indictment when he made false statement on firearms purchase form by checking "no" box, error was harmless, where jury, by returning guilty verdicts on *18 USCS § 922(a)(6)* counts, found beyond reasonable doubt that he knew his statement was false, and thus must have found that he was under indictment. *United States v. Forbes, 64 F.3d 928, 1995 U.S. App. LEXIS 25905 (4th Cir. 1995)*.

135. Interstate or foreign commerce

18 USCS § 922(h) applies to purchaser's intrastate acquisition of firearm that previously, but independently of purchaser's receipt, had been transported in interstate commerce. *Barrett v. United States, 423 U.S. 212, 96 S. Ct. 498, 46 L. Ed. 2d 450, 1976 U.S. LEXIS 37 (1976)*.

Interstate commerce element of *18 USCS § 922(h)* is satisfied by proof that gun, not felon in possession, passed some time in interstate commerce. *United States v. Butler, 541 F.2d 730, 1976 U.S. App. LEXIS 7286 (8th Cir. 1976)*.

18 USCS § 922 is violated if individual receives firearm that was shipped in interstate commerce. *United States v. Gardner, 579 F.2d 474, 1978 U.S. App. LEXIS 10268 (8th Cir. 1978)*.

That defendant conceded that firearms in question had traveled at some time in interstate commerce provided minimal nexus with interstate commerce necessary to convict for violation of *18 USCS § 922(g)*. *United States v. Gaines, 295 F.3d 293, 2002 U.S. App. LEXIS 14009 (2d Cir. 2002)*.

Testimony of government's expert witness was properly admitted to prove that ammunition presented at trial was sufficiently connected to interstate commerce to satisfy *18 USCS § 922(g)* because his testimony was not simply summary of out-of-court sources but thorough opinion drawing on multiple sources to ensure accuracy. *United States v. Luna, 649 F.3d 91, 2011 U.S. App. LEXIS 16628 (1st Cir.)*, cert. denied, *565 U.S. 1099, 132 S. Ct. 861, 181 L. Ed. 2d 560, 2011 U.S. LEXIS 8853 (2011)*.

Interstate commerce requirement of *18 USCS § 922(h)* would be construed to include sale of firearms in Wisconsin of firearms previously transported from out of state by Wisconsin dealer to Wisconsin residents. § 922 is not limited to transaction in which dealer orders specific firearm from another state at request of a particular purchaser since firearm is transported in interstate commerce within meaning of § 922 if dealer in one state receives firearms sent at any time from manufacturer or distributor in another state. *United States v. Ziegenhagen, 420 F. Supp. 72, 1976 U.S. Dist. LEXIS 13907 (E.D. Wis. 1976)*.

18 USCS § 922 does not require that interstate transportation of firearm occur after its effective date; Congress intended *18 USCS § 922* to apply to interstate commerce which has occurred at some indefinite time in past. *United States v. Agnes, 453 F. Supp. 1256, 1978 U.S. Dist. LEXIS 16750 (E.D. Pa. 1978)*, aff'd, *601 F.2d 576, 1979 U.S. App. LEXIS 13468 (3d Cir. 1979)*.

Unpublished decision: Evidence for conviction of defendant on one count of being felon in possession of firearm, in violation of *18 USCS § 922(g)*, was sufficient because defendant's stipulation that gun found in his possession in Tennessee was manufactured in Massachusetts alone satisfied interstate-commerce element of § 922(g). *United States v. Campbell, 436 Fed. Appx. 518, 2011 FED App. 0631N, 2011 U.S. App. LEXIS 17958 (6th Cir. 2011)*, cert. denied, *565 U.S. 1223, 132 S. Ct. 1602, 182 L. Ed. 2d 211, 2012 U.S. LEXIS 1444 (2012)*.

136. —Time of movement

Application of *18 USCS § 922(h)* is not confined to direct interstate receipt of firearm; thus, § 922(h) applies to intrastate sale that has been preceded by movement of firearm in interstate commerce; there is no need to prove that at time gun was received it was part of interstate transportation. *Barrett v. United States, 423 U.S. 212, 96 S. Ct. 498, 46 L. Ed. 2d 450, 1976 U.S. LEXIS 37 (1976)*.

Interstate movement need not be contemporaneous with, nor immediately precede, receipt of firearm for violation of *18 USCS § 922* to occur; fact that shotgun had not moved in interstate commerce since enactment of *18 USCS § 922* was of no significance since receipt, not interstate movement, is gravamen of crime. *United States v. Mitchell, 557 F.2d 1290, 1977 U.S. App. LEXIS 12390 (9th Cir. 1977)*.

18 USCS § 922(h) applies to receipt of firearm by felon in intrastate transaction which was preceded by interstate transaction, and fact that interstate movement of firearm occurred over 5 years prior to defendant's receipt in transaction with which he had no connection, in that defendant did not receive firearm directly from interstate

commerce and that interstate movement of firearm was removed in time from defendant's receipt, does not place his conduct beyond scope of § 922. *United States v. Haddad, 558 F.2d 968, 1977 U.S. App. LEXIS 12073 (9th Cir. 1977)*.

18 USCS § 922(h) reaches intrastate receipt of firearm that had previously moved in interstate commerce, and therefore conviction of defendant was proper even though firearm was received from his father while they were both in Indiana and even though there was no proof that defendant had intentionally participated in interstate transportation. *United States v. Rose, 562 F.2d 409, 1977 U.S. App. LEXIS 12675 (7th Cir. 1977)*.

Transport of weapon in interstate commerce, however remote in distant past, gives its present intrastate possession sufficient nexus to interstate commerce to fall within ambit of *18 USCS § 922(g)(1)*; to extent that Third Circuit has never addressed precise issue of whether proof that firearm was manufactured in state other than state where possession occurred is sufficient to establish that possession was in or affecting commerce under *18 USCS § 922(g)(1)*, court concludes that such proof meets minimal nexus required to establish that firearm affected interstate commerce. *United States v. Shambry, 392 F.3d 631, 2004 U.S. App. LEXIS 26742 (3d Cir. 2004)*, cert. denied, *544 U.S. 1006, 125 S. Ct. 1953, 161 L. Ed. 2d 785, 2005 U.S. LEXIS 3645 (2005)*.

Interstate transportation of firearm need not be in close time proximity to receipt of firearm by defendant in order to constitute violation of *18 USCS § 922*; fact that interstate transportation of firearm in question occurred more than 10 years before defendant was alleged to have received firearm is not material in prosecution for violation of *18 USCS § 922*. *United States v. Agnes, 453 F. Supp. 1256, 1978 U.S. Dist. LEXIS 16750 (E.D. Pa. 1978)*, aff'd, *601 F.2d 576, 1979 U.S. App. LEXIS 13468 (3d Cir. 1979)*.

18 USCS § 922 requires only past connection of gun with interstate commerce to sustain conviction, and present connection between felon's possession of gun and interstate commerce is not required. *United States v. Bowens, 108 F. Supp. 2d 1067, 2000 U.S. Dist. LEXIS 11031 (N.D. Cal. 2000)*.

137. —§ 922(g)(1)

It is sufficient to establish nexus to interstate commerce under *18 USCS § 922(g)(1)* that convicted felon's possession of firearm have had past connection to interstate commerce. *United States v. Fitzhugh, 984 F.2d 143, 1993 U.S. App. LEXIS 2001 (5th Cir.*, cert. denied, *510 U.S. 895, 114 S. Ct. 259, 126 L. Ed. 2d 211, 1993 U.S. LEXIS 6117 (1993)*, reh'g denied, *1993 U.S. App. LEXIS 11033 (5th Cir. Apr. 30, 1993)*.

Defendant's motion to dismiss for lack of subject matter jurisdiction was denied, where he made no showing that sawed-off shotgun or ammunition involved in his convictions lacked requisite nexus with interstate commerce and government's evidence was to contrary, since *18 USCS § 922(g)(1)* is clearly tied to interstate commerce. *United States v. Rankin, 64 F.3d 338, 1995 U.S. App. LEXIS 19973 (8th Cir.)*, cert. denied, *516 U.S. 1015, 116 S. Ct. 577, 133 L. Ed. 2d 500, 1995 U.S. LEXIS 8413 (1995)*.

Commerce clause nexus requirement of *18 USCS § 922(g)* is merely jurisdictional; therefore, defendant's prior conviction for state felon in possession offense constituted aggravated felony for sentencing purposes, as offense described in *18 USCS § 922(g)(1)*, even though state offense did not contain interstate commerce element. *United States v. De Jesus Castillo-Rivera, 244 F.3d 1020, 2001 Cal. Daily Op. Service 2382, 2001 D.A.R. 3011, 2001 U.S. App. LEXIS 4584 (9th Cir.)*, cert. denied, *534 U.S. 931, 122 S. Ct. 294, 151 L. Ed. 2d 217, 2001 U.S. LEXIS 7161 (2001)*.

Question whether defendant's weapon possession under *18 USCS § 922(g)(1)* affected interstate commerce was not jurisdictional but issue which defendant waived when he entered his guilty plea. *United States v. Dwyer, 245 F.3d 1168, 2001 Colo. J. C.A.R. 1873, 2001 U.S. App. LEXIS 6066 (10th Cir. 2001)*.

District court properly rejected defendant's argument that jurisdictional elements of *18 USCS § 922(g)(1)* required proof that firearm either recently moved across state lines or that defendant's conduct had actual economic impact; one-time past connection to interstate commerce was sufficient under § 922(g)(1), and evidence was undisputed that

defendant's guns were manufactured in one state and found in another. *United States v. Younger, 398 F.3d 1179, 66 Fed. R. Evid. Serv. (CBC) 726, 2005 U.S. App. LEXIS 3438 (9th Cir. 2005)*.

In reverse sting operation, federal agents did not offend U.S. Constitution by choosing to provide interstate guns to defendant buying firearms to satisfy required federal nexus element for conviction under *18 USCS § 922(g)(1)*. *United States v. Sarraj, 665 F.3d 916, 2012 U.S. App. LEXIS 238 (7th Cir.)*, cert. denied, *566 U.S. 1002, 132 S. Ct. 2412, 182 L. Ed. 2d 1047, 2012 U.S. LEXIS 3712 (2012)*.

Unpublished decision: Where defendant appealed his conviction for violating *18 USCS § 922(g)(1)*, he argued that government could not prove that he knew that handgun had traveled in interstate commerce. Seventh Circuit had repeatedly rejected argument that, in prosecution under § 922(g), government had to prove that defendant knew that firearm had traveled in interstate commerce. *United States v. Ross, 741 F.3d 743, 565 Fed. Appx. 505, 2013 U.S. App. LEXIS 25275 (7th Cir. 2013)*.

On charge of felon in possession of firearm, challenge to interstate commerce element was waived because prior to trial defendant stipulated that component of object he placed in mailbox traveled in interstate commerce by stipulating that ends caps were made in China, and defendant did not object to jury instruction stating that interstate nexus requirement was satisfied if component of destructive device traveled in interstate or foreign commerce prior to defendant's possession of it. *United States v. Lockwood, 789 F.3d 773, 2015 U.S. App. LEXIS 10123 (7th Cir. 2015)*.

Defendant's felon in possession conviction was subject to reversal, where none of defendant's prior convictions had standard sentencing ranges exceeding one year, nor were any accompanied by written findings of any of the statutory factors that would justify upward departure. *United States v. McAdory, 935 F.3d 838, 2019 U.S. App. LEXIS 25982 (9th Cir. 2019)*.

Conviction for possession of firearm by felon is proper under *18 USCS § 922(g)(1)*, where gun was manufactured in one state and discovered in defendant's possession in second state, because gun had entered interstate commerce. *United States v. Fromal, 733 F. Supp. 960, 1990 U.S. Dist. LEXIS 2674 (E.D. Pa. 1990)*.

18 USCS § 922(g)(1) was not unconstitutional as applied to defendant, where firearm possessed by defendant had at one point moved in interstate commerce, and, thus, such possession had requisite nexus with interstate commerce under statute. *United States v. Torres, 149 F. Supp. 2d 199, 2001 U.S. Dist. LEXIS 9708 (E.D. Pa. 2001)*.

138. Receipt

Defendant's argument that he did not "receive" gun within meaning of *18 USCS § 922* because it was delivered to him by County Commissioner, who served as administrator of court, only because justice court judge had ordered that gun be delivered to him rather than another who owned it was without merit since no order required that defendant take gun, record shows that he obtained it and signed receipt for it voluntarily and that he referred to it as his gun. *United States v. Robbins, 579 F.2d 1151, 1978 U.S. App. LEXIS 9641 (9th Cir. 1978)*.

"Receipt" of firearm within meaning of *18 USCS § 922* does not encompass requirement that there be intent to lay claim to firearm or to manage it; receipt, even of passing nature, is sufficient. *United States v. Scales, 599 F.2d 78, 1979 U.S. App. LEXIS 13068 (5th Cir. 1979)*.

Receipt is broadly interpreted and ownership itself is not required; term receipt includes any knowing acceptance or taking of possession of weapon and where common-law wife owns weapons, husband is deemed in receipt of them. *United States v. Lipps, 659 F.2d 960, 9 Fed. R. Evid. Serv. (CBC) 358, 1981 U.S. App. LEXIS 16795 (9th Cir. 1981)*, overruled in part, *United States v. De Bright, 730 F.2d 1255, 1984 U.S. App. LEXIS 24076 (9th Cir. 1984)*.

Defendant who redeemed firearms from pawn shop while under indictment was guilty of "receipt" under *18 USCS § 922*, since Congress did not explicitly except redemption from statute, and to do so would leave gap in statute not intended by Congress. *United States v. Bond, 860 F.2d 241, 1988 U.S. App. LEXIS 14423 (7th Cir. 1988)*.

Taking repossession of firearm after serving time in prison constitutes "receipt" for purposes of *18 USCS § 922(g)*. *United States v. Solomon, 29 F.3d 961, 1994 U.S. App. LEXIS 21114 (5th Cir. 1994)*, reh'g, en banc, denied, *36 F.3d 92, 1994 U.S. App. LEXIS 27072 (5th Cir. 1994)*, cert. denied, *513 U.S. 1157, 115 S. Ct. 1115, 130 L. Ed. 2d 1079, 1995 U.S. LEXIS 1140 (1995)*.

Defendant's indictment sufficiently alleged nexus between receipt of semi-automatic weapon and interstate commerce to satisfy *18 USCS § 922*, where in charging defendant with unlawful possession of firearm by convicted felon indictment alleged that defendant was convicted of crime punishable by imprisonment for term exceeding one year and that defendant knowingly received and possessed firearm that had been "possessed, shipped and transported in and affecting interstate and foreign commerce." *United States v. Carter, 917 F. Supp. 1, 1995 U.S. Dist. LEXIS 20515 (D.D.C. 1995)*.

18 USCS § 922(h) broadly prohibits felon's receipt of any firearm which has been shipped in interstate commerce, without limitation that unlawful receipt itself be part of interstate movement. *United States v Powers, 23 Crim. L. Rep. (BNA) 2044 (CA8 Mo 2/28/78)*.

139. —Simultaneous receipt

Simultaneous receipt of more than one weapon covered by *18 USCS § 922* supports conviction for only one offense; although receipt may be shown by possession when single offense is charged, government must prove separate receipt rather than merely separate possession in order to support multiple offenses under § 922. *United States v. Frankenberry, 696 F.2d 239, 12 Fed. R. Evid. Serv. (CBC) 377, 1982 U.S. App. LEXIS 23034 (3d Cir. 1982)*, cert. denied, *463 U.S. 1210, 103 S. Ct. 3544, 77 L. Ed. 2d 1392, 1983 U.S. LEXIS 775 (1983)*.

Simultaneous receipt of more than one weapon constitutes only one offense under *18 USCS § 922(h)*. *United States v. Valentine, 706 F.2d 282, 13 Fed. R. Evid. Serv. (CBC) 623, 1983 U.S. App. LEXIS 28708 (10th Cir. 1983)*.

Statutory phrase "to receive any firearm" is ambiguous as such and does not instruct whether simultaneous receipt of guns constitutes one offense or 3 separate offenses under statute; therefore, defendant was erroneously indicted and convicted of 3 counts for simultaneous receipt of 3 firearms. *United States v Powers, 23 Crim. L. Rep. (BNA) 2044 (CA8 Mo 2/28/78)*.

140. Possession

Merely holding firearm establishes possession as matter of law in context of charge under *18 USCS § 922(g)(1)*, since evidence that felon held gun is by itself factor indicating that defendant had ability to exercise direct control over it. *United States v. Lane, 267 F.3d 715, 2001 U.S. App. LEXIS 21368 (7th Cir. 2001)*.

In context of *18 USCS § 922(g)*, constructive possession may be proved by circumstantial evidence. *United States v. Payne, 377 F.3d 811, 2004 U.S. App. LEXIS 16077 (8th Cir. 2004)*, reh'g, en banc, denied, *2004 U.S. App. LEXIS 19769 (8th Cir. Sept. 21, 2004)*, remanded, *543 U.S. 1112, 125 S. Ct. 1065, 160 L. Ed. 2d 1050, 2005 U.S. LEXIS 1297 (2005)*.

In Eighth Circuit, Government could assert separate counts for violations under *18 USCS § 922(g)(1)* when defendant was found to possess, simultaneously, ammunition in pocket and semi-automatic pistol in van. *United States v. Walker, 380 F.3d 391, 2004 U.S. App. LEXIS 17932 (8th Cir. 2004)*.

Sole possession and exclusive control of firearms by third party may extinguish felon's possessory interest; whether particular proposed arrangement would constitute prohibited constructive possession will be issue of fact to be determined by district court. *United States v. Zaleski, 686 F.3d 90, 2012 U.S. App. LEXIS 14435 (2d Cir.)*, cert. denied, *568 U.S. 990, 133 S. Ct. 554, 184 L. Ed. 2d 360, 2012 U.S. LEXIS 8549 (2012)*.

Order denying defendant's motion under *Fed. R. Crim. P. 41(g)* for order requiring United States to transfer to third party seized firearms and ammunition that defendant lawfully owned before his felony conviction was vacated and

remanded because (1) although *18 USCS § 922(g)(1)* prohibited constructive possession, as well as actual physical possession, of firearms and ammunition, under limited circumstances convicted felon could have arranged to benefit from sale of otherwise lawful, unforfeited firearms by third party without actually or constructively possessing them; (2) defendant proposed to retain only right to obtain value of weapons, while custodian of weapons, third party, served as trustee; and (3) proposed arrangement could have been approved without running afoul of § 922(g)(1) if evidence showed that transferring weapons to third party would have in fact stripped defendant of any power to exercise dominion and control over them, third party was suitable custodian and not subject to defendant's control, and arrangement was otherwise equitable. *United States v. Zaleski, 686 F.3d 90, 2012 U.S. App. LEXIS 14435 (2d Cir.)*, cert. denied, *568 U.S. 990, 133 S. Ct. 554, 184 L. Ed. 2d 360, 2012 U.S. LEXIS 8549 (2012)*.

Unpublished decision: There was sufficient evidence to support defendant's conviction for being felon in possession of firearm, based on testimony of witnesses who saw him with firearm, discovery of firearm in his home, and admissions and stipulations that he made. *United States v. Sherley, 2010 U.S. App. LEXIS 27810 (6th Cir. Sept. 16, 2010)*.

Unpublished decision: Jury could conclude that each defendant possessed firearm; victim strongly identified first defendant as person who pointed gun at him during robbery and testified that gun found in bedroom of second defendant's girlfriend matched gun used during robbery. *United States v. Harper, 545 Fed. Appx. 329, 2013 FED App. 0852N, 2013 U.S. App. LEXIS 19883 (6th Cir. 2013)*, cert. denied, *571 U.S. 1225, 134 S. Ct. 1345, 188 L. Ed. 2d 349, 2014 U.S. LEXIS 1076 (2014)*.

District court did not err in calculating defendant's guideline range after he pleaded guilty to unlawful possession of firearm as previously convicted felon, *18 U.S.C.S. § 922(g)(1)* by discarding his firearm during the chase, he also created the possibility of weapon accidently discharging and that he was aware of the risks created by his conduct. *United States v. Davidson, 933 F.3d 912, 2019 U.S. App. LEXIS 23826 (8th Cir. 2019)*.

There was sufficient evidence to sustain defendant's conviction for unlawful possession of firearm because witness testimony that defendant had gun at apartment on morning of kidnapping and murder, and that he admitted to shooting victim, combined with photos showing defendant in possession of what appeared to be gun, was sufficient to support reasonable finding that defendant possessed firearm. *United States v. Ross, 969 F.3d 829, 113 Fed. R. Evid. Serv. (CBC) 181, 2020 U.S. App. LEXIS 25333 (8th Cir.)*, reh'g denied, *977 F.3d 1295, 2020 U.S. App. LEXIS 33710 (8th Cir. 2020)*.

Defendant was properly convicted of aiding and abetting a felon-in-possession of firearm because evidence was sufficient for reasonable jury to find that defendant constructively possessed Glock pistol in bag and was in joint constructive possession of three guns found in safe. *United States v. Brooks-Davis, 984 F.3d 695, 2021 U.S. App. LEXIS 346 (8th Cir. 2021)*, reh'g denied, *2021 U.S. App. LEXIS 5879 (8th Cir. Feb. 26, 2021)*.

In indictment for possessing stolen firearm and being felon in possession of firearm, district court's determination that statements in the 911 recording were non-testimonial was proper under Confrontation Clause because defendant's girlfriend, was speaking about current events in real time, defendant's girlfriend was undoubtedly in environment that was neither tranquil nor safe. *United States v. Estes, 985 F.3d 99, 114 Fed. R. Evid. Serv. (CBC) 891, 2021 U.S. App. LEXIS 1017 (1st Cir. 2021)*.

There was sufficient evidence defendant possessed firearm under *18 U.S.C.S. § 922(g)* because the officer testified he saw defendant placed in the flower pot a firearm that matched description of firearm officers found in immediate search of pot which was firearm charged in indictment. The officers' testimony combined with dash camera video and audio recordings and defendant statement in taped jail call provided evidence that he actually as well as constructively possessed firearm in flower pot. *United States v. Ganter, 2021 U.S. App. LEXIS 19610 (8th Cir. July 1, 2021)*.

Evidence was sufficient to convict defendant of being felon in possession of ammunition in because victim testified that he was shot by defendant in hotel parking lot and another witness testified that he heard gunshot and then observed man wearing red cap and red hooded sweatshirt searching ground for what he believed was shell casing.

United States v. Woodley, 727 Fed. Appx. 136, 2018 FED App. 0132N, 2018 U.S. App. LEXIS 6291 (6th Cir. 2018), reh'g, en banc, denied, 2018 U.S. App. LEXIS 12217 (6th Cir. May 9, 2018).

Sufficient evidence supported defendant's 18 USCS § 922(g)(1) conviction because jury could (1) find gun's constructive possession from being head of household where it was found and defendant's link to bag containing gun, and (2) infer witness lied when denying stating gun was defendant's. United States v. Davis, 896 F.3d 784, 106 Fed. R. Evid. Serv. (CBC) 1231, 2018 U.S. App. LEXIS 20594 (7th Cir. 2018), reh'g, en banc, denied, 2018 U.S. App. LEXIS 23756 (7th Cir. Aug. 22, 2018).

Trial court did not constructively amend indictment by instructing jury it could convict defendant if it unanimously found that he possessed three rounds of ammunition found in his pocket as indictment alleged that defendant possessed about 10 rounds of ammunition, and if he possessed any of rounds, he violated this section. United States v. Lee, 658 Fed. Appx. 185, 2016 U.S. App. LEXIS 14786 (4th Cir. 2016).

141. —§ 922(g)(3)

18 USCS § 922(g)(3) does not forbid possession of firearm while unlawfully using controlled substance, but prohibits unlawful users of controlled substances from possessing firearms. United States v. Jackson, 280 F.3d 403, 2002 U.S. App. LEXIS 1919 (4th Cir.), cert. denied, *536 U.S. 911, 122 S. Ct. 2372, 153 L. Ed. 2d 191, 2002 U.S. LEXIS 4331 (2002)*.

Defendant's conviction for possession of firearms while being unlawful user of controlled substance was affirmed because record was not devoid of evidence that defendant unlawfully used cocaine while possessing firearms. United States v. Herrera, 313 F.3d 882, 2002 U.S. App. LEXIS 24128 (5th Cir. 2002), cert. denied, *537 U.S. 1242, 123 S. Ct. 1375, 155 L. Ed. 2d 213, 2003 U.S. LEXIS 1896 (2003)*.

In view of Rehaif, and reasonable probability that outcome of trial might have been different had government been required to prove, and had jury been required to find, that defendant knew he was unlawful user of marijuana, defendant was entitled to new trial. United States v. Cook, 970 F.3d 866, 2020 U.S. App. LEXIS 26023 (7th Cir. 2020).

From evidence, rational jury could determine that defendant had physical control over gun and attempted to stuff it under his seat as officers approached, and that factual finding would suffice to prove that defendant knowingly had "actual possession" (physical control) within meaning ofstatute; although appellate court did not know for how long defendant controlled gun, he did not need to control it for any "minimum" period of time. United States v. Brooks, 987 F.3d 593, 2021 FED App. 28P, 114 Fed. R. Evid. Serv. (CBC) 1462, 2021 U.S. App. LEXIS 3546 (6th Cir. 2021).

142. Ownership

Fact that firearms were purchased and registered by defendant's wife is of no significance in prosecution for violation of 18 USCS § 922(h); nothing in 18 USCS § 922 indicates that sine qua non of receipt is ownership properly evidenced. United States v. Mitchell, 557 F.2d 1290, 1977 U.S. App. LEXIS 12390 (9th Cir. 1977).

Receipt is broadly interpreted and ownership itself is not required; term receipt includes any knowing acceptance or taking of possession of weapon and where common-law wife owns weapons, husband is deemed in receipt of them. United States v. Lipps, 659 F.2d 960, 9 Fed. R. Evid. Serv. (CBC) 358, 1981 U.S. App. LEXIS 16795 (9th Cir. 1981), overruled in part, United States v. De Bright, 730 F.2d 1255, 1984 U.S. App. LEXIS 24076 (9th Cir. 1984).

Convicted felon "knowingly possessed" firearm, which he claimed belonged to his girlfriend, where he pawned gun for her, since ownership was irrelevant to issue of possession. United States v. Hernandez, 972 F.2d 885, 1992 U.S. App. LEXIS 18043 (8th Cir. 1992), cert. denied, *507 U.S. 922, 113 S. Ct. 1287, 122 L. Ed. 2d 679, 1993 U.S. LEXIS 1290 (1993)*.

Defendant's argument that prosecution suppressed evidence that he did not own firearm failed where government asserted defendant had constructive possession of weapon, and issue of ownership was not material for purposes of Brady v. Maryland. *United States v. Carman, 314 F.3d 321, 2002 U.S. App. LEXIS 26472 (8th Cir. 2002)*.

Evidence was sufficient to sustain defendant's conviction for violation of *18 USCS § 922(h)* where, although record owner of rifle was defendant's wife, jury was entitled to find that she purchased rifle as straw party since evidence shows that defendant made initial inquiry concerning purchase of pistol, selected pistol, accompanied his wife to sporting goods store to obtain pistol, and knew pistol's location. and, further, pistol was located in place equally accessible to both husband and wife. *United States v. Stine, 458 F. Supp. 366, 1978 U.S. Dist. LEXIS 17251 (E.D. Pa. 1978)*.

143. Miscellaneous

By bringing his package to post office and beginning mailing process, defendant caused his package to be transported by United States postal system and thus, he "shipped" package within meaning of *18 USCS § 922(g)(1)* and (2). *United States v. Hinton, 222 F.3d 664, 2000 Cal. Daily Op. Service 6168, 2000 D.A.R. 8193, 2000 U.S. App. LEXIS 17763 (9th Cir. 2000)*, cert. denied, *531 U.S. 1200, 121 S. Ct. 1209, 149 L. Ed. 2d 122, 2001 U.S. LEXIS 1859 (2001)*.

Unpublished decision: Court did not err in denying defendant's motion for judgment of acquittal because government produced evidence that firearm and ammunition defendant possessed in Florida were manufactured outside State and therefore had necessarily traveled in interstate commerce. *United States v. Kirk, 636 Fed. Appx. 548, 2016 U.S. App. LEXIS 1381 (11th Cir. 2016)*.

2. Particular Disabilities

a. In General

144. Fugitives from justice

Individual who has fled from state to avoid prosecution for military crime is "fugitive" for purposes of violations of federal firearms laws; evidence was sufficient that defendant was fugitive from justice, where he enlisted in Army under alias, left state after failing to report for duty at military base, and failed to inform Army of his whereabouts for over 5 years. *United States v. Mittleider, 835 F.2d 769, 24 Fed. R. Evid. Serv. (CBC) 500, 1987 U.S. App. LEXIS 16630 (10th Cir. 1987)*, cert. denied, *485 U.S. 980, 108 S. Ct. 1279, 99 L. Ed. 2d 490, 1988 U.S. LEXIS 1490 (1988)*.

Defendant was "fugitive from justice" within meaning of *18 USCS § 922*, even though he did not flee New York, or perhaps know that failure to appear led to warrant for his arrest, where he purposefully stayed away to avoid charges pending against him, since he knew that charges were pending and refused to appear, and his reckless disregard for truth satisfies scienter requirement. *United States v. Spillane, 913 F.2d 1079, 1990 U.S. App. LEXIS 15927 (4th Cir. 1990)*.

There was sufficient evidence for jury to find that defendant provided firearm to prohibited person where it heard evidence that defendant gave his friend access to entire RV and disclosed specific location of firearm; when police located firearm outside of RV's closet—near his friend's wallet—defendant said that his friend must have moved it. *United States v. Stegmeier, 701 F.3d 574, 2012 U.S. App. LEXIS 25460 (8th Cir. 2012)*, cert. denied, *571 U.S. 881, 134 S. Ct. 221, 187 L. Ed. 2d 144, 2013 U.S. LEXIS 6676 (2013)*, reh'g, en banc, denied, *2013 U.S. App. LEXIS 1957 (8th Cir. Jan. 28, 2013)*.

145. Drug users or addicts

18 USCS § 922(g)(3) does not forbid possession of firearm while unlawfully using controlled substance, but prohibits unlawful users of controlled substances from possessing firearms. *United States v. Jackson, 280 F.3d 403, 2002 U.S. App. LEXIS 1919 (4th Cir.)*, cert. denied, *536 U.S. 911, 122 S. Ct. 2372, 153 L. Ed. 2d 191, 2002 U.S. LEXIS 4331 (2002)*.

Conviction under *18 USCS § 922(g)(3)* was affirmed, where police found 12 guns on defendant's property during execution of their search warrant, and, although no direct evidence showed that defendant was using drugs at exact moment of search, government did show that user quantity of amphetamine was laid out on defendant's table, that he lived in house alone, and that he often used drugs with his customers. *United States v. Oleson, 310 F.3d 1085, 2002 U.S. App. LEXIS 23806 (8th Cir. 2002)*, reh'g, en banc, denied, *2003 U.S. App. LEXIS 308 (8th Cir. Jan. 9, 2003)*, cert. denied, *538 U.S. 1048, 123 S. Ct. 2113, 155 L. Ed. 2d 1090, 2003 U.S. LEXIS 3946 (2003)*.

Defendant's conviction for possession of firearms while being unlawful user of controlled substance was affirmed because record was not devoid of evidence that defendant unlawfully used cocaine while possessing firearms. *United States v. Herrera, 313 F.3d 882, 2002 U.S. App. LEXIS 24128 (5th Cir. 2002)*, cert. denied, *537 U.S. 1242, 123 S. Ct. 1375, 155 L. Ed. 2d 213, 2003 U.S. LEXIS 1896 (2003)*.

Evidence of defendant's single use of marijuana, prior to his allegedly unlawful possession of firearm, was insufficient to prove that he was unlawful user of or was addicted to any controlled substance under *18 USCS § 922(g)(3)*; Congress intended statute to cover unlawful drug use at or about time of possession of firearm, where such drug use not remote in time or merely isolated occurrence. *United States v. Augustin, 376 F.3d 135, 2004 U.S. App. LEXIS 15297 (3d Cir. 2004)*.

Defendant's convictions for possessing two firearms while being unlawful user of, and addicted to, controlled substance (marijuana), was appropriate because government adequately demonstrated reasonable fit between its important interest in protecting community from gun violence and statute which disarmed unlawful drug users and addicts; studies presented to district court indicated strong link between drug use and violence and amply demonstrated connection between marijuana use specifically and statute proportionally advanced government's legitimate goal of preventing gun violence and was therefore constitutional under constitution. *United States v. Carter, 750 F.3d 462, 2014 U.S. App. LEXIS 8142 (4th Cir.)*, cert. denied, *574 U.S. 907, 135 S. Ct. 273, 190 L. Ed. 2d 201, 2014 U.S. LEXIS 5381 (2014)*.

Unpublished decision: Because defendant took drugs with regularity, over extended period of time, and contemporaneously with his purchase or possession of firearm, his drug use was sufficient to put him on notice that he fell within statutory definition of "unlawful drug user" in *18 USCS § 922(g)(3)*. *United States v. Dugan, 450 Fed. Appx. 633, 2011 U.S. App. LEXIS 19336 (9th Cir. 2011)*.

Case law does not graft onto *18 U.S.C.S. § 922(g)* an ignorance-of-the-law defense by which every defendant could escape conviction if he was unaware of this provision of the United States Code. *United States v. Bowens, 938 F.3d 790, 2019 U.S. App. LEXIS 27488 (6th Cir. 2019)*, cert. denied, *140 S. Ct. 2572, 206 L. Ed. 2d 500, 2020 U.S. LEXIS 1940 (2020)*, cert. denied, *140 S. Ct. 814, 205 L. Ed. 2d 499, 2020 U.S. LEXIS 429 (2020)*.

In a prosecution under *18 U.S.C.S. § 922(g)(3)*, the government arguably must prove that defendants knew they were unlawful users of a controlled substance, but not that they knew unlawful users of controlled substances were prohibited from possessing firearms under federal law. *United States v. Bowens, 938 F.3d 790, 2019 U.S. App. LEXIS 27488 (6th Cir. 2019)*, cert. denied, *140 S. Ct. 2572, 206 L. Ed. 2d 500, 2020 U.S. LEXIS 1940 (2020)*, cert. denied, *140 S. Ct. 814, 205 L. Ed. 2d 499, 2020 U.S. LEXIS 429 (2020)*.

To sustain conviction under *18 USCS § 922(g)(3)*, United States must prove pattern, and recency, of drug use by defendant or that drug use was sufficiently consistent, prolonged, and close in time to defendant's gun possession to put him on notice that he qualified as unlawful user of drugs under statute. *United States v. Williams, 216 F. Supp. 2d 568, 2002 U.S. Dist. LEXIS 15014 (E.D. Va. 2002)*.

Unpublished decision: Doctor's expert opinion and petitioner's negative drug test were not probative of whether petitioner was "unlawful user" of marijuana during time he possessed his gun because diagnosis that petitioner did not meet clinical criteria for marijuana abuse did not show that he was not "unlawful user" of marijuana. *Sobolewski v. United States, 649 Fed. Appx. 706, 2016 U.S. App. LEXIS 7871 (11th Cir. 2016)*.

146. Mental incompetence or commitment to mental institution

State law is relevant in determining whether person has in fact been committed to mental institution for purposes of *18 USCS § 922*, but once determination is made that defendant has been committed to mental institution, state legislative intent is irrelevant; court and state are bound by Congress's determination of consequences that flow from that commitment, including prohibition of possessing firearm. *United States v. Dorsch, 363 F.3d 784, 2004 U.S. App. LEXIS 7101 (8th Cir. 2004)*.

Even if defendant could have shown some infirmity in his commitment hearing, he was committed to mental institution under meaning of statute because there was no reason that part of statute that criminalized possession of firearm by any person who had been committed to mental institution should have been subjected to validity requirement that other subsections of statute were not. *United States v. McIlwain, 772 F.3d 688, 25 Fla. L. Weekly Fed. C 671, 2014 U.S. App. LEXIS 22244 (11th Cir. 2014)*.

18 USCS § 922 does not define term "committed to mental institution"; however, U.S. Court of Appeals for Eighth Circuit defines that term as meaning formal commitment of person to mental institution by court, board, commission, or other lawful authority. *United States v. B.H., 466 F. Supp. 2d 1139, 2006 U.S. Dist. LEXIS 88976 (N.D. Iowa 2006)*.

147. —Adjudication of mental defectiveness

Finding by a county mental health board that defendant was mentally ill was not an adjudication of mental defectiveness within the meaning of *18 USCS § 922(h)* because the term "mental defective" as used in *18 USCS §§ 921* et seq. does not include mental illness; defendant's hospitalization for observation and examination, pursuant to order of a county mental health board, was not a commitment within the meaning of § 922 since there is no indication that Congress intended to prohibit possession of firearms by persons who had been hospitalized for observation and examination where they were found not mentally ill. *United States v. Hansel, 474 F.2d 1120, 1973 U.S. App. LEXIS 11555 (8th Cir. 1973)*.

Finding by state judge that defendant was person requiring treatment because he was mentally ill was not adjudication of mental defectiveness within meaning of *18 USCS § 922(g)(4)*, absent finding that defendant was danger to himself or others or that he lacked mental capacity to contract or manage his own affairs. *United States v. Vertz, 102 F. Supp. 2d 787, 2000 U.S. Dist. LEXIS 7823 (W.D. Mich. 2000)*, aff'd, *40 Fed. Appx. 69, 2002 U.S. App. LEXIS 12627 (6th Cir. 2002)*.

Denial of defendant's motion for return of firearms seized pursuant to his bail order was error because, contrary to trial court's finding, "adjudicated as mental defective," pursuant to *18 USCS § 922(g)(4)*, did not mean same thing as incompetent to stand trial; trial court's prior incompetency finding did not bar defendant's possession of firearms. *State v. Buchanan, 155 N.H. 505, 924 A.2d 422, 2007 N.H. LEXIS 86 (N.H. 2007)*.

148. —Emergency hospitalization

Defendant was not "committed" within meaning of provision of *18 USCS § 922* when he was detained for hospital psychiatric treatment pursuant to coroner's emergency certificate under Louisiana law for 2 weeks, since there was no formal adjudication of mental defect or formal commitment. *United States v. Giardina, 861 F.2d 1334, 1988 U.S. App. LEXIS 17207 (5th Cir. 1988)*.

Defendant's indictment under *18 USCS § 922(g)(4)* for possession of gun by person who has been committed to mental institution was not dismissed when judicial officer found clear and convincing evidence did not require that defendant continue to be hospitalized because there was no suggestion that defendant's emergency hospitalization pursuant to Me. Rev. Stat. Ann. tit. 35-B, § 3863 was inappropriate. *United States v. Rehlander, 685 F. Supp. 2d 159, 2010 U.S. Dist. LEXIS 14004 (D. Me. 2010)*, rev'd, *666 F.3d 45, 2012 U.S. App. LEXIS 766 (1st Cir. 2012)*.

When defendant had been subject to emergency hospitalization, pursuant to *Me. Rev. Stat. Ann. tit. 34-B, § 3863*, but not commitment provided in *Me. Rev. Stat. Ann. tit. 34-B, § 3864*, defendant was not entitled to dismissal of

charge of possession of firearm by person who has been committed to mental institution, under *18 USCS § 922(g)(4)*, because definition of "commitment" was not unconstitutionally vague, as § 922(g)(4) adequately notified defendant that "commitment to mental institution" included defendant's emergency hospitalization, since defendant's claim that only proceeding under *Me. Rev. Stat. Ann. tit. 34-B, § 3864* was commitment had been rejected by First Circuit, and U.S. Supreme Court had not provided inconsistent definition. *United States v. Murphy, 2010 U.S. Dist. LEXIS 9823 (D. Me. Feb. 3, 2010)*.

149. —Other particular cases

Defendant was "committed" to confinement in mental health facility, where he was examined by competent mental health practitioner and represented by counsel, factual findings were made by judge who heard evidence and concluded he suffered from mental illness to degree requiring inpatient hospital care, judicial order was issued committing him to mental institution, and he was actually confined, although there had been no formal civil procedure. *United States v. Midgett, 198 F.3d 143, 1999 U.S. App. LEXIS 30725 (4th Cir. 1999)*, cert. denied, *529 U.S. 1028, 120 S. Ct. 1440, 146 L. Ed. 2d 328, 2000 U.S. LEXIS 2050 (2000)*.

Defendant had been committed to mental institution and was prohibited from possessing firearm under *18 USCS § 922(g)(4)* when South Dakota county board held hearing, after observation period, and determined he was mentally ill and in need of involuntary commitment. *United States v. Dorsch, 363 F.3d 784, 2004 U.S. App. LEXIS 7101 (8th Cir. 2004)*.

Defendant was "committed" under *Me. Rev. Stat. Ann. tit. 34-B, § 3863*, when court ordered involuntary hospitalization and that element of *18 USCS § 922(g)(4)* was properly charged to jury; moreover, jury was properly instructed as to "intent" and there was no basis for requiring instruction on defense of "innocent" possession. *United States v. Holt, 464 F.3d 101, 2006 U.S. App. LEXIS 24420 (1st Cir. 2006)*, cert. denied, *549 U.S. 1344, 127 S. Ct. 2031, 167 L. Ed. 2d 773, 2007 U.S. LEXIS 4033 (2007)*.

Defendant's prior commitment constituted commitment to mental institution because defendant was afforded formal process required by state statute, and his commitment was formal commitment and not emergency hospitalization because defendant received formal hearing, was represented by attorney, and state probate court heard sworn testimony and made substantive findings of fact that it included in its formal order of commitment. *United States v. McIlwain, 772 F.3d 688, 25 Fla. L. Weekly Fed. C 671, 2014 U.S. App. LEXIS 22244 (11th Cir. 2014)*.

Indictment of former mental patient arrested for possessing firearms will not be dismissed on grounds that he had not been formally committed to mental institution as required by *18 USCS § 922(g)(4)* where mental patient had been involuntarily placed in New York psychiatric center without judicial order, which confinement was converted to voluntary confinement at his request, because under *New York Mental Hygiene Law § 9.27* formal commitment is effectuated through certification by 2 physicians of involuntary admission and court involvement is not necessary. *United States v. Waters, 786 F. Supp. 1111, 1992 U.S. Dist. LEXIS 3397 (N.D.N.Y. 1992)*.

Indictment and stipulated evidence was sufficient to allege that defendant was "committed to mental institution" within meaning of *18 USCS § 922(g)(4)*, where no records of prescreening evaluations or certifications appeared in evidence and area for physician's signature on certification form was blank, and court was required to presume that state procedure by which defendant was involuntarily hospitalized was properly followed. *United States v. Jones, 117 F. Supp. 2d 551, 2000 U.S. Dist. LEXIS 15640 (W.D. Va. 2000)*.

Prior proceedings in which defendant was involuntarily committed to mental health institution for 13 days provided sufficient support for his conviction for being in possession of firearms after previously having been committed to mental institution under *18 USCS § 922(g)(4)*; fact that defendant's status changed to conditional extension pending placement was of no relevance because defendant had already been committed. *United States v. Miller, 366 F. Supp. 2d 128, 2005 U.S. Dist. LEXIS 2331 (D. Me. 2005)*.

Where person has been involuntarily committed by Iowa state court to undergo outpatient treatment at mental health center on finding that he has "serious mental impairment" within meaning of *Iowa Code § 229.13(1)*, his status is that of "prohibited person" for purposes of *18 USCS § 922(g)(4)* because such outpatient treatment is tantamount to commitment to "mental institution" within meaning of § 922(g)(4). *United States v. B.H., 466 F. Supp. 2d 1139, 2006 U.S. Dist. LEXIS 88976 (N.D. Iowa 2006)*.

Respondent's firearm license was reinstated because notices sent out pursuant to Mental Hygiene Law § 9.46(b) erroneously categorized her as mentally defective or involuntarily committed, her voluntary admission did not meet the definition of "committed" under the statute, and there was no cause for discretionary revocation under Penal Law §400.00(11) because nothing in the record indicated she lacked the judgment or temperament to possess a firearm. *Matter of McKay, 52 Misc. 3d 936, 34 N.Y.S.3d 354, 2016 N.Y. Misc. LEXIS 2055 (N.Y. County Ct. 2016)*.

150. Aliens

Alien, who is only permitted to remain in U.S. for duration of his or her status, becomes "illegally or unlawfully in United States" for purposes of *18 USCS § 922(g)(5)(A)* upon commission of status violation; courts look to date of status violation to determine when alien's presence became unauthorized, not to date when such violation was recognized by official decree. *United States v. Atandi, 376 F.3d 1186, 2004 U.S. App. LEXIS 15325 (10th Cir. 2004)*.

Only aliens who were admitted to U.S. on non-immigrant visa and maintain lawful non-immigrant status can be prosecuted under *18 USCS § 922(g)(5)(B)*; aliens no longer in lawful non-immigrant status are not to be prosecuted if they purchased gun after they acquired lawful immigrant status and can be prosecuted under § 922(g)(5)(A) if they purchased gun after they acquired unlawful status. *United States v. Elrawy, 448 F.3d 309, 2006 U.S. App. LEXIS 10364 (5th Cir. 2006)*.

151. —Particular cases

Yemen diplomat's son was properly convicted of possession of firearm by non-immigrant alien, *18 USCS § 922(g)(5)(B)*, where son did not have diplomatic immunity under *Vienna Convention on Diplomatic Relations*, Apr. 18, 1961, art. 37.1, 23 U.S.T. 3227 as he had lost his immunity on his 21st birthday; State Department reasonably interpreted phrase "member of family" to exclude children who had reached 21 years of age and children still in school who had reached 23 years of age. *United States v. Al-Hamdi, 356 F.3d 564, 2004 U.S. App. LEXIS 1034 (4th Cir. 2004)*.

Because I-130 visa petition does not authorize alien to stay in U.S., alien may be subject to *18 USCS § 922(g)(5)(A)*'s firearm restriction regardless of whether I-130 petition on his or her behalf has been filed or approved. *United States v. Atandi, 376 F.3d 1186, 2004 U.S. App. LEXIS 15325 (10th Cir. 2004)*.

Defendant's conviction for possessing firearm while being alien illegally or unlawfully in U.S. in violation of *18 USCS § 922(g)(5)(A)* was reversed pursuant to rule of lenity because it was uncertain whether Congress intended to criminalize possession of firearms by alien, such as defendant, in receipt of lawful temporary protected status under *8 USCS § 1254a*. *United States v. Orellana, 405 F.3d 360, 2005 U.S. App. LEXIS 5436 (5th Cir. 2005)*.

Even though illegal alien is "authorized" to remain in country while his application for adjustment of status can be adjudicated under *8 USCS § 1255a*, his unlawful immigration status remains undisturbed; thus, defendant could be properly charged with possession of firearm while illegally or unlawfully present in U.S., under *18 USCS § 922(g)(5)(A)*, and judgment of acquittal under *Fed. R. Crim. P. 29* should not have been granted. *United States v. Lucio, 428 F.3d 519, 2005 U.S. App. LEXIS 21956 (5th Cir. 2005)*, app. after remand, *227 Fed. Appx. 410, 2007 U.S. App. LEXIS 11369 (5th Cir. 2007)*.

Alien, convicted of violating *18 USCS § 922(g)(5)(A)* and *§ 922(g)(5)(B)* by being alien admitted under non-immigrant visa who possessed firearm and being alien illegally present in U.S. who possessed firearm, could only be convicted of latter because he was no longer in lawful non-immigrant status when arrested. *United States v. Elrawy, 448 F.3d 309, 2006 U.S. App. LEXIS 10364 (5th Cir. 2006)*.

Defendant's conviction for illegal possession of firearm in violation of *18 USCS § 922(g)(5)(A)* was upheld on appeal because his application for adjustment of status after marrying U.S. citizen did not legalize his presence. *United States v. Latu, 479 F.3d 1153, 2007 U.S. App. LEXIS 6296 (9th Cir.)*, cert. denied, *552 U.S. 868, 128 S. Ct. 164, 169 L. Ed. 2d 112, 2007 U.S. LEXIS 9836 (2007)*.

Unpublished decision: Based on evidence, rational juror could reasonably conclude defendant knowingly and constructively possessed firearm, sufficient to support his conviction where: (1) testimony revealed defendant exercised dominion and control over residence where firearm was discovered by using his key to enter and exit premises, (2) weapon was located in same closet where officials discovered cash from final controlled buy, and (3) officers testified: weapon was in plain sight, it was loaded, and there were no impediments to anyone in room grabbing weapon. *United States v. Pineda-Pineda, 534 Fed. Appx. 272, 2013 U.S. App. LEXIS 13727 (5th Cir.)*, cert. denied, *571 U.S. 1003, 134 S. Ct. 549, 187 L. Ed. 2d 392, 2013 U.S. LEXIS 7808 (2013)*.

Present state of law left court unable to conclude with certainty whether aliens unlawfully present in United States were part of people to whom Second Amendment protections extended, but even assuming that unlawful aliens did hold some degree of Second Amendment rights, those rights were not unlimited, and restriction in *18 U.S.C.S. § 922(g)(5)* was valid exercise of Congress's authority. *United States v. Torres, 911 F.3d 1253, 2019 U.S. App. LEXIS 514 (9th Cir. 2019)*.

Prohibition on firearm possession and ownership by nonimmigrant visa holders survives intermediate scrutiny because it serves important public interest in crime control and public safety, without substantially burdening nonimmigrant visa holder's assumed Second Amendment right. *United States v. Singh, 924 F.3d 1030, 2019 U.S. App. LEXIS 14466 (9th Cir. 2019)*, sub. op., *979 F.3d 697, 2020 U.S. App. LEXIS 33927 (9th Cir. 2020)*, cert. denied, *140 S. Ct. 1265, 206 L. Ed. 2d 255, 2020 U.S. LEXIS 1435 (2020)*, remanded, *140 S. Ct. 991, 206 L. Ed. 2d 172, 2020 U.S. LEXIS 1143 (2020)*.

Defendant was properly convicted of unlawful possession of firearm by alien who was illegally or unlawfully in United States because "in the United States" element required only that noncitizen be physically present within United States, and it was uncontested that defendant was physically present in United States, and he was present illegally or unlawfully as he had not been paroled when he was released from detention and had been finally adjudicated to be unlawfully present. *United States v. Balde, 927 F.3d 71, 2019 U.S. App. LEXIS 17709 (2d Cir.)*, remanded, *943 F.3d 73, 2019 U.S. App. LEXIS 33802 (2d Cir. 2019)*.

Defendant's conviction for possessing a firearm and ammunition as immigrant illegally or unlawfully in United States had to be vacated because district court's exclusion of evidence relevant to defendant's knowledge of his immigration status was error made plain by Rehaif's holding that § 922(g) required proof of defendant's knowledge of his immigration status; defendant had sufficiently shown reasonable probability that but for error, outcome of his trial would have been different as he consistently challenged nature of his immigration status; and district court's error effectively precluded defendant from mounting any defense about his knowledge of his immigration status, necessary element of § 922(g)(5) conviction. *United States v. Russell, 957 F.3d 1249, 28 Fla. L. Weekly Fed. C 1083, 2020 U.S. App. LEXIS 14127 (11th Cir. 2020)*, remanded, *846 Fed. Appx. 879, 2021 U.S. App. LEXIS 5778 (11th Cir. 2021)*.

Defendant's guilty plea to unlawful possession of firearm by alien who was illegally or unlawfully in U.S. had to be vacated because district court's failure to advise him that government had to establish beyond reasonable doubt that he knew he was illegally present in U.S., or to examine record to determine whether there was factual basis for finding such knowledge, was error; there was binding precedent that Government had to show that defendant knew he possessed firearm and also that he knew he had relevant status when he possessed it; there was reasonable probability that, but for error, he would not have entered plea; and failing to correct error would seriously affect fairness, integrity or public reputation of judicial proceedings. *United States v. Balde, 943 F.3d 73, 2019 U.S. App. LEXIS 33802 (2d Cir. 2019)*.

District court's Rehaif error did not constitute plain error because although district court's failure to ascertain whether defendant knew that he was alien unlawfully in United States, and thus, barred from possessing firearm, constituted

clear error, defendant failed to establish reasonable probability that he would not have pled guilty had he been advised as Rehaif required. *United States v. Patrone, 985 F.3d 81, 2021 U.S. App. LEXIS 1018 (1st Cir. 2021)*.

18 U.S.C.S. § 922(g)(5), as applied to defendant, withstood intermediate scrutiny, even if it was assumed he had constitutional right to possess firearms, § 922(g)(5) was permissible restriction when applied to facts of the case as his possession was neither in self-defense nor in the home, and he did not qualify as a law-abiding, responsible citizen because his presence was unlawful. *United States v. Perez, 2021 U.S. App. LEXIS 22479 (2d Cir. July 29, 2021)*.

Firearm indictment is dismissed under *18 USCS § 922(a)(6)* and (g)(5), where alien defendant had applied for permanent resident status, because alien was not "without authorization" to remain in U.S. under *8 USCS § 1255* and thus was neither "illegally" nor "unlawfully" in U.S. so as to be ineligible to possess firearm. *United States v. Brissett, 720 F. Supp. 90, 1989 U.S. Dist. LEXIS 11191 (S.D. Tex. 1989)*.

Weapons charges against alien need not be dismissed, even though he contends he was not "illegal alien" when he purchased pistols, where he had not and could not have taken final step in lawful permanent resident process—filing of his status change documents—since his priority date had not yet been published, because legislative intent of *18 USCS §§ 922(a)(6)* and (g)(5) are consistent with this parsing of immigration statutes and regulations. *United States v. Revuelta, 109 F. Supp. 2d 1170, 2000 U.S. Dist. LEXIS 12689 (N.D. Cal. 2000)*.

152. Persons subject to court order

Protective order signed without notice of a hearing, without appearance before a judge or adducement of evidence, was not one entered "after a hearing of which" defendant "received actual notice" and accordingly was not within the scope of *18 USCS § 922(g)(8)*. *United States v. Spruill, 292 F.3d 207, 2002 U.S. App. LEXIS 9211 (5th Cir. 2002)*.

Trial court erred in determining that restraining order, which formed basis for charges of possession of firearm while subject to restraining order against defendant, had been issued without hearing within meaning of *18 USCS § 922(g)(8)(A)*; defendant had actual notice of scheduled hearing and opportunity to participate, thus, defendant had opportunity to put on evidence, but did not avail himself of that opportunity. *United States v. Banks, 339 F.3d 267, 2003 U.S. App. LEXIS 14188 (5th Cir. 2003)*, remanded, *131 Fed. Appx. 983, 2005 U.S. App. LEXIS 9306 (5th Cir. 2005)*.

Pursuant to *Neb. Rev. Stat. § 25-2001*, *Neb. Rev. Stat. § 42-925*, and Nebraska district court's inherent authority, even though state court did not receive within timely request for hearing following issuance of ex parte protection order, state district court had authority to consider merits of protection order during hearing on defendant's request to modify terms of that order; thus, protection order, as modified, satisfied requirements of *18 USCS § 922(g)(8)(A)*. *United States v. Olvey, 437 F.3d 804, 2006 U.S. App. LEXIS 3447 (8th Cir. 2006)*.

District court did not err when it denied defendant's motion to acquit on ground that Pennsylvania domestic abuse order did not meet requirements of *18 USCS § 922(g)(8)(C)(ii)* because order that directed defendant to "refrain from abusing" his wife satisfied requirements of § 922(g)(8)(C)(ii), and commonly understood definition of "abuse" included violent acts involving physical force within definition. *United States v. Coccia, 446 F.3d 233, 2006 U.S. App. LEXIS 11339 (1st Cir. 2006)*, cert. denied, *549 U.S. 1149, 127 S. Ct. 1021, 166 L. Ed. 2d 769, 2007 U.S. LEXIS 579 (2007)*.

Although defendant claimed that he was unaware that state court restraining order, which prohibited him from future threats to mother of his child, prohibited him from possessing weapon, even though state court order contained such restriction in bold typeface, defendant was properly convicted of such unlawful possession of weapon under *18 USCS §§ 922(g)(8)* and *924(a)(2)* because it was not reasonable for someone in defendant's position to expect to be able to possess dangerous weapon, particularly in light of text of state court order. *United States v. Miller, 646 F.3d 1128, 2011 U.S. App. LEXIS 15538 (8th Cir. 2011)*.

Unpublished decision: Defendant's sentence for assaulting federal officer was erroneously enhanced under USSG § 2A2.2(b)(5) for violating Louisiana protection orders; defendant's possession of firearm, which was prohibited under

18 USCS § 922(g)(8), did not constitute state law violation of protection orders, and defendant's assault on federal agent did not violate protection orders because agent was not person protected by orders. *United States v. Brandon Banks, 480 Fed. Appx. 314, 2012 U.S. App. LEXIS 13607 (5th Cir. 2012)*.

Unpublished decision: Where defendant was convicted of violating *18 USCS § 922(g)(8)*, validity of underlying protective order was irrelevant to determination of whether defendant's conduct fell within § 922(g)(8). *United States v. Elkins, 495 Fed. Appx. 330, 2012 U.S. App. LEXIS 21536 (4th Cir. 2012)*, cert. denied, *568 U.S. 1108, 133 S. Ct. 894, 184 L. Ed. 2d 694, 2013 U.S. LEXIS 116 (2013)*.

Unpublished decision: Where defendant was convicted of violating *18 USCS § 922(g)(8)*, it was irrelevant whether protective order was being enforced or not. *United States v. Elkins, 495 Fed. Appx. 330, 2012 U.S. App. LEXIS 21536 (4th Cir. 2012)*, cert. denied, *568 U.S. 1108, 133 S. Ct. 894, 184 L. Ed. 2d 694, 2013 U.S. LEXIS 116 (2013)*.

Hearing on merits was not required to trigger firearms prohibitions of *18 USCS § 922(g)(8)(A)*, where fact that defendant's counsel made only limited appearance at hearing and convinced court to grant extension of time did not alter fact that hearing occurred and that defendant had opportunity to participate. *United States v. Calor, 172 F. Supp. 2d 900, 2001 U.S. Dist. LEXIS 18351 (E.D. Ky. 2001)*, aff'd, *340 F.3d 428, 2003 FED App. 0291P, 2003 U.S. App. LEXIS 16706 (6th Cir. 2003)*.

District court lacked power to amend no-contact order, effectively allowing protected party's husband to possess firearms while order was in effect, because such order violated *18 USCS § 922(g)(8)*. *Weissenburger v. Iowa Dist. Court, 740 N.W.2d 431 (Iowa 2007)*.

Court order which prohibited husband from interfering with ex-wife's person or liberty or from harassing, intimidating, or threatening her did not trigger *18 USCS § 922(d)(8)(B)(ii)* (2000), and state supreme court found that trial court erred as matter of law when it ruled that § 922(d)(8)(B)(ii) prohibited sheriff's office from returning firearms it seized under court order after husband's wife filed stalking petition, once that petition was dismissed. *Magoon v. Thoroughgood, 148 N.H. 139, 803 A.2d 1070, 2002 N.H. LEXIS 105 (N.H. 2002)*.

Unpublished decision: Defendant could not argue that government failed to establish second element of his crime (that his possession of firearms occurred at time when he was subject to domestic-violence order of protection) simply by asserting that he mistakenly thought that protective order had already expired because defendant admitted that he had notice that such order actually was imposed, that he received this order, and that he knew it expressly prohibited him from possessing guns for some period of time; fact that defendant did not note carefully exact term of order did not relieve him of guilt. *United States v. Stetler, 526 Fed. Appx. 631, 2013 FED App. 0500N, 2013 U.S. App. LEXIS 10258 (6th Cir. 2013)*.

153. Under indictment for crime

"Willfully" in *18 USCS § 924(a)(1)(D)* means defendant must have acted with knowledge that his conduct was unlawful; absent disability such as mental incapacity or illiteracy, defendant's signature on ATF form should be sufficient certification to prove his knowledge of law under *18 USCS §§ 922(n)* and *924(a)(1)(D)*; if defendant knows he has been indicted or deliberately avoids ascertaining his status, and thereafter purchases firearm, he will have satisfied knowledge requirement of *18 USCS § 922(n)*. *United States v. Hayden, 64 F.3d 126, 1995 U.S. App. LEXIS 24228 (3d Cir. 1995)*.

Although jury was not instructed on essential element of *18 USCS § 922(n)* crime, i.e., that defendant must have known he was under indictment when he made false statement on firearms purchase form by checking "no" box, error was harmless, where jury, by returning guilty verdicts on *18 USCS § 922(a)(6)* counts, found beyond reasonable doubt that he knew his statement was false, and thus must have found that he was under indictment. *United States v. Forbes, 64 F.3d 928, 1995 U.S. App. LEXIS 25905 (4th Cir. 1995)*.

State defendant who is on probation pursuant to deferred adjudication of felony charge remains, as matter of law, under indictment for purposes of *18 USCS § 922(n)*. *United States v. Valentine, 401 F.3d 609, 2005 U.S. App. LEXIS 3283 (5th Cir.)*, cert. denied, *545 U.S. 1116, 125 S. Ct. 2905, 162 L. Ed. 2d 298, 2005 U.S. LEXIS 4707 (2005)*.

b. Convicted Felons

(1). In General

154. Generally

18 USCS § 922(g) places no age limit on felonies which may be used to support felon in possession charge. *United States v. Hudson, 53 F.3d 744, 1995 FED App. 0145P, 1995 U.S. App. LEXIS 10416 (6th Cir. 1995)*, reh'g, en banc, denied, *1995 U.S. App. LEXIS 16559 (6th Cir. June 27, 1995)*, cert. denied, *516 U.S. 952, 116 S. Ct. 400, 133 L. Ed. 2d 320, 1995 U.S. LEXIS 7356 (1995)*, cert. denied, *516 U.S. 890, 116 S. Ct. 235, 133 L. Ed. 2d 163, 1995 U.S. LEXIS 6484 (1995)*.

Fact that appealed state conviction is not final under state law is not determinative for applicability of *18 USCS § 922(h)(1)*. *United States v. Torres, 616 F. Supp. 499, 1985 U.S. Dist. LEXIS 16770 (D.P.R. 1985)*.

155. Governing law

Whether plea of nolo contendere in state to charge of larceny of automobile constituted "conviction" within meaning of *18 USCS § 922* is determined by state law. *United States v. Brzoticky, 588 F.2d 773, 1978 U.S. App. LEXIS 7457 (10th Cir. 1978)*.

State court decisions determine whether state proceedings resulted in "conviction" within meaning of *18 USCS § 922(h)*; defendant who pleaded guilty in state court pursuant to state Deferred Judgment Act, under which no judgment of guilt is entered after receipt of guilty plea, has not been "convicted" within meaning of § 922. *United States v. Stober, 604 F.2d 1274, 1979 U.S. App. LEXIS 12737 (10th Cir. 1979)*.

Question of whether defendant has been "convicted" within meaning of *18 USCS § 922(h)* is to be resolved by reference to federal law; state court's acceptance of guilty plea and subsequent sentencing constitutes "conviction" even if defendant had been prosecuted in state court under deferred prosecution statute. *United States v. Benson, 605 F.2d 1093, 1979 U.S. App. LEXIS 13053 (9th Cir. 1979)*.

Defendant's conviction forty years ago and sentence to 2 years hard labor for offenses not deemed crimes in civilian sense nevertheless made him "convicted felon" within meaning of *18 USCS § 922(g)(1)*, since, with deference to military definition, general court-martial is "court," and conviction for which individual is punishable for term exceeding 1 year amounts to crime within meaning of *18 USCS § 922(g)(1)*. *United States v. MacDonald, 992 F.2d 967, 93 Cal. Daily Op. Service 3274, 93 D.A.R. 5693, 1993 U.S. App. LEXIS 10294 (9th Cir. 1993)*.

156. Validity of conviction

Where defendant's state conviction was not challenged prior to his being found in possession of 2 pistols and his claim that state conviction is invalid based on statutory rather than constitutional grounds, *18 USCS § 922(h)* still applies. *United States v. Herrell, 588 F.2d 711, 3 Fed. R. Evid. Serv. (CBC) 1414, 1978 U.S. App. LEXIS 7695 (9th Cir. 1978)*, cert. denied, *440 U.S. 964, 99 S. Ct. 1511, 59 L. Ed. 2d 778, 1979 U.S. LEXIS 1251 (1979)*.

Finding of guilt under *18 USCS § 922* is not improper because state court previously nullified conviction upon which charges under § 922 were based inasmuch as nullification did not erase fact of defendant's earlier conviction. *United States v. Germaine, 720 F.2d 998, 1983 U.S. App. LEXIS 15193 (8th Cir. 1983)*.

Invalid prior conviction may serve as predicate offense for violation of *18 USCS § 922* and *18* App. USCS § 1202, even though court lacked jurisdiction over defendant because he was minor at time of offense; conviction imposes

firearms disability until defendant takes affirmative action to clear his status. *United States v. Mayfield, 810 F.2d 943, 1987 U.S. App. LEXIS 1540 (10th Cir. 1987)*.

It was undisputed that defendant had state court felony conviction for aggravated assault on date that police cited him for unlawful possession of firearm; therefore, fact that state court subsequently invalidated that conviction was irrelevant and district court properly denied defendant's motion to dismiss indictment. *United States v. Settle, 394 F.3d 422, 2005 U.S. App. LEXIS 385 (6th Cir. 2005)*.

Defendant could not raise collateral challenge to his underlying state felony conviction as defense to charges that he had possessed firearm while under disability in violation of *18 USCS § 922(g)(1)*; there was nothing in statutory language of § 922(g)(1) that suggested that firearm disability applied only to persons with valid convictions, and § 922(g)(1) prohibited defendant, as convicted felon, from possessing firearm, even if his predicate state felony conviction was susceptible to collateral attack. *United States v. Leuschen, 395 F.3d 155, 2005 U.S. App. LEXIS 1094 (3d Cir.)*, cert. denied, *544 U.S. 1041, 125 S. Ct. 2280, 161 L. Ed. 2d 1074, 2005 U.S. LEXIS 4092 (2005)*.

Although *18 USCS § 922(g)(1)* prohibits constructive possession, as well as actual physical possession, of firearms and ammunition, under limited circumstances convicted felon may arrange to benefit from sale of otherwise lawful, unforfeited firearms by third party without actually or constructively possessing them. *United States v. Zaleski, 686 F.3d 90, 2012 U.S. App. LEXIS 14435 (2d Cir.)*, cert. denied, *568 U.S. 990, 133 S. Ct. 554, 184 L. Ed. 2d 360, 2012 U.S. LEXIS 8549 (2012)*.

Because it was undisputed that gun was used during commission of bank robbery, based on evidence of defendant's and codefendant's prior conviction for armed bank robbery, reasonable jury could have concluded that defendant knew that gun would be used by codefendant in committing crime, especially when combined with other evidence that defendant was involved in planning crime over period of months while codefendant stayed with defendant. *United States v. Sterling, 738 F.3d 228, 24 Fla. L. Weekly Fed. C 806, 92 Fed. R. Evid. Serv. (CBC) 1327, 2013 U.S. App. LEXIS 23401 (11th Cir. 2013)*, cert. denied, *572 U.S. 1143, 134 S. Ct. 2682, 189 L. Ed. 2d 224, 2014 U.S. LEXIS 3669 (2014)*.

It was error to grant Government's request that defendant be medicated by force because it was clear error to find that Government had met its burden of proving that proposed treatment was substantially likely to restore defendant's competency since nothing in district court's decision indicated that it actually considered whether evidence proffered by Government sufficiently addressed defendant's particular medical situation. *United States v. Watson, 793 F.3d 416, 2015 U.S. App. LEXIS 12371 (4th Cir. 2015)*.

Unpublished decision: In absence of stipulation by defendant, government needed to prove beyond reasonable doubt that at least one of defendant's prior crimes qualified as "a prior felony" under *18 USCS §§ 922(g)(1)* and *921(a)(20)*; district court did not abuse its discretion when it allowed government to introduce evidence of defendant's six felony convictions. *United States v. Blair, 499 Fed. Appx. 639, 2013 U.S. App. LEXIS 4709 (8th Cir.*, cert. denied, *571 U.S. 924, 134 S. Ct. 317, 187 L. Ed. 2d 224, 2013 U.S. LEXIS 6400 (2013)*, reh'g, en banc, denied, *2013 U.S. App. LEXIS 9198 (8th Cir. May 3, 2013)*.

Evidence was sufficient to sustain defendant's conviction for felon in possession because an assault rifle and a pistol were discovered in what appeared to be the master bedroom closet in the trailer that defendant occupied for many years, and the guns had been left near the residence four years earlier at a party defendant attended. *United States v. Huntsberry, 956 F.3d 270, 112 Fed. R. Evid. Serv. (CBC) 124, 2020 U.S. App. LEXIS 11341 (5th Cir. 2020)*.

157. —Constitutional validity or invalidity

18 USCS § 922(g)(1) is applicable only to those who have been constitutionally convicted of a felony; a person can successfully attack collaterally a conviction under § 922(g)(1) for interstate transportation of a firearm by a convicted felon when his counselless state felony conviction has been subsequently voided under constitutional principles. *Dameron v. United States, 488 F.2d 724, 1974 U.S. App. LEXIS 10427 (5th Cir. 1974)*.

Defendant in prosecution for violation of *18 USCS § 922(h)* was properly allowed to establish constitutional invalidity of underlying state conviction. *United States v. Scales, 599 F.2d 78, 1979 U.S. App. LEXIS 13068 (5th Cir. 1979)*.

Conviction for aiding and abetting convicted felon in unlawful receipt of firearm may be made without regard to constitutional validity of underlying felony conviction. *United States v. Davis, 773 F.2d 1180, 1985 U.S. App. LEXIS 23692 (11th Cir. 1985)*.

Invalidity of prior felony is not defense to *18 USCS § 922(g)(1)* charge of being felon in possession of firearm, even if prior conviction violates defendant's Sixth Amendment rights. *United States v. Dorsch, 363 F.3d 784, 2004 U.S. App. LEXIS 7101 (8th Cir. 2004)*.

Convictions under *18 USCS § 922(g)(9)* for possession of firearms by individuals who had previously been convicted of misdemeanor crimes of domestic violence did not require intentional mens rea for underlying domestic violence conviction. *United States v. Booker, 644 F.3d 12, 2011 U.S. App. LEXIS 8925 (1st Cir. 2011)*, cert. denied, *565 U.S. 1204, 132 S. Ct. 1538, 182 L. Ed. 2d 175, 2012 U.S. LEXIS 1581 (2012)*.

Defendant challenging prior conviction, which is one of essential elements of offense under *18 USCS § 922(h)(1)*, must establish prima facie that conviction was not constitutionally obtained; once validity of previous offense has been put in issue by defendant, burden shifts to Government to prove that conviction was constitutionally valid. *United States v. Cavataio, 425 F. Supp. 1250, 1977 U.S. Dist. LEXIS 17812 (E.D. Mich. 1977)*.

158. Sentence actually imposed

State court conviction of defendant which could have subjected him to sentence of more than 1 year, was "felony" for purposes of *18 USCS § 922(h)*, despite fact that state law classified crime as misdemeanor, based solely on sentence actually imposed. *United States v. Pruner, 606 F.2d 871, 1979 U.S. App. LEXIS 11209 (9th Cir. 1979)*.

In case in which defendant pled guilty to violating *18 USCS §§ 922(g)(1)* and *924(a)(2)* and he appealed district court's denial of his motion to suppress firearm, there had not been violation of defendant's Fourth Amendment rights. His Fourth Amendment rights were not violated by attempted stop, even if officer did not have reasonable suspicion, because attempted stop was not seizure for Fourth Amendment purposes since he did not submit in any realistic sense to officer's command that he stand in front of patrol case; defendant was seized after he fled and was apprehended by officer, and officer had reasonable suspicion to effectuate seizure after defendant fled. *United States v. Smith, 633 F.3d 889, 2011 U.S. App. LEXIS 2122 (9th Cir.)*, cert. denied, *564 U.S. 1010, 131 S. Ct. 3005, 180 L. Ed. 2d 831, 2011 U.S. LEXIS 4461 (2011)*.

Each of defendant's convictions, for which he faced nineteen-month term of imprisonment, which included nine-month period of supervision, qualified as prior felony conviction because state law rendered post-release supervision part of term of imprisonment. *United States v. Barlow, 811 F.3d 133, 2015 U.S. App. LEXIS 22211 (4th Cir. 2015)*, cert. denied, *136 S. Ct. 2041, 195 L. Ed. 2d 239, 2016 U.S. LEXIS 3119 (2016)*.

Unpublished decision: Search warrant was valid because affidavit accurately stated that defendant was in possession of firearm approximately 12 hours before warrant was issued, not six hours, as defendant seemed to believe; blanket suppression was not justified regarding seizure of few items that were unrelated to firearms. *United States v. Allen, 416 Fed. Appx. 754, 2011 U.S. App. LEXIS 5844 (10th Cir. 2011)*.

Unpublished decision: As defendant could have been sentenced to over year in prison for involuntary manslaughter, his prior conviction was proper predicate under *18 USCS § 922(g)(1)*; it was not required that he was actually sentenced to serve (or did in fact serve) over one year. *United States v. Swann, 526 Fed. Appx. 265, 2013 U.S. App. LEXIS 9512 (4th Cir. 2013)*.

Denial of appellant's petition for relief under *28 USCS § 2255* was affirmed because appellant's three prior convictions of assault with a deadly weapon, Mass. Gen. Laws ch. 265, § 15B(b), attempted second-degree assault, *New York Penal Law § 120.05(7)*, and first-degree robbery, *New York Penal Law § 160.15(4)*, were all predicate offenses under

the Armed Career Criminal Act's, *18 USCS § 924(e)(2)(B)(i)*, force clause making his sentence as an armed career criminal appropriate. *Lassend v. United States, 898 F.3d 115, 2018 U.S. App. LEXIS 21470 (1st Cir. 2018)*, cert. denied, *139 S. Ct. 1300, 203 L. Ed. 2d 422, 2019 U.S. LEXIS 1607 (2019)*.

District court did not procedurally err in imposing 72 month sentence, 15 months above top of guidelines range on defendant for possessing firearm as a felon, because his flight—speeding through red light and parking lots did not present usual type of risk from felon fleeing with weapon. His flight created substantial risk of bodily injury to more than one person; and court adequately reasoned that his criminal history warranted an upward variance to deter crime, protect public and promote respect for law. *United States v. Ramirez, 983 F.3d 959, 2020 U.S. App. LEXIS 40622 (7th Cir. 2020)*.

Defendant's prior welfare fraud conviction was for a crime punishable by a term exceeding one year, making his possession of a firearm unlawful, because he was sentenced to a two-to-three year prison term, although the crime was not a felony and his sentence was later reduced to 364 days. *United States v. Walker, 758 Fed. Appx. 868, 2019 U.S. App. LEXIS 3328 (11th Cir. 2019)*.

Use of word "punishable" in *18 USCS § 922* evidences intent by Congress to include within statute's ambit anyone whose previous conviction exposed him to possible prison sentence in excess of one year; actual sentence imposed for previous conviction has no bearing on legitimacy of prosecution under federal firearms statute since it is fact of valid prior felony conviction that is essential catalyst for prosecution; fact that defendant was prosecuted in circuit court and that he could not have been sentenced in excess of one year because of court's limited sentencing jurisdiction was not determinative. *United States v. Rivera, 467 F. Supp. 37, 1979 U.S. Dist. LEXIS 14400 (D. Conn. 1979)*.

159. Guilty plea

State court decisions determine whether state proceedings resulted in "conviction" within meaning of *18 USCS § 922(h)*; defendant who pleaded guilty in state court pursuant to state Deferred Judgment Act, under which no judgment of guilt is entered after receipt of guilty plea, has not been "convicted" within meaning of § 922. *United States v. Stober, 604 F.2d 1274, 1979 U.S. App. LEXIS 12737 (10th Cir. 1979)*.

Question of whether defendant has been "convicted" within meaning of *18 USCS § 922(h)* is to be resolved by reference to federal law; state court's acceptance of guilty plea and subsequent sentencing constitutes "conviction" even if defendant had been prosecuted in state court under deferred prosecution statute. *United States v. Benson, 605 F.2d 1093, 1979 U.S. App. LEXIS 13053 (9th Cir. 1979)*.

Defendant's guilty plea, which had been accepted by district court, constituted conviction under *18 USCS § 922(g)(1)*, even though he had not been sentenced under it. *United States v. Sample, 136 F.3d 562, 1998 U.S. App. LEXIS 1887 (8th Cir. 1998)*.

Where no definitive case law existed on whether guilty plea with adjudication withheld to lesser included offense of possession of cocaine with intent to sell constituted "conviction" under Florida law, district court did not plainly err in accepting defendant's guilty plea to crime of being felon in possession of firearm in violation of *18 USCS § 922*. *United States v. Chubbuck, 252 F.3d 1300, 14 Fla. L. Weekly Fed. C 759, 2001 U.S. App. LEXIS 11572 (11th Cir. 2001)*, reh'g, en banc, denied, *273 F.3d 395, 2001 U.S. App. LEXIS 29323 (11th Cir. 2001)*, cert. denied, *535 U.S. 955, 122 S. Ct. 1360, 152 L. Ed. 2d 355, 2002 U.S. LEXIS 1969 (2002)*.

Where defendant was shot outside defendant's family's store, detective followed blood trail inside store to filing cabinet containing gun, and ammunition was found in defendant's residence, suppression was not warranted, because information in affidavit for warrant to search store, without reference to gun observed in filing cabinet, was sufficient to establish probable cause; also, affidavit supporting warrant to search residence provided probable cause. *United States v. Allen, 631 F.3d 164, 2011 U.S. App. LEXIS 1195 (4th Cir. 2011)*.

Unpublished decision: In case in which defendant appealed his 140-month sentence for violating *21 USCS § 841(a)(1)* and *18 USCS § 922(g)(1)*, he unsuccessfully argued that district court conflated USSG § 3E1.1(a) and (b) and erroneously denied him reduction under subsection (a) because of timing of his guilty pleas, which he said was relevant factor only under subsection (b); timing of his guilty plea, which was made just before opening statements were to begin, was relevant under both subsections. *United States v. Owens, 403 Fed. Appx. 91, 2010 U.S. App. LEXIS 24118 (7th Cir. 2010)*.

Defendant's Virginia conviction for misdemeanor crime of domestic violence, upon guilty plea, was proper predicate for gun charge, despite claim that court did not advise him of right to jury trial, because *18 U.S.C.S. § 921(a)(33)(B)(i)*a(II)(bb) was only applicable to charge that defendant was entitled to have resolved by jury trial, and, under presumption of regularity, he was presumed to have waived right to trial in way that satisfied requirements of § 921(a)(33)(B)(i)a(II)(bb). *United States v. Locke, 932 F.3d 196, 2019 U.S. App. LEXIS 22553 (4th Cir. 2019)*.

Defendant's conviction under *18 USCS § 922(g)(1)* for being a felon in possession of a firearm could not be upheld because it seemed reasonable that someone in his position, after pleading guilty to two Iowa felonies, might nevertheless have thought he could possess firearms because he had not yet been sentenced. *United States v. Davies, 942 F.3d 871, 2019 U.S. App. LEXIS 33483 (8th Cir. 2019)*.

District court committed error that was plain on appeal when it accepted defendant's guilty plea without advising him that he was required to know he was felon to be convicted under *18 U.S.C.S. § 922(g)(1)*, but defendant could not credibly claim that he was unaware that he was felon, and thus, he could not show reasonable probability that, had he been advised of knowledge-of-status element, he would not have entered plea. *United States v. Trujillo, 960 F.3d 1196, 2020 U.S. App. LEXIS 16770 (10th Cir. 2020)*, cert. denied, *2021 U.S. LEXIS 3227 (U.S. June 21, 2021)*.

Defendant failed to carry his burden of demonstrating that it was reasonably probable that he would not have pled guilty to violating *18 USCS § 922(g)* had district court told him that government was required to prove beyond a reasonable doubt that he knew when he possessed gun that he had previously been convicted of offense punishable by more than year in prison, and thus, his challenge to acceptance of his plea failed on plain error review. *United States v. Burghardt, 939 F.3d 397, 2019 U.S. App. LEXIS 29731 (1st Cir. 2019)*, cert. denied, *140 S. Ct. 2550, 206 L. Ed. 2d 486, 2020 U.S. LEXIS 1792 (2020)*.

Although district court committed Rehaif error by failing to inform defendant of knowledge-of-status element of § 922(g)(1), defendant lacked plausible argument that he did not know that his prior Texas conviction for aggravated assault was punishable by more than year in prison, and thus, he failed to show reasonable probability that he would have pleaded not guilty without error. *United States v. Tignor, 981 F.3d 826, 2020 U.S. App. LEXIS 37487 (10th Cir. 2020)*.

Evidence is sufficient to support charge of possession of firearm by convicted felon, where offense giving rise to charge occurred between defendant's plea of guilty to violation of *18 USCS § 924(c)* and when court accepted plea and adjudicated defendant guilty, because plea of guilty to violation of *18 USCS § 924(c)* given in and accepted by federal court constitutes conviction supporting charge under *18 USCS § 922(g)(1)*. *United States v. Kahoe, 902 F. Supp. 684, 1995 U.S. Dist. LEXIS 16290 (E.D. Va. 1995)*, aff'd, *133 F.3d 918, 1998 U.S. App. LEXIS 3427 (4th Cir. 1998)*.

Defendant's guilty plea and subsequent judicial diversion for felony aggravated assault did not constitute prior conviction under state law for purposes of federal felon in possession of firearm provision. *United States v. Mynatt, 349 F. Supp. 2d 1056, 2004 U.S. Dist. LEXIS 26786 (E.D. Tenn. 2004)*.

Trial court did not err by denying defendant's motion to withdraw his plea because he did not establish that his 1993 plea was not made knowingly, intelligently, and voluntarily based on the failure to have been informed regarding the Lautenberg Amendment to the 1968 Gun Control Act, which was enacted five years after the plea was entered. Approximately 23 years passed between his conviction and his motion to withdraw his plea, and 20 years passed between the enactment of the Lautenberg Amendment and defendant's motion, which militated against a finding that

he suffered a manifest injustice and the right to possess a firearm was not imperative to his livelihood, as an optometrist. *City of Beavercreek v. Kelly, 2017-Ohio-8761, 2017 Ohio App. LEXIS 5196 (Ohio Ct. App., Greene County 2017)*.

160. Nolo contendere plea

Whether plea of nolo contendere in state to charge of larceny of automobile constituted "conviction" within meaning of *18 USCS § 922* is determined by state law. *United States v. Brzoticky, 588 F.2d 773, 1978 U.S. App. LEXIS 7457 (10th Cir. 1978)*.

Defendant's former plea of nolo contendere to state felony charge was conviction for purposes of *18 USCS § 922(h)(1)*, notwithstanding state law did not so consider it. *United States v. Bustamante, 706 F.2d 13, 1983 U.S. App. LEXIS 28547 (1st Cir.)*, cert. denied, *464 U.S. 856, 104 S. Ct. 175, 78 L. Ed. 2d 157, 1983 U.S. LEXIS 1611 (1983)*.

Although adjudication was withheld on defendant's underlying state felony charge where he pleaded nolo contendere, such plea was conviction for purposes of *18 USCS § 922*. *United States v. Garcia, 727 F.2d 1028, 1984 U.S. App. LEXIS 24424 (11th Cir. 1984)*.

Defendant who pleaded nolo contendere under Florida law to charges of carrying concealed firearm and grand theft of firearm was not "convicted felon" under *18 USCS § 922(g)(1)*, since he had not been convicted of felony under Florida law. *United States v. Willis, 106 F.3d 966, 10 Fla. L. Weekly Fed. C 743, 1997 U.S. App. LEXIS 3578 (11th Cir. 1997)*.

Where plea of nolo contendere was followed by adjudication of guilt, or where adjudication was not withheld, there was conviction under state law which satisfied requirements of Armed Career Criminal Act. *United States v. Drayton, 113 F.3d 1191, 10 Fla. L. Weekly Fed. C 973, 1997 U.S. App. LEXIS 12448 (11th Cir. 1997)*.

State courts place some limitations on use of Alford and nolo contendere pleas as admissions of charged criminal conduct in some, but not all, subsequent proceedings; appeals court rejects argument that this limitation renders judgments that were entered after sentence on such pleas as something less than convictions under Connecticut law or that such judgments of conviction cannot qualify as predicates that were required by *18 USCS § 922(g)(1)*. *Burrell v. United States, 384 F.3d 22, 2004 U.S. App. LEXIS 19259 (2d Cir.)*, cert. denied, *543 U.S. 993, 125 S. Ct. 511, 160 L. Ed. 2d 381, 2004 U.S. LEXIS 7620 (2004)*.

Where defendant was convicted of being felon in possession of firearm in violation of *18 USCS § 922(g)*, defendant's prior plea of nolo contendere under Colorado law satisfied "conviction in any court" as term was used in § 922. *United States v. Williams, 442 F.3d 1259, 2006 U.S. App. LEXIS 8013 (10th Cir. 2006)*.

District court committed harmless error during defendant's trial on charge alleging that he violated *18 USCS § 922* by possessing weapon or ammunition after he was convicted of felony, when it denied defendant's motion to change "crimes" to "crime" in indictment after defendant stipulated to fact that he had prior felony conviction, and when it allowed Government to introduce defendant's conviction for illegally possessing ammunition under Florida law because defendant entered plea of nolo contendere to that charge; for purposes of *Fed. R. Evid. 404*, *Fed. R. Evid. 803* precluded use of defendant's conviction in state court to prove that he illegally possessed ammunition in 2006. *United States v. Green, 842 F.3d 1299, 26 Fla. L. Weekly Fed. C 1039, 101 Fed. R. Evid. Serv. (CBC) 1539, 2016 U.S. App. LEXIS 21431 (11th Cir. 2016)*, sub. op., *873 F.3d 846, 104 Fed. R. Evid. Serv. (CBC) 745, 2017 U.S. App. LEXIS 18829 (11th Cir. 2017)*.

Indictment count charging violation of *18 USCS § 922(g)(1)* must be dismissed, where indictee previously pled "nolo contendere" to felony concealed weapon charge in state court, because state law clearly distinguished nolo plea/probation from conviction, so that indictee could not be considered "convicted felon" subject to § 922(g)(1) prohibition. *United States v. Lester, 785 F. Supp. 976, 6 Fla. L. Weekly Fed. D 27, 1991 U.S. Dist. LEXIS 19750 (S.D. Fla. 1991)*.

District court erred in failing to advise defendant of potential loss of his firearms rights because Wyo. Stat. Ann. § 7-11-507 does not create advisement exception when defendant may already be disqualified from owning or possessing firearms due to prior felony convictions. *Balderson v. State, 2013 WY 107, 309 P.3d 809, 2013 Wyo. LEXIS 112 (Wyo. 2013)*.

161. Suspension or deferral of sentence

Defendant's suspended state sentence prevented government from indicting him as felon in possession under *18 USCS § 922(g)*, where he was no longer "under indictment" as required by § 922(n) after he pled guilty to state charge for unlawful use of weapon. *United States v. Hill, 210 F.3d 881, 2000 U.S. App. LEXIS 6430 (8th Cir. 2000)*.

Unpublished decision: Deferred sentences under *Okla. Stat. Ann. tit. 63, § 2-410*, were convictions if later conviction occurred during probation, and it always applied to specified offenders, whether discretion was used to defer sentence or not, thus, defendant's deferred sentence counted as predicate offense for his conviction under *18 USCS § 922(g)(1)*. *United States v. Hutchinson, 438 Fed. Appx. 681, 2011 U.S. App. LEXIS 18430 (10th Cir. 2011)*.

Unpublished decision: In case in which defense counsel in his Anders reply brief asked appellate court to review defendant's conviction for violating *18 USCS § 922(g)(1)* for any potential error under Simmons decision, three of his prior North Carolina convictions—two 1992 convictions for breaking or entering and one 1994 conviction for assault with deadly weapon on government official—predated enactment of North Carolina's Structured Sentencing Act, which was at issue in Simmons decision; either of 1992 breaking or entering convictions, for which he was sentenced to nine years of imprisonment, suspended, qualified as proper predicate for § 922(g) charge, and Simmons decision did not alter that conclusion. *United States v. Harris, 458 Fed. Appx. 297, 2011 U.S. App. LEXIS 24941 (4th Cir. 2011)*.

Man charged with violation of *18 USCS § 922(g)(1)* is not entitled to dismissal, even though he argues he had received deferred sentence for underlying offense for which he was still on probation at time of alleged possession of firearm, where record shows he pleaded guilty to 2 Vermont felonies, each of which carried maximum term of imprisonment of more than one year, because, having pleaded guilty, he was "convicted" within meaning of statute. *United States v. Labor, 31 F. Supp. 2d 366, 1998 U.S. Dist. LEXIS 20080 (D. Vt. 1998)*.

Unpublished decision: Where defendant entered conditional guilty plea to being felon in possession of firearm, district court did not err in denying his motion to dismiss for lack of jurisdiction; amended *Okla. Stat. tit. 63, § 2-410* applied to defendant's deferred sentence, which meant that during his five-year deferral period he had conviction for purpose of satisfying predicate felony requirement. *United States v. Law, 572 Fed. Appx. 644, 2014 U.S. App. LEXIS 13909 (10th Cir. 2014)*.

Guilty plea for felony for which adjudication is withheld does not qualify as "conviction" for purposes of *Fla. Stat. § 790.23*, thus, defendant's prior guilty plea in Florida state court to possession of cocaine, for which adjudication was withheld, did not constitute prior felony conviction for purposes of this statute. *Clarke v. United States, 184 So. 3d 1107, 2016 Fla. LEXIS 277 (Fla. 2016)*.

162. Probation

Placing defendant on probation under Michigan law constituted conviction for purposes of l8 USCS § 922(g) for crime ordinarily punishable by more than l year, since under state law "conviction is the finding of guilt, and there is nothing illogical about providing that conviction may be expunged or vacated upon successful completion of probation but not before or unless that occurs. *United States v. Hawkins, 969 F.2d 169, 1992 U.S. App. LEXIS 14024 (6th Cir. 1992)*, cert. denied, *506 U.S. 1069, 113 S. Ct. 1021, 122 L. Ed. 2d 168, 1993 U.S. LEXIS 357 (1993)*.

Defendant who pled guilty to state law offense and received sentence of probation was "convicted," despite absence of formal entry of guilty verdict, and, hence, he was "convicted felon" when he was found in possession of firearm twenty days before his probation was complete, at which time his conviction was expunged and his right to possess

firearms was restored under state law. *United States v. Lloyd, 184 F.3d 695, 1999 U.S. App. LEXIS 16541 (7th Cir. 1999)*.

163. Pardon

Although defendant had received pardon from governor, he can still be convicted of violation of *18 USCS § 922(g)* for transporting firearms in interstate commerce since his pardon on earlier offense had been received after his arrest. *United States v. Dameron, 460 F.2d 294, 1972 U.S. App. LEXIS 9579 (5th Cir.)*, cert. denied, *409 U.S. 882, 93 S. Ct. 168, 34 L. Ed. 2d 137, 1972 U.S. LEXIS 1710 (1972)*.

Full and complete pardon granted prior to enactment of *18 USCS § 922(g)* and (h) exempts accused from criminal liability. *United States v. Matassini, 565 F.2d 1297, 1978 U.S. App. LEXIS 13107 (5th Cir. 1978)*.

Petitioner for relief from federal firearms disability is not entitled to relief on basis of judicial pardon and expungement of record under state statute since such pardon and expungement do not completely erase prior convictions. *Thompson v. Department of Treasury, etc., 557 F. Supp. 158, 1982 U.S. Dist. LEXIS 17049 (D. Utah 1982)*.

164. Vacation, setting aside or reversal of conviction

Felony conviction which has been set aside under *18 USCS § 5021* cannot constitute prior felony conviction which is essential element of firearms crimes in which he was convicted under 18 USCS Appx § 1202 and *18 USCS § 922(h)(1)*. *United States v. Purgason, 565 F.2d 1279, 1977 U.S. App. LEXIS 6036 (4th Cir. 1977)*.

Once one is convicted of felony, he is within proscription against possession of firearm found in *18 USCS § 922* until that prior conviction is actually overturned or expunged. *Barker v. United States, 579 F.2d 1219, 1978 U.S. App. LEXIS 10217 (10th Cir. 1978)*.

Conviction for violating *18 USCS § 922(h)(1)* is not subject to attack on ground that predicate conviction is subsequently reversed, vacated or modified; rather, it is up to defendant to clear his status before buying weapon. *Bonfiglio v. Hodden, 770 F.2d 301, 1985 U.S. App. LEXIS 22301 (2d Cir. 1985)*.

Defendant's belated success in vacating his 1992 stalking conviction bears no relevance to his conviction under *18 USCS § 922(g)(1)*, where, at time he was caught possessing firearm, his 1992 conviction was still in effect, as was § 922's prohibition on his possessing firearm. *United States v. Snyder, 235 F.3d 42, 2000 U.S. App. LEXIS 33446 (1st Cir. 2000)*, cert. denied, *532 U.S. 1057, 121 S. Ct. 2205, 149 L. Ed. 2d 1034, 2001 U.S. LEXIS 4097 (2001)*.

Sufficient factual basis existed for defendant's guilty plea under *18 USCS § 922(g)(1)* to being felon in possession of firearm; defendant's prior felony conviction had been reversed on appeal but subsequently was reinstated, and government was only required to prove defendant's status as felon and knowing possession of firearm, not that defendant knew of his status as felon. *United States v. Thomas, 615 F.3d 895, 2010 U.S. App. LEXIS 16113 (8th Cir. 2010)*.

Conviction for being felon in possession of firearm was subject to vacation because defendant was actually innocent of offense when he was not, at time of offense, convicted felon; further, defendant did not waive his challenge because he made cognizable claim of actual innocence. *United States v. Adams, 814 F.3d 178, 2016 U.S. App. LEXIS 2872 (4th Cir. 2016)*.

165. Expungement of conviction

Once one is convicted of felony, he is within proscription against possession of firearm found in *18 USCS § 922* until that prior conviction is actually overturned or expunged. *Barker v. United States, 579 F.2d 1219, 1978 U.S. App. LEXIS 10217 (10th Cir. 1978)*.

Fact that defendant's state court conviction was expunged after charges under *18 USCS § 922* were filed did not change his liability under § 922. *United States v. Brzoticky, 588 F.2d 773, 1978 U.S. App. LEXIS 7457 (10th Cir. 1978)*.

Expunction of conviction under state law does not change status of person as convicted felon for purposes of *18 USCS § 922(h)*. *United States v. Bergeman, 592 F.2d 533, 1979 U.S. App. LEXIS 17211 (9th Cir. 1979)*.

Status as convicted felon, for purposes of *18 USCS § 922*, is established at time of buying firearm, and, since expungement of underlying conviction after purchase of firearm is irrelevant, it was not error for District Court to exclude as immaterial evidence that, after his indictment on federal charge under § 922 and before trial, state court vacated his underlying felony conviction. *United States v. Cabrera, 786 F.2d 1097, 1986 U.S. App. LEXIS 24082 (11th Cir. 1986)*.

Defendant was "convicted felon" under *18 USCS § 922*, despite fact that his state law conviction was expunged and that Congress amended definition of "conviction" in *18 USCS § 921* to exclude expunged convictions while defendant's case was pending, since legislative history indicates that Congress did not intend amendment to apply to pending cases, and since USCS § 109 prevents abatement of defendant's prosecution prior to sentencing. *United States v. Holley, 818 F.2d 351, 1987 U.S. App. LEXIS 7296 (5th Cir. 1987)*.

Convicted felon found in possession of shotgun satisfied all elements of *18 USCS § 922(g)*, even though his conviction was expunged five days prior to trial, since expungement must predate possession of firearm in order for possession to be lawful. *United States v. Lee, 72 F.3d 55, 1995 U.S. App. LEXIS 35274 (7th Cir. 1995)*, reh'g denied, *1996 U.S. App. LEXIS 1061 (7th Cir. Jan. 24, 1996)*.

Petitioner for relief from federal firearms disability is not entitled to relief on basis of judicial pardon and expungement of record under state statute since such pardon and expungement do not completely erase prior convictions. *Thompson v. Department of Treasury, etc., 557 F. Supp. 158, 1982 U.S. Dist. LEXIS 17049 (D. Utah 1982)*.

166. Miscellaneous

State courts place some limitations on use of Alford and nolo contendere pleas as admissions of charged criminal conduct in some, but not all, subsequent proceedings; appeals court rejects argument that this limitation renders judgments that were entered after sentence on such pleas as something less than convictions under Connecticut law or that such judgments of conviction cannot qualify as predicates that were required by *18 USCS § 922(g)(1)*. *Burrell v. United States, 384 F.3d 22, 2004 U.S. App. LEXIS 19259 (2d Cir.)*, cert. denied, *543 U.S. 993, 125 S. Ct. 511, 160 L. Ed. 2d 381, 2004 U.S. LEXIS 7620 (2004)*.

State court official confirmed at trial, that court never took any action to reduce defendant's conviction to misdemeanor; thus, trial court did not err in determining that defendant had prior felony conviction within meaning of *18 USCS § 922(g)*; therefore, his conviction for being felon in possession of firearm was upheld. *United States v. Robinson, 390 F.3d 853, 2004 FED App. 0415P, 65 Fed. R. Evid. Serv. (CBC) 1188, 2004 U.S. App. LEXIS 24893 (6th Cir. 2004)*, reh'g, en banc, denied, *2005 U.S. App. LEXIS 3835 (6th Cir. Feb. 25, 2005)*.

Defendant's prior conviction for theft of firearm from licensed gun dealer under *18 USCS § 922(u)*, was violent felony under residual clause prong of Armed Career Criminal Act (ACCA), *18 USCS § 924(e)*, as it was sufficiently similar to burglary, involved victims who were often armed and loot likely to be used for violent purposes. *United States v. Schmidt, 623 F.3d 257, 2010 U.S. App. LEXIS 21438 (5th Cir. 2010)*, cert. denied, *564 U.S. 1047, 131 S. Ct. 2858, 180 L. Ed. 2d 904, 2011 U.S. LEXIS 4798 (2011)*.

Defendant's indictment on *18 USCS § 922(g)* was sufficient without alleging that defendant's civil rights had never been restored, and government had no obligation to present any evidence on topic; if defendant wanted to claim that State of Illinois had restored his right to carry firearms, he was obligated to present evidence indicating that fact either prior to or during his trial; district court correctly denied defendant's post-judgment motion to dismiss indictment and vacate his conviction. *United States v. Foster, 652 F.3d 776, 85 Fed. R. Evid. Serv. (CBC) 1147, 2011 U.S. App.*

LEXIS 14897 (7th Cir. 2011), cert. denied, *566 U.S. 1029, 132 S. Ct. 2702, 183 L. Ed. 2d 60, 2012 U.S. LEXIS 4110 (2012)*, remanded, *902 F.3d 654, 2018 U.S. App. LEXIS 24856 (7th Cir. 2018)*.

Evidence that defendant purchased gun that he left in girlfriend's house was sufficient to support *18 USCS § 922(g)* conviction; that defendant did not make effort to actually use gun, and that he was incarcerated during relevant time period, did not render relationship any less logical, so this count was permissibly joined with other charges. *United States v. Hackley, 662 F.3d 671, 2011 U.S. App. LEXIS 24123 (4th Cir. 2011)*, cert. denied, *566 U.S. 1030, 132 S. Ct. 2703, 183 L. Ed. 2d 61, 2012 U.S. LEXIS 3955 (2012)*, cert. denied, *566 U.S. 949, 132 S. Ct. 1936, 182 L. Ed. 2d 793, 2012 U.S. LEXIS 2746 (2012)*.

In criminal trial that charged defendant with possession of firearm by felon under *18 USCS § 922(g)(1)*, government was not required to prove that defendant actually knew defendant was felon, even though *18 USCS § 924(a)(2)* contained word "knowingly," because, in Tenth Circuit, only knowledge required for § 922(g) conviction was knowledge that instrument possessed was firearm. *United States v. Games-Perez, 667 F.3d 1136, 2012 U.S. App. LEXIS 1242 (10th Cir. 2012)*, reh'g, en banc, denied, *695 F.3d 1104, 2012 U.S. App. LEXIS 19874 (10th Cir. 2012)*, cert. denied, *571 U.S. 830, 134 S. Ct. 54, 187 L. Ed. 2d 48, 2013 U.S. LEXIS 5744 (2013)*.

Petitioner's conviction for possession of firearm by convicted felon was vacated because United States v. Simmons decision, which narrowed scope of *18 USCS § 922(g)(1)* by establishing that it did not reach defendants whose prior convictions could not have resulted in sentence of more than one year, announced retroactive, substantive rule. *Miller v. United States, 735 F.3d 141, 2013 U.S. App. LEXIS 17494 (4th Cir. 2013)*.

Assuming propriety of felon firearm bans as court had to do under U.S. Supreme Court precedent and court's own precedent—there was little question that defendant's predicate conviction for misprision of felony could constitutionally serve as basis for felon ban. *United States v. Phillips, 827 F.3d 1171, 2016 U.S. App. LEXIS 12438 (9th Cir. 2016)*, cert. denied, *138 S. Ct. 56, 199 L. Ed. 2d 43, 2017 U.S. LEXIS 5717 (2017)*.

Unpublished decision: Any subsequently-realized invalidity of predicate felony conviction is immaterial to *18 USCS § 922(g)(1)* prosecution, as long as prior conviction was in effect on date that defendant possessed firearm; because there was no dispute that defendant's 2005 felon-in-possession conviction was both punishable by more than year and was in effect on August 18, 2008, when he possessed sawed-off shotgun that was subject of his *18 USCS § 922(g)(1)* conviction, defendant's18 USCS § 922(g)(1) conviction was proper. *United States v. Neal, 458 Fed. Appx. 246, 2011 U.S. App. LEXIS 25034 (4th Cir. 2011)*, cert. denied, *566 U.S. 954, 132 S. Ct. 1948, 182 L. Ed. 2d 802, 2012 U.S. LEXIS 2723 (2012)*.

Unpublished decision: Because defendant was sentenced within presumptive range, maximum sentence he could have received was eight months' imprisonment for his prior North Carolina convictions which included breaking and entering motor vehicle, possession with intent to sell and deliver marijuana, and manufacturing marijuana, in violation of *N.C. Gen. Stat. §§ 14-56*, 90-95; because prior convictions failed to qualify as prior felony for purposes of being felon in possession of firearm, defendant's conviction and sentence for violating *18 USCS § 922* was vacated. *United States v. McCaskey, 521 Fed. Appx. 98, 2013 U.S. App. LEXIS 6929 (4th Cir. 2013)*.

Because there was insufficient evidence that defendant had been issued protective order "after hearing" in which he had "opportunity to participate," as required by § 922(g)(8)(A), no rational trier of fact could find that when defendant submitted application to purchase firearm he violated § 922(a)(6) by knowingly lying about whether he was subject to such order. *United States v. Bramer, 956 F.3d 91, 2020 U.S. App. LEXIS 12022 (2d Cir. 2020)*.

Although there was plain error in indictment and jury instructions that omitted knowledge as element of possession of firearm by convicted felon, defendant's substantial rights were not affected because defendant had stipulated to felon status and had served more than one year in prison on past convictions, which established defendant's knowledge of felon status; moreover, there was no constructive amendment because indictment and jury instructions contained same error. *United States v. Veal, 839 Fed. Appx. 341, 2020 U.S. App. LEXIS 39273 (11th Cir. 2020)*.

Where defendant allegedly attempted to purchase firearm, after he was found guilty by jury of felony and before his motion for acquittal was granted, defendant could be charged with being felon in possession of firearm in violation of *18 USCS § 922(g)(1)*; status of defendant's prior record on date of felon in possession offense was controlling, and rule of lenity was inapplicable. *United States v. Bennett, 285 F. Supp. 2d 978, 2003 U.S. Dist. LEXIS 17709 (E.D. Mich. 2003)*, remanded, *112 Fed. Appx. 375, 2004 U.S. App. LEXIS 20640 (6th Cir. 2004)*.

Unpublished decision: Where defendant entered conditional guilty plea to being felon in possession of firearm, his knowledge of his status as convicted felon was not required for his conviction; Tenth Circuit had expressly held that only knowledge required for *18 USCS § 922(g)* conviction was knowledge that instrument possessed was firearm. *United States v. Law, 572 Fed. Appx. 644, 2014 U.S. App. LEXIS 13909 (10th Cir. 2014)*.

Unpublished decision: Where defendant appealed his conviction for being felon in possession of firearm, he unsuccessfully argued that absence of statute explicitly prohibiting convicted felon from selling firearm was evidence that Congress did not intend such conduct to be illegal. *United States v. Jordan, 622 Fed. Appx. 345, 2015 U.S. App. LEXIS 13894 (5th Cir. 2015)*.

(2). Restoration of Civil Rights

167. Governing law

Federal law, not state law, is to be controlling as to whether person, charged with unlawful firearm possession under *18 USCS § 922(g)*, "has had civil rights restored" following prior federal conviction. *Beecham v. United States, 511 U.S. 368, 114 S. Ct. 1669, 128 L. Ed. 2d 383, 8 Fla. L. Weekly Fed. S 94, 94 Cal. Daily Op. Service 3442, 94 D.A.R. 6511, 1994 U.S. LEXIS 3768 (1994)*.

Restoration of convicted federal felon's right to possess firearm was to be determined under federal, not state, law, despite fact that restoration of his civil right to vote had been determined under North Carolina law, since state restoration of civil rights cannot undo federal disability flowing from federal conviction. *United States v. Rhynes, 206 F.3d 349, 1999 U.S. App. LEXIS 38461 (4th Cir. 1999)*, cert. denied, *White v. United States, 530 U.S. 1222, 120 S. Ct. 2234, 147 L. Ed. 2d 263, 2000 U.S. LEXIS 3935 (2000)*, cert. denied, *McCoy v. United States, 530 U.S. 1222, 120 S. Ct. 2234, 147 L. Ed. 2d 263, 2000 U.S. LEXIS 3936 (2000)*, cert. denied, *Gormley v. United States, 530 U.S. 1222, 120 S. Ct. 2235, 147 L. Ed. 2d 263, 2000 U.S. LEXIS 3937 (2000)*.

168. Looking to whole of state law

Defendant was convicted felon when he possessed firearms in violation of *18 USCS § 922*, even though he had certificate purporting to restore his civil rights, where state statute prohibited felons from possessing certain firearms within 5 years of release, since one must look beyond certificate to whole of state law. *United States v. Burns, 934 F.2d 1157, 1991 U.S. App. LEXIS 11081 (10th Cir. 1991)*, cert. denied, *502 U.S. 1124, 112 S. Ct. 1246, 117 L. Ed. 2d 478, 1992 U.S. LEXIS 1216 (1992)*.

Defendant's firearms possession was not federal crime as defined by *18 USCS § 922(g)*, where his rights had been restored under North Carolina law, since that state's law did not prohibit possession of firearms as consequence of his conviction for insurance fraud, and since restoration of rights met requirements of *18 USCS § 921*, by looking to whole of state law. *United States v. McBryde, 938 F.2d 533, 1991 U.S. App. LEXIS 14993 (4th Cir. 1991)*.

North Carolina never restored defendant's right to possess sawed-off shotgun, even within his own home, since it was prohibited "weapon of mass death and destruction," considering state law as whole. *United States v. Walker, 39 F.3d 489, 1994 U.S. App. LEXIS 30369 (4th Cir. 1994)*, app. after remand, *83 F.3d 94, 1996 U.S. App. LEXIS 10853 (4th Cir. 1996)*.

169. Rights never lost

Where at time of defendant's two 1975 Tennessee convictions for attempted burglary Tennessee did not have law limiting convicted felon's right to possess firearms, he was properly sentenced as armed career criminal pursuant to *18 USCS § 924(c)*, since what was never taken away could not be restored. *United States v. Moore, 108 F.3d 878, 1997 U.S. App. LEXIS 4630 (8th Cir. 1997)*.

Exception to *18 USCS § 922(g)(1)* for restoration of civil rights did not apply to misdemeanant who never lost his civil rights; this result did not violate his rights under equal protection, where he could have applied for pardon from governor to avoid consequences of prior misdemeanor conviction so as to fit within exception to *18 USCS § 921(a)(33)*. *United States v. Smith, 171 F.3d 617, 1999 U.S. App. LEXIS 5082 (8th Cir. 1999)*.

170. Complete restoration of rights

In order to qualify for exclusion from prohibition on possession of firearms by convicted felon in violation of *18 USCS § 922*, defendant's restoration of civil rights must be substantial, although not total. *Presley v. United States, 851 F.2d 1052, 1988 U.S. App. LEXIS 9397 (8th Cir. 1988)*.

Defendant was "convicted felon" whose civil rights had not been completely restored under Michigan law at time of his arrest for firearm possession, since he could not sit on jury if his status was questioned under court rules, which constitute part of state law; Michigan's partial restriction on defendant's ability to own firearms, prohibiting him from owning pistols, prevents him from claiming that his rights have been restored, since federal government maintains its original presumption of firearms disability. *United States v. Driscoll, 970 F.2d 1472, 1992 U.S. App. LEXIS 16139 (6th Cir. 1992)*, reh'g, en banc, denied, *1992 U.S. App. LEXIS 20941 (6th Cir. Sept. 2, 1992)*, cert. denied, *506 U.S. 1083, 113 S. Ct. 1056, 122 L. Ed. 2d 362, 1993 U.S. LEXIS 949 (1993)*.

Where state's constitution declared essentially that all full rights of citizenship would be restored upon convicted felon's release from custody, there was no need to look further into state law to determine that restoration satisfied *18 USCS § 921(a)(20)*; fact that legislature had barred felons from serving on juries is not inconsistent with this conclusion. *United States v. Dupaquier, 74 F.3d 615, 1996 U.S. App. LEXIS 1302 (5th Cir. 1996)*.

Where, at time of defendant's discharge, state law did not restrict his right to possess firearms to any extent whatsoever, he could not be convicted for violation of *18 USCS § 922(g)*. *United States v. Meza-Corrales, 183 F.3d 1116, 99 Cal. Daily Op. Service 5692, 99 D.A.R. 7285, 1999 U.S. App. LEXIS 16010 (9th Cir. 1999)*.

Defendant's civil rights were unreservedly restored to him by operation of Michigan law, despite fact that Michigan prohibited felons convicted of "specified felonies" from possessing firearms, since his crime of attempted larceny of vehicle was not "specified felony." *United States v. Tait, 202 F.3d 1320, 13 Fla. L. Weekly Fed. C 396, 2000 U.S. App. LEXIS 1445 (11th Cir. 2000)*.

Where defendant claimed that prosecutor misstated police officer's testimony in closing argument, defendant's prosecutorial misconduct claim failed because prosecutor did not misstate evidence since, inter alia, police officer did identify defendant at trial as man officer had pursued from movie theater. *United States v. Manor, 633 F.3d 11, 2011 U.S. App. LEXIS 1460 (1st Cir. 2011)*.

Prisoner's sentence will not be vacated under *28 USCS § 2255*, where prisoner contends that his prior felony conviction could not serve as predicate offense under *18 USCS § 922(g)(1)* since his civil rights were restored by state when he was released 7 years before present conviction, because use of prior felony conviction was proper since state law did not completely restore civil rights since on date of prisoner's arrest state law explicitly limited convicted felon's rights as to firearms for 8 years after incarceration. *Lyons v. United States, 794 F. Supp. 238, 1992 U.S. Dist. LEXIS 10487 (E.D. Mich. 1992)*.

Application of state statute prohibiting individual from possessing firearm within 3 years of being released from prison did not violate Ex Post Facto Clause of U.S. Constitution, even though statute had not been enacted when defendant was originally convicted, and, thus, defendant's civil rights were not fully restored when defendant possessed firearm

less than 3 years after release, and he could be convicted under *18 USCS § 922(g)*. *Hervey v. United States, 105 F. Supp. 2d 731, 2000 U.S. Dist. LEXIS 10052 (E.D. Mich. 2000)*.

171. Substantial restoration of rights

In order to qualify for exclusion from prohibition on possession of firearms by convicted felon in violation of *18 USCS § 922*, defendant's restoration of civil rights must be substantial, although not total. *Presley v. United States, 851 F.2d 1052, 1988 U.S. App. LEXIS 9397 (8th Cir. 1988)*.

Convicted felon's civil rights were not substantially restored under Missouri's "combination of limitations," since right to serve on jury was withheld, although rights to hold office (except those of sheriff or highway patrolman) and to vote were restored. *United States v. Meeks, 987 F.2d 575, 93 Cal. Daily Op. Service 1229, 1993 U.S. App. LEXIS 2996 (9th Cir.)*, cert. denied, *510 U.S. 919, 114 S. Ct. 314, 126 L. Ed. 2d 261, 1993 U.S. LEXIS 6415 (1993)*.

Michigan law as whole did not substantially restore convicted felon's civil rights, even though rights to vote and hold public office were apparently restored and state statute disqualified from jury service those "under sentence" for felony at time of jury selection, since Michigan Court Rules would operate to subject former felon to for-cause challenge and automatic dismissal as prospective juror. *United States v. Metzger, 3 F.3d 756, 1993 U.S. App. LEXIS 21880 (4th Cir. 1993)*, cert. denied, *511 U.S. 1006, 114 S. Ct. 1374, 128 L. Ed. 2d 50, 1994 U.S. LEXIS 2530 (1994)*.

Convicted felon's civil rights were not substantially restored, where his right to hold public offices and positions was significantly curtailed, and his right to sit on jury was significantly more limited than right of person with no felony record, although he retained right to vote and his rights to sit on jury and hold office had been restored. *United States v. Oman, 91 F.3d 1320, 96 Cal. Daily Op. Service 5791, 96 D.A.R. 9449, 1996 U.S. App. LEXIS 19191 (9th Cir. 1996)*.

As state legislature chose not to restore substantially felon's right to bear arms under Mo. Const. art. I, § 23, defendant's state felony convictions were proper predicates for *18 USCS § 922(g)(1)*. *United States v. Brown, 408 F.3d 1016, 2005 U.S. App. LEXIS 8059 (8th Cir. 2005)*.

Indictment against felon for possessing firearm in violation of *18 USCS § 922(g)(1)* is upheld, where felon argued that his conviction falls within exception clause of *18 USCS § 921(a)(20)* as his civil rights have been substantially restored under Michigan law, because while Michigan restores convicted felon's right to vote and right to hold public office, he is still excluded from right to sit on jury. *United States v. Butler, 788 F. Supp. 944, 1991 U.S. Dist. LEXIS 21956 (E.D. Mich. 1991)*.

Unpublished decision: Because Missouri law prohibits felon from sitting on jury, *Mo. Rev. Stat. § 561.026(3)*, serving as sheriff, *Mo. Rev. Stat. § 57.010(1)*, and working as highway patrol officer, *Mo. Rev. Stat. § 43.060(1)*, state has not substantially restored civil rights under *18 USCS § 921(a)(20)*, despite permitting felons to vote and hold public office after termination of their sentences. *United States v. Carey, 126 Fed. Appx. 822, 2005 U.S. App. LEXIS 4287 (9th Cir. 2005)*.

172. Automatic restoration of rights

Indictment under *18 USCS § 922(g)* should have been dismissed, where defendant's civil rights were restored automatically by operation of Colorado statute ten years after his release, pursuant to *18 USCS § 921(a)(20)*, and no Colorado law prohibited him from possessing firearm at time of his arrest. *United States v. Hall, 20 F.3d 1066, 1994 U.S. App. LEXIS 5339 (10th Cir. 1994)*.

Where defendant's rights to serve on jury and hold public office were restored by certificate of discharge and his right to vote was automatically restored by statute, and where neither certificate nor statute contained any language expressly limiting his right to possess firearm, he was not subject to prosecution under *18 USCS § 922(g)*, since *18 USCS § 921(a)(20)* did not direct courts to look to whole of state law. *United States v. Bost, 87 F.3d 1333, 318 U.S. App. D.C. 324, 1996 U.S. App. LEXIS 15458 (D.C. Cir. 1996)*.

Unpublished decision: Defendant's conviction under *18 USCS § 922(g)(1)* was reversed because district court erred in its interpretation and application of *Ohio Rev. Code Ann. § 2967.16*; defendant's civil rights were restored as matter of law upon completion of his sentence and/or upon final release and could not be used as predicate felony. *United States v. Zellars, 334 Fed. Appx. 742, 2009 FED App. 0426N, 2009 U.S. App. LEXIS 13117 (6th Cir. 2009)*.

173. Time of restoration

Enactment of *18 USCS § 921(a)(20)* between time of defendants' indictment and his trial, in which Congress redefined term 'convicted felon,' applied to defendant so that state's restoration of all civil and political rights after defendant's burglary offense precluded defendant from being considered a convicted felon in possession of firearm. *United States v. Kolter, 849 F.2d 541, 1988 U.S. App. LEXIS 9559 (11th Cir. 1988)*.

Where defendant committed acts underlying his federal firearms offenses after effective date of *18 USCS § 921(a)(20)* and Colorado law restored his right to possess firearms upon parole in 1989, he was not "previously convicted felon" as defined by § 921 when he entered his plea to violating *18 USCS § 922(g)(1)*. *United States v. Kelly, 62 F.3d 1215, 95 Cal. Daily Op. Service 6318, 1995 U.S. App. LEXIS 21475 (9th Cir. 1995)*.

Defendant who pled guilty to state felony of aggravated harassment was "convicted felon" within meaning of *18 USCS § 922(g)*, even though state court stayed imposition of his sentence of sixty days and later restored his civil rights, where there was no evidence that his right to possess firearms was restored under state law at time he purchased shotgun. *United States v. Kind, 194 F.3d 900, 1999 U.S. App. LEXIS 25639 (8th Cir. 1999)*, cert. denied, *528 U.S. 1180, 120 S. Ct. 1217, 145 L. Ed. 2d 1117, 2000 U.S. LEXIS 1407 (2000)*.

Where defendant's 1968 burglary conviction was firearms disabling offense on day he possessed firearm, district court correctly concluded that his post-indictment restoration of civil rights was immaterial to his charge of being felon in possession of firearm. *United States v. Morgan, 216 F.3d 557, 2000 FED App. 0204P, 2000 U.S. App. LEXIS 13998 (6th Cir. 2000)*, cert. denied, *531 U.S. 1154, 121 S. Ct. 1102, 148 L. Ed. 2d 973, 2001 U.S. LEXIS 1259 (2001)*.

Defendant's prior convictions were excluded by *18 USCS § 921(a)(20)* from supporting defendant's convictions under *18 USCS §§ 922(g)(1)* and *924(a)(2)*, where prior Illinois law had restored defendant's civil rights after he served his sentence but imposed five-year waiting period upon his right to possess firearms, since restoration need not be at moment of release or service of sentence, and, once civil rights are restored by convicting state, later changes in state law are not relevant. *United States v. Osborne, 262 F.3d 486, 2001 U.S. App. LEXIS 18787 (5th Cir. 2001)*.

Unpublished decision: Defendant was discharged from his probation on April 25, 1995, and, after five year wait required by Mich. Comp. Laws Serv. § 750.224f(2), he was eligible to apply to regain his firearms rights in Michigan on April 25, 2000; however, according to *18 USCS § 921(a)(20)*, defendant's felony was still considered conviction for purposes of *18 USCS § 922(g)* until Michigan restored his firearms right; therefore, April 25, 2000, would be first day that defendant could have lawfully possessed gun under federal law, and thus because events surrounding his federal gun charge took place on July 31, 1998, defendant was properly considered to be felon and his conviction for being felon in possession of firearm in violation of § 922(g) was affirmed. *United States v. Allen, 155 Fed. Appx. 229, 2005 FED App. 0930N, 2005 U.S. App. LEXIS 25611 (6th Cir. 2005)*.

174. Express limitation, reservation or exclusion of rights

In determining that defendant was not "convicted felon" at time of his arrest for possession of firearms under *18 USCS § 922*, it was not necessary that Idaho have restored rights by individual affirmative act; but rather, it was sufficient that state code contained provisions granting rights to discharged felons, and did not expressly reserve rights involving weapons. *United States v. Gomez, 911 F.2d 219, 1990 U.S. App. LEXIS 13419 (9th Cir. 1990)*.

State certificate, which restored to convicted felon all his civil and political rights, and which did not expressly limit his right to possess firearms, removed his federal and state firearms disability under *18 USCS § 922*, even though state statutory provision would seem to prohibit him from possessing weapons. *United States v. Swanson, 947 F.2d 914, 1991 U.S. App. LEXIS 27417 (11th Cir. 1991)*.

Defendant was not convicted felon in possession of firearm in violation of *18 USCS § 922(g)*, since his civil rights were restored by state law upon discharge and his certificate of discharge did not contain express limitation on his right to possess firearm, even though state statute in effect at time he was arrested prohibited his carrying firearm, looking at whole of state law at time at which his civil rights were restored. *United States v. Haynes, 961 F.2d 50, 1992 U.S. App. LEXIS 6212 (4th Cir. 1992)*.

Defendant's 1985 conviction did not bar him from possessing firearms under *18 USCS § 922(g)*, since his date of discharge occurred after effective date of 1986 amendment to *18 USCS § 921(a)(20)*, but before effective date of Minnesota statute barring convicted felons from possessing firearms for 10 years after restoration of civil rights following conviction for crime of violence; nor can second Minnesota conviction be used for sentence enhancement, since order of discharge did not expressly exclude right to possess firearms from restoration of civil rights, and omission cannot be overlooked in light of plenary nature of Minnesota restoration statute. *United States v. Wind, 986 F.2d 1248, 1993 U.S. App. LEXIS 3553 (8th Cir. 1993)*.

Under state law in effect at time defendant's civil rights were restored rather than under amended statute in effect at time of his arrest, defendant's 1976 conviction could not serve as predicate offense under *18 USCS § 922(g)(1)*, since state law did not expressly limit his possession of firearms. *United States v. Norman, 129 F.3d 1393, 1997 Colo. J. C.A.R. 3213, 1997 U.S. App. LEXIS 33698 (10th Cir. 1997)*, app. after remand, *202 F.3d 283, 2000 U.S. App. LEXIS 4218 (10th Cir. 2000)*.

Defendant's right to possess firearms had not been restored, either by virtue of 1992 state law enactment imposing firearms restriction for five years after release before defendant could even apply to county licensing board for restoration of firearms rights, or, if there was Ex Post Facto Clause problem in applying 1992 enactment to 1977 and 1988 felony convictions, by virtue of prior state law which imposed eight-year firearms restriction upon release. *United States v. Campbell, 256 F.3d 381, 2001 FED App. 0208P, 2001 U.S. App. LEXIS 9776 (6th Cir.)*, cert. denied, *534 U.S. 1032, 122 S. Ct. 572, 151 L. Ed. 2d 444, 2001 U.S. LEXIS 10537 (2001)*.

Defendant's conviction and sentence for violating *18 USCS §§ 922(g)(1)* and *924(a)(2)* were vacated and remanded to district court with instructions to dismiss indictment since certificate restoring his civil rights did not expressly prohibit his possessing firearms; indictment failed to allege prior conviction as defined in *18 USCS § 921(a)(20)*. *United States v. Chenowith, 459 F.3d 635, 2006 U.S. App. LEXIS 20250 (5th Cir. 2006)*.

Judgment was properly entered in favor of Attorney General in action for declaratory relief brought by former felon whose civil rights were automatically restored under Montana law, seeking approval of proposed firearm purchase, because Montana's prohibition on former felon's obtaining permit to carry concealed weapon was sufficient restriction of his firearm rights to trigger "unless clause" of Firearms Owners' Protection Act, and thus, former felon was forbidden to receive or possess firearm, and that ban did not violate his Second Amendment rights. *Van Der Hule v. Holder, 759 F.3d 1043, 2014 U.S. App. LEXIS 13531 (9th Cir. 2014)*.

Unpublished decision: language of *La. Rev. Stat. Ann. § 15:572(D)* certificate of restoration of rights was neither silent as to defendant's firearm rights nor susceptible to objective reading suggesting that those rights were restored; accordingly, defendant's prior conviction could serve as predicate offense for his *18 USCS § 922(g)(1)* conviction pursuant to *18 USCS § 921(a)(20)*. *United States v. Washington, 544 Fed. Appx. 365, 2013 U.S. App. LEXIS 9439 (5th Cir. 2013)*.

Indictment for being felon in possession of firearm in violation of *18 USCS §§ 922(g)(1)* and *924(a)(2)* must be dismissed, even though he knowingly possessed 2 Ruger .45 caliber pistols transported in interstate commerce, because he also had received "Restoration of Rights" from state which did not impose any restriction on his right to possess firearms, excluding his prior crimes from consideration under § 921(a)(20). *United States v. Chapple, 880 F. Supp. 471, 1995 U.S. Dist. LEXIS 3681 (S.D. W. Va.)*, dismissed, *880 F. Supp. 471, 1995 U.S. Dist. LEXIS 3676 (S.D. W. Va. 1995)*.

Because restoration of defendant's civil rights under state law provided that defendant could not possess firearms for at least 3-year period, *18 USCS § 922(g)* prohibited defendant's possession of firearms and ammunition during that time, even though state law itself did not prohibit possession of ammunition, and even though defendant's other civil rights had been restored. *United States v. Wheeler, 117 F. Supp. 2d 638, 2000 U.S. Dist. LEXIS 15701 (E.D. Mich. 2000)*.

18 USCS § 921(a)(20) directed that conviction for which person had civil rights restored should not be considered conviction for purposes of *18 USCS § 922(g)*, prohibiting felon's possession of firearm, unless restoration of civil rights expressly provided that person could not ship, transport, possess, or receive firearms, and use of present tense focused on restoration as it occurred and not on projection of what might be restored if and when defendant completed service of his sentence. *United States v. Petersen, 277 F. Supp. 2d 1089, 2003 U.S. Dist. LEXIS 14005 (D. Colo. 2003)*.

Unpublished decision: Despite defendant's restoration of rights by Tennessee court, he could still be prosecuted under *18 USCS § 922(g)(1)* for unlawful possession of firearm by felon because his restoration of rights in Georgia after felony he committed in Georgia expressly excluded right to receive, possess, or transport in commerce firearm. *United States v. Jones, 253 Fed. Appx. 550, 2007 FED App. 0777N, 2007 U.S. App. LEXIS 26006 (6th Cir. 2007)*.

175. Failure to follow procedure to obtain restoration

Defendant who failed to show that he did not receive papers telling him exactly what he had to do for restoration of his civil rights, as required by Nevada law at time of his honorable discharge, cannot complain that he was "mousetrapped" by state, since he did not follow prescribed procedure. *United States v. Simpson, 27 F.3d 355, 94 Cal. Daily Op. Service 4209, 94 D.A.R. 7812, 1994 U.S. App. LEXIS 13573 (9th Cir. 1994)*, cert. denied, *513 U.S. 1172, 115 S. Ct. 1149, 130 L. Ed. 2d 1107, 1995 U.S. LEXIS 1363 (1995)*.

Although state law did not prohibit defendant from possessing shotgun and his civil rights to vote and hold public office had been restored, he may still be convicted as felon in possession, where he had not petitioned for certificate of rehabilitation from state, which would presumably have restored his right to serve on jury. *United States v. Horodner, 91 F.3d 1317, 96 Cal. Daily Op. Service 5790, 96 D.A.R. 9451, 1996 U.S. App. LEXIS 19192 (9th Cir. 1996)*, cert. denied, *519 U.S. 1133, 117 S. Ct. 997, 136 L. Ed. 2d 877, 1997 U.S. LEXIS 1056 (1997)*.

Convicted felon's civil rights were not restored, where he petitioned state for their restoration without waiting two years after discharge as required, thus obtaining his voter registration card by misrepresentation. *United States v. McElyea, 158 F.3d 1016, 98 Cal. Daily Op. Service 7822, 98 D.A.R. 10873, 1998 U.S. App. LEXIS 26124 (9th Cir. 1998)*.

Federal district court properly denied defendant's motion to dismiss felon-in-possession charge, violation of *18 USCS §§ 924*, *922(g)(1)*, as prior conviction of breaking and entering of unoccupied dwelling supported charge given that it was specified felony under Mich. Comp. Laws Serv. § 750.224f and he had not applied to have his right to possess weapon restored as was required under *Mich. Comp. Laws § 28.424*. *United States v. Philp, 460 F.3d 729, 2006 FED App. 0308P, 2006 U.S. App. LEXIS 21402 (6th Cir. 2006)*.

In case in which defendant appealed his conviction for violating *18 USCS § 922(g)(1)*, he unsuccessfully argued that he was entitled to new trial because government withheld impeachment evidence regarding altercation at police department holiday party before defendant's trial involving police officer who was government witness, even if government suppressed evidence that was favorable to defendant, his Brady claim failed since he could not show materiality; in other words, he could not show that there was reasonable probability result of his trial would have been different if allegedly suppressed evidence had been disclosed, and defendant misunderstood *Fed. R. Evid. 608(b)*; fact that officer may have assaulted bartender was not probative of his character for truthfulness, so any extrinsic evidence tending to show that officer assaulted bartender would not be admissible. *United States v. Tate, 633 F.3d 624, 2011 U.S. App. LEXIS 3875 (8th Cir. 2011)*, reh'g denied, *2011 U.S. App. LEXIS 26311 (8th Cir. Apr. 13, 2011)*.

District court rejected federal inmate's argument that his conviction for violating *18 USCS § 922(g)(1)* had to be vacated because Nevada court which convicted him of possessing two-tenths of gram of cocaine in 1992 placed him on probation and he was eligible at time he violated § 922(g)(1) to have his rights restored under *Nev. Rev. Stat. § 176A.850*; although *18 USCS § 921(a)(20)* provided that convicted felon was not subject to prosecution under *18 USCS § 922(g)(1)* if he had his civil rights restored by state that rendered predicate conviction, *Nev. Rev. Stat. § 176A.850* required inmate to petition Nevada court to have his rights restored, and he had not done so. *United States v. Keyes, 558 F. Supp. 2d 1169, 2007 U.S. Dist. LEXIS 83382 (D. Colo. 2007)*.

176. Completion of sentence

Although under Washington state law, felon-on-probation was not prohibited from possessing shotgun, his conviction was yet conviction for purposes of *18 USCS § 922(g)*, since his full civil rights would not be restored until he had completed requirements of his sentence and been discharged. *United States v. Andaverde, 64 F.3d 1305, 95 Cal. Daily Op. Service 6708, 95 D.A.R. 11493, 1995 U.S. App. LEXIS 23977 (9th Cir. 1995)*, cert. denied, *516 U.S. 1164, 116 S. Ct. 1055, 134 L. Ed. 2d 199, 1996 U.S. LEXIS 1680 (1996)*.

Although convicted felon's civil rights would have been restored by operation of Michigan law upon completion of terms and conditions of his sentence, "unless" clause of *18 USCS § 921(a)(20)* applied, so that his prior conviction for felonious assault was proper predicate for conviction under *18 USCS § 922(g)(1)*, where he failed to make application to "concealed weapons licensing board" for county in which he resided. *United States v. Ormsby, 252 F.3d 844, 2001 FED App. 0183P, 2001 U.S. App. LEXIS 11544 (6th Cir. 2001)*.

State restoration of defendant's civil rights, received solely by virtue of his having satisfied his sentence, did not remove felony conviction for purpose of requirements of *18 USCS § 922(h)* since purpose of statute, keeping firearms out of hands of categories of potentially irresponsible persons including convicted felons, would be emasculated if every person receiving restoration of civil rights after completing state sentence was deemed not to have been convicted within meaning of these federal laws. *United States v. Ziegenhagen, 420 F. Supp. 72, 1976 U.S. Dist. LEXIS 13907 (E.D. Wis. 1976)*.

Defendant could be prosecuted under *18 USCS § 922(g)(1)* for possession of firearm by convicted felon, even though his civil rights had been restored after completion of his sentences for his prior felonies, under Colo. Const. art. VII, § 10, because his right to possess firearms was not restored, as, under law in Colorado in effect at time of restoration of his rights, *Colo. Rev. Stat. § 18-12-108*, possession of firearm by any felon was prohibited. *United States v. Petersen, 277 F. Supp. 2d 1089, 2003 U.S. Dist. LEXIS 14005 (D. Colo. 2003)*.

177. Discharge

In 1983, when state discharged defendant's 1975 and 1977 convictions, its felony firearms act in effect in 1983 barred him from possessing firearms for five years; however, since he was convicted of 1988 offense before expiration of that five-year period, state never fully restored his civil rights after his 1975 and 1977 convictions, and they were, therefore, along with 1988 conviction, valid predicate convictions for purposes of *18 USCS § 924(e)*. *United States v. O'Neal, 180 F.3d 115, 1999 U.S. App. LEXIS 11167 (4th Cir.)*, cert. denied, *528 U.S. 980, 120 S. Ct. 433, 145 L. Ed. 2d 339, 1999 U.S. LEXIS 7317 (1999)*.

Defendant's honorable discharge in 1985, under state statute prior to amendment, operated to set aside his prior felony conviction; therefore, since discharge order did not expressly prohibit defendant from possessing firearms, prior felony could not serve as predicate conviction for purposes of *18 USCS § 922(g)(1)*, even where he pled guilty. *United States v. Laskie, 258 F.3d 1047, 2001 Cal. Daily Op. Service 6698, 2001 D.A.R. 8209, 2001 U.S. App. LEXIS 17409 (9th Cir. 2001)*.

178. Probation

Civil rights of convicted felon were not sufficiently restored to remove his federal firearms disability, where standard one-sentence probation discharge did not satisfy specific restoration procedures established by state. *United States v. Herron, 38 F.3d 115, 1994 U.S. App. LEXIS 21781 (4th Cir. 1994)*.

Although defendant's civil rights were not restored, they were retained under California law, where California court granted him probation and suspended further proceedings so that there was no final or pending judgment against him. *United States v. Qualls, 108 F.3d 1019, 97 Cal. Daily Op. Service 1641, 97 D.A.R. 3109, 1997 U.S. App. LEXIS 3785 (9th Cir.)*, reh'g, en banc, granted, *122 F.3d 38, 97 Cal. Daily Op. Service 7111, 97 D.A.R. 11453, 1997 U.S. App. LEXIS 23734 (9th Cir. 1997)*.

Defendant was convicted felon for purposes of *18 USCS § 922(g)* when he possessed firearm, where his rights to possess firearm were not restored by Texas law, even after he was discharged from probation, since Texas law activated "unless" clause of *18 USCS § 921(a)(20)*. *United States v. Daugherty, 264 F.3d 513, 2001 U.S. App. LEXIS 19201 (5th Cir. 2001)*, reh'g, en banc, denied, *275 F.3d 41, 2001 U.S. App. LEXIS 22379 (5th Cir. 2001)*, cert. denied, *534 U.S. 1150, 122 S. Ct. 1113, 151 L. Ed. 2d 1007, 2002 U.S. LEXIS 1121 (2002)*.

Defendant's right to possess firearms had been restored by Texas law, so that he was not "convicted felon" for purposes of *18 USCS § 922(g)(1)*, where state court added grant of new trial to order terminating his probationary status, since jeopardy did not attach. *United States v. Fix, 264 F.3d 532, 2001 U.S. App. LEXIS 19296 (5th Cir. 2001)*.

Unpublished decision: Count One—unlawful possession of machine gun—and Count Six—being illegal alien in possession of firearm—were not multiplicitous because each required government to prove one distinct fact other did not: Count One required government to show that defendant possessed not just any firearm but machine gun, and Count Six required government to show not just that defendant possessed firearm, but that he did so while being in country unlawfully. *United States v. Malachowski, 415 Fed. Appx. 307, 2011 U.S. App. LEXIS 5927 (2d Cir. 2011)*.

Charge of being felon in possession of firearms in violation of *18 USCS § 922(g)(1)* will not be dismissed, even though arrestee was sentenced to only 5 years' probation for state robbery conviction and, upon completion of sentence, received certificate from state restoring his rights to vote, serve as juror, and hold public office, because (1) robbery conviction was "punishable" by imprisonment for term exceeding one year, and (2) certificate did not relieve his firearm disability under state law. *United States v. Scarberry, 999 F. Supp. 1055, 1998 U.S. Dist. LEXIS 5896 (S.D. Ohio 1998)*.

179. Pardon

Fact that defendant may have been pardoned does not bar conviction under *18 USCS § 922(h)* or 18 USCS Appx § 1202 since there was no authorization for possession of firearm contained in pardon. *United States v. Larranaga, 614 F.2d 239, 1980 U.S. App. LEXIS 21251 (10th Cir. 1980)*, disapproved, *Ball v. United States, 470 U.S. 856, 105 S. Ct. 1668, 84 L. Ed. 2d 740, 1985 U.S. LEXIS 79 (1985)*.

Defendant's prior state felony conviction constituted "conviction" for purposes of *18 USCS § 921(a)(20)(B)* and thus predicated felony under *18 USCS § 922(g)(1)*, even though pardon itself did not restrict his right to possess firearms, since addendum setting out conditions of pardon, included in packet with pardon expressly, gave him notice that his conduct was unlawful. *United States v. Richardson, 168 F.3d 836, 1999 U.S. App. LEXIS 3158 (5th Cir.)*, cert. denied, *526 U.S. 1105, 119 S. Ct. 1589, 143 L. Ed. 2d 682, 1999 U.S. LEXIS 3132 (1999)*.

Defendant's full and complete pardon does not relieve him from proscription against receipt or possession of firearms in *18 USCS § 922* and 18 USCS Appendix § 1202 where express authorization to carry firearms does not appear on face of pardon. *United States v. Rossi, 579 F. Supp. 688, 1984 U.S. Dist. LEXIS 20315 (D. Mass. 1984)*.

Felon who has received state pardon from governor that includes express authorization to possess firearm may nevertheless be prosecuted as felon for receiving firearm shipped in interstate commerce. *Markham v. United States Dep't of Treasury, Bureau of Alcohol, Tobacco & Firearms, 594 F. Supp. 9, 1983 U.S. Dist. LEXIS 16359 (E.D. Mich. 1983)*, aff'd, *743 F.2d 397, 1984 U.S. App. LEXIS 18815 (6th Cir. 1984)*.

Restoration of felon's rights to vote, sit on jury and hold office, upon pardon or completion of sentence, was sufficient to reinstate felon's civil rights for purposes of *18 USCS § 921(a)(20)*, regarding qualifying felony convictions for purposes of prosecution under *18 USCS § 922(g)(1)* for possession of firearm by convicted felon. *United States v. Petersen, 277 F. Supp. 2d 1089, 2003 U.S. Dist. LEXIS 14005 (D. Colo. 2003)*.

180. —Partial pardon

Statement concerning partial gubernatorial pardon restoring only defendant's civil rights lost by reason of prior state felony conviction, but not remitting guilt for any penalty attendant conviction does not affect defendant's convicted status so as to preclude his conviction for receipt of firearms transported in interstate commerce under *18 USCS § 922(h)*. *United States v. Barrett, 504 F.2d 629, 1974 U.S. App. LEXIS 6444 (6th Cir. 1974)*, aff'd, *423 U.S. 212, 96 S. Ct. 498, 46 L. Ed. 2d 450, 1976 U.S. LEXIS 37 (1976)*.

In prosecution under indictment based on *18 USCS § 922(h)*, charging that defendant, having been convicted in the state court of a felony, knowingly received and had in his possession a firearm which had been transported in interstate commerce, defendant's contention that his felony conviction had been wiped out by the pardon given him by the state governor, was rejected where pardon was not a full pardon but only a partial pardon restoring defendant's civil rights under state law. *United States v. Barrett, 504 F.2d 629, 1974 U.S. App. LEXIS 6444 (6th Cir. 1974)*, aff'd, *423 U.S. 212, 96 S. Ct. 498, 46 L. Ed. 2d 450, 1976 U.S. LEXIS 37 (1976)*.

181. Expungement of conviction

State expunction statute providing for vacation of conviction, dismissal of charges and restoration of civil rights cannot eliminate prior conviction as basis for federal conviction under *18 USCS § 922(h)*. *United States v. Herrell, 588 F.2d 711, 3 Fed. R. Evid. Serv. (CBC) 1414, 1978 U.S. App. LEXIS 7695 (9th Cir. 1978)*, cert. denied, *440 U.S. 964, 99 S. Ct. 1511, 59 L. Ed. 2d 778, 1979 U.S. LEXIS 1251 (1979)*.

Defendant who pled guilty to state law offense and received sentence of probation was "convicted," despite absence of formal entry of guilty verdict, and, hence, he was "convicted felon" when he was found in possession of firearm twenty days before his probation was complete, at which time his conviction was expunged and his right to possess firearms was restored under state law. *United States v. Lloyd, 184 F.3d 695, 1999 U.S. App. LEXIS 16541 (7th Cir. 1999)*.

182. Miscellaneous

Restoration of civil rights to federal felon by state statute operated to exempt felon from *18 USCS § 922(g)*, even though *18 USCS § 925(c)* provides alternative means for exemption, since this is plain meaning of unambiguous *18 USCS § 921(a)(20)*. *United States v. Edwards, 946 F.2d 1347, 1991 U.S. App. LEXIS 23617 (8th Cir. 1991)*, reh'g, en banc, denied, *1992 U.S. App. LEXIS 1153 (8th Cir. Jan. 29, 1992)*, disapproved, *Beecham v. United States, 511 U.S. 368, 114 S. Ct. 1669, 128 L. Ed. 2d 383, 8 Fla. L. Weekly Fed. S 94, 94 Cal. Daily Op. Service 3442, 94 D.A.R. 6511, 1994 U.S. LEXIS 3768 (1994)*.

Former felon did not fall within exception to state law, which allowed him to possess firearm in his dwelling, since facts indicate that he was not in his dwelling at time of possession, where he stayed at alleged "dwelling" off and on, had been there only "a week or two," sometimes stayed elsewhere, and paid no rent. *United States v. Wagner, 976 F.2d 354, 1992 U.S. App. LEXIS 24334 (7th Cir. 1992)*.

Although Texas law does not prohibit possession of firearm by non-violent convicted felon, neither does it provide either passively or actively for restoration of civil rights, and for that reason, possession by convicted felon remained offense under *18 USCS § 922(g)*. *United States v. Thomas, 991 F.2d 206, 1993 U.S. App. LEXIS 10547 (5th Cir.*, cert. denied, *510 U.S. 1014, 114 S. Ct. 607, 126 L. Ed. 2d 572, 1993 U.S. LEXIS 7687 (1993)*, reh'g denied, *1993 U.S. App. LEXIS 14501 (5th Cir. June 8, 1993)*.

South Dakota had not restored civil rights of native of South Dakota who was convicted in California, since its civil rights restoration statutes apply only to felons convicted in South Dakota state court. *United States v. Capito, 992 F.2d 218, 1993 U.S. App. LEXIS 10356 (8th Cir. 1993)*.

State's restoration of civil rights scheme cannot negate prior federal conviction for purposes of *18 USCS § 922(g)(1)* and *18 USCS § 921(a)(20)*, since "any conviction" in *18 USCS § 921(a)(20)* unambiguously refers to state court convictions. *United States v. Jones, 993 F.2d 1131, 1993 U.S. App. LEXIS 12054 (4th Cir. 1993)*, cert. granted, *510 U.S. 975, 114 S. Ct. 466, 126 L. Ed. 2d 418, 93 D.A.R. 14400, 1993 U.S. LEXIS 7312 (1993)*, aff'd, *511 U.S. 368, 114 S. Ct. 1669, 128 L. Ed. 2d 383, 8 Fla. L. Weekly Fed. S 94, 94 Cal. Daily Op. Service 3442, 94 D.A.R. 6511, 1994 U.S. LEXIS 3768 (1994)*.

Defendant was improperly charged with possession of firearms "in his home" under *18 USCS § 922(g)(1)*, where restoration of rights certificate allowed him to possess any type of firearm "in his home," since *18 USCS § 921(a)(20)* exempted him from provisions of § 922(g)(1). *United States v. Shoemaker, 2 F.3d 53, 1993 U.S. App. LEXIS 20648 (4th Cir. 1993)*, cert. denied, *510 U.S. 1047, 114 S. Ct. 698, 126 L. Ed. 2d 665, 1994 U.S. LEXIS 157 (1994)*.

Defendant was properly convicted of possession of ammunition under *18 USCS § 922(g)(1)*, even if such possession were legal under state law which allowed him to possess rifle, since his right to sit on jury had not been restored. *United States v. Fisher, 38 F.3d 1144, 1994 U.S. App. LEXIS 30364 (10th Cir. 1994)*.

Where underlying North Carolina felony conviction occurred within 5 years of instant firearms offense, government need not prove independently fact that defendant had not had his civil rights restored, where this fact was established de jure by introduction of conviction, since under North Carolina law defendant's civil rights could not have been restored within this time frame. *United States v. Thomas, 52 F.3d 82, 1995 U.S. App. LEXIS 9017 (4th Cir.)*, cert. denied, *516 U.S. 885, 116 S. Ct. 226, 133 L. Ed. 2d 155, 1995 U.S. LEXIS 6420 (1995)*.

It is not necessary to decide whether affirmative burden should be on defendant to prove convicted felon received certificate demonstrating restoration of his rights of citizenship or on government to prove he did not, since certificate only applied to first convictions, and defendant's subsequent conviction for assault qualified as felony under Missouri law at time of his conviction, although statute was subsequently revised. *United States v. Martin, 62 F.3d 1009, 1995 U.S. App. LEXIS 20610 (8th Cir. 1995)*, reh'g, en banc, denied, *1995 U.S. App. LEXIS 27987 (8th Cir. Oct. 6, 1995)*, cert. denied, *517 U.S. 1161, 116 S. Ct. 1556, 134 L. Ed. 2d 657, 1996 U.S. LEXIS 2776 (1996)*.

Defendant's right to possess firearm, which he lost upon conviction of state felony, was not restored pursuant to Nebraska law, where there was no evidence that governor of state had expressly authorized such restoration. *United States v. Sianis, 275 F.3d 731, 2002 U.S. App. LEXIS 166 (8th Cir. 2002)*.

Defendant could be prosecuted under *18 USCS § 922(g)(1)*, even if he had retained his right to vote, to hold public office, and to possess firearms in state, because "restoration of civil rights" exception that was found in *18 USCS § 921(a)(20)* applied only where criminal defendant retained all three core civil rights, which included right to vote, right to hold public office, and right to serve on jury: (1) federal firearms restriction was not removed because defendant had allegedly retained only two of three core civil rights; (2) fact that he could allegedly possess firearms under state law was irrelevant where he had not retained three core civil rights; and (3) federal firearm restriction would not be removed from defendant unless or until he obtained official restoration of his civil rights from state court. *United States v. Leuschen, 395 F.3d 155, 2005 U.S. App. LEXIS 1094 (3d Cir.)*, cert. denied, *544 U.S. 1041, 125 S. Ct. 2280, 161 L. Ed. 2d 1074, 2005 U.S. LEXIS 4092 (2005)*.

Where defendant had been off parole for 11 years at time he committed offense of possessing ammunition after having been convicted of at least three violent felony offenses in violation of *18 USCS §§ 922(g)(1)* and *924(e)*, although defendant's rights to vote and hold office were arguably restored by operation of *N.Y. Elec. Law § 5-106* and *N.Y. Civ. Rights Law § 79*, defendant's civil rights had not been restored within meaning of *18 USCS § 921(a)(20)* because defendant's right to serve on jury had not been restored under N.Y. Jud. Ct. Acts Law § 510(3); thus,

defendant's prior felony convictions were properly considered under § 924(e). *United States v. Bullock, 550 F.3d 247, 2008 U.S. App. LEXIS 25355 (2d Cir. 2008)*.

While *18 USCS § 921(a)(20)* set objective standard that did not depend on whether defendant had received, read, or understood letter as to restoration of his civil rights, Illinois' letter to defendant, referring to sentence expiration in April 1999, had to have been dealing with prior murder conviction alone, since custody due to revocation of parole for two prior attempted murder crimes was long past, and thus, letter was linked only to expiration of parole on murder conviction and that meant that defendant had 3 countable convictions for violent felonies: two attempted murders and one domestic battery; resentencing under *18 USCS § 924(e)* as armed career criminal was required for his conviction for unlawful possession of firearm under *18 USCS § 922(g)(1)*. *United States v. Burnett, 641 F.3d 894, 2011 U.S. App. LEXIS 11366 (7th Cir.)*, cert. denied, *565 U.S. 1020, 132 S. Ct. 566, 181 L. Ed. 2d 408, 2011 U.S. LEXIS 8074 (2011)*.

Defendant's claim that his civil rights have been restored is essentially affirmative defense to criminal charge under *18 USCS § 922(g)(1)*; it is defendant's responsibility to raise this issue and to produce evidence showing that his civil rights have been restored before matter may be presented to jury for resolution. *United States v. Foster, 652 F.3d 776, 85 Fed. R. Evid. Serv. (CBC) 1147, 2011 U.S. App. LEXIS 14897 (7th Cir. 2011)*, cert. denied, *566 U.S. 1029, 132 S. Ct. 2702, 183 L. Ed. 2d 60, 2012 U.S. LEXIS 4110 (2012)*, remanded, *902 F.3d 654, 2018 U.S. App. LEXIS 24856 (7th Cir. 2018)*.

While defendant argued his civil rights had been restored after his prior conviction and that thus, under *18 USCS § 921(a)(20)*, he should not have been treated as felon in possession, that statutory exception was affirmative defense for which he had burden of proof, and since evidence of such restoration was highly doubtful, and was in any case never presented to district court, there was no error. *United States v. Widi, 684 F.3d 216, 2012 U.S. App. LEXIS 13845 (1st Cir. 2012)*, cert. denied, *568 U.S. 1108, 133 S. Ct. 893, 184 L. Ed. 2d 693, 2013 U.S. LEXIS 181 (2013)*.

Unpublished decision: Where defendant argued that district court should have dismissed indictment charging him with violating *18 USCS § 922(g)(1)* because his civil rights had been restored when he was discharged from parole in 1997, he had burden of proving that his rights had been restored, and he could not produce 1997 discharge letter. District court correctly concluded that his 1992 convictions could not be used as predicate offenses for felon-in-possession charge, but that his 1980s convictions could be. *United States v. Ross, 741 F.3d 743, 565 Fed. Appx. 505, 2013 U.S. App. LEXIS 25275 (7th Cir. 2013)*.

Where defendant maintained that defendant's civil rights had been restored regarding prior felony convictions before defendant possessed gun and ammunition, and, therefore, that defendant did not have predicate felony, motion to dismiss indictment was properly denied because letter to defendant restoring defendant's civil rights did not do so for all defendant's prior felonies since defendant offered no evidence that defendant's parole revocation and unlawful use of weapon sentences terminated on same date. *United States v. Boyce, 742 F.3d 792, 93 Fed. R. Evid. Serv. (CBC) 978, 2014 U.S. App. LEXIS 2744 (7th Cir.)*, cert. denied, *572 U.S. 1127, 134 S. Ct. 2321, 189 L. Ed. 2d 197, 2014 U.S. LEXIS 3320 (2014)*.

Whether civil rights restoration exception applied to defendant's prior convictions was properly determined by district court rather than jury, as exception was affirmative defense rather than element of offense; district court did not clearly err in finding that defendant failed to show that his civil rights were restored with respect to two of his prior offenses, as issuance of restoration of rights letter could not be inferred from evidence. *United States v. Zuniga, 767 F.3d 712, 95 Fed. R. Evid. Serv. (CBC) 426, 2014 U.S. App. LEXIS 17644 (7th Cir. 2014)*, cert. denied, *574 U.S. 1103, 135 S. Ct. 1018, 190 L. Ed. 2d 886, 2015 U.S. LEXIS 91 (2015)*.

Unpublished decision: Apart from defendant's Illinois convictions, his conviction for violating statute could have been predicated on his Georgia conviction, which he did not contest, and restoration of civil rights in one jurisdiction had no effect on convictions from other jurisdictions. *United States v. Hester, 552 Fed. Appx. 580, 2014 U.S. App. LEXIS 1312 (7th Cir. 2014)*.

Argument that defendant was permitted to have the firearms under Texas law was rejected as the legality of the firearms was irrelevant to a conviction under *18 USCS § 922(g)(1)*, defendant had pointed to no evidence that his rights had been restored after a prior burglary conviction, and as a result, the district court was not required to make any finding as to the restoration of his rights. *United States v. Massey, 849 F.3d 262, 2017 U.S. App. LEXIS 3227 (5th Cir.)*, cert. denied, *138 S. Ct. 500, 199 L. Ed. 2d 384, 2017 U.S. LEXIS 7177 (2017)*.

Count of indictment must be dismissed, where Michigan law restores civil rights of convicted felons and places no restriction on right of person convicted of attempted larceny from motor vehicle to possess firearm, because indictee is not subject to prosecution under *18 USCS § 922(g)* since his civil rights were restored within meaning of § 921(a)(20). *United States v. Tait, 54 F. Supp. 2d 1100, 1999 U.S. Dist. LEXIS 6506 (S.D. Ala. 1999)*, aff'd, *202 F.3d 1320, 13 Fla. L. Weekly Fed. C 396, 2000 U.S. App. LEXIS 1445 (11th Cir. 2000)*.

One of 4 counts charging violations of *18 USCS § 922(g)* may be dismissed, where applicable Michigan restoration-of-rights law prohibits state convict's possession of firearms but did not expressly prohibit possession of ammunition, because eighth count of indictment only charges possession of ammunition, which apparently was not off-limits to Michigan convict. *United States v. Wheeler, 118 F. Supp. 2d 789, 2000 U.S. Dist. LEXIS 15856 (E.D. Mich. 2000)*.

Although state court removed disabilities imposed on two Pennsylvania residents by state's Uniform Firearms Act, *18 Pa. Cons. Stat. §§ 6101* et seq., when it issued orders allowing them to purchase, own, and use firearms, it did not remove disabilities imposed on residents by Gun Control Act of 1968, *18 USCS §§ 921* et seq., and state erred when it found that all disabilities imposed on residents by state and federal law were removed. *Pa. State Police v. Paulshock, 575 Pa. 378, 836 A.2d 110, 2003 Pa. LEXIS 2178 (Pa. 2003)*.

c. Convicted of Misdemeanor Crime of Domestic Violence

183. Relationship between parties

Domestic relationship, although it must be established beyond reasonable doubt in *18 USCS § 922(g)(9)* firearms possession prosecution, need not be defining element of predicate offense. *United States v. Hayes, 555 U.S. 415, 129 S. Ct. 1079, 172 L. Ed. 2d 816, 21 Fla. L. Weekly Fed. S 643, 2009 U.S. LEXIS 1634 (2009)*.

18 USCS § 922(g)(9), prohibiting possession of firearm by one who was previously convicted of misdemeanor crime of domestic violence, as defined in *18 USCS § 921(a)(33)(A)*, does not require that domestic relationship between assailant and victim be included as element of predicate state offense, even though prosecution must prove a domestic relationship between defendant and victim of predicate offense. *United States v. Kavoukian, 315 F.3d 139, 2002 U.S. App. LEXIS 27235 (2d Cir. 2002)*, app. after remand, *354 F.3d 117, 2003 U.S. App. LEXIS 24309 (2d Cir. 2003)*.

18 USCS § 922(g)(9) does not require predicate offense to contain as element relationship between defendant and victim. *United States v. Shelton, 325 F.3d 553, 2003 U.S. App. LEXIS 4898 (5th Cir. 2003)*, reh'g, en banc, denied, *67 Fed. Appx. 250, 2003 U.S. App. LEXIS 9488 (5th Cir. 2003)*, cert. denied, *540 U.S. 916, 124 S. Ct. 305, 157 L. Ed. 2d 210, 2003 U.S. LEXIS 6596 (2003)*, cert. denied, *543 U.S. 1057, 125 S. Ct. 866, 160 L. Ed. 2d 782, 2005 U.S. LEXIS 547 (2005)*.

18 USCS § 922(g)(9) does not require that predicate offense have domestic relationship between offender and victim as element. *United States v. Belless, 338 F.3d 1063, 2003 Cal. Daily Op. Service 7118, 2003 D.A.R. 8966, 2003 U.S. App. LEXIS 16361 (9th Cir. 2003)*, abrogated in part, *United States v. Castleman, 572 U.S. 157, 134 S. Ct. 1405, 188 L. Ed. 2d 426, 24 Fla. L. Weekly Fed. S 632, 2014 U.S. LEXIS 2220 (2014)*.

Domestic relationship component of *18 USCS § 922(g)(9)* need not be element of predicate misdemeanor offense. *United States v. Heckenliable, 446 F.3d 1048, 2006 U.S. App. LEXIS 10475 (10th Cir.)*, cert. denied, *549 U.S. 924, 127 S. Ct. 287, 166 L. Ed. 2d 219, 2006 U.S. LEXIS 6310 (2006)*.

184. —Girlfriend and boyfriend

Defendant's prior Ala. Code §§ 13A-11-8A, 13A-6-132, conviction was for pushing his live-in girlfriend down and trying to choke her, and since live-in girlfriend qualified as domestic relationship under *18 USCS §§ 921(a)(33)(a)*, *922*, prior Alabama conviction was predicate offense for § 922(g)(9), and § 922(g)(9) conviction was supported by substantial evidence. *United States v. White, 593 F.3d 1199, 22 Fla. L. Weekly Fed. C 419, 2010 U.S. App. LEXIS 542 (11th Cir. 2010)*.

Appellant's counsel was not ineffective and district court did not err in dismissing appellant's *28 USCS § 2255* motion without evidentiary hearing because undisputed facts underlying appellant's prior conviction for domestic abuse on live-in girlfriend could support violation of *18 USCS § 922(g)* because abuse perpetrated on live-in girlfriend was domestic abuse committed "by person similarly situated to spouse" for purposes of *18 USCS §§ 922(g)(9)* and *921(a)(33)(A)(ii)*. *Buster v. United States, 447 F.3d 1130, 2006 U.S. App. LEXIS 12604 (8th Cir. 2006)*.

Appellant, who was convicted of domestic assault in violation of *W.Va. Code § 61-2-28(b)*, committed "misdemeanor crime of domestic violence" under *18 USCS § 921(a)(33)(A)(i)* and (ii) and thus was barred from possessing firearms under *18 USCS § 922(g)(9)*; victim, his live-in girlfriend, was "family member" as defined in *W.Va. Code § 48-27-204*, and two met domestic relationship requirement of § 921(a)(33)(A)(ii). *In re Parsons, 218 W. Va. 353, 624 S.E.2d 790, 2005 W. Va. LEXIS 153 (W. Va. 2005)*.

185. —Other particular cases

Court of appeals erred in reversing defendant's conviction under *18 USCS §§ 922(g)(9)* and *924(a)(2)* for possessing firearms after having been convicted of misdemeanor crime of domestic violence; although predicate offense under *W. Va. Code § 61-2-9(c)* did not have domestic relationship between offender and victim as element, *18 USCS § 921(a)(33)(A)* did not require predicate-offense statute to include existence of domestic relationship as element. *United States v. Hayes, 555 U.S. 415, 129 S. Ct. 1079, 172 L. Ed. 2d 816, 21 Fla. L. Weekly Fed. S 643, 2009 U.S. LEXIS 1634 (2009)*.

Where defendant argued that prior conviction for simple assault did not qualify as misdemeanor crime of domestic violence, defendant's guilty plea was appropriate because domestic relationship component of *18 USCS § 922(g)(9)* did not need to be element of predicate misdemeanor offense. *United States v. Heckenliable, 446 F.3d 1048, 2006 U.S. App. LEXIS 10475 (10th Cir.)*, cert. denied, *549 U.S. 924, 127 S. Ct. 287, 166 L. Ed. 2d 219, 2006 U.S. LEXIS 6310 (2006)*.

Indictment of man for violating *18 USCS §§ 922(g)(9)* and *924(a)(2)* is dismissed, even though government alleges he was convicted of domestic violence misdemeanor, where statute clearly covers only certain specific relationships within that definition, because relationship man had with his victim—child-aggressor and parent-victim—is not specified in statute as one that meets predicate requirements. *United States v. Skuban, 175 F. Supp. 2d 1253, 2001 U.S. Dist. LEXIS 21788 (D. Nev. 2001)*.

Defendant who was convicted in state court for assault in fourth degree in violation of *Ky. Rev. Stat. Ann. § 508.030* could be subsequently prosecuted for violation of *18 USCS § 922(g)(9)* for possessing weapon after being convicted of misdemeanor involving domestic violence; fact that domestic relationship was not element of state court conviction was not grounds for dismissal of prosecution under § 922(g)(9), and Government would be given opportunity to prove existence of domestic relationship. *United States v. Watkins, 407 F. Supp. 2d 825, 2006 U.S. Dist. LEXIS 1634 (E.D. Ky. 2006)*.

Unpublished decision: Court rejected defendant's claim that his prior misdemeanor battery conviction under municipal ordinance was not predicate "misdemeanor crime of domestic violence" under *18 USCS § 922(g)(9)*; pursuant to *U.S. v. Heckenliable, 446 F.3d 1048 (10th Cir. 2006)*, misdemeanor crime of domestic violence required domestic relationship element to be charged and proven as element of *18 USCS § 922(g)(9)* violation, not as element of underlying misdemeanor. *United States v. Liapis, 216 Fed. Appx. 776, 2007 U.S. App. LEXIS 3583 (10th Cir. 2007)*.

Unpublished decision: In establishing that defendant's prior battery conviction qualified as misdemeanor crime of domestic violence under *18 USCS §§ 921(a)(3)(A)* and *922(g)(9)*, Government was permitted to use evidence that did not appear on face of any judicial documents in battery conviction to prove that defendant had domestic relationship with victim of prior misdemeanor battery conviction, and indictment alleging that victim was defendant's spouse with whom defendant shared child and cohabited was valid; no Sixth Amendment concerns were raised by Government's use of extrinsic evidence to prove prior conviction to jury. *United States v. Hayes, 337 Fed. Appx. 285, 2009 U.S. App. LEXIS 13101 (4th Cir. 2009)*.

186. Physical force or threatened use of deadly weapon

Use or attempted use of physical force constitutes essential and formal element of *18 USCS § 922(g)(9)* offense. *United States v. Nason, 269 F.3d 10, 2001 U.S. App. LEXIS 22514 (1st Cir. 2001)*.

Phrase physical force meant violent force—that is, force capable of causing physical pain or injury to another person—and it was clear that physical force, so defined, was not element of assault and battery under well-established law of Virginia; therefore, defendant's conviction under *Va. Code Ann. § 18.2-57.2* was not, on its face, misdemeanor crime of domestic violence under *18 USCS § 922(g)(9)* because Virginia statute was not offense that had, as element, use or attempted use of physical force; applying modified categorical approach, record was devoid of any qualifying documentation to show defendant's conviction under *Va. Code Ann. § 18.2-57.2* was otherwise misdemeanor crime of domestic violence under *18 USCS § 922(g)(9)*. *United States v. White, 606 F.3d 144, 2010 U.S. App. LEXIS 11026 (4th Cir. 2010)*.

By defining "misdemeanor crime of domestic violence" for purposes of *18 USCS § 922(g)(9)* to require use or attempted use of physical force, *18 USCS § 921(a)(33)(A)(ii)* drops reference to "threatened use" from *18 USCS §§ 16(a)* and *924(e)(2)(B)(i)* but otherwise tracks language of §§ 16(a) and 924(e)(2)(B)(i); provisions' similarity supports inference that Congress intended them to capture offenses criminalizing identical degrees of force. *United States v. Castleman, 695 F.3d 582, 2012 FED App. 0344P, 2012 U.S. App. LEXIS 19635 (6th Cir. 2012)*, reh'g, en banc, denied, *2012 U.S. App. LEXIS 26759 (6th Cir. Dec. 19, 2012)*, cert. granted, *570 U.S. 948, 134 S. Ct. 49, 186 L. Ed. 2d 962, 2013 U.S. LEXIS 5129 (2013)*, remanded, *572 U.S. 157, 134 S. Ct. 1405, 188 L. Ed. 2d 426, 24 Fla. L. Weekly Fed. S 632, 2014 U.S. LEXIS 2220 (2014)*.

187. —Particular cases

Respondent's *Tenn. Code Ann. § 39-13-111(b)* conviction qualified as misdemeanor crime of domestic violence under *18 USCS §§ 921(a)(33)(A)(ii)* and *922(g)(9)* where he had pled guilty to intentionally or knowingly causing bodily injury to mother of his child, and that causation of bodily injury necessarily involved use of physical force. *United States v. Castleman, 572 U.S. 157, 134 S. Ct. 1405, 188 L. Ed. 2d 426, 24 Fla. L. Weekly Fed. S 632, 2014 U.S. LEXIS 2220 (2014)*.

Neither of two predicate state law domestic violence convictions was for "crime of violence" as required by *18 USCS §§ 922(g)(9)* and *921(a)(33)(A)*, since neither had as element use or attempted use of physical force or threatened use of deadly weapon. *United States v. White, 258 F.3d 374, 2001 U.S. App. LEXIS 15631 (5th Cir. 2001)*.

As Wyo. Stat. Ann. § 6-2-501(b), under which defendant was convicted, defined "battery" as unlawfully touching another in rude, insolent or angry manner or intentionally, knowingly or recklessly causing bodily injury to another, it embraced conduct that did not include "use or attempted use of physical force" as required by *18 USCS § 922(g)(9)*; defendant's conviction under latter statute was therefore improper. *United States v. Belless, 338 F.3d 1063, 2003 Cal. Daily Op. Service 7118, 2003 D.A.R. 8966, 2003 U.S. App. LEXIS 16361 (9th Cir. 2003)*, abrogated in part, *United States v. Castleman, 572 U.S. 157, 134 S. Ct. 1405, 188 L. Ed. 2d 426, 24 Fla. L. Weekly Fed. S 632, 2014 U.S. LEXIS 2220 (2014)*.

Haw. Rev. Stat. § 709-906(1) does not necessarily require "violent use of force"; in addition to making it unlawful to physically abuse family or household member, § 709-906(1) also proscribes refusing compliance with lawful order of

police officer, offense that specifies no use of force, violent or otherwise; consequently, conviction under § 709-906(1) does not categorically suffice to establish requisite predicate offense for conviction under *18 USCS §§ 921(a)(33)(A)(ii)*, *922(g)(9)*. *United States v. Nobriga, 408 F.3d 1178, 2005 U.S. App. LEXIS 9220 (9th Cir. 2005)*, op. withdrawn, *433 F.3d 1090, 2006 U.S. App. LEXIS 10 (9th Cir. 2006)*).

In context presented in defendant's case, state's battery statute did not satisfy "use of physical force" element of *18 USCS § 921(a)(33)(A)(ii)*'s definition of misdemeanor crime of domestic violence; as such, defendant's underlying conviction pursuant to state statute did not support his conviction under *18 USCS §§ 922(g)(9)* and *924(a)(2)* for possession of firearm after having been convicted of misdemeanor crime of domestic violence, and district court's denial of defendant's motion to dismiss indictment was reversed. *United States v. Hays, 526 F.3d 674, 2008 U.S. App. LEXIS 10790 (10th Cir. 2008)*.

Defendant's conviction for possession of firearm after having been convicted of misdemeanor crime of domestic violence, violation of *18 USCS §§ 922(g)(9)* and *924(a)(2)*, was reversed because defendant's predicate conviction for misdemeanor assault in third degree under *Mo. Rev. Stat. § 565.070(4)* (Supp. 1997) was not for misdemeanor crime of domestic violence because § 565.070(4) did not required as element either use or attempted use of physical force or threatened use of deadly weapon under *18 USCS § 921(a)(33)(A)(ii)*. *United States v. Howell, 531 F.3d 621, 2008 U.S. App. LEXIS 14262 (8th Cir. 2008)*.

Phrase physical force meant violent force—that is, force capable of causing physical pain or injury to another person—and it was clear that physical force, so defined, was not element of assault and battery under well-established law of Virginia; therefore, defendant's conviction under *Va. Code Ann. § 18.2-57.2* was not, on its face, misdemeanor crime of domestic violence under *18 USCS § 922(g)(9)* because Virginia statute was not offense that had, as element, use or attempted use of physical force; applying modified categorical approach, record was devoid of any qualifying documentation to show defendant's conviction under *Va. Code Ann. § 18.2-57.2* was otherwise misdemeanor crime of domestic violence under *18 USCS § 922(g)(9)*. *United States v. White, 606 F.3d 144, 2010 U.S. App. LEXIS 11026 (4th Cir. 2010)*.

In case in which defendant appealed his conviction for violating 8 USCS §§ 922(g)(1) and 924(e)(1), he unsuccessfully argued that district court erred in denying his motion to dismiss for selective prosecution; at very least, defendant failed to establish discriminatory effect; figures he presented were not probative of similarly situated inquiry of discriminatory effect test. *United States v. Jordan, 635 F.3d 1181, 22 Fla. L. Weekly Fed. C 1900, 2011 U.S. App. LEXIS 5235 (11th Cir.)*, cert. denied, *565 U.S. 925, 132 S. Ct. 356, 181 L. Ed. 2d 225, 2011 U.S. LEXIS 7051 (2011)*, reh'g, en banc, denied, *2011 U.S. App. LEXIS 23685 (11th Cir. May 19, 2011)*, reh'g, en banc, denied, *433 Fed. Appx. 899, 2011 U.S. App. LEXIS 26220 (11th Cir. 2011)*.

Because state court conviction of attempted assault under *Neb. Rev. Stat. § 28-310(1)(a)* satisfied force requirement and there was no question that defendant had domestic relationship with victim, that conviction served as predicate misdemeanor crime of domestic violence for criminal liability under *18 USCS § 922(g)(9)*. *United States v. Fischer, 641 F.3d 1006, 2011 U.S. App. LEXIS 12239 (8th Cir. 2011)*, cert. denied, *566 U.S. 921, 132 S. Ct. 1857, 182 L. Ed. 2d 643, 2012 U.S. LEXIS 2631 (2012)*.

Threats which placed defendant's wife in reasonable apprehension of death or bodily injury were part of Virginia's definition of domestic abuse under *Va. Code Ann. § 16.1-228*, and 18 USCS § 922(g)(8)(B) reached those restrained from engaging in other conduct that would place intimate partner in reasonable fear of bodily injury to partner, and absence of findings in protective order of prior violence or prior bodily injury inflicted on wife did not suffice to vitiate defendant's § 922(g)(8) conviction on Second Amendment grounds. *United States v. Mahin, 668 F.3d 119, 2012 U.S. App. LEXIS 2083 (4th Cir. 2012)*.

Defendant's conviction of domestic assault under *Tenn. Code Ann. § 39-13-111(b)* was not "misdemeanor crime of domestic violence" as defined by *18 USCS § 921(a)(33)(A)(ii)* and could not serve as predicate for firearms possession conviction under *18 USCS § 922(g)(9)*; conviction under § 39-13-111(b) did not categorically require use of violent force, and state indictment did not establish that defendant's offense entailed violent force. *United States v.*

Castleman, 695 F.3d 582, 2012 FED App. 0344P, 2012 U.S. App. LEXIS 19635 (6th Cir. 2012), reh'g, en banc, denied, *2012 U.S. App. LEXIS 26759 (6th Cir. Dec. 19, 2012)*, cert. granted, *570 U.S. 948, 134 S. Ct. 49, 186 L. Ed. 2d 962, 2013 U.S. LEXIS 5129 (2013)*, remanded, *572 U.S. 157, 134 S. Ct. 1405, 188 L. Ed. 2d 426, 24 Fla. L. Weekly Fed. S 632, 2014 U.S. LEXIS 2220 (2014)*.

Defendant's assault conviction for spitting in his girlfriend's face and shoving her could be "physical force" and thus predicate offense for possession of firearm, if defendant was convicted under either "intentionally" or "knowingly" prong of Maine assault statute; as record was inconclusive, case was remanded to further develop record. *United States v. Carter, 752 F.3d 8, 2014 U.S. App. LEXIS 8153 (1st Cir. 2014)*.

Because none of categories of assault under North Carolina law had elements matching elements of misdemeanor crime of domestic violence, district court properly dismissed indictment against defendant charging him with possession of firearm by prohibited person. *United States v. Vinson, 805 F.3d 120, 2015 U.S. App. LEXIS 19169 (4th Cir. 2015)*.

Under *18 USCS §§ 921(a)(33)(A)* and *922(g)(9)*, requirement that domestic violence misdemeanor have as element use or attempted use of physical force in order to convict defendant for possessing firearm after having been convicted of misdemeanor crime of domestic violence is satisfied by reckless conduct scienter requirement for conviction under Maine's assault statute, *Me. Rev. Stat. Ann. tit. 17-A, § 207*. *United States v. Pettengill, 682 F. Supp. 2d 49, 2010 U.S. Dist. LEXIS 8801 (D. Me. 2010)*.

Unpublished decision: U.S. Government employee was properly removed from his position as correctional officer at U.S. Bureau of Prisons facility after he was convicted of third-degree assault, in violation of *Colo. Rev. Stat. Ann. § 18-3-204*; although § 18-3-204 was broad enough to encompass crimes involving use of force and crimes involving no use of force, employee was charged with violating § 18-3-204 after he got into altercation with his 13-year-old son, and evidence was sufficient to show that he was convicted of "misdemeanor crime of domestic violence," as that term was defined by *18 USCS § 921(a)(33)*, and was prohibited under *18 USCS § 922(g)(9)* from possessing firearm. *Allen v. DOJ, 360 Fed. Appx. 154, 2010 U.S. App. LEXIS 405 (Fed. Cir. 2010)*, reh'g denied, *2010 U.S. App. LEXIS 6661 (Fed. Cir. Mar. 8, 2010)*.

18 USCS § 922(g)(9) does not require that breach of peace statute, Wyo. Stat. Ann. § 6-6-102, have, as element, that physical force be perpetrated upon household member. *King v. Wyo. Div. of Crim. Investigation, 2004 WY 52, 89 P.3d 341, 2004 Wyo. LEXIS 63 (Wyo. 2004)*.

188. Waiver of rights

Defendant's possession of firearms was not federal crime under *18 USCS § 922(g)(9)*, where he did not knowingly and intelligently waive right to counsel in predicate domestic violence conviction, as required under *18 USCS § 921(a)(33)*. *United States v. Akins, 276 F.3d 1141, 2002 Cal. Daily Op. Service 234, 2002 D.A.R. 377, 2001 U.S. App. LEXIS 27681 (9th Cir. 2001)*, overruled in part, *Iowa v. Tovar, 541 U.S. 77, 124 S. Ct. 1379, 158 L. Ed. 2d 209, 17 Fla. L. Weekly Fed. S. 190, 2004 U.S. LEXIS 1837 (2004)*.

Defendant's conviction for possession of firearm by person convicted of misdemeanor crime of domestic violence in violation of *18 USCS § 922(g)(9)*, was affirmed because restoration exception of *18 USCS § 921(a)(33)(B)(ii)* did not apply since there was no violation of defendant's Sixth Amendment rights because defendant knowingly and intelligently waived his right to counsel and his right to jury trial in previous misdemeanor case. *United States v. Jennings, 323 F.3d 263, 2003 U.S. App. LEXIS 4941 (4th Cir.)*, cert. denied, *540 U.S. 1005, 124 S. Ct. 531, 157 L. Ed. 2d 412, 2003 U.S. LEXIS 8238 (2003)*.

Defendant properly was convicted under *18 USCS § 922(g)(9)* for possession of firearm by person convicted of misdemeanor crime of domestic violence because he failed to establish that he did not knowingly and intelligently waive his Sixth Amendment right to counsel before he pled guilty to predicate misdemeanor offense when, prior to pleading guilty to that misdemeanor offense, he was informed that he could lose his right to carry firearm; possibility

that he later could be prosecuted under *18 USCS § 922(g)(9)* if he carried firearm was collateral consequence that did not implicate constitutionality of his waiver; because he knowingly and intelligently waived right to counsel before pleading guilty to prior misdemeanor offense, he could not utilize *18 USCS § 921(a)(33)(B)(i)(I)* as defense to *18 USCS § 922(g)(9)* charge on which he was indicted. *United States v. Lenihan, 488 F.3d 1175, 2007 U.S. App. LEXIS 12440 (9th Cir. 2007)*.

189. Restoration of civil rights

Defendant's stipulation as to facts establishing elements of predicate misdemeanor conviction for violation of *18 USCS § 922(g)(9)* functioned as waiver of legal defenses to establishment of particular element to which parties had stipulated; namely, restoration of his civil rights. *United States v. Meade, 175 F.3d 215, 1999 U.S. App. LEXIS 9032 (1st Cir. 1999)*.

Unpublished decision: Although there was merit in defendant's argument that it was abuse of discretion to admit photographs from social media websites, because government failed to lay proper foundation and they were unfairly prejudicial, any error did not affect verdict as to charge of felon in possession of firearm; even photograph of weapons had no reasonable probability of contributing to verdict, because specific gun underlying conviction was found next to defendant, so evidence of his guilt on that count was overwhelming; on conspiracy conviction, though admission of photos was error, independent evidence of defendant's involvement in conspiracy was so overwhelming that error was harmless. *United States v. Winters, 91 Fed. R. Evid. Serv. (CBC) 958, 2013 U.S. App. LEXIS 9632 (5th Cir. May 13, 2013)*, op. withdrawn, *2013 U.S. App. LEXIS 13305 (5th Cir. June 20, 2013)*, sub. op., *530 Fed. Appx. 390, 2013 U.S. App. LEXIS 12937 (5th Cir. 2013)*.

In prosecution under *18 USCS § 922(g)(9)* and *922(a)(6)*, under Indiana's re-enfranchisement statute, *Ind. Code § 3-7-13-6*, defendant's loss of voting privileges, and under Ind. Code § 33-4-5-7(b)(4), defendant's loss of right to serve on jury, came to end as soon as incarceration portion of defendant's sentence for domestic violence misdemeanor offense was completed; district court held that defendant thus qualified as person whose civil rights had been restored, and defendant was exempt from firearms disability imposed by 1996 amendment ("Lautenberg Amendment") to Gun Control Act of 1968, *18 USCS §§ 921–930*. *United States v. Brown, 235 F. Supp. 2d 931, 2002 U.S. Dist. LEXIS 24285 (S.D. Ind. 2002)*.

Unpublished decision: In case in which defendant appealed district court's denial of his motion to dismiss indictment charging him with violating *18 USCS § 922(g)(9)*, he did not have same freedom to transport his firearm as Michigan citizen without domestic assault record, and, under Caron decision, that was sufficient to trigger unless clause in *18 USCS § 921(a)(33)(B)(ii)*. *United States v. Sanford, 2012 FED App. 1255N, 2012 U.S. App. LEXIS 25121 (6th Cir. Dec. 4, 2012)*.

190. —Rights never lost

Defendant's conviction for possession of firearm by person convicted of misdemeanor crime of domestic violence in violation of *18 USCS § 922(g)(9)*, was affirmed because defendant's civil rights in previous misdemeanor conviction were neither revoked nor restored; therefore, restoration exception of *18 USCS § 921(a)(33)(B)(ii)* did not apply. *United States v. Jennings, 323 F.3d 263, 2003 U.S. App. LEXIS 4941 (4th Cir.)*, cert. denied, *540 U.S. 1005, 124 S. Ct. 531, 157 L. Ed. 2d 412, 2003 U.S. LEXIS 8238 (2003)*.

Where defendant was charged with firearm possession under *18 USCS § 922(g)(9)*, defendant could not benefit from federal restoration exception under *18 USCS § 921(a)(33)(B)(ii)* because defendant's prior misdemeanor domestic violence conviction under state law did not remove defendant's core civil rights of voting, serving as juror, or holding public office and, therefore, defendant's civil rights were not "restored" within meaning of federal law by state's amendment permitting defendant to possess firearm. *United States v. Brailey, 408 F.3d 609, 2005 U.S. App. LEXIS 9039 (9th Cir. 2005)*.

One who has been convicted of misdemeanor crime of domestic violence and who does not lose his or her civil rights as result of conviction cannot have his or her civil rights "restored" for purpose of *18 USCS § 921(a)(33)(B)(ii)* so as to fall within that provision's restoration exception to prohibition on firearm possession in *18 USCS § 922(g)(9)*. *In re Parsons, 218 W. Va. 353, 624 S.E.2d 790, 2005 W. Va. LEXIS 153 (W. Va. 2005)*.

191. Miscellaneous

Defendant made required showing to withdraw his plea to unlawfully possessing firearm in violation of this statute because statutory definition of "misdemeanor crime of domestic violence"—defendant's alleged underlying crime—was quite complicated, giving defendant plausible defense in light of *Rehaif v. United States, 139 S. Ct. 2191 (2019)*. *United States v. Triggs, 963 F.3d 710, 2020 U.S. App. LEXIS 20542 (7th Cir. 2020)*.

Merit Systems Protection Board's decision, to uphold removal of federal corrections officer, was affirmed, because there was clear and substantial evidence that officer's job required him to carry firearm, and misdemeanor assault conviction, under *Va. Code Ann. § 18.2-57*, against woman with whom he had close personal relationship, qualified as domestic violence offense, under *18 USCS § 921*, and prevented him from carrying firearm, under *18 USCS § 922(g)(9)*. *White v. DOJ, 328 F.3d 1361, 20 I.E.R. Cas. (BNA) 341, 2003 U.S. App. LEXIS 9177 (Fed. Cir. 2003)*.

Language appearing in federal firearms license defendant obtained before he was convicted in state court of committing misdemeanor domestic assault was not all inclusive, and district court properly rejected defendant's claim of estoppel by entrapment, based on argument that he could not be convicted of violating *18 USCS § 922(g)(9)* by possessing firearms after he was convicted of domestic assault because license did not warn him that it was illegal to possess firearms. *United States v. Ray, 411 F.3d 900, 2005 U.S. App. LEXIS 11111 (8th Cir.)*, cert. denied, *546 U.S. 955, 126 S. Ct. 469, 163 L. Ed. 2d 356, 2005 U.S. LEXIS 7609 (2005)*.

Defendant's prior conviction for assault on female under *N.C. Gen. Stat. § 14-33* qualified as misdemeanor crime of domestic violence (MCDV), causing defendant to be person prohibited from possessing firearm; North Carolina's different formulations of assault were alternative elements of offense, so offense of assault on female was divisible, and defendant's conviction of completed-battery form of assault was MCDV. *United States v. Vinson, 794 F.3d 418, 2015 U.S. App. LEXIS 12560 (4th Cir. 2015)*.

Where defendant appealed his conviction for violating *18 USCS § 922(g)(9)*, his prior domestic violence conviction under *S.D. Codified Laws § 22-18-1* was not qualifying prior conviction as judicial record did not establish that he necessarily was convicted of assault that had required element. *United States v. Horse Looking, 828 F.3d 744, 2016 U.S. App. LEXIS 12680 (8th Cir. 2016)*.

Court rejected defendant's challenge to conviction for being domestic-violence misdemeanant while possessing firearm under 18 U.S.C.S. § 922(g)(9) because he knew he was domestic-violence misdemeanant for Rehaif purposes where he knew at time he possessed gun that he had been convicted of misdemeanor crime of battery under *Fla. Stat. § 784.03(1)*, that misdemeanor to which he pled guilty—battery—required that he had, at minimum, recklessly engaged in at least slightest offensive touching, and that victim of Florida misdemeanor battery was wife. *United States v. Johnson, 981 F.3d 1171, 28 Fla. L. Weekly Fed. C 2222, 2020 U.S. App. LEXIS 37636 (11th Cir. 2020)*.

Although security specialist with state Air National Guard, who was required to carry firearm in connection with his duties, pleaded nolo contendere to misdemeanor charge of domestic assault, he was subject to *18 USCS § 922(g)(9)*, since he had not yet successfully completed one-year probation term, as required to negate conviction, and, therefore, Air National Guard properly terminated specialist based on conviction. *Carew v. Centracchio, 17 F. Supp. 2d 56, 1998 U.S. Dist. LEXIS 11408 (D.R.I. 1998)*.

Unpublished decision: In prosecution of defendant for possession of firearm after having been convicted of felony, and having been convicted of domestic violence, district court properly granted Government's motion in limine to

prevent collateral attack on defendant's domestic violence conviction from being presented to jury. *United States v. Artis, 132 Fed. Appx. 483, 2005 U.S. App. LEXIS 9847 (4th Cir. 2005)*.

Right to jury trial did not attach; misdemeanor offense of first-offense domestic battery under *Nev. Rev. Stat. § 200.485* is not serious offense when rebuttable presumption that perpetrator of domestic violence is unfit for sole or joint custody of his or children and loss of right to possess firearm are not direct consequences of conviction. *Amezcua v. Eighth Judicial Dist. Court of Nev., 130 Nev. 45, 319 P.3d 602, 2014 Nev. LEXIS 8 (Nev.)*, cert. denied, *574 U.S. 830, 135 S. Ct. 59, 190 L. Ed. 2d 57, 2014 U.S. LEXIS 5415 (2014)*.

V. PROSECUTION AND PUNISHMENT

A. In General

192. Arrests

Where United States Marshall saw defendant flee, give chase, and drop what looked to be firearm to ground during his flight, probable cause supported arrest; subsequent search that uncovered bullets on his person was lawful search incident to arrest; and bullets recovered should not have been suppressed. *United States v. Sawyer, 224 F.3d 675, 2000 U.S. App. LEXIS 21060 (7th Cir. 2000)*.

Where police officers investigating drive-by shooting involving sport utility vehicle (SUV) found SUV at nearby gas station at which defendant was one of only two customers, officers had reasonable suspicion to question defendant about SUV, and officers had probable cause to arrest defendant when they discovered outstanding warrant; evidence, including handgun that officer saw when looking through SUV's window, was admissible at defendant's trial for possessing firearm in violation of *18 USCS § 922(g)* and (k). *United States v. Thornton, 463 F.3d 693, 2006 U.S. App. LEXIS 23182 (7th Cir. 2006)*, cert. denied, *551 U.S. 1168, 127 S. Ct. 3060, 168 L. Ed. 2d 770, 2007 U.S. LEXIS 8852 (2007)*.

In prosecution under *18 USCS §§ 922(g)(1)* and *924(e)(1)*, court held police officers violated Fourth Amendment by arresting defendant inside his curtilage because they did not have probable cause to believe he was committing burglary, and assuming they had probable cause to believe he committed misdemeanor trespass, circumstances were not exigent. *United States v. Struckman, 603 F.3d 731, 2010 U.S. App. LEXIS 9140 (9th Cir. 2010)*.

Where defendant appealed his conviction for violating *18 USCS § 922(g)(1)*, police had probable cause to arrest him because he had violated N.Y. Comp. Codes R. & Regs. tit. 21. § 1050.9(d), which prohibited use of end doors of subway car to pass from one subway car to another except in emergency or when directed to do so by authority conductor or New York City police officer. *United States v. Miles, 748 F.3d 485, 2014 U.S. App. LEXIS 6637 (2d Cir.)*, cert. denied, *574 U.S. 936, 135 S. Ct. 381, 190 L. Ed. 2d 255, 2014 U.S. LEXIS 6991 (2014)*.

193. Venue

Proper venue of prosecution for violation of *18 USCS § 922(h)* is district in which receipt of firearm took place. *United States v. Black Cloud, 590 F.2d 270, 1979 U.S. App. LEXIS 17688 (8th Cir. 1979)*.

Defendant's conviction under *18 USCS § 922(g)(1)* was upheld because, inter alia, defendant waived any Sixth Amendment venue issue by not raising objection at trial or at close of evidence. *United States v. Greer, 440 F.3d 1267, 19 Fla. L. Weekly Fed. C 312, 2006 U.S. App. LEXIS 4462 (11th Cir.)*, reh'g, en banc, denied, *179 Fed. Appx. 689, 2006 U.S. App. LEXIS 24157 (11th Cir. 2006)*.

Venue for trial of unlawful machine-gun-possession counts against one defendant is transferred from Michigan to Ohio, where indictment indicates that defendant received conversion kits attributed to him after placing order for them at alleged coconspirator's Ohio business, and he had no direct contact with Michigan, because government cannot bootstrap venue on all substantive counts to proper venue over conspiracy count since venue in criminal cases is

constitutionally protected right. *United States v. Hunter, 863 F. Supp. 462, 1994 U.S. Dist. LEXIS 13121 (E.D. Mich. 1994)*.

194. Self-representation

In defendant's trial for being felon in possession of firearm under *18 USCS § 922(g)(1)*, district court did not violate his right of self-representation by appointing substitute counsel after defendant forced his appointed counsel to resign; court recognized obstacles defendant faced in accessing legal materials due to his heightened custody status, as voiced by defendant during motions hearing. *United States v. Oaks, 606 F.3d 530, 82 Fed. R. Evid. Serv. (CBC) 894, 2010 U.S. App. LEXIS 10695 (8th Cir. 2010)*.

In case in which defendant was found guilty of violating *18 USCS §§ 922(g)(1)* and *924(e)*, he unsuccessfully argued that district court erroneously denied his request to represent himself; magistrate judge had explained that it was not appropriate for defendant to proceed pro se because either he did not understand proceedings or he was not willing to participate in them, and magistrate judge clarified that his decision was based on fact that defendant failed to respond to his questions and participate in proceedings; defendant's obstreperous conduct provided sufficient grounds for district court to terminate and disallow his self-representation since his behavior interfered with pretrial proceedings and delayed trial and there was good cause to believe that he would continue to disrupt proceedings if court permitted him to resume self-representation. *United States v. Mosley, 607 F.3d 555, 2010 U.S. App. LEXIS 11939 (8th Cir. 2010)*.

In criminal trial in which defendant was convicted under *18 USCS § 922(g)* for being felon in possession of firearm, district court's decision to allow defendant to proceed pro se at trial was proper under Sixth Amendment because record reflected that defendant's decision to waive counsel was knowing and voluntary since both district court and government warned defendant of pitfalls of proceeding pro se. *United States v. Benson, 686 F.3d 498, 2012 U.S. App. LEXIS 14122 (8th Cir. 2012)*, reh'g denied, *2012 U.S. App. LEXIS 17127 (8th Cir. Aug. 15, 2012)*, cert. denied, *568 U.S. 1105, 133 S. Ct. 877, 184 L. Ed. 2d 687, 2013 U.S. LEXIS 166 (2013)*.

Unpublished decision: In case in which defendant appealed his conviction and sentence for violating *18 USCS § 922(g)(1)*, district court erred by denying his timely request, made before jury was selected, to proceed pro se; since he made timely request to proceed pro se and Peppers requirements were met, defendant's right to proceed pro se was unqualified. *United States v. Griswold, 2013 U.S. App. LEXIS 9004 (3d Cir. May 2, 2013)*, amended, *525 Fed. Appx. 111, 2013 U.S. App. LEXIS 10290 (3d Cir. 2013)*.

Unpublished decision: In case in which defendant was convicted of violating *18 USCS § 922(g)(1)* and he was sentenced to 120 months of imprisonment, his Sixth Amendment rights were violated when district court denied his request, made prior to jury selection, to proceed pro se; although district court may have believed that his request was made to obstruct proceedings and delay trial, it did not conclude that request itself was equivocal or that defendant's waiver of counsel was not knowing, voluntary and intelligent or that he was not competent to stand trial. *United States v. Griswold, 525 Fed. Appx. 111, 2013 U.S. App. LEXIS 10290 (3d Cir. 2013)*.

Defendant's convictions for weapons charges related to bank robbery and carjacking were affirmed, where district court did not err in concluding that defendant was competent to stand trial, in permitting defendant to represent himself, in placing defendant in stun belt and shackles during trial, in granting upward sentencing departure, and in refusing to suppress defendant's statement made during his arrest, but before he was read his Miranda rights. *United States v. Joseph, 333 F.3d 587, 2003 U.S. App. LEXIS 11464 (5th Cir.)*, cert. denied, *540 U.S. 973, 124 S. Ct. 446, 157 L. Ed. 2d 322, 2003 U.S. LEXIS 7818 (2003)*.

195. Separate or single offenses

Absent showing that 2 firearms were stored or acquired at different times or places, only one violation of *18 USCS § 922* can be said to have occurred. *United States v. Calhoun, 510 F.2d 861, 1975 U.S. App. LEXIS 16433 (7th Cir.)*, cert. denied, *421 U.S. 950, 95 S. Ct. 1683, 44 L. Ed. 2d 104, 1975 U.S. LEXIS 1499 (1975)*.

Defendant convicted of transporting loads of firearms in interstate commerce could not also be convicted for receiving same firearms based on same transaction. *United States v. Cantrell, 612 F.2d 509, 1980 U.S. App. LEXIS 21599 (10th Cir. 1980)*.

Violations of *18 USCS § 922(a)(1)* and *§ 922(h)(1)* constitute separate offenses which may be punished consecutively. *United States v. Goodheim, 686 F.2d 776, 11 Fed. R. Evid. Serv. (CBC) 792, 1982 U.S. App. LEXIS 25876 (9th Cir. 1982)*.

Making of false statements and exhibiting false identification concerning same material fact and same firearm constitute only one offense under *18 USCS § 922* and are subject to only one punishment under *18 USCS § 924*. *United States v. Mastrangelo, 733 F.2d 793, 1984 U.S. App. LEXIS 21955 (11th Cir. 1984)*.

Defendant is presumed to have committed only one crime, not series of crimes, under *18 USCS § 922*, unless government specifically proves he either separately acquired or stored his weapons. *United States v. Baugh, 787 F.2d 1131, 1986 U.S. App. LEXIS 23722 (7th Cir. 1986)*.

Under *18 USCS § 922*, multiple weapons, seized from different, although closely proximate, areas in same building at same time, are not separately possessed. *United States v. Grinkiewicz, 873 F.2d 253, 1989 U.S. App. LEXIS 6654 (11th Cir. 1989)*.

Defendant was improperly convicted of multiple counts under *18 USCS § 922(g)(1)* based on his possession of multiple weapons on same date, where jury made no finding of fact as to separate acquisition or possession of weapons. *United States v. Szalkiewicz, 944 F.2d 653, 91 Cal. Daily Op. Service 7584, 91 D.A.R. 11654, 1991 U.S. App. LEXIS 22119 (9th Cir. 1991)*.

Person who is member of more than one disqualifying class only violates *18 USCS § 922(g)* once for each act of possession; therefore, defendant's possession of six firearms and ammunition, seized at same time from his house, supported only one conviction for *18 USCS § 922(g)*. *United States v. Dunford, 148 F.3d 385, 49 Fed. R. Serv. 3d (Callaghan) 836, 49 Fed. R. Evid. Serv. (CBC) 836, 1998 U.S. App. LEXIS 14921 (4th Cir. 1998)*.

Critical aspects of gun and bullet counts were different because successful prosecution on gun count required proof that defendant knowingly possessed pistol, while his successful prosecution on bullet count required proof that he knowingly possessed bullet found in his pants pocket at jail (contention jury had rejected); in these circumstances, it could not be said that two temporally distinct possessions actually constituted "same offense." *United States v. Goodine, 400 F.3d 202, 2005 U.S. App. LEXIS 4267 (4th Cir. 2005)*.

Possession of same gun when arrested and on previous day in robbery, absent evidence that possession was interrupted, cannot constitute two violations of *18 USCS § 922(g)*; continuing possession of same firearm in single course of conduct constitutes one offense under statute. *United States v. Hope, 545 F.3d 293, 2008 U.S. App. LEXIS 21098 (5th Cir. 2008)*.

Absent indictment charging defendant with possessing or receiving firearms and ammunition on separate occasions, and proof and argument supporting same, his dual convictions and sentences under *18 USCS § 922(g)(1)* could not stand under Berry. *United States v. Meza, 701 F.3d 411, 89 Fed. R. Evid. Serv. (CBC) 1139, 2012 U.S. App. LEXIS 23167 (5th Cir. 2012)*.

Separate counts alleging that defendant was felon in possession of firearm in violation of *18 USCS § 922(g)(1)*, and that same defendant was also drug user in possession of firearm in violation of § 922(g)(3), both counts arising out of single act of firearm possession, constituted but one offense. *United States v. Gamboa, 439 F.3d 796, 69 Fed. R. Evid. Serv. (CBC) 675, 2006 U.S. App. LEXIS 5393 (8th Cir. 2006)*, reh'g, en banc, denied, *2006 U.S. App. LEXIS 12347 (8th Cir. May 19, 2006)*, cert. denied, *549 U.S. 1042, 127 S. Ct. 605, 166 L. Ed. 2d 449, 2006 U.S. LEXIS 8780 (2006)*, writ denied, *2020 U.S. App. LEXIS 19358 (D.C. Cir. June 19, 2020)*.

196. —Double jeopardy

Defendant waived his Fifth Amendment double jeopardy argument by pleading guilty to separate counts of *18 USCS § 922(j)* and (g)(1) for which he was lawfully prosecuted in that each required proof of additional fact, one required proof that defendant was convicted felon and other that firearm in question was stolen and that defendant knew that it was stolen. *United States v. Smith, 532 F.3d 1125, 21 Fla. L. Weekly Fed. C 842, 2008 U.S. App. LEXIS 13722 (11th Cir.)*, cert. denied, *555 U.S. 1007, 129 S. Ct. 517, 172 L. Ed. 2d 379, 2008 U.S. LEXIS 7963 (2008)*.

Trial court plainly erred as contemplated under *Fed. R. Crim. P. 52(b)* by convicting defendant twice under *18 USCS § 922(g)(1)* for possessing same .380 caliber pistol when arrested and on previous day in robbery because Double Jeopardy Clause was violated—continuous possession constituted one offense under statute; defendant's substantial rights were affected because his combined sentences exceeded maximum sentence available for one count. *United States v. Hope, 545 F.3d 293, 2008 U.S. App. LEXIS 21098 (5th Cir. 2008)*.

Double jeopardy precluded punishing defendant twice under *18 USCS § 922(g)(9)*— first in Illinois case and then in Indiana case—based on his possession of same gun; although he had relinquished actual possession of gun, it was not clear that he had relinquished constructive possession of it because knew exactly where it was kept and was able to get it back from fellow gang member in very short order and deprive him permanently of it. *United States v. Ellis, 622 F.3d 784, 2010 U.S. App. LEXIS 19458 (7th Cir. 2010)*, amended, *2010 U.S. App. LEXIS 19949 (7th Cir. Sept. 27, 2010)*.

18 USCS § 922(o) did not require proof of element not included in *I.R.C. § 5861(d)*, thus, § 922(o) was lesser included offense of § 5861(d), and one of defendant's possession of machine gun convictions had to be vacated due to multiplicious indictment and double jeopardy concerns. *United States v. Mann, 701 F.3d 274, 90 Fed. R. Evid. Serv. (CBC) 18, 2012 U.S. App. LEXIS 24995 (8th Cir. 2012)*, cert. denied, *571 U.S. 973, 134 S. Ct. 470, 187 L. Ed. 2d 316, 2013 U.S. LEXIS 7622 (2013)*.

District court committed plain error when it convicted and punished defendant for two separate counts of possession of firearm by convicted felon under *18 USCS § 922(g)(1)* in violation of Double Jeopardy Clause of Fifth Amendment because felon-in-possession crime in § 922(g)(1) was continuing offense, and, without evidence that defendant relinquished constructive possession of gun, there could be only one possession conviction; although second conviction might not have had immediate practical effect of increasing length of defendant's sentence, defendant's substantial rights were affected by second conviction because defendant risked additional adverse consequences due to second conviction, and leaving error uncorrected would seriously and detrimentally affect fairness, integrity, and public reputation of proceedings. *United States v. Benjamin, 711 F.3d 371, 2013 U.S. App. LEXIS 5996 (3d Cir.)*, cert. denied, *571 U.S. 921, 134 S. Ct. 309, 187 L. Ed. 2d 220, 2013 U.S. LEXIS 6420 (2013)*.

District court plainly erred in imposing two separate convictions and sentences for violation of two subdivisions of *18 USCS § 922(g)* because both convictions arose out of the same incident, thus, defendant's sentences were vacated and his case was remanded to the district court with instructions that one of the convictions be vacated and merged into the other, and that he be resentenced on a single count with only one special assessment of $100. *United States v. Cadet, 819 Fed. Appx. 815, 2020 U.S. App. LEXIS 21129 (11th Cir. 2020)*.

Where defendant appealed district court's denial of his motion to dismiss charges of unlicensed dealing of firearms, conspiracy to deal said firearms, and unlawful possession of firearm by convicted felon was affirmed as there was no Double-Jeopardy Clause violation based on his conviction in Northern District of Georgia for being felon in possession of firearm. *United States v. Hickson, 708 Fed. Appx. 78, 2018 U.S. App. LEXIS 439 (3d Cir.)*, cert. denied, *138 S. Ct. 2589, 201 L. Ed. 2d 305, 2018 U.S. LEXIS 3328 (2018)*.

Petitioner's convictions for violating *18 USCS § 922(g)(1)* and (g)(3) and subsequent sentence violated his rights under Double Jeopardy Clause because § 922(g) could not support multiple convictions based on single firearm possession as allowable unit of prosecution was incident of possession, not petitioner's membership in class (or classes) of persons disqualified from possession; thus, counsel was ineffective for not raising issue. *United States v. Ocampo, 919 F. Supp. 2d 898, 2013 U.S. Dist. LEXIS 10666 (E.D. Mich. 2013)*.

Unpublished decision: There was sufficient evidence to convict defendant of two felon-in-possession counts based on testimony by police that they saw defendant throw handgun into bushes and found ammunition in his pocket during search; however, separate sentences for two convictions constituted double jeopardy violation because only single episode of possession occurred. *United States v. Norman, 628 Fed. Appx. 876, 2015 U.S. App. LEXIS 18304 (5th Cir. 2015)*.

Unpublished decision: Prosecution on charge of making false statement in connection with acquisition of handgun after defendant previously pleaded guilty to possession of same firearm by felon did not violate double jeopardy under Blockburger test, which permitted multiple charges where each charge required proof of distinct element. *United States v. Gregory, 639 Fed. Appx. 913, 2016 U.S. App. LEXIS 1887 (4th Cir. 2016)*.

197. —Simultaneous violations

Defendant cannot be tried on 3 counts of unlawful receipt of firearms in violation of *18 USCS § 922* where there was simultaneous receipt of weapons. *Powers v. U. S., 472 F.2d 1406, 1973 U.S. App. LEXIS 11270 (5th Cir. 1973)*.

Simultaneous receipt of multiple weapons is only one offense under *18 USCS § 922(h)*; similarly, simultaneous executions by convicted felons of multiple forms in connection with purchase of multiple weapons is only one offense. *United States v. Mason, 611 F.2d 49, 1979 U.S. App. LEXIS 9798 (4th Cir. 1979)*.

For purposes of *18 USCS § 922*, firearms and ammunition are interchangeable and possession of each together cannot stand as 2 separate offenses where evidence indicates that items were acquired at same time. *United States v. Oliver, 683 F.2d 224, 1982 U.S. App. LEXIS 17387 (7th Cir. 1982)*.

Single act of knowingly furnishing false driver's license in connection with acquisition of both firearm and ammunition in one purchase and on same occasion, constituted single violation of *18 USCS § 922*, since gravamen of offense is making of statement or furnishing of identification. *United States v. Evans, 854 F.2d 56, 1988 U.S. App. LEXIS 12639 (5th Cir. 1988)*.

Simultaneous possession by felon of multiple firearms, that is, possession of multiple firearms in one place at one time, is only one violation of *18 USCS § 922(g)(1)*. *United States v. Verrecchia, 196 F.3d 294, 1999 U.S. App. LEXIS 30522 (1st Cir. 1999)*.

Where defendant was convicted of being felon in possession of firearm under *18 USCS § 922(g)(1)*, and also of being fugitive in possession of firearm under § 922(g)(2), conviction as felon in possession of firearm was vacated as multiplicitous because being convicted as felon-in-possession and as fugitive-in-possession for same firearm on same occasion was prohibited, and allowing invalid conviction to stand would work manifest injustice. *United States v. Hollis, 506 F.3d 415, 2007 U.S. App. LEXIS 25410 (5th Cir. 2007)*.

Defendant's conviction and sentence on two counts under *18 USCS § 922(g)(1)* for simultaneous possession of firearm and ammunition was plain error under *Fed. R. Crim. P. 52(b)*; allowable unit of prosecution under § 922(g) was incident of possession, regardless of whether defendant possessed both firearm and ammunition, and error affected defendant's substantial rights because second conviction, at minimum, carried concurrent sentence and additional special assessment. *United States v. Tann, 577 F.3d 533, 2009 U.S. App. LEXIS 18943 (3d Cir. 2009)*.

Defendant's simultaneous possession of gun and ammunition supported only one count of conviction under *18 USCS § 922(g)*; thus, it was plain error to convict and sentence him on both counts. *United States v. Mahin, 668 F.3d 119, 2012 U.S. App. LEXIS 2083 (4th Cir. 2012)*.

Under *18 USCS § 922*, provision of false information on more than one ATF Form in connection with simultaneous acquisition of firearms constitutes one offense, since regulations promulgated by Bureau of Alcohol, Tobacco and Firearms leave number of forms required to discretion of licensed dealer. *United States v. Martorana, 629 F. Supp. 509, 1986 U.S. Dist. LEXIS 28836 (D. Me. 1986)*.

Unpublished decision: District court did not plainly err by entering separate counts of conviction under *18 USCS § 922(g)(1)* for appellant's possession of firearm and of ammunition; it is not per se improper to impose separate convictions and sentences for simultaneous possession of both firearm and ammunition, as multiple convictions are appropriate if firearm and ammunition are purchased separately, and there was no evidence in record concerning whether items in appellant's possession were acquired together or separately. *United States v. Santiago, 387 Fed. Appx. 223, 2010 U.S. App. LEXIS 14797 (3d Cir. 2010)*.

198. —Multiple violations

Defendant's contention that he was victim of improper pyramiding of offenses because he was charged in three counts with separate offenses, namely, that of knowingly receiving and possessing stolen property in violation of *18 USCS § 659*, that of dealing in firearms without a license in violation of *18 USCS §§ 922* and *924*, and that of receiving and possessing firearms after having been convicted of felony in violation of 18 USCS App § 1202, was without merit notwithstanding fact that all offenses were punishable under individual sections of the Gun Control Act of 1968, (*18 USCS §§ 921* et seq.). *United States v. Phillips, 522 F.2d 388, 1975 U.S. App. LEXIS 12982 (8th Cir. 1975)*.

Two separate violations of *18 USCS § 922* which makes it offense to make false statement in acquisition of firearms occurred where defendant filled out separate forms for each of 2 guns he purchased and thus gave false statement in connection with sale of each one. *United States v. Long, 524 F.2d 660, 1975 U.S. App. LEXIS 12312 (9th Cir. 1975)*.

There are 2 offenses where false statement is made in acquisition of each of 2 weapons bought at one time. *United States v. Williams, 685 F.2d 319, 1982 U.S. App. LEXIS 16384 (9th Cir. 1982)*.

Licensed firearms dealer providing false information on 2 separate ATF Forms, on 2 separate days, for sale of 2 firearms establishes separate offenses under *18 USCS § 922* and imposition of 2 consecutive sentences is proper. *United States v. Solomon, 726 F.2d 677, 1984 U.S. App. LEXIS 24874 (11th Cir. 1984)*.

Defendant was properly prosecuted with respect to each firearms transaction form that he filled out where he purchased approximately 87 handguns and on 4 separate days he picked up guns and filled out separate forms with respect to each, since successive acts, no matter how close in time, constitute separate offenses and therefore each firearms transaction form was proper unit of prosecution. *United States v. Hawkins, 794 F.2d 589, 1986 U.S. App. LEXIS 27367 (11th Cir. 1986)*.

Merging two *18 USCS § 922(g)(1)* gun possession counts was error because 2 guns were in separate cars with branded heroin suggesting different distributors, and 1 gun was in car defendant had just driven, indicating they had been apart; convictions did not twice punish him for same offense in violation of Double Jeopardy. *United States v. Kennedy, 682 F.3d 244, 2012 U.S. App. LEXIS 12171 (3d Cir. 2012)*.

Criminal defendant was properly indicted for 3 counts each of making false statements in connection with acquisition of weapon and being felon in possession of weapon, even though he merely acquired or retrieved same revolver from pawn shop on 3 separate occasions, because defendant republished false statement each time he submitted forms to retrieve gun and there was no continuing possessory interest in pawned gun sufficient to preclude 3 separate wrongful possessions of weapon. *United States v. Dudley, 779 F. Supp. 1581, 1991 U.S. Dist. LEXIS 19067 (D. Kan. 1991)*.

Unpublished decision: District court erred during defendant's trial on charges alleging that he illegally possessed ammunition after he was convicted of felony, in violation of *18 USCS § 922(g)*, when it declined to vacate second and third counts of three-count indictment as duplicative, and when it imposed special assessment on each count after defendant pled guilty to all three counts; there was no evidence that defendant separately acquired or stored ammunition that officers found when they searched his vehicle. *United States v. Leach, 206 Fed. Appx. 432, 2006 FED App. 0814N, 2006 U.S. App. LEXIS 27585 (6th Cir. 2006)*.

Two separate convictions for being felon in possession of gun and ammunition were justified because defendant separated his gun and ammunition between car and apartment building. *United States v. Washington, 666 Fed. Appx. 544, 2016 U.S. App. LEXIS 20769 (7th Cir. 2016)*.

199. Joinder and severance

Joinder of counts charging interstate transportation of stolen vehicle and interstate transportation of firearm by felon was proper under *USCS Rule of Criminal Procedure 8* since 2 offenses charged arose from single transaction. *United States v. Abshire, 471 F.2d 116, 1972 U.S. App. LEXIS 6132 (5th Cir. 1972)*.

Counts of indictment charging defendant with violations of federal statutes relating to firearms and with interstate transportation of firearms after his conviction of crime punishable by imprisonment for more than one year were properly joined, since charges in counts arose out of same incident, that is, defendant's possession of sawed-off shotgun. *United States v. Roe, 495 F.2d 600, 1974 U.S. App. LEXIS 8981 (10th Cir.)*, cert. denied, *419 U.S. 858, 95 S. Ct. 107, 42 L. Ed. 2d 92, 1974 U.S. LEXIS 2646 (1974)*.

Trial court did not err in denying motion to sever count relating to possession of unregistered firearm from counts relating to armed bank robbery, jeopardizing lives of others in commission thereof, and kidnapping in attempt to avoid apprehension for offense since separate offenses were based on same transaction, possession of unregistered firearm deriving from firearm's presence in van which defendant had employed as means of escape, and it not being prerequisite to joinder that firearm had been used in commission of robbery. *United States v. Pietras, 501 F.2d 182, 1974 U.S. App. LEXIS 7412 (8th Cir.)*, cert. denied, *419 U.S. 1071, 95 S. Ct. 660, 42 L. Ed. 2d 668, 1974 U.S. LEXIS 3736 (1974)*.

Counts of indictment charging defendant with knowingly receiving and possessing stolen property, dealing in firearms without license, and receiving and possessing firearms after having been convicted of felony were properly joined under *USCS Rule of Criminal Procedure 8* where charges arose from single sale of 5 stolen shotguns. *United States v. Phillips, 522 F.2d 388, 1975 U.S. App. LEXIS 12982 (8th Cir. 1975)*.

Joinder of counts relating to possession of unregistered firearm and distribution of heroin was proper where both offenses involve sale of contraband, were committed on same day, and same 2 detectives observed both transactions, and thus proof of offenses was overlapping to some extent. *United States v. Jines, 536 F.2d 1255, 1976 U.S. App. LEXIS 8191 (8th Cir.)*, cert. denied, *429 U.S. 942, 97 S. Ct. 361, 50 L. Ed. 2d 312, 1976 U.S. LEXIS 3494 (1976)*.

Court of Appeals holds that bifurcation of elements of single-count felon-in-possession trial under *18 USCS § 922(g)(1)*, absent Government's consent, is generally error; this Court does not rule out bifurcation where facts underlying prior felony would be presented to jury and are so heinous as to overwhelm trial of firearm or ammunition possession. *United States v. Amante (In re United States), 418 F.3d 220, 2005 U.S. App. LEXIS 16602 (2d Cir. 2005)*.

Pursuant to *Fed. R. Crim. P. 14(a)*, district court did not abuse its discretion in denying defendant's motion to sever *18 USCS § 922(g)* felon-in-possession gun charges against him from drug-related charges; all jury heard about prior conviction was bare-bones stipulation that defendant had earlier felony conviction; it was not told any of details of that conviction, not even crime involved. *United States v. Lopez, 649 F.3d 1222, 23 Fla. L. Weekly Fed. C 281, 2011 U.S. App. LEXIS 17000 (11th Cir.)*, reh'g, en banc, denied, *451 Fed. Appx. 910, 2011 U.S. App. LEXIS 26188 (11th Cir. 2011)*.

Pursuant to *Fed. R. Crim. P. 14(a)*, district court properly denied severance of count alleging crime of felon in possession of firearm, violation of *18 USCS § 922(g)(1)*, from narcotics counts because, in light of overwhelming evidence presented against defendant—including testimony of his former girlfriend and his own confession—joinder did not cause defendant substantial prejudice so as to warrant severance. *United States v. Page, 657 F.3d 126, 2011 U.S. App. LEXIS 19081 (2d Cir. 2011)*, cert. denied, *565 U.S. 1128, 132 S. Ct. 1041, 181 L. Ed. 2d 765, 2012 U.S. LEXIS 187 (2012)*.

While defendant's argument as to severance was that mention of predicate felony for felon-in-possession charge, *18 USCS § 922(g)(1)*—to which he stipulated—impermissibly prejudiced him in defending against manufacturing marijuana charge, but bare mention of prior felony conviction otherwise unidentified was trivial, and was dwarfed by powerful separate evidence as to each charge, and, defendant had both armory and relatively sophisticated marijuana growing operation in his apartment. *United States v. Widi, 684 F.3d 216, 2012 U.S. App. LEXIS 13845 (1st Cir. 2012)*, cert. denied, *568 U.S. 1108, 133 S. Ct. 893, 184 L. Ed. 2d 693, 2013 U.S. LEXIS 181 (2013)*.

Charges of possession of cocaine base with intent to distribute and possession of ammunition by convicted felon were properly joined; drugs and ammunition were seized from defendant's residence on suspicion that defendant was involved in drug activity, and ammunition was found in safe from which cash that was linked to drugs had been seized. *United States v. Bagby, 696 F.3d 1074, 2012 U.S. App. LEXIS 21674 (10th Cir. 2012)*.

District court did not err in refusing to sever prior felony element from other elements of count for unlawful possession of firearm by convicted felon, since court did sever ex-felon count from other counts for trial. *United States v. Mangum, 100 F.3d 164, 321 U.S. App. D.C. 348, 1996 U.S. App. LEXIS 30238 (D.C. Cir. 1996)*.

Unpublished decision: Where defendant was charged with Hobbs Act robberies, *18 USCS § 1951*, using and carrying firearm during crime of violence, *18 USCS § 924(c)(1)*, solicitation to commit murder for hire, *18 USCS § 373*, murder for hire, *18 USCS § 1958*, witness tampering, *18 USCS § 1512(b)(1)*, (3), and being felon in possession of firearm, *18 USCS § 922(g)*, and each offense arose from several hour crime spree wherein defendant first hired and robbed prostitute with gun, then immediately hired and robbed cab driver with same gun; he then proceeded to interfere with state and federal prosecutions by tampering with witness and seeking more than once to have cab driver murdered, severance would have been needless duplication of judicial effort. *United States v. Mirwais Mohamadi, 461 Fed. Appx. 328, 2012 U.S. App. LEXIS 876 (4th Cir. 2012)*.

Unpublished decision: Pursuant to *Fed. R. Crim. P. 14(a)*, denial of severance of felon-in-possession of firearm and ammunition charges under *18 USCS § 922(g)(1)* from drug-related charges was proper because, in part, of considerations of judicial economy; had separate trials been granted, firearm evidence would likely have been admissible at trial of drug charges anyway, under *Fed. R. Evid. 404(b)*. *United States v. Tucker, 502 Fed. Appx. 720, 2012 U.S. App. LEXIS 23520 (10th Cir. 2012)*, cert. denied, *568 U.S. 1184, 133 S. Ct. 1302, 185 L. Ed. 2d 228, 2013 U.S. LEXIS 1499 (2013)*.

In case involving possession of firearm by felon, there was no error in refusal to bifurcate trial because, while bifurcation for single-count case was permissible, it was not required. *United States v. Thompson, 675 Fed. Appx. 221, 2017 U.S. App. LEXIS 776 (3d Cir.)*, cert. denied, *137 S. Ct. 2106, 197 L. Ed. 2d 904, 2017 U.S. LEXIS 2830 (2017)*.

Where a defendant has been charged with four counts of illegal sales of firearms to a government agent, and a co-defendant was a participant on only one occasion, and where there is no allegation in the indictment of a conspiracy, the two defendants may not be joined for trial; defendants charged under *18 USCS § 922* and under 18 USCS Appx. § 1202, dealing with possession of firearms, do not have a right to severance for trial of the 2 charges but should be protected from possible prejudice through adoption of 2-stage jury trial for each defendant. *United States v. Franke, 331 F. Supp. 136, 1971 U.S. Dist. LEXIS 11995 (D. Minn. 1971)*.

Where jury would not hear any details of codefendant's prior felony conviction, other than fact he had conviction which would subject him to *18 USCS § 922*, and would be instructed that codefendant's prior conviction could only be used for limited purpose of determining guilt or innocence on particular count, denial of defendant's motion to sever trials would not deprive him of fair trial. *United States v. Huslage, 480 F. Supp. 870, 1979 U.S. Dist. LEXIS 8173 (W.D. Pa. 1979)*.

Severance of felon in possession counts, *18 USCS § 922(g)(1)*, under *Fed. R. Crim. P. 14* was denied, as charges were based on same act or transaction that constituted parts of common scheme or plan and, therefore, were properly

joined under *Fed. R. Crim. P. 8(a)*. *United States v. Taylor, 293 F. Supp. 2d 884, 2003 U.S. Dist. LEXIS 21823 (N.D. Ind. 2003)*.

Unpublished decision: Initial joinder of possession of firearm by convicted felon charge with other offenses in indictment was proper under *Fed. R. Crim. P. 8(a)*; felon-in-possession charge was of same or similar character as another firearms charge, and charge was based on same act or transaction as drug charges against defendant since weapons and drugs were found at same time and one of weapons was found in same place as drugs; further, denial of motion to sever charge of possession of firearm by felon from drug charges was not abuse of discretion even though jury was not specifically instructed to consider prior felony conviction only in connection with felon-in-possession charge; jury's verdict of acquittal on two counts demonstrated that it followed judge's instructions and considered each count separately. *United States v. Williams, 177 Fed. Appx. 914, 2006 U.S. App. LEXIS 10165 (11th Cir.)*, cert. denied, *549 U.S. 915, 127 S. Ct. 260, 166 L. Ed. 2d 202, 2006 U.S. LEXIS 6162 (2006)*.

Unpublished decision: Court affirmed defendant's convictions under *18 USCS §§ 922(g)(1)* and *1512(b)(1)*; where evidence of defendant's weapon possession was introduced through stipulation, cautionary instruction was issued, and evidence of defendant's witness tampering was overwhelming, trial court did not err by refusing to sever charges. *United States v. Cordova, 186 Fed. Appx. 742, 2006 U.S. App. LEXIS 15807 (9th Cir. 2006)*.

District court properly refused to sever counts charging them with receiving firearms while being convicted felons from prosecution for use of firearm to commit felony resulted in admission into evidence of their prior convictions in government's case-in-chief which prejudiced them in trial of other offenses charged was without merit where evidence of their prior convictions were admissible to rebut defense of entrapment which had been raised by defendants. United States v Busic, 22 Crim. L. Rep. (BNA) 2443 (CA3 1/5/78).

200. —Discretion and abuse of discretion

Refusal to sever prosecution for violation of *18 USCS § 1962* from prosecution for possession and transportation of firearm in commerce after conviction of felony was not abuse of discretion since weapon which formed basis of firearms count was also involved in racketeering counts as essential part and jury was instructed to give separate consideration to each defendant and to each count. *United States v. Aleman, 609 F.2d 298, 1979 U.S. App. LEXIS 10861 (7th Cir. 1979)*, cert. denied, *445 U.S. 946, 100 S. Ct. 1345, 63 L. Ed. 2d 780, 1980 U.S. LEXIS 1285 (1980)*.

Although severance or bifurcation of trials for conspiracy to transfer unregistered shotgun and possession of firearm by convicted felon would have been preferable, district court did not abuse its discretion by consolidating two cases and ordering that two indictments be tried together, where judge gave proper limiting instructions, and evidence was enough to negate prejudice. *United States v. Nguyen, 88 F.3d 812, 96 Cal. Daily Op. Service 5111, 96 D.A.R. 8241, 45 Fed. R. Evid. Serv. (CBC) 138, 1996 U.S. App. LEXIS 16285 (9th Cir.)*, cert. denied, *519 U.S. 986, 117 S. Ct. 443, 136 L. Ed. 2d 339, 1996 U.S. LEXIS 6934 (1996)*.

District court did not abuse its discretion in failing to sever convicted felon's count for possession of firearm under *18 USCS § 922(g)* from his counts for conspiracy and cocaine possession, although gun was found twenty-four days after his last known drug trafficking activity, where defendant failed to show he suffered undue prejudice. *United States v. Heckard, 238 F.3d 1222, 2001 Colo. J. C.A.R. 323, 56 Fed. R. Evid. Serv. (CBC) 245, 2001 U.S. App. LEXIS 166 (10th Cir. 2001)*.

Joinder of possession of firearm count with count for possession of ammunition found at defendant's residence eight months later was "proper," where two offenses charged were of like class and character, and defendant would likely have been found guilty on each count had separate trials occurred; district court did not "abuse its discretion" in denying defendant's motion for severance, where some of evidence from each count likely would have been admissible in other trial, jury was properly instructed, evidence was not complicated, and trial was short. *United States v. Quilling, 261 F.3d 707, 2001 U.S. App. LEXIS 18755 (7th Cir.)*, cert. denied, *534 U.S. 1034, 122 S. Ct. 576, 151 L. Ed. 2d 447, 2001 U.S. LEXIS 10562 (2001)*.

District court did not abuse its discretion in denying motion to sever witness tampering charge, *18 USCS § 1512*, from felon-in-possession charge, *18 USCS § 922(g)*, since charges were factually related, and evidence that weapons were obtained by burglary and that defendant had been convicted of prior felony would have been admissible in separate trial for witness tampering, where witness tampering was attempt to avoid prosecution of firearms charge. *United States v. Rock, 282 F.3d 548, 2002 U.S. App. LEXIS 3412 (8th Cir. 2002)*.

District court's exercise of its discretion in refusing to bifurcate elements of defendant's *18 USCS § 922(g)(1)* charge was not reversible error because admission into evidence of defendant's prior conviction was accompanied by proper curative instruction and was limited to fact of conviction itself, it was by definition not prejudicial. *United States v. Belk, 346 F.3d 305, 2003 U.S. App. LEXIS 20718 (2d Cir. 2003)*, cert. denied, *540 U.S. 1205, 124 S. Ct. 1474, 158 L. Ed. 2d 126, 2004 U.S. LEXIS 1447 (2004)*, transferred, *2016 U.S. App. LEXIS 23832 (2d Cir. Aug. 5, 2016)*.

Refusal by district court to sever trials of defendant and co-defendant on charges of possession of firearm by convicted felon in violation of *18 USCS § 922(g)(1)* was not abuse of discretion as resulting admission of two photographs that had previously been found inadmissible did not amount to compelling prejudice. *United States v. Clay, 408 F.3d 214, 2005 U.S. App. LEXIS 7342 (5th Cir. 2005)*.

Court of Appeals granted Government's petition for writ of mandamus directing district not to bifurcate trial of elements of single count charging defendant with being felon-in-possession in violation of *18 USCS § 922(g)(1)*, finding that district court abused its discretion in deciding to bifurcate trial absent Government's consent; although bifurcation may have been appropriate if facts underlying prior felony were so heinous as to overwhelm trial of firearm or ammunition possession, in instant case, defendant's previous felony convictions for narcotics trafficking were not "extraordinarily unusual." *United States v. Amante (In re United States), 418 F.3d 220, 2005 U.S. App. LEXIS 16602 (2d Cir. 2005)*.

Defendant's convictions for two counts of violating *18 USCS §§ 922(g)(1)* and *924(a)(2)* were affirmed since district court did not abuse its discretion by refusing to sever two counts of being felon in possession of firearm charged in indictment; instruction given to jury plainly forbade it from considering evidence pertaining to one count as to other and defendant pointed to no indications that instruction was not followed. *United States v. Hickerson, 489 F.3d 742, 2007 U.S. App. LEXIS 14449 (5th Cir.)*, cert. denied, *552 U.S. 1004, 128 S. Ct. 521, 169 L. Ed. 2d 363, 2007 U.S. LEXIS 11725 (2007)*.

District court did not abuse its discretion under *Fed. R. Crim. P. 14(a)* when it denied defendant's motion to sever one *18 USCS § 922(g)(1)* charge from his trial on another § 922(g)(1) charge. There was no abuse of discretion because although underlying criminal activity occurred on different days, evidence as to each § 922(g)(1) charge was relatively short and simple, and district court properly instructed jury to consider each count separately. *United States v. Rice, 520 F.3d 811, 2008 U.S. App. LEXIS 6894 (7th Cir. 2008)*.

Where officers found shotgun in defendant's abandoned vehicle after traffic stop few months before stopping defendant and finding ammunition in defendant's pocket, it was not abuse of discretion to deny defendant's motion to sever ammunition count from firearm counts, because evidence was not too confusing or unfairly overlapping and each individual count was supported by sufficient evidence. *United States v. Gonzales, 535 F.3d 1174, 2008 U.S. App. LEXIS 16461 (10th Cir.)*, cert. denied, *555 U.S. 1077, 129 S. Ct. 743, 172 L. Ed. 2d 740, 2008 U.S. LEXIS 8946 (2008)*.

District court did not abuse its discretion either by refusing to sever *18 USCS § 922(g)(1)* charges from *18 USCS § 201* charges for attempted bribery of police officer or by permitting proof of defendant's prior conviction through parties' stipulation, where proof of felon-in-possession offenses would have been admissible even in separate trial of remaining offense. *United States v. Clark, 184 F.3d 858, 337 U.S. App. D.C. 278, 52 Fed. R. Evid. Serv. (CBC) 126, 1999 U.S. App. LEXIS 18048 (D.C. Cir. 1999)*.

Unpublished decision: In criminal trial in which defendant was convicted of two counts of being felon in possession of firearm and ammunition under *18 USCS § 922(g)(1)*, district court did not abuse its discretion in joining two counts

under *Fed. R. Crim. P. 8(a)* and denying defendant's motion to sever counts under *Fed. R. Crim. P. 14(a)* because two counts were separate and distinct, offenses took place on different dates at different locations, different witnesses and evidence were presented on each count, and case for each count was strong enough on its own. *United States v. Maxwell, 492 Fed. Appx. 860, 2012 U.S. App. LEXIS 14627 (10th Cir. 2012)*.

201. —Prejudice

Where violation of *18 USCS § 922(b)(3)* which prohibits sales to those licensee knows or has reasonable cause to believe live in another state, was inextricably bound up with prosecution under *18 USCS § 922(b)(5)*, which mandates recording name, age and place of residence of any buyers of firearms, and where potential for prejudice was acute, conviction under latter section would be reversed, and government may retry defendant separately on charge. *United States v. Plyman, 551 F.2d 965, 1977 U.S. App. LEXIS 13541 (5th Cir. 1977)*.

There is no merit to contention that cocaine and firearms possession charges should have been severed, where fact that cocaine and guns were found in same room establishes common scheme, and no prejudice resulted to defendant due to number of charges joined or fact that rebutting possession of firearms allowed prosecution to show prior conviction. *United States v. Valentine, 706 F.2d 282, 13 Fed. R. Evid. Serv. (CBC) 623, 1983 U.S. App. LEXIS 28708 (10th Cir. 1983)*.

Firearms offense under *18 USCS § 922* was properly joined with drug conspiracy charges, since firearms violation was overt act of conspiracy; joinder was not unduly prejudicial, in light of nexus between drug distribution and weapons. *United States v. Jones, 880 F.2d 55, 28 Fed. R. Evid. Serv. (CBC) 829, 1989 U.S. App. LEXIS 9933 (8th Cir. 1989)*, reh'g denied, *1989 U.S. App. LEXIS 13053 (8th Cir. Aug. 23, 1989)*.

Defendant failed to show that he was prejudiced by district court's denial of his motion for severance of non-RICO drug and firearm counts on which he was charged from RICO counts, after which he was charged with RICO conspiracy and substantive RICO, where district court took appropriate measures to minimize any spillover prejudice with regard to hearsay evidence admitted provisionally and later stricken. *United States v. Baltas, 236 F.3d 27, 2001 U.S. App. LEXIS 3 (1st Cir.)*, cert. denied, *532 U.S. 1030, 121 S. Ct. 1982, 149 L. Ed. 2d 773, 2001 U.S. LEXIS 3762 (2001)*.

District court did not abuse its discretion in failing to sever convicted felon's count for possession of firearm under *18 USCS § 922(g)* from his counts for conspiracy and cocaine possession, although gun was found twenty-four days after his last known drug trafficking activity, where defendant failed to show he suffered undue prejudice. *United States v. Heckard, 238 F.3d 1222, 2001 Colo. J. C.A.R. 323, 56 Fed. R. Evid. Serv. (CBC) 245, 2001 U.S. App. LEXIS 166 (10th Cir. 2001)*.

District court did not err in refusing to sever firearms counts, pursuant to *Fed. R. Crim. P. 14*, from controlled substances counts; count pursuant to *18 USCS § 924(c)* concerning use of firearm in furtherance of drug trafficking crime was properly tried with methamphetamine crimes given their relation; moreover, counts charging violations of *18 USCS § 922(g)* were properly joined because defendant failed to show that he suffered undue prejudice as result of joinder; his stipulation of prior felony minimized possibility of any prejudice based on subject matter of prior crime; further, district court gave limiting instructions, sufficiently curing any prejudice. *United States v. Atchley, 474 F.3d 840, 2007 FED App. 0034P, 2007 U.S. App. LEXIS 1394 (6th Cir.)*, cert. denied, *550 U.S. 965, 127 S. Ct. 2447, 167 L. Ed. 2d 1145, 2007 U.S. LEXIS 6040 (2007)*.

District court demonstrated sufficiently scrupulous regard for defendant's right to fair trial, where, although court refused to sever narcotics counts from weapons counts, it employed cautionary measures, even if they were not same measures defendant proposed, since defendant failed to establish that undue prejudice remained after cautionary measures had taken effect. *United States v. Bowie, 142 F.3d 1301, 330 U.S. App. D.C. 74, 1998 U.S. App. LEXIS 9473 (D.C. Cir. 1998)*.

Unpublished decision: In criminal trial that charged defendant with violating *18 USCS §§ 371* and *922(g)(1)*, district court did not abuse its discretion in denying defendant's motion to sever offenses under *Fed. R. Crim. P. 14* because counts were of same or similar character pursuant to *Fed. R. Crim. P. 8(a)*, and denial of motion did not prejudice defendant. *United States v. Hagins, 452 Fed. Appx. 141, 2011 U.S. App. LEXIS 23201 (3d Cir. 2011)*, cert. denied, *568 U.S. 876, 133 S. Ct. 255, 184 L. Ed. 2d 137, 2012 U.S. LEXIS 6247 (2012)*.

Unpublished decision: In case in which defendant was indicted on two counts of violating *18 USCS §§ 922(g)(1)* and *924(a)(2)* and (e) and jury acquitted him on count one and convicted him on count two, he unsuccessfully argued on appeal that district court erred by failing to sever counts one and two for trial; joinder of counts was proper since both counts charged similar conduct, namely possession of firearms and ammunition by convicted felon, and occurred only months apart, and defendant failed to show that he was clearly prejudiced by district court's denial of his motion to sever. *United States v. Ketter, 456 Fed. Appx. 293, 2011 U.S. App. LEXIS 24030 (4th Cir. 2011)*.

Unpublished decision: Although defendant contended that prior felony element of *18 USCS § 922(g)* was unconstitutional because it unfairly prejudiced jury against defendant, denying him his right to fair trial, defendant stipulated to his prior conviction at trial; defendant could not complain of prejudice. *United States v. Bogle, 522 Fed. Appx. 15, 2013 U.S. App. LEXIS 10377 (2d Cir. 2013)*.

First count of superseding indictment—accusing defendant of being felon in possession of firearm in violation of *18 USCS § 922(g)(1)*—will not be severed on grounds of prejudicial joinder, even though jury will learn about defendant's 20-year-old conviction, which would be inadmissible in separate trial of next two counts charging possession of firearms with obliterated serial numbers in violation of § 922(k) and possession of machine guns in violation of § 922(o), because evidence otherwise is essentially same and possible prejudice can be remedied by stipulation to conviction or by jury instructions. *United States v. Mebust, 857 F. Supp. 609, 1994 U.S. Dist. LEXIS 3795 (N.D. Ill. 1994)*.

202. —Harmless and reversible error

Where violation of *18 USCS § 922(b)(3)* which prohibits sales to those licensee knows or has reasonable cause to believe live in another state, was inextricably bound up with prosecution under *18 USCS § 922(b)(5)*, which mandates recording name, age and place of residence of any buyers of firearms, and where potential for prejudice was acute, conviction under latter section would be reversed, and government may retry defendant separately on charge. *United States v. Plyman, 551 F.2d 965, 1977 U.S. App. LEXIS 13541 (5th Cir. 1977)*.

Firearms and narcotics charges were improperly joined, where significant expanse of time separated discovery of firearms from conduct underlying narcotics charges, even though firearms were discovered in same secret compartment of vehicle in which narcotics were later found, since natural inferences that may be drawn from contemporaneous possession of drugs and firearms could not be drawn; however, error was harmless. *United States v. Hubbard, 61 F.3d 1261, 1995 U.S. App. LEXIS 19164 (7th Cir. 1995)*, reh'g denied, *1995 U.S. App. LEXIS 24204 (7th Cir. Aug. 24, 1995)*, cert. denied, *516 U.S. 1175, 116 S. Ct. 1268, 134 L. Ed. 2d 216, 1996 U.S. LEXIS 1814 (1996)*.

District court's failure to sever felon in possession charge under *18 USCS § 922(g)* from charge for harboring aliens for commercial gain in violation of *8 USCS § 1324* was reversible error, where counts were unrelated, since inclusion of weakly-supported firearm charge and evidence admitted based on its relevance to this count seriously and improperly prejudiced defendant, resulting in unfair trial. *United States v. Singh, 261 F.3d 530, 2001 U.S. App. LEXIS 18026 (5th Cir. 2001)*.

District court's exercise of its discretion in refusing to bifurcate elements of defendant's *18 USCS § 922(g)(1)* charge was not reversible error because admission into evidence of defendant's prior conviction was accompanied by proper curative instruction and was limited to fact of conviction itself, it was by definition not prejudicial. *United States v. Belk, 346 F.3d 305, 2003 U.S. App. LEXIS 20718 (2d Cir. 2003)*, cert. denied, *540 U.S. 1205, 124 S. Ct. 1474, 158 L. Ed. 2d 126, 2004 U.S. LEXIS 1447 (2004)*, transferred, *2016 U.S. App. LEXIS 23832 (2d Cir. Aug. 5, 2016)*.

Defendant's offenses of bank robbery and firearm possession under *18 USCS §§ 2113* and *922(g)(1)* were misjoined under *Fed. R. Crim. P 8(a)* because joinder failed face-of-the-indictment test in that robbery did not involve possession of guns and other offense occurred three weeks later and involved nothing but guns; however, misjoinder was harmless under *Fed. R. Crim. P. 52(a)* due to overwhelming evidence of guilt for each offense. *United States v. Locklear, 631 F.3d 364, 2011 FED App. 0022P, 2011 U.S. App. LEXIS 1758 (6th Cir. 2011)*.

203. Estoppel

Defendant's argument that government is estopped from prosecuting him for dealing in firearms without license in violation of *18 USCS § 922* because Internal Revenue Service had published booklet containing question about whether unlicensed individual could sell firearm to another person who resides in same state, is without merit since reasonable reader of booklet would conclude that single isolated sale did not constitute engaging in "business of selling firearms," and defendant could hardly have had reason to believe that his continuous buying and selling of weapons was protected by umbrella of answer in booklet. *United States v. Gross, 451 F.2d 1355, 1971 U.S. App. LEXIS 7325 (7th Cir. 1971)*.

Although fact that Treasury Department had issued firearms regulation books which purports to exempt sales of firearms to police officers may constitute defense, seller must have knowledge that buyer is police officer and must secure signed statement from official of agency for which buyer works stating that firearm is to be used in buyer's official duties. *United States v. Brooks, 611 F.2d 614, 1980 U.S. App. LEXIS 20625 (5th Cir. 1980)*, overruled in part, *United States v. Henry, 749 F.2d 203, 1984 U.S. App. LEXIS 15964 (5th Cir. 1984)*.

Defendant's conviction for receipt and possession of firearms under *18 USCS § 922* must be reversed, since he was misled by licensed firearms dealer who sold him weapons, into believing that his conduct would not be contrary to federal law. *United States v. Tallmadge, 829 F.2d 767, 1987 U.S. App. LEXIS 12989 (9th Cir. 1987)*.

204. —Collateral estoppel

Finding that defendant was "not guilty" as to one of dates on which he was charged with continuous possession of firearm did not constitute acquittal of charged possession as whole, since proof of possession on that date was not necessary to support conviction for charged offense; jeopardy did not terminate, and neither Double Jeopardy Clause nor doctrine of collateral estoppel barred second prosecution for possession on date in question. *United States v. Rivera, 77 F.3d 1348, 9 Fla. L. Weekly Fed. C 954, 1996 U.S. App. LEXIS 4930 (11th Cir.)*, cert. denied, *517 U.S. 1250, 116 S. Ct. 2511, 135 L. Ed. 2d 200, 1996 U.S. LEXIS 3819 (1996)*.

Neither collateral estoppel nor double jeopardy barred prosecution of defendant for unlawful possession of firearm in violation of *18 USCS § 922(g)(1)*, even though he had been convicted previously under *18 USCS § 922(k)* for transporting weapon with obliterated serial number and *18 USCS § 371* for conspiracy with firearm possession as overt act based on same evidence. *United States v. Lanoue, 137 F.3d 656, 1998 U.S. App. LEXIS 3902 (1st Cir. 1998)*.

Unpublished decision: Where defendant was acquitted of conspiracy to distribute crack, in violation of *21 USCS §§ 841(a)(1)* and *846*, collateral estoppel did not bar government from subsequently prosecuting defendant jointly with coconspirators on charges of conspiracy to commit money laundering, in violation of *18 USCS § 1956(h)*, and possession of firearms, in violation of *18 USCS §§ 922(g)(1)* and *924(c)(1)*, because jury in first trial did not acquit defendant of distributing crack and charges filed against defendant in second trial did not require jury to determine if defendant entered into agreement to distribute crack. *United States v. Melvin, 2007 U.S. App. LEXIS 16794 (4th Cir. July 13, 2007)*, cert. denied, *552 U.S. 1032, 128 S. Ct. 637, 169 L. Ed. 2d 411, 2007 U.S. LEXIS 12145 (2007)*, cert. denied, *552 U.S. 1128, 128 S. Ct. 950, 169 L. Ed. 2d 781, 2008 U.S. LEXIS 544 (2008)*.

Government was collaterally estopped from establishing that defendant discharged firearm in basement of building, as required to link him with ammunition found in basement and to support charges brought under *18 USCS § 922(g)*, where jury necessarily found that defendant was not shooter when it earlier acquitted him on charges of conspiracy

to interfere with commerce by robbery, attempt to interfere with commerce by robbery, and causing death of person by using and carrying firearm. *United States v. Duffy, 188 F. Supp. 2d 281, 2002 U.S. Dist. LEXIS 2964 (E.D.N.Y.)*, aff'd, *40 Fed. Appx. 637, 2002 U.S. App. LEXIS 17760 (2d Cir. 2002)*.

205. Selection of jury

In prosecution for offense of receiving firearm as convicted felon, district judge's general questioning of jury without expressly mentioning defendant's prior felony was sufficient to discover possible prejudice on part of jurors. *United States v. Batchelder, 581 F.2d 626, 1978 U.S. App. LEXIS 9987 (7th Cir. 1978)*, rev'd, *442 U.S. 114, 99 S. Ct. 2198, 60 L. Ed. 2d 755, 1979 U.S. LEXIS 122 (1979)*.

District court acted properly in replacing juror after jury had been sworn in, where there was issue whether he had been convicted of offense eighteen years ago that disqualified him from his current possession of firearms for hunting. *United States v. Cantu, 229 F.3d 544, 2000 FED App. 0365P, 2000 U.S. App. LEXIS 25341 (6th Cir. 2000)*.

Defendant's convictions for bank robbery, use of firearm during crime of violence, and unlawful possession of firearm in violation of *18 USCS §§ 2113(a)*, (d), 924(c)(1)(A), (e)(1), and 922(g)(1) were affirmed because his Sixth Amendment right to impartial jury was not denied by failure to strike juror who was bank teller at another bank for cause based on implied bias since fact that someone held position similar to that of key witness was not basis for excluding her where there was no indication of bias, and defendant's exercise of peremptory challenge pursuant to *Fed. R. Crim. P. 24(b)* was not denied or impaired when he chose to use peremptory challenge to remove juror who allegedly should have been excused for cause. *United States v. Thompson, 450 F.3d 840, 2006 U.S. App. LEXIS 15079 (8th Cir. 2006)*.

Defendant was properly convicted of dealing in firearms without license, *18 USCS § 922(a)(1)(A)*, selling firearms to person previously convicted of felony, *18 USCS § 922(d)(1)*, (3), and possession and transfer of semi-automatic assault weapons, *18 USCS § 922(v)(1)*; district court did not abuse its discretion in denying defendant's motion for new trial based on juror's alleged dishonesty during voir dire because juror's answer, although mistaken, was not dishonest and because no bias could be inferred from juror's "dishonesty." *United States v. McConnel, 464 F.3d 1152, 71 Fed. R. Evid. Serv. (CBC) 420, 2006 U.S. App. LEXIS 24240 (10th Cir. 2006)*, cert. denied, *549 U.S. 1361, 127 S. Ct. 2085, 167 L. Ed. 2d 803, 2007 U.S. LEXIS 4280 (2007)*, remanded, *425 Fed. Appx. 691, 2011 U.S. App. LEXIS 7716 (10th Cir. 2011)*.

In case in which defendant appealed his conviction for being felon in possession of firearm, in violation of *18 USCS §§ 922(g)(1)* and *924(a)(2)*, his untimely Batson challenge was waived; he did not object to jury panel, did not make Batson challenge at time of trial, passed jury for cause, and made no objection to any strikes made by government; Batson objection must be made at latest before venire is dismissed and before trial commences. *United States v. Brown, 634 F.3d 435, 2011 U.S. App. LEXIS 4607 (8th Cir. 2011)*.

Defendant failed to demonstrate that prosecution acted in discriminatory manner by striking veniremember because striking of two out of three black veniremembers did not demonstrate pattern of discrimination, and State struck veniremember because prosecutor had trouble hearing veniremember's answers and veniremember had friend who was on multiple years' probation. *United States v. Folk, 754 F.3d 905, 24 Fla. L. Weekly Fed. C 1424, 2014 U.S. App. LEXIS 10929 (11th Cir. 2014)*, cert. denied, *574 U.S. 1100, 135 S. Ct. 1006, 190 L. Ed. 2d 879, 2015 U.S. LEXIS 310 (2015)*.

Defendant convicted of possession of firearm by prior felon under *18 USCS § 922(g)(1)* was deprived of fair trial under Sixth Amendment because judge read unredacted indictment to jury pool, revealing defendant's prior conviction for robbery with gun, crime substantially similar to charged offense, even though defendant had offered to stipulate to prior offense; error was plain and not harmless under *Fed. R. Crim. P. 52* because indictment had effect of bolstering arresting officer's credibility and diminishing defendant's credibility in otherwise weak case. *United States v. Coleman, 552 F.3d 853, 384 U.S. App. D.C. 200, 2009 U.S. App. LEXIS 673 (D.C. Cir. 2009)*.

Unpublished decision: Defendant was not entitled to have conviction for being felon in possession of firearm in violation of *18 USCS § 922(g)(1)* reversed on basis that district court decided to maintain jury as constituted following Government's errant use of alternate peremptory strike against seated juror in violation of *Fed. R. Crim. P. 24(c)* because defendant failed to show that defendant suffered any prejudice, especially in light of fact that district court had allowed defense counsel to correct similar mistake. *United States v. Williams, 450 Fed. Appx. 600, 2011 U.S. App. LEXIS 19188 (9th Cir. 2011)*.

Unpublished decision: Where defendant appealed his convictions for violating *18 USCS § 922(g)(1)*, district court did not err in failing to delay sua sponte jury empanelment due to defendant's medical condition; both defense counsel and defendant sought to move forward in court that day. *United States v. Lassend, 545 Fed. Appx. 3, 2013 U.S. App. LEXIS 21524 (1st Cir. 2013)*.

Unpublished decision: Defendant's convictions for violating *18 USCS §§ 922(g)* and *924(c)* and (e) and *21 USCS § 844* were affirmed because district court did not err in sustaining objection by government under Batson decision and seated jurors defendant had challenged; defendant had engaged in purposeful discrimination in using his preemptory challenges. *United States v. Gabe, 232 Fed. Appx. 900, 2007 U.S. App. LEXIS 11202 (11th Cir. 2007)*.

Unpublished decision: In case in which defendant challenged his conviction for violating *21 USCS § 841(a)(1)* and (b)(1)(A)(iii) and *18 USCS §§ 922(g)(1)* and *924(c)* and (e)(1) by arguing that district court erred in accepting government's non-discriminatory reason for striking minority juror and that his rights under Batson decision were thereby violated, that argument had been waived on appeal because record showed that he had made no objection to government's demeanor explanation. *United States v. Brent, 300 Fed. Appx. 267, 2008 U.S. App. LEXIS 23762 (5th Cir. 2008)*, cert. denied, *558 U.S. 829, 130 S. Ct. 54, 175 L. Ed. 2d 44, 2009 U.S. LEXIS 5438 (2009)*.

Unpublished decision: Where defendant appealed his conviction for violating *18 USCS 922(G)(1)* and *924(e)*, given uncertainty regarding length of illness, juror's confirmation that concentration on evidence would likely be problematic, and inconvenience that any delay might cause, district court acted within its discretion in excusing ill juror on second day of trial and replacing her with alternate rather than postponing defendant's trial. *United States v. Baize, 622 Fed. Appx. 198, 2015 U.S. App. LEXIS 5168 (4th Cir. 2015)*.

Unpublished decision: Where defendant appealed his conviction for being felon in possession of firearm, as he failed to establish that government violated Batson decision, there was no need for district court to take remedial action, and appellate court did not have to decide whether Batson error that resulted in striking of alternate juror, when no alternate deliberated, was subject to harmless error analysis. *United States v. Saylor, 626 Fed. Appx. 802, 2015 U.S. App. LEXIS 15933 (11th Cir. 2015)*.

Unpublished decision: It was not error to deny defendant's Batson challenge, because court's own findings confirmed government's stated rationale since juror was somewhat distracted and much more uncomfortable than rest of folks on panel. *United States v. Taylor, 638 Fed. Appx. 236, 2016 U.S. App. LEXIS 4732 (4th Cir. 2016)*.

206. Comments and arguments of counsel

Prosecutor's comment in prosecution for violation of *18 USCS § 922* that gun involved might be "sniper's gun" was fair comment on evidence of case. *United States v. Kowalski, 502 F.2d 203, 1974 U.S. App. LEXIS 7163 (7th Cir. 1974)*, cert. denied, *420 U.S. 979, 95 S. Ct. 1407, 43 L. Ed. 2d 660, 1975 U.S. LEXIS 977 (1975)*.

Prosecutor's references to defendant's connection with Mexican terrorist organization and arrest of defendant's father in Mexico on related charge was not such error as to entitle defendant to reversal of conviction. *United States v. Veytia-Bravo, 603 F.2d 1187, 4 Fed. R. Evid. Serv. (CBC) 1474, 1979 U.S. App. LEXIS 11368 (5th Cir. 1979)*, reh'g denied, *607 F.2d 1006 (5th Cir. 1979)*, cert. denied, *444 U.S. 1024, 100 S. Ct. 686, 62 L. Ed. 2d 658, 1980 U.S. LEXIS 405 (1980)*.

Defendant could not by stipulation in prosecution for violation of *18 USCS § 922* admit felony, and, therefore, preclude any mention of convicted status to jury either by argument of prosecutor or through court's instructions since

commission of felony was element of crime. *United States v. Williams, 612 F.2d 735, 1979 U.S. App. LEXIS 9277 (3d Cir. 1979)*, cert. denied, *445 U.S. 934, 100 S. Ct. 1328, 63 L. Ed. 2d 770, 1980 U.S. LEXIS 1217 (1980)*.

In prosecution for violating *18 USCS § 922*, prosecutor's references to defendant as convicted felon and his alleged lying about his car theft conviction does not constitute plain error of where defense counsel did not object to this portion of closing argument and defendant's status as convicted felon was already before jury as element of government's unlawful possession charges against him; prosecutor's brief reference to intent of Congress in passing *18 USCS § 922* does not require instruction sua sponte where no cautionary instruction is requested by defense counsel and prosecutor was speaking in general terms. *United States v. Auerbach, 682 F.2d 735, 10 Fed. R. Evid. Serv. (CBC) 1191, 1982 U.S. App. LEXIS 17690 (8th Cir.)*, cert. denied, *459 U.S. 911, 103 S. Ct. 219, 74 L. Ed. 2d 174, 1982 U.S. LEXIS 3868 (1982)*.

Counsel has no right to argue legal contention to jury that court has rejected where court informs counsel that it will not instruct as requested on point of law. *United States v. Lamare, 711 F.2d 3, 1983 U.S. App. LEXIS 26342 (1st Cir. 1983)*.

Defendant was not entitled to new trial based on alleged prosecutorial misconduct—when prosecutor likened gun in defendant's possession to gun used to assassinate President Lincoln—during closing arguments, because remark was isolated one, and evidence against defendant was overwhelming; defendant stipulated to being convicted felon who was found in possession of firearm that affected and traveled in interstate commerce; only issue at trial was whether defendant's possession of pistol was "knowing" under *18 USCS § 922(g)*. *United States v. Hargrove, 416 F.3d 486, 2005 FED App. 0301P, 2005 U.S. App. LEXIS 14521 (6th Cir. 2005)*.

Where defendant argued that prosecutor made improper remarks during closing argument, remark, "the community enforces law, you represent community, you decide," did not impermissibly implore jury to act as "conscience of community." *United States v. Levering, 431 F.3d 289, 2005 U.S. App. LEXIS 26770 (8th Cir. 2005)*, cert. denied, *547 U.S. 1185, 126 S. Ct. 2366, 165 L. Ed. 2d 289, 2006 U.S. LEXIS 4444 (2006)*, reh'g, en banc, denied, *2006 U.S. App. LEXIS 2555 (8th Cir. Feb. 1, 2006)*.

Defendant's conviction for being felon in possession of firearm was upheld because prosecutor's statements during closing argument were not improper since (1) regarding one comment, prosecutor was appealing to jurors' common sense in asking them to credit Government's explanation instead of defendant's, and (2) comment regarding defendant's left-handedness was not improper comment on defendant's failure to testify and did not impermissibly shift burden of proof. *United States v. Glover, 558 F.3d 71, 2009 U.S. App. LEXIS 3853 (1st Cir. 2009)*.

Defendant's conviction for being felon in possession of firearm under *18 USCS § 922(g)(1)* was upheld because, inter alia, comments made by prosecutor's during closing argument regarding witness identification and defendant's motive were not improper. *United States v. Meadows, 571 F.3d 131, 2009 U.S. App. LEXIS 14935 (1st Cir.)*, cert. denied, *558 U.S. 1018, 130 S. Ct. 569, 175 L. Ed. 2d 394, 2009 U.S. LEXIS 8040 (2009)*.

Improper comments to jury were cause for reversal of defendant's conviction for being felon in possession of firearm, in violation of *18 USCS §§ 922(g)(1)* and *924(a)(2)*, because they related to central issue in case and substantially prejudiced defendant's right to fair trial; prosecutor asserted that for defendant to be not guilty, officer would have to have been dishonest. *United States v. Miller, 621 F.3d 723, 2010 U.S. App. LEXIS 18816 (8th Cir. 2010)*.

In case in which defendant appealed his conviction for violating 8 USCS §§ 922(g)(1) and 924(e)(1), he unsuccessfully argued that district court erred in denying his motion to suppress evidence as fruit of illegal seizure of his person; defendant was present in area known for crime, he became suspiciously defensive when confronted about walking in middle of street, belligerently yelling that he had not done anything wrong, officer saw gun-shaped bulge in defendant's pocket, defendant approached patrol car on his own, and officers did not touch him until after he fled and they chased him down. *United States v. Jordan, 635 F.3d 1181, 22 Fla. L. Weekly Fed. C 1900, 2011 U.S. App. LEXIS 5235 (11th Cir.)*, cert. denied, *565 U.S. 925, 132 S. Ct. 356, 181 L. Ed. 2d 225, 2011 U.S. LEXIS 7051 (2011)*,

reh'g, en banc, denied, *2011 U.S. App. LEXIS 23685 (11th Cir. May 19, 2011)*, reh'g, en banc, denied, *433 Fed. Appx. 899, 2011 U.S. App. LEXIS 26220 (11th Cir. 2011)*.

In case in which defendant appealed his conviction for violating *18 USCS § 922(g)(9)*, he unsuccessfully claimed prosecutorial misconduct; there was nothing improper about prosecutor's statement that there was no evidence that gun had been planted because defendant had advanced theory that his ex-girlfriend had planted gun to frame him and theory that gun belonged to buyer of house, who had moved belongings in prior to his arrest; defendant opened door to statement at issue. *United States v. Salley, 651 F.3d 159, 2011 U.S. App. LEXIS 13258 (1st Cir. 2011)*.

In case in which defendant appealed his conviction for violating *18 USCS § 922(g)(9)*, claiming prosecutorial misconduct, prosecutor's statement that there had been no suggestion that defendant did not know that gun was there did not shift burden of proof; prosecutor did not argue that defendant had burden to prove another set of facts; statement drew attention to lack of evidence that he was unaware of gun's presence in his home. *United States v. Salley, 651 F.3d 159, 2011 U.S. App. LEXIS 13258 (1st Cir. 2011)*.

In case in which defendant appealed his conviction for violating *18 USCS § 922(g)(9)*, claiming prosecutorial misconduct, prosecutor's statement that there had been no suggestion that defendant did not know that gun was there did not comment on defendant's failure to testify; while jury may have perceived statement as commentary of defendant not testifying, it was conceivable that statement, albeit clumsily, highlighted for jury absence of any testimony from defense witness that she put gun in closet and that, to her knowledge, defendant was not aware of its presence; additionally, evidence linking defendant to gun was tremendous. *United States v. Salley, 651 F.3d 159, 2011 U.S. App. LEXIS 13258 (1st Cir. 2011)*.

Defendant, who was convicted of aiding and abetting use and carrying of firearm during crime of violence, under *18 USCS § 924(c)(1)*, and possession of firearm by convicted felon, under *18 USCS §§ 922(g)(1)*, *924(a)(2)*, was not entitled to have convictions reversed on basis of prosecutorial misconduct during closing argument in violation of Fifth Amendment because any prejudice as to isolated comment about defendant's burden to prove defendant's innocence was sufficiently cured by district court's immediate statement to jury and its final jury instructions; comments made by prosecutor during rebuttal argument that allegedly attacked integrity of defense counsel were not improper because government was properly attempting to distinguish defense's attack on co-defendant's credibility from uncontroverted facts of case. *United States v. Patterson, 684 F.3d 794, 2012 U.S. App. LEXIS 14591 (8th Cir. 2012)*, reh'g, en banc, denied, *2012 U.S. App. LEXIS 19701 (8th Cir. Sept. 19, 2012)*, cert. denied, *568 U.S. 1148, 133 S. Ct. 992, 184 L. Ed. 2d 770, 2013 U.S. LEXIS 941 (2013)*.

Where officer testified that officer observed defendant place what officer believed was weapon under vehicle, it was not abuse of discretion to overrule defendant's objection to statements made by Government's counsel regarding testimony as to visibility conditions, because argument was not comment on defendant's failure to testify but instead was merely analysis of testimony presented. *United States v. Porter, 687 F.3d 918, 2012 U.S. App. LEXIS 15958 (8th Cir. 2012)*.

As to "someone must be lying" statements by prosecutor in closing argument, even if prosecutor committed error, error was harmless because government's evidence that defendant was guilty of being felon in possession of firearm and ammunition in violation of *18 USCS § 922(g)* was substantial; in addition, majority of prosecutor's statements during closing argument were not improper vouching, and any improper vouching by prosecutor did not affect fairness of defendant's trial due to substantial evidence against defendant. *United States v. Ruiz, 710 F.3d 1077, 2013 U.S. App. LEXIS 6009 (9th Cir.)*, cert. denied, *571 U.S. 980, 134 S. Ct. 488, 187 L. Ed. 2d 330, 2013 U.S. LEXIS 7576 (2013)*.

Where detectives found gun under vehicle's driver's seat and defendant was convicted of unlawful possession of firearm by convicted felon, prosecutor improperly testified about facts not in evidence when prosecutor suggested that defendant's fingerprints were covered up by detective who retrieved gun and that fingerprints could not be recovered from smooth surfaces like glass table or exterior of gun. *United States v. Brown, 765 F.3d 278, 95 Fed. R. Evid. Serv. (CBC) 313, 2014 U.S. App. LEXIS 16548 (3d Cir. 2014)*.

Where defendant was convicted for being previously convicted felon unlawfully in possession of firearm, prosecutor's closing argument did not warrant reversal, because, inter alia, remarks regarding planting firearm were not improper since prosecutor was responding to defense's contention that deputy planted gun in defendant's car, and prosecutor's comments regarding defense strategy were not improper. *United States v. Farmer, 770 F.3d 1363, 2014 U.S. App. LEXIS 21364 (10th Cir. 2014)*.

Although existence of defendant's prior conviction was repeated to jury five times during his trial, he was not prejudiced, where all references were legitimate rather than gratuitous. *United States v. Moore, 104 F.3d 377, 322 U.S. App. D.C. 334, 46 Fed. R. Evid. Serv. (CBC) 250, 1997 U.S. App. LEXIS 177 (D.C. Cir.)*, reh'g, en banc, denied, *110 F.3d 99, 324 U.S. App. D.C. 53, 1997 U.S. App. LEXIS 6926 (D.C. Cir. 1997)*.

At defendant's trial for violating *18 USCS § 922(g)(1)*, district court did not plainly err in allowing prosecutor to make, during closing argument, laudatory comments about Government's witnesses because such comments were designed to bolster credibility of witnesses, which was proper purpose; further, district court did not err in allowing prosecutor's comment regarding absence of evidence to contradict Government's case; in light of district court's curative instructions and strength of evidence against defendant, any error in allowing comments was harmless. *United States v. Rawlings, 522 F.3d 403, 380 U.S. App. D.C. 378, 2008 U.S. App. LEXIS 8005 (D.C. Cir. 2008)*.

Unpublished decision: In case in which defendant, who had been on Level III intensive probation, appealed his conviction for violating *18 USCS §§ 922(g)(1)* and *924(e)(1)*, he unsuccessfully argued that prosecutor's comments violated his rights under Confrontation Clause of Sixth Amendment since defendant was unable to cross examine his father, who invoked Fifth Amendment privilege against self-incrimination; no testimonial statements by defendant's father were admitted, and district court specifically instructed jurors that lawyers' statements were not evidence. *United States v. Webster, 400 Fed. Appx. 666, 2010 U.S. App. LEXIS 22873 (3d Cir. 2010)*, cert. denied, *562 U.S. 1245, 131 S. Ct. 1540, 179 L. Ed. 2d 352, 2011 U.S. LEXIS 1253 (2011)*.

Unpublished decision: In case in which defendant, who had been on Level III intensive probation, appealed his conviction for violating *18 USCS §§ 922(g)(1)* and *924(e)(1)*, he unsuccessfully argued that prosecutor's comments impacted fundamental fairness of trial; prosecutor's comments did not constitute misconduct, and, even if they did, error would be harmless; comments were brief and made in middle of government's closing, and they were not so egregious as to affect outcome of proceeding. *United States v. Webster, 400 Fed. Appx. 666, 2010 U.S. App. LEXIS 22873 (3d Cir. 2010)*, cert. denied, *562 U.S. 1245, 131 S. Ct. 1540, 179 L. Ed. 2d 352, 2011 U.S. LEXIS 1253 (2011)*.

Unpublished decision: In case in which defendant was convicted of violating *18 USCS § 922(g)(1)* and he appealed, arguing that his conviction should be reversed because of improper comments made in government's closing argument, there was no reversible error since any inappropriate comments made by government did not cast serious doubt on correctness of jury's verdict. *United States v. Ford, 402 Fed. Appx. 946, 2010 U.S. App. LEXIS 24122 (5th Cir. 2010)*, cert. denied, *563 U.S. 926, 131 S. Ct. 1832, 179 L. Ed. 2d 787, 2011 U.S. LEXIS 2634 (2011)*.

Unpublished decision: Even if government committed prosecutorial misconduct by stating at closing argument that defendant knew that she could not possess firearm, statement did not prejudice defendant because evidence presented in support of defendant's conviction for possession of firearm in violation of *18 USCS § 922(g)* was substantial, trial court provided extensive curative instruction, and relationship of objectionable comments to entire proceeding was notably limited in scope. *United States v. Hernandez, 412 Fed. Appx. 509, 2011 U.S. App. LEXIS 646 (3d Cir. 2011)*.

Unpublished decision: Although prosecutor made improper remarks bolstering police testimony during closing arguments, defendant's substantial rights were not affected because there was sufficient evidence for jury to reasonably find defendant guilty of unlawful possession of firearm and possession with intent to distribute crack cocaine based upon testimony remaining after contested testimony was excluded. *United States v. Jefferson, 432 Fed. Appx. 382, 2011 U.S. App. LEXIS 14405 (5th Cir.)*, cert. denied, *565 U.S. 1044, 132 S. Ct. 597, 181 L. Ed. 2d 438, 2011 U.S. LEXIS 8168 (2011)*.

Unpublished decision: In case in which defendant appealed his conviction for violating *18 USCS § 922(g)*, prosecutor's statements did not constitute improper vouching, and prosecutor's statement that was improper did not create prejudice. *United States v. Barlow, 479 Fed. Appx. 372, 2012 U.S. App. LEXIS 9007 (2d Cir.)*, cert. denied, *568 U.S. 1037, 133 S. Ct. 672, 184 L. Ed. 2d 477, 2012 U.S. LEXIS 8978 (2012)*.

Unpublished decision: In case in which defendant appealed his conviction for violating *18 USCS §§ 922(g)(1)* and *924(e)(1)*, he unsuccessfully argued that prosecutor's closing argument violated his rights under Fifth Amendment; statements were permissible argument as response to defense counsel's opening statement that clearly placed police officer's credibility at issue, and prosecutor's statements were not manifestly intended to be comment on defendant's failure to testify. *United States v. Stanley, 495 Fed. Appx. 954, 2012 U.S. App. LEXIS 22881 (11th Cir. 2012)*.

Unpublished decision: In case in which defendant appealed his conviction for violating *18 USCS §§ 922(g)(1)* and *924(a)(2)*, government counsel's questions during cross-examination and statements during closing argument, to extent they were improper, did not warrant mistrial. *United States v. Harriman, 491 Fed. Appx. 782, 2012 U.S. App. LEXIS 23131 (8th Cir. 2012)*, reh'g, en banc, denied, *2013 U.S. App. LEXIS 4195 (8th Cir. Feb. 28, 2013)*, cert. denied, *571 U.S. 937, 134 S. Ct. 360, 187 L. Ed. 2d 250, 2013 U.S. LEXIS 6888 (2013)*.

Unpublished decision: Where defendant contended that Government improperly labeled defendant as "drug dealer" during opening statements and closing argument and therefore violated defendant's due-process rights, there was no error in Government's statements, because Government was merely stating what it thought evidence showed. *United States v. Davis, 508 Fed. Appx. 606, 2013 U.S. App. LEXIS 2991 (9th Cir. 2013)*.

Unpublished decision: District court did not abuse its discretion by denying defendant's motion for new trial based on prosecutorial misconduct because, contrary to defendant's contention, stipulation he entered into with Government merely stated that gun buy back program existed; it did not preclude Government from arguing that existence of gun buy back program was irrelevant to question of whether defendant could legally possess firearm. *United States v. Williams, 526 Fed. Appx. 29, 2013 U.S. App. LEXIS 11140 (2d Cir. 2013)*, cert. denied, *572 U.S. 1074, 134 S. Ct. 1911, 188 L. Ed. 2d 938, 2014 U.S. LEXIS 2726 (2014)*.

Unpublished decision: Where defendant appealed his conviction for violating *18 USCS § 922(g)(1)*, government did not violate his Fifth Amendment privilege against self-incrimination, when, during closing argument, government stated several times that evidence was uncontroverted; in his view, that inappropriately highlighted that he chose not to testify, as he alone had information to rebut testimony provided by government witnesses, but from those relatively innocuous comments, jury would not naturally and necessarily draw inference that comments highlighted defendant's failure to testify. *United States v. Simmons, 513 Fed. Appx. 626, 2013 U.S. App. LEXIS 13292 (8th Cir. 2013)*.

At defendant's trial on charge of possession of firearm by prohibited person, violation of *18 USCS § 922(g)(9)*, prosecutor's comment—that there had been no suggestion that gun was planted in defendant's closet and no suggestion that defendant didn't know it was there—would likely have been seen by jury as improper reference to defendant's failure to take stand, in violation of defendant's Fifth Amendment rights. *United States v. Salley, 552 F. Supp. 2d 62, 2008 U.S. Dist. LEXIS 39267 (D. Me. 2008)*, aff'd, *651 F.3d 159, 2011 U.S. App. LEXIS 13258 (1st Cir. 2011)*.

Unpublished decision: Where defendant appealed his conviction for being felon in possession of firearm, it was not abuse of discretion for district court to then preclude him from arguing lack of fingerprint evidence at closing argument; his constitutional right to present defense did not include right to affirmatively misrepresent or falsely imply that police had found no forensic evidence connecting him to gun. *United States v. Lake, 611 Fed. Appx. 390, 2015 U.S. App. LEXIS 8058 (9th Cir. 2015)*.

Unpublished decision: Where defendant appealed his conviction for possession of firearm by felon, government's characterization of word "bizack" as reference to firearm defendant was found guilty of possessing was not improper; government was entitled to encourage jury to draw inferences from evidence—including inference that when defendant used term "bizack" in recorded telephone conversation he meant gun. *United States v. Green, 623 Fed.*

Appx. 848, 2015 U.S. App. LEXIS 14053 (9th Cir. 2015), cert. denied, *577 U.S. 1082, 136 S. Ct. 844, 193 L. Ed. 2d 747, 2016 U.S. LEXIS 610 (2016)*.

Unpublished decision: Where defendant appealed his conviction for possession of firearm by felon, government conceded that it erred when it stated that it was confident evidence shows that defendant would have moved marijuana and gun and everything else if he had time, but isolated misstatement was offset by government's admonitions that jurors should determine what facts evidence had established, and, in any event, there was substantial independent evidence of defendant's guilt. United States v. Green, 623 Fed. Appx. 848, 2015 U.S. App. LEXIS 14053 (9th Cir. 2015), cert. denied, *577 U.S. 1082, 136 S. Ct. 844, 193 L. Ed. 2d 747, 2016 U.S. LEXIS 610 (2016)*.

207. Questions of law and fact

Where gun dealer testified in prosecution for violation of 18 USCS § 922 that he filled out form for illiterate defendant after questioning him, and defendant testified that dealer did not read for to him or otherwise inform him of its contents, determination of credibility was within province of jury. United States v. Brown, 458 F.2d 375, 1972 U.S. App. LEXIS 10420 (6th Cir. 1972).

Question of whether shotgun purchased by defendant was sufficiently operable or convertible to constitute firearm was for jury in prosecution for violation of 18 USCS § 922. United States v. Rouse, 462 F.2d 126, 1972 U.S. App. LEXIS 9113 (5th Cir. 1972).

Question of whether receipt of firearms occurred in District of North Dakota was question of fact for jury. United States v. Black Cloud, 590 F.2d 270, 1979 U.S. App. LEXIS 17688 (8th Cir. 1979).

District court properly refused to submit to jury question of whether false statement on firearms purchase application of true identity of purchaser was material, since it was question of law. United States v. Klais, 68 F.3d 1282, 9 Fla. L. Weekly Fed. C 635, 1995 U.S. App. LEXIS 31834 (11th Cir. 1995), cert. denied, *519 U.S. 829, 117 S. Ct. 94, 136 L. Ed. 2d 50, 1996 U.S. LEXIS 4919 (1996)*.

Defendant charged with possession of machine gun was not entitled to dismissal based on Revenue Ruling that allegedly established that cam-action type gun that defendant owned did not fit definition of "machine gun" under 18 USCS § 922(o), since gun's classification was element of offense, and, thus, jury question. United States v. Fleischli, 119 F. Supp. 2d 819, 2000 U.S. Dist. LEXIS 15461 (C.D. Ill. 2000).

Issue of whether defendant's possession of semiautomatic handgun affected interstate commerce was for jury in prosecution under 18 USCS § 922(g)(1), despite lack of evidence on how handgun got into vehicle, origin or destination of defendant's drive, or any other evidence suggesting any commercial or transactional aspect to defendant's possession of handgun. United States v. Coward, 151 F. Supp. 2d 544, 2001 U.S. Dist. LEXIS 4264 (E.D. Pa. 2001), remanded, 296 F.3d 176, 2002 U.S. App. LEXIS 13248 (3d Cir. 2002).

208. —Prior conviction

Question of whether defendant had been "convicted" within meaning of 18 USCS § 922 was one of law. United States v. Beebe, 467 F.2d 222, 1972 U.S. App. LEXIS 7335 (10th Cir. 1972), cert. denied, *416 U.S. 904, 94 S. Ct. 1607, 40 L. Ed. 2d 108, 1974 U.S. LEXIS 676 (1974)*.

Since 18 USCS § 921(a)(20) is definitional and not affirmative defense, it is trial judge's responsibility to determine as matter of law whether prior conviction constitutes "crime punishable by imprisonment for term exceeding one year" which may be admitted in evidence in case under 18 USCS § 922(g). United States v. Flower, 29 F.3d 530, 1994 U.S. App. LEXIS 16717 (10th Cir. 1994), cert. denied, *513 U.S. 1129, 115 S. Ct. 939, 130 L. Ed. 2d 884, 1995 U.S. LEXIS 778 (1995)*.

In prosecution under *18 USCS § 922(d)(1)*, district court properly refused to make jury question of whether defendant's conviction for possession of cocaine with intent to distribute constituted exemption under *18 USCS § 921(20)*, where proposed instructions were neither supported by law or fact. *United States v. Parker, 262 F.3d 415, 57 Fed. R. Evid. Serv. (CBC) 1524, 2001 U.S. App. LEXIS 19176 (4th Cir. 2001)*.

Unpublished decision: District court did not err during defendant's trial on charge alleging that he violated *18 USCS § 922* by possessing firearm after having been convicted of qualifying felony, when it informed jury that defendant was previously convicted of conspiracy to commit armed robbery; defendant's refusal to stipulate to his felony status made it impossible for prosecutors to address exception under *18 USCS § 921* without presenting some evidence regarding nature of defendant's prior conviction, and court instructed jury to disregard any conduct or offense not alleged in indictment. *United States v. Poydras, 569 Fed. Appx. 318, 2014 U.S. App. LEXIS 10116 (5th Cir. 2014)*.

Defendant's prior conviction under *Tex. Penal Code Ann. § 22.01(a)(1)* for assault on family member required only causation of bodily injury, rather than proof that force was actually used; because use of force was not fact necessary to support defendant's conviction under statute, it did not constitute crime of violence for purposes of *18 USCS § 922(g)(9)*. *United States v. Anderson, 726 F. Supp. 2d 737, 2007 U.S. Dist. LEXIS 99267 (S.D. Tex. 2007)*.

209. Mistrial

District court did not commit plain error by not granting mistrial to defendant in defendant's trial in which defendant was convicted of intent to distribute crack cocaine in violation of *21 USCS § 841*, and being felon in possession of firearm; although witness' testimony was improper, district court's corrective action overcame prejudicial effect, and therefore, it was not plain error for district court to fail to grant mistrial sua sponte. *United States v. Harris, 325 F.3d 865, 2003 U.S. App. LEXIS 6591 (7th Cir. 2003)*.

District court did not abuse its discretion when it declined to declare mistrial during defendants' trial on *21 USCS §§ 841(a)(1)*, (b)(1)(A)(iii), 846, and *18 USCS §§ 922(g)(1)*, *924(c)(1)(A)*, charges after police officer violated order in limine and stated that he attempted to stop car in which one defendant was riding because it was connected to possible homicide where (1) officer explained that he had been instructed not to mention homicide investigation and that he had merely made mistake in doing so; (2) district court cured prejudicial effect of statement by taking swift corrective action, i.e. by immediately issuing curative instruction to jury; and (3) any error arising from that testimony was harmless because government presented overwhelming evidence of defendants' guilt. *United States v. Brandon, 521 F.3d 1019, 2008 U.S. App. LEXIS 7360 (8th Cir.)*, cert. denied, *555 U.S. 931, 129 S. Ct. 314, 172 L. Ed. 2d 228, 2008 U.S. LEXIS 6394 (2008)*.

In prosecution for possession of firearm by felon, once government chose to disclose incomplete continuity slip regarding government's storage of firearm as evidence, defense was entitled to rely on that disclosure as accurate representation of evidence government had in its possession; district court abused its discretion in denying defendant's motion for mistrial because belatedly disclosed completed continuity form dramatically shifted evidence and ability to intelligently weigh plea options. *United States v. Mackin, 793 F.3d 703, 2015 U.S. App. LEXIS 12028 (7th Cir. 2015)*.

In case in which defendant was convicted of violating, inter alia, *18 USCS § 922(g)(1)* and unredacted indictment was submitted to jury, district court's denial of defendant's motion for mistrial was affirmed since, other than what district judge did, which included curative instruction and his emphatic statements that first indictment jury received was simply wrong in that crimes it identified were not crimes of which defendant was convicted, there was nothing more that district judge could have done, and case against defendant was strong; it could not be said that error seriously affected fairness, integrity, or public reputation of judicial proceedings under fourth prong of plain error inquiry. *United States v. Roy, 473 F.3d 1232, 374 U.S. App. D.C. 249, 2007 U.S. App. LEXIS 629 (D.C. Cir. 2007)*.

Unpublished decision: In case in which defendant appealed his conviction for violating *21 USCS §§ 846*, *841(b)(1)(A)*, and *848* and *18 USCS §§ 924(c)* and *922(g)*, he unsuccessfully argued that district court erred in failing to declare mistrial or to grant limiting instruction after police sergeant testified about several instances of defendant's silence

during their initial encounter; his silence in face of police questioning before he had been issued Miranda warnings could be considered substantively against him at trial, without triggering Fifth Amendment, and district court had previously adjudicated suppression motion and concluded sergeant's failure to issue Miranda warnings before questioning defendant in field was proper under Quarles public safety exception. *United States v. Judge, 447 Fed. Appx. 409, 2011 U.S. App. LEXIS 20676 (3d Cir. 2011)* sub. nom.*United States v. Lewis, 447 Fed. Appx. 310, 2011 U.S. App. LEXIS 20675 (3d Cir. 2011)*, cert. denied, *566 U.S. 991, 132 S. Ct. 2376, 182 L. Ed. 2d 1025, 2012 U.S. LEXIS 3606 (2012)*.

Unpublished decision: In case in which defendant appealed his conviction for violating *21 USCS §§ 846*, *841(b)(1)(A)*, and *848* and *18 USCS §§ 924(c)* and *922(g)*, he unsuccessfully argued that district court erred in denying his motion for mistrial, proffered after government was unable to produce gunshot residue expert to whom it had referred earlier; district court concluded government's references to expert in its opening statement had been minor compared to quantity of evidence in case as whole, and that curative jury instruction would dispel any potential prejudice; that assessment was reasonable. *United States v. Judge, 447 Fed. Appx. 409, 2011 U.S. App. LEXIS 20676 (3d Cir. 2011)* sub. nom.*United States v. Lewis, 447 Fed. Appx. 310, 2011 U.S. App. LEXIS 20675 (3d Cir. 2011)*, cert. denied, *566 U.S. 991, 132 S. Ct. 2376, 182 L. Ed. 2d 1025, 2012 U.S. LEXIS 3606 (2012)*.

Unpublished decision: In criminal trial in which defendant was found guilty of possessing heroin with intent to distribute, under *21 USCS § 841(a)(1)*, (b)(1)(C), using or carrying firearm during and in relation to drug trafficking crime, under *18 USCS § 924(c)(1)(A)*, and being felon in possession of firearm, under *18 USCS § 922(g)(1)*, allegedly improper remarks by prosecutor did not deprive defendant of right to fair trial in order to be granted mistrial because it was arguable whether comments were actually improper, and any impropriety in remarks was cured by district court's immediate issuance of strongly-worded curative instruction. *United States v. Scott, 463 Fed. Appx. 85, 2012 U.S. App. LEXIS 435 (3d Cir.)*, cert. denied, *566 U.S. 1003, 132 S. Ct. 2415, 182 L. Ed. 2d 1049, 2012 U.S. LEXIS 3739 (2012)*.

Unpublished decision: Defendant's motion for mistrial based on alleged bolstering was properly denied because agent's testimony was isolated, exceptionally brief, and did not comment directly on evidence or officer's testimony, and independent evidence of defendant's guilt was overwhelming. *United States v. Goss, 537 Fed. Appx. 276, 2013 U.S. App. LEXIS 16634 (4th Cir. 2013)*.

Unpublished decision: Where defendant appealed his conviction for violating *18 USCS §§ 922(g)(1)* and *2*, because testimony at issue was stricken and because district court provided appropriate instruction to jury, there was no basis for granting mistrial for impermissible vouching. *United States v. Coleman, 545 Fed. Appx. 156, 2013 U.S. App. LEXIS 23328 (3d Cir. 2013)*.

Unpublished decision: Mistrial was properly denied because map not in evidence possibly used by juror was cumulative to aerial photograph admitted into evidence, vacating of earlier verdict and curative instruction mitigated any potential prejudice so as to violate due process, and government's case was strong proving that defendant was in possession of firearm in violation of *18 USCS § 922(g)* where investigator testified that gun was recovered from location where he observed defendant throw object and that he did not observe anyone other than defendant in that location. *United States v. Aguirre, 147 Fed. Appx. 893, 2005 U.S. App. LEXIS 19458 (11th Cir. 2005)*.

Unpublished decision: Where defendant was convicted of being felon in possession of firearm, it was not abuse of discretion to deny defendant's motion for mistrial based on deputies' improper remarks at trial regarding defendant's criminal history and dangerous character, because (1) there was no evidence that prosecutor acted in bad faith, (2) limiting instructions were given, and (3) evidence against defendant was overwhelming. *United States v. Velarde, 186 Fed. Appx. 817, 2006 U.S. App. LEXIS 16637 (10th Cir. 2006)*, cert. denied, *549 U.S. 1358, 127 S. Ct. 2077, 167 L. Ed. 2d 798, 2007 U.S. LEXIS 4233 (2007)*.

Unpublished decision: District court did not abuse its discretion in denying defendant's motion for mistrial in his trial on charges of being felon in possession of ammunition in violation of *18 USCS § 922(g)* based on prosecutor's question during defendant's cross-examination about whether defendant's son was in hallway; question was not

improper because it was part of line of questioning intended simply to dispel defendant's own suggestion that ammunition found in defendant's residence belonged to his son. *United States v. Ables, 280 Fed. Appx. 513, 2008 FED App. 0321N, 2008 U.S. App. LEXIS 12472 (6th Cir. 2008)*.

Unpublished decision: In case in which defendant appealed his conviction and sentence for violating *18 USCS §§ 1951*, *924(c)*, and *922(g)*, he unsuccessfully argued that witness's improper reference to his parole status warranted mistrial; mistrial based on witness's improper reference was not warranted since remark was not pronounced and persistent, evidence against defendant was strong, and district court gave curative instruction. *United States v. Alston, 380 Fed. Appx. 217, 2010 U.S. App. LEXIS 9891 (3d Cir.)*, cert. denied, *562 U.S. 1111, 131 S. Ct. 820, 178 L. Ed. 2d 561, 2010 U.S. LEXIS 9783 (2010)*.

Unpublished decision: Where defendant appealed district court's denial of his motion for mistrial, he was not so prejudiced by prosecutor's problematic remarks that he was denied fair trial; they were isolated and in response to defense counsel's questioning of defendant on direct examination about potential punishment he faced. *United States v. Cheatham, 601 Fed. Appx. 194, 2015 U.S. App. LEXIS 2071 (4th Cir. 2015)*.

Unpublished decision: Where defendant had been indicted for being felon in possession of firearm and he appealed district court's denial of his motion to dismiss indictment on double jeopardy grounds, there was sufficient justification in finding that there was manifest necessity for mistrial; jurors' discussion of witness's testimony and his manner of speaking constituted premature discussions on some level. *United States v. Washington, 612 Fed. Appx. 546, 2015 U.S. App. LEXIS 7618 (11th Cir. 2015)*, cert. denied, *577 U.S. 1092, 136 S. Ct. 869, 193 L. Ed. 2d 764, 2016 U.S. LEXIS 405 (2016)*.

Unpublished decision: Where defendant appealed his conviction for possession of firearm by convicted felon, district court did not abuse its discretion in denying his motion for mistrial; even if government violated *Fed. R. Crim. P. 16*, admission of three statements did not prejudice his substantial rights. *United States v. Johnson, 615 Fed. Appx. 582, 2015 U.S. App. LEXIS 10769 (11th Cir.)*, cert. denied, *577 U.S. 989, 136 S. Ct. 508, 193 L. Ed. 2d 402, 2015 U.S. LEXIS 7256 (2015)*.

Unpublished decision: Where defendant appealed his conviction for violating *18 USCS §§ 922(g)(1)* and *924(e)*, district court did not abuse its discretion by denying his motion for mistrial; while police officer's statements violated parties' agreement not to mention shooting, statements did not unduly prejudice defendant's substantial rights, and district court gave jury instruction that eliminated any potential prejudice. *United States v. Clarke, 651 Fed. Appx. 944, 2016 U.S. App. LEXIS 10176 (11th Cir. 2016)*.

210. Verdict or judgment

Where conviction was possible on either ground that appellant falsely stated his criminal record or falsely stated his address, and appellant prevailed on the former issue, reversal is appropriate where jury returned a general verdict of guilty. *United States v. Williams, 464 F.2d 927, 1972 U.S. App. LEXIS 8226 (8th Cir. 1972)*, app. after remand, *484 F.2d 428, 1973 U.S. App. LEXIS 8316 (8th Cir. 1973)*.

District court properly denied defendant's motion for judgment of acquittal as to three counts of possession of firearms with obliterated serial numbers pursuant to *18 USCS § 922(k)* as it was easy to infer from evidence that defendant was familiar with guns that he was selling, and that he knew quite well that serial numbers had been obliterated; conclusion that defendant had requisite knowledge was further supported by third-party's testimony that he had purchased firearms with intact serial numbers for defendant, and by agent's testimony explaining similarities between those purchases for defendant and numerous firearms with obliterated serial numbers that defendant sold to Government informant. *United States v. Teleguez, 492 F.3d 80, 2007 U.S. App. LEXIS 17525 (1st Cir. 2007)*.

Defendant is not granted postverdict judgment of acquittal following conviction of, inter alia, possession of firearm by convicted felon in violation of *18 USCS § 922*, where under state constitution, rights restored to convicted felon do not include right to possess firearm, and where defendant was given written document upon release from prison

advising him that he was not permitted to possess or own firearm, so defendant's civil rights had not been restored within meaning of 21 USCS § 921(a)(20) so as to preclude prosecution under *18 USCS § 922(g)*. *United States v. Dupaquier, 907 F. Supp. 951, 1995 U.S. Dist. LEXIS 13936 (M.D. La. 1995)*, remanded, *74 F.3d 615, 1996 U.S. App. LEXIS 1302 (5th Cir. 1996)*.

Judgment of acquittal was granted where prosecution failed to show by permissible inference that defendant, convicted felon, had knowingly possessed firearm and ammunition, by either having prior knowledge or prior possession of gun. *United States v. Pahulu, 274 F. Supp. 2d 1235, 2003 U.S. Dist. LEXIS 13576 (D. Utah 2003)*, aff'd, *108 Fed. Appx. 606, 2004 U.S. App. LEXIS 18511 (10th Cir. 2004)*.

Defendant was not entitled to have his motion for acquittal granted after jury convicted him of being felon in possession of weapon, in violation of *18 USCS § 922(g)*, because jury reasonably could have inferred from evidence government introduced, taken in light most favorable to government, that gun was visible on floor behind driver's seat and that defendant, as owner and driver of car, had to be aware it was there. *United States v. Thompson, 561 F. Supp. 2d 938, 2008 U.S. Dist. LEXIS 42434 (N.D. Ill. 2008)*.

211. —Inconsistent verdicts

Dealer's acquittal on one count of selling firearms to nonresidents through "sham transactions" did not negate his willful intent to sell different batch of guns to same buyer on different day on another count; even if verdicts were inconsistent, that alone would not be grounds for reversal. *United States v. Straach, 987 F.2d 232, 37 Fed. R. Evid. Serv. (CBC) 524, 1993 U.S. App. LEXIS 5059 (5th Cir. 1993)*, reh'g denied, *1993 U.S. App. LEXIS 11527 (5th Cir. May 10, 1993)*.

When single count alleges two methods of committing violation of *18 USCS § 922(g)(1)*, fact that jury convicts defendant on basis of one method but not other does not allow defendant to attack that conviction because it is inconsistent with jury's verdict of acquittal as to other method; inconsistent verdicts may well be nothing more than demonstration of jury's leniency. *United States v. Brown, 504 F.3d 99, 378 U.S. App. D.C. 260, 2007 U.S. App. LEXIS 24730 (D.C. Cir. 2007)*.

Unpublished decision: Defendant's convictions for possessing firearm in relation to drug trafficking crime and being felon in possession of firearm were not inconsistent with his acquittal of being user of controlled substance in possession of firearm; because use of controlled substance was not element of other two firearms convictions, jury's acquittal had no effect on validity of two other convictions. *United States v. Williams, 570 Fed. Appx. 137, 2014 U.S. App. LEXIS 12030 (3d Cir. 2014)*.

Unpublished decision: Third Circuit would not speculate regarding apparent inconsistencies between jury's decision to acquit defendant of *26 USCS § 5861(d)* possession of unregistered firearm charge, but convict him of *18 USCS § 922(g)(1)* possession of firearm by felon charge; it would not second-guess jury and conclude that it must have been confused about § 922(g)(1) charge, especially given that jury had stated that it was not confused about elements required for that offense. *United States v. Johnson, 247 Fed. Appx. 357, 2007 U.S. App. LEXIS 22403 (3d Cir. 2007)*.

Unpublished decision: Defendant argued that jury returned inconsistent verdicts when it convicted him of possessing firearm as prohibited person, but acquitted him of selling firearms across state lines, but because appellate court had already determined that sufficient evidence existed to convict defendant under *18 USCS § 922(g)(8)*, he could not obtain relief by alleging inconsistent verdicts. *United States v. Stetler, 526 Fed. Appx. 631, 2013 FED App. 0500N, 2013 U.S. App. LEXIS 10258 (6th Cir. 2013)*.

212. Appeal and review, generally

After an enhanced federal sentence has been imposed pursuant to Armed Career Criminal Act of 1984 (*18 USCS § 924(e)*)—which imposes a mandatory minimum 15-year sentence on anyone who is convicted of being a felon in possession of firearm in violation of *18 USCS § 922(g)(1)* and who has three previous violent felony convictions—the person sentenced may pursue any channels of direct or collateral review still available to challenge the person's prior

conviction; if any such challenge to the underlying conviction is successful, the person may then apply for reopening of the person's federal sentence. *Daniels v. United States, 532 U.S. 374, 121 S. Ct. 1578, 149 L. Ed. 2d 590, 14 Fla. L. Weekly Fed. S 185, 2001 Cal. Daily Op. Service 3250, 2001 Colo. J. C.A.R. 2090, 2001 D.A.R. 4023, 2001 U.S. LEXIS 3368 (2001)*.

Because defendant was aware of his status as convicted felon at time he possessed firearm, there was no reason to believe that he would have gone to trial absent district court's error in not informing him that government was required to prove that he knew he belonged to relevant category of persons barred from possessing firearm, as required by *Rehaif v. United States, 588 U.S. _, 139 S. Ct. 2191 (2019)*. *United States v. Ward, 796 Fed. Appx. 591, 2019 U.S. App. LEXIS 35741 (11th Cir. 2019)*.

Defendant's contention that conviction for possession of firearms by convicted felon was invalid because firearms did not affect interstate commerce lacked merit where it was determined that defendant waived issue because defendant did not raise issue in district court. *United States v. Harris, 325 F.3d 865, 2003 U.S. App. LEXIS 6591 (7th Cir. 2003)*.

Defendant's conviction for violating *18 USCS § 922(g)(8)* was affirmed on appeal because: (1) district court did not err when it refused to instruct jury that, in order to bring defendant under § 922(g)(8), hearing that led to issuance of domestic violence restraining order against him, had to involve offering evidence and testimony of witness because statute only required that defendant receive notice of and have opportunity to appear at hearing; (2) district court did not err when it denied request to instruct jury that defendant could not be convicted unless he knew that he was violating or had specific intention of violating statute because neither knowledge nor specific intent was required for conviction under § 922(g)(8); and (3) statute was not unconstitutional under Second Amendment because Second Amendment protected right to bear arms only when it was reasonably related to maintenance of well regulated militia, Congress had compelling government interest in enacting § 922(g)(8) to decrease domestic violence, and restraining order issued against defendant was narrowly tailored to restrict his firearm possession for limited duration and to protect individual who had applied for order. *United States v. Lippman, 369 F.3d 1039, 2004 U.S. App. LEXIS 10432 (8th Cir. 2004)*, reh'g, en banc, denied, *2004 U.S. App. LEXIS 15634 (8th Cir. July 29, 2004)*, cert. denied, *543 U.S. 1080, 125 S. Ct. 942, 160 L. Ed. 2d 824, 2005 U.S. LEXIS 277 (2005)*.

Government was entitled to dismissal of defendant's appeal of his guilty plea to being felon in possession of firearm; there was no violation of *Fed. R. Crim. P. 11(b)(1)(N)* based on fact that U.S. Attorney, rather than judge, explained defendant's appellate waiver in open court at plea hearing. *United States v. Wilson, 438 F.3d 672, 2006 FED App. 0072P, 2006 U.S. App. LEXIS 4942 (6th Cir. 2006)*.

Defendant failed to show that district court committed any reversible error during his trial on charges that he was felon in possession of firearm under *18 USCS § 1922(g)(1)* because (1) it was within district court's discretion to limit cross-examination of one government witness; (2) no abuse of discretion was shown because line of questioning that defendant wanted to pursue raised likelihood of diversion and prejudice, rendering it subject to exclusion under *Fed. R. Evid. 403*, and it was unlikely that defendant would be able to counter any denial by witness for *Fed. R. Evid. 608(b)* purposes; and (3) defendant had forfeited his error claims regarding district court's failure to give requested jury instruction because he had not renewed his objection after jury instructions were given. *United States v. Bishop, 453 F.3d 30, 2006 U.S. App. LEXIS 16096 (1st Cir.)*, cert. denied, *549 U.S. 1013, 127 S. Ct. 540, 166 L. Ed. 2d 400, 2006 U.S. LEXIS 8306 (2006)*.

Defendant's appeal of his *18 USCS § 922(g)(1)* felon in possession of firearm conviction was denied since (1) district court did not commit clear error in denying defendant's motion, seeking to suppress incriminating written statement that he had provided to police, because credibility determinations were properly left to district court, district court had found that police officers testifying at suppression hearing were credible, and officers' testimony established that defendant had knowingly and voluntarily waived his Miranda rights; and (2) there was sufficient evidence to support defendant's § 922(g)(1) conviction because, in addition to his statement admitting that gun was his, government presented evidence showing that gun was located under mattress of bed where defendant was sleeping and that he had apparently started to reach for it when police officers entered room. *United States v. Bell, 477 F.3d 607, 2007 U.S. App. LEXIS 3738 (8th Cir. 2007)*.

Defendant's conviction for violating *18 USCS § 922(g)(1)* was affirmed because, even though burglary of vehicle had been reduced from third class felony to Class A misdemeanor under Texas penal, at time that defendant committed offense in 1985, it was felony; state conviction was predicate offense for § 922(g)(1); 1994 amendment to Texas penal code included retroactivity clause stating that changes applied only to offense committed on or after September 1, 1994; since defendant committed his state felony before effective date of amendment, offense was governed by pre-amendment penal code. *United States v. Schmidt, 487 F.3d 253, 2007 U.S. App. LEXIS 11527 (5th Cir. 2007)*.

Defendant, who pleaded guilty under three separate plea agreements, did not waive right to appeal sentence enhancement based on prior conviction of crime of violence; one of relevant plea agreements contained no appellate waiver, and other relevant agreement reserved right to appeal "crime of violence" issue. *United States v. Koufos, 666 F.3d 1243, 2011 U.S. App. LEXIS 26178 (10th Cir. 2011)*, cert. denied, *567 U.S. 922, 132 S. Ct. 2787, 183 L. Ed. 2d 650, 2012 U.S. LEXIS 4515 (2012)*.

Upon defendant's appeal of his conviction for being felon in possession of firearm and ammunition, in violation of *18 USCS § 922(g)(1)*, plain error standard of review applied to defendant's contention that district court erred in allowing jurors to ask questions of witnesses because defendant failed to pose such objection before district court. *United States v. Rawlings, 522 F.3d 403, 380 U.S. App. D.C. 378, 2008 U.S. App. LEXIS 8005 (D.C. Cir. 2008)*.

In case that had been remanded for resentencing, defendant, on appeal, again challenged his conviction for violating *18 USCS § 922(g)(2)*; since he presented same arguments that had been rejected in his first appeal and appellate court had not erroneously determined that district court correctly denied defendant's motion to suppress, law of case doctrine applied to inmate's second appeal of his conviction. *United States v. Thomas, 572 F.3d 945, 387 U.S. App. D.C. 300, 2009 U.S. App. LEXIS 16099 (D.C. Cir. 2009)*, cert. denied, *559 U.S. 986, 130 S. Ct. 1725, 176 L. Ed. 2d 204, 2010 U.S. LEXIS 2000 (2010)*.

Unpublished decision: In case in which defendant appealed his guilty plea conviction to violating *18 USCS §§ 371*, *922(a)(1)(A)* and (g)(1) and *21 USCS § 841(a)(1)* and (b)(1)(A), he unsuccessfully argued that district court abused its discretion in denying his initial and renewed motions to withdraw guilty plea; he argued, as he did in district court, that his plea was not knowing and intelligent one, based on his disagreements with his appointed counsel and because of his confusion and discussions with his attorney as well as legal consultant centered around Count 4; there was nothing that indicated that his plea was anything other than knowing and voluntary plea. *United States v. Deacon, 413 Fed. Appx. 347, 2011 U.S. App. LEXIS 4696 (2d Cir. 2011)*.

Unpublished decision: Defendant, who pleaded guilty to possession of firearm by convicted felon, had no nonfrivolous issues for review; his unconditional guilty plea precluded him from arguing that his statements to police should have been suppressed, record did not support contention that plea was involuntary, and defendant's sentence below U.S. Sentencing Guidelines range was reasonable. *United States v. Gaines, 515 Fed. Appx. 151, 2013 U.S. App. LEXIS 4978 (3d Cir. 2013)*.

Unpublished decision: Defendant, who pleaded guilty to possession of firearm by convicted felon, had no nonfrivolous issues for review; his unconditional guilty plea precluded him from arguing that his statements to police should have been suppressed, record did not support contention that plea was involuntary, and defendant's sentence below U.S. Sentencing Guidelines range was reasonable. *United States v. Gaines, 515 Fed. Appx. 151, 2013 U.S. App. LEXIS 4978 (3d Cir. 2013)*.

Unpublished decision: Where defendant appealed his convictions for violating *21 USCS § 841(a)(1)*, (b)(1)(B), and (b)(1)(D) and *18 USCS §§ 922(g)(1)* and *924(a)(2)*, (c)(1)(A), and (c)(2) by challenging magistrate judge's denial of his motion to reveal confidential informant's identity, appellate court lacked jurisdiction to review that claim since record contained no indication defendant asked district judge to review magistrate judge's denial of his motion to disclose confidential informant's identity. *United States v. McLoyd, 567 Fed. Appx. 899, 2014 U.S. App. LEXIS 10133 (11th Cir. 2014)*.

Unpublished decision: Where defendant appealed his conviction for possession of firearm by felon, he did not demonstrate any prejudice he may have suffered based on missing transcript; omission of those portions of trial transcripts was harmless. *United States v. Russell, 604 Fed. Appx. 193, 2015 U.S. App. LEXIS 4617 (3d Cir. 2015)*.

213. New trial

Defendant was entitled to new trial where district court's instruction on possession attempted to provide guidance on issue of unanimity, but phrasing was fatally ambiguous because jury could have concluded that they were required to decide unanimously only that possession occurred during any of three times enumerated, not that they had to unanimously agree on which one. *United States v. Garcia-Rivera, 353 F.3d 788, 2003 U.S. App. LEXIS 26295 (9th Cir. 2003)*.

Defendant was properly convicted of dealing in firearms without license, *18 USCS § 922(a)(1)(A)*, selling firearms to person previously convicted of felony, *18 USCS § 922(d)(1)*, (3), and possession and transfer of semi-automatic assault weapons, *18 USCS § 922(v)(1)*; district court did not abuse its discretion in denying defendant's motion for new trial based on juror's alleged dishonesty during voir dire because juror's answer, although mistaken, was not dishonest and because no bias could be inferred from juror's "dishonesty." *United States v. McConnel, 464 F.3d 1152, 71 Fed. R. Evid. Serv. (CBC) 420, 2006 U.S. App. LEXIS 24240 (10th Cir. 2006)*, cert. denied, *549 U.S. 1361, 127 S. Ct. 2085, 167 L. Ed. 2d 803, 2007 U.S. LEXIS 4280 (2007)*, remanded, *425 Fed. Appx. 691, 2011 U.S. App. LEXIS 7716 (10th Cir. 2011)*.

Defendant was not entitled to new trial on charge of illegally selling or possessing machine gun, in violation of *18 USCS § 922(o)*, because government produced evidence indicating defendant possessed fully automatic weapon long before government informant asked to buy it. To prevail on third sale and overcome defendant's entrapment defense, government only needed to prove defendant either knowingly possessed or transferred this weapon. *United States v. Ford, 550 F.3d 975, 2008 U.S. App. LEXIS 25452 (10th Cir. 2008)*, cert. denied, *558 U.S. 849, 130 S. Ct. 122, 175 L. Ed. 2d 80, 2009 U.S. LEXIS 5264 (2009)*.

In case in which defendant appealed his convictions for violating *18 USCS §§ 922(g)(1)* and *924(c)(1)* and *21 USCS § 841(a)(1)* and (b)(1)(D), he argued that he suffered substantial prejudice when district court submitted to jury unredacted copy of indictment that referenced several of his previously undisclosed felony convictions; district court did not abuse its discretion when it denied his motion for new trial; government presented overwhelming case that he possessed firearm as convicted felon, and government also presented strong case that he possessed marijuana with intent to distribute it. *United States v. Dortch, 696 F.3d 1104, 23 Fla. L. Weekly Fed. C 1515, 2012 U.S. App. LEXIS 19080 (11th Cir. 2012)*, cert. denied, *568 U.S. 1149, 133 S. Ct. 993, 184 L. Ed. 2d 771, 2013 U.S. LEXIS 963 (2013)*.

Where defendant argued that district court abused its discretion in denying defendant's motion to sever counts into three groups, each involving one of three searches that led to convictions, in denying defendant's pro se motion for court's recusal based on alleged "sarcastic comments" court made, and in instructing jury in accordance with Eleventh Circuit's Pattern Jury Instruction on elements of *18 USCS § 924(c)* violation, defendant's arguments were rejected, and defendant was not entitled to new trial. *United States v. Yeary, 740 F.3d 569, 24 Fla. L. Weekly Fed. C 959, 2014 U.S. App. LEXIS 1132 (11th Cir. 2014)*, cert. denied, *574 U.S. 1123, 135 S. Ct. 1153, 190 L. Ed. 2d 915, 2015 U.S. LEXIS 681 (2015)*.

Where defendant was convicted of violating *18 USCS § 922(g)(1)* and he moved for new trial, he was not denied his Fifth Amendment rights as he failed to show that he was prejudiced by being transported in handcuffs through public area of courthouse in view of venire; nothing in record confirmed that any seated juror actually saw him in handcuffs. *United States v. Morales, 758 F.3d 1232, 2014 U.S. App. LEXIS 13415 (10th Cir. 2014)*.

Defendant who was convicted of possessing gun despite prior felony conviction, in violation of *18 USCS § 922*, was entitled to new trial because totality of circumstances—including fact that district judge continued to poll jury after first juror stated that she did not agree with verdict and directed jury to resume deliberations without reminding jurors not to surrender their honest beliefs just to reach unanimous verdict—suggested that juror who stated that she did not

agree with verdict may have been coerced into changing her vote. *United States v. Williams, 819 F.3d 1026, 2016 U.S. App. LEXIS 7562 (7th Cir. 2016)*.

Unpublished decision: Defendant's motion for new trial due to newly discovered evidence under *Fed. R. Crim. P. 33* was properly denied after defendant was convicted of possession of firearm as convicted felon in violation of *18 USCS § 922(g)(1)* because newly discovered evidence, even if credible, did not contradict government's evidence and therefore was unlikely to produce acquittal. *United States v. Stillis, 437 Fed. Appx. 78, 2011 U.S. App. LEXIS 14408 (3d Cir.)*, cert. denied, *565 U.S. 920, 132 S. Ct. 343, 181 L. Ed. 2d 215, 2011 U.S. LEXIS 7109 (2011)* sub. nom.*United States v. Davis, 437 Fed. Appx. 86, 2011 U.S. App. LEXIS 14384 (3d Cir. 2011)*.

Unpublished decision: In case in which defendant appealed his conviction for violating 8 USCS §§ 922(g)(1) and 924(d)(1), he unsuccessfully sought new trial on ground that juror was seated using improper procedure; person with name similar to person summoned showed up and was seated on jury, all provisions of jury selection were substantially complied with, qualified juror was selected, subjected to voir dire, accepted by both parties, and seated on jury, and there was no indication that juror selected deprived defendant of fair trial or truly representative cross section of community; district court did not abuse its discretion in refusing to set aside jury's verdict and grant defendant new trial. *United States v. Brunson, 451 Fed. Appx. 879, 2012 U.S. App. LEXIS 1058 (11th Cir. 2012)*.

Unpublished decision: In case in which defendant was convicted of violating *18 USCS § 922(g)* and he argued in *Fed. R. Crim. P. 33* motion that his jury did not represent fair cross-section of community as required by Sixth Amendment, there was no fault in district court's thorough and well-reasoned opinion and order addressing his Rule 33 motion. *United States v. Barlow, 479 Fed. Appx. 372, 2012 U.S. App. LEXIS 9007 (2d Cir.)*, cert. denied, *568 U.S. 1037, 133 S. Ct. 672, 184 L. Ed. 2d 477, 2012 U.S. LEXIS 8978 (2012)*.

Unpublished decision: Where defendant appealed his conviction for being prohibited person in possession of firearm, district court did not abuse its discretion by denying his post-trial motions for new trial based juror misconduct and one to interview trial jurors; there was no evidence that juror in question dishonestly answered questions during voir dire, and defendant's allegations of bias were purely speculative. *United States v. Behrens, 581 Fed. Appx. 277, 2014 U.S. App. LEXIS 15824 (4th Cir. 2014)*.

Following defendant's conviction for being felon in possession of firearm under *18 USCS § 922(g)(1)*, juvenile's affidavit and live testimony subject to cross examination, indicating that juvenile owned gun in question, supported defendant's request for new trial under *Fed. R. Crim. P. 33* because testimony was material, exculpatory and defendant used reasonable diligence in discovering evidence, where there had been no reason to believe that juvenile would recant his grand jury testimony which implicated defendant. *United States v. Carmichael, 269 F. Supp. 2d 588, 2003 U.S. Dist. LEXIS 11162 (D.N.J. 2003)*.

Defendant was entitled to new trial after jury convicted him of being felon in possession of weapon, in violation of *18 USCS § 922(g)*, because defendant's appointed trial counsel failed to sufficiently investigate whether defendant's wife, who regularly drove vehicle in which weapon was found, had information that would tend to show that defendant did not know about presence of weapon in vehicle; counsel's failure was prejudicial in view of how close case was on question of defendant's knowing possession of gun. *United States v. Thompson, 561 F. Supp. 2d 938, 2008 U.S. Dist. LEXIS 42434 (N.D. Ill. 2008)*.

Where defendant was convicted of being felon in possession of firearm under *18 USCS § 922(g)(1)* and defendant alleged that firearms dealer and former girlfriend committed perjury regarding purchase of gun, new trial was not warranted, because (1) neither dealer's nor girlfriend's testimony even remotely suggested that they were lying, and (2) defendant's motion was not based on newly discovered evidence. *United States v. McCurdy, 634 F. Supp. 2d 118, 2009 U.S. Dist. LEXIS 57538 (D. Me. 2009)*.

Unpublished decision: Where defendant was convicted of illegal possession of firearm as convicted felon, district court did not err by granting his motion for new trial based on evidence of effort to tamper with jury that came to light following trial; district court did not abuse its discretion by concluding that juror would have been troubled by offer of

bribe to return favorable verdict for defendant and his ability to function as juror would have been compromised. *United States v. Morrison, 580 Fed. Appx. 20, 2014 U.S. App. LEXIS 19161 (2d Cir. 2014)*.

214. —Evidentiary matters

Under plain error review, defendant's conviction for possession of firearm by felon could not stand and a new trial on that charge was required because at trial prior to U.S. Supreme Court's opinion in *Rehaif v. United States, 139 S. Ct. 2191 (2019)*, literally no evidence was presented as to defendant's knowledge of his status as felon; whether viewed as matter of Fifth Amendment's guarantee of due process or Sixth Amendment's promise of trial by jury, or both, deprivation of those essential rights seriously impugned fairness, integrity and public reputation of judicial proceedings. *United States v. Nasir, 982 F.3d 144, 2020 U.S. App. LEXIS 37489 (3d Cir. 2020)*.

Denial of defendant's motion for new trial with regard to charge of being felon in possession of two firearms in violation of *18 USCS § 922(g)* was affirmed because trial court painstakingly reviewed evidence and found no deal by government to certain witness and, as such, there was no Brady violation for failure to disclose any such deal to defendant. *United States v. Lopez, 372 F.3d 1207, 2004 U.S. App. LEXIS 12438 (10th Cir. 2004)*.

Defendant's *Fed. R. Crim. P. 33(a)* new trial motion, which asserted that evidence was insufficient to support his conviction for *18 USCS § 922(g)(1)* crime, was properly denied; because defendant conceded first and third elements of § 922(g)(1) offense, government only had to prove that he knowingly possessed firearm, and it presented sufficient evidence to establish that element based on testimony of several witnesses, who testified that bag full of weapons was given to defendant, that he took possession of, and exercised control over, bag, and that he later actively attempted to sell firearms in bag. *United States v. Smart, 501 F.3d 862, 2007 U.S. App. LEXIS 21258 (8th Cir. 2007)*, cert. denied, *552 U.S. 1199, 128 S. Ct. 1258, 170 L. Ed. 2d 94, 2008 U.S. LEXIS 1505 (2008)*.

Defendant was not entitled to new trial on charge of illegally selling or possessing machine gun, in violation of *18 USCS § 922(o)*, because defendant failed to establish Brady violation stemming from government's failure to disclose three e-mails favorable to defendant's entrapment defense; contents of undisclosed e-mails were not sufficiently material to cast doubt on jury's verdict. *United States v. Ford, 550 F.3d 975, 2008 U.S. App. LEXIS 25452 (10th Cir. 2008)*, cert. denied, *558 U.S. 849, 130 S. Ct. 122, 175 L. Ed. 2d 80, 2009 U.S. LEXIS 5264 (2009)*.

District court did not abuse its discretion when it held that defendant had satisfied all five Berry factors and granted defendant's motion for new trial pursuant to *Fed. R. Crim. P. 33*; evidence presented by defendant was newly discovered, defense had exercised due diligence in seeking evidence, evidence was not cumulative and it was highly material, and it showed that it was more likely than not that defendant's brother, and not himself, was person who sold guns. *United States v. Piazza, 647 F.3d 559, 2011 U.S. App. LEXIS 15033 (5th Cir. 2011)*.

Unpublished decision: In case in which defendant appealed his conviction for violating *18 USCS §§ 922(g)(1)* and *924(a)(2)*, district court did not err by denying his *Fed. R. Crim. P. 33* motion for new trial; officer's testimony in suppression hearing in another case did not constitute Brady material since it was not exculpatory or impeaching. *United States v. Nosworthy, 475 Fed. Appx. 347, 2012 U.S. App. LEXIS 7250 (2d Cir. 2012)*.

Unpublished decision: In case in which defendant appealed his conviction for violating *18 USCS §§ 922(g)(1)* and *924(a)(2)*, district court did not err by denying his *Fed. R. Crim. P. 33* motion for new trial; government did not violate Jencks Act or *Fed. R. Crim. P. 26.2* by failing to disclose officer's testimony in suppression hearing in another case because that testimony did not concern any of facts surrounding defendant's arrest and was of only marginal impeachment value. *United States v. Nosworthy, 475 Fed. Appx. 347, 2012 U.S. App. LEXIS 7250 (2d Cir. 2012)*.

Unpublished decision: In case in which defendant appealed his conviction for violating *18 USCS §§ 922(g)(1)* and *924(a)(2)*, in rejecting his *Fed. R. Crim. P. 33* motion for new trial, district court did not err by rejecting his argument that officer's testimony in another suppression hearing constituted newly discovered evidence; there was no reason why simple Google search that uncovered testimony could not have been performed before trial. *United States v. Nosworthy, 475 Fed. Appx. 347, 2012 U.S. App. LEXIS 7250 (2d Cir. 2012)*.

Unpublished decision: In case in which defendant was convicted of violating *18 USCS § 922(g)* and he argued in *Fed. R. Crim. P. 33* motion that government violated its disclosure obligations, there was no fault in district court's thorough and well-reasoned opinion and order addressing his Rule 33 motion. *United States v. Barlow, 479 Fed. Appx. 372, 2012 U.S. App. LEXIS 9007 (2d Cir.)*, cert. denied, *568 U.S. 1037, 133 S. Ct. 672, 184 L. Ed. 2d 477, 2012 U.S. LEXIS 8978 (2012)*.

Unpublished decision: In case in which defendant appealed district court's denial of his *Fed. R. Crim. P. 33* motion for new trial based on information that he characterized as newly discovered evidence, fact that his codefendant invoked his Fifth Amendment right against self-incrimination and refused to testify during defendant's trial, but approximately two and one half years later expressed his willingness to do so, did not transform his single-sentence declaration into newly discovered evidence. *United States v. Griffin, 489 Fed. Appx. 679, 2012 U.S. App. LEXIS 15500 (4th Cir. 2012)*, cert. denied, *568 U.S. 1193, 133 S. Ct. 1457, 185 L. Ed. 2d 362, 2013 U.S. LEXIS 1769 (2013)*.

Unpublished decision: District court abused its discretion in denying defendant's motion for new trial under *Fed. R. Crim. P. 33* based on newly discovered statements by accomplice that defendant did not participate in or even witness theft of certain handguns at issue where newly discovered evidence undermined defendant's conviction for actual possession of firearm by unlawful user of controlled substance in violation of *18 USCS § 922(g)(3)* by suggesting that accomplice stole guns on entirely separate and later occasion than occasion described at defendant's trial. *United States v. Belyea, 159 Fed. Appx. 525, 2005 U.S. App. LEXIS 28835 (4th Cir. 2005)*.

Unpublished decision: Evidence, which consisted of testimony by witness who identified gun found on ground as that possessed by defendant earlier in night, testimony from arresting officer that he saw defendant move to throw something and heard metal striking stucco, and testimony that gun was found in spot where defendant had been standing and was marked with stucco, was sufficient to support finding that defendant knowingly possessed gun, thus violating *18 USCS §§ 922(g)(1)* and *924(e)*; also, defendant was not entitled to new trial because evidence cited by defendant as newly discovered had been considered at trial, and weight of evidence was sufficient to support conviction, even considering witnesses' credibility and some inconsistencies in their testimony. *United States v. Green, 275 Fed. Appx. 898, 2008 U.S. App. LEXIS 9789 (11th Cir. 2008)*.

Unpublished decision: In case in which defendant had been convicted of violating *21 USCS § 856(a)(2)* and (b) and *18 USCS §§ 922(g)(1)* and *924(a)(2)*, district court did not abuse its discretion in denying his *Fed. R. Crim. P. 33* motion for new trial on basis of newly discovered evidence because defendant, who owned strip club, had not shown that evidence on female confidential source's character was not merely impeachment evidence; additionally, to extent that he indicated that female confidential source would have provided exculpatory evidence had he been able to call her as witness, he failed to explain nature of that exculpatory evidence, such that its cumulative nature and materiality could not be analyzed. *United States v. Abusaid, 279 Fed. Appx. 843, 2008 U.S. App. LEXIS 27106 (11th Cir. 2008)*.

Unpublished decision: Defendant was not entitled to new trial upon his convictions for violating *18 USCS § 922(g)(1)*, (j) because even if there were inconsistencies in testimony of government witnesses, weight of evidence did not preponderate against verdict where evidence included stipulation that defendant was convicted felon, uncontroverted evidence that firearms at issue were stolen, testimony that defendant possessed firearms and knew or had reason to know they were stolen, and evidence that defendant participated in subsequent sale of firearms. *United States v. Williams, 291 Fed. Appx. 288, 2008 U.S. App. LEXIS 18650 (11th Cir. 2008)*.

Unpublished decision: Where defendant appealed district court's denial of his motion for new trial following his convictions for conspiracy to commit robbery, robbery, using and carrying firearm during and in relation to crime of violence, and being felon in possession of firearm, co-conspirator's testimony, while helpful to government's case, was not necessary to obtain defendant's convictions, and newly discovered evidence would not probably have resulted in acquittal. *United States v. Hicks, 607 Fed. Appx. 206, 2015 U.S. App. LEXIS 6045 (3d Cir. 2015)*.

Unpublished decision: Where defendant was convicted of being felon in possession of firearm, he was entitled to new trial as evidence of his prior conviction for possession of firearm in furtherance of drug trafficking was admitted in error as his prior conviction had no bearing on his knowledge of firearms in his wife's basement in 2011; his prior

conviction supported only impermissible inference that defendant was type of person who would possess guns. *United States v. Penn, 616 Fed. Appx. 524, 2015 U.S. App. LEXIS 6026 (3d Cir. 2015)*.

Where defendant was convicted of violating *18 USCS § 922(g)(1)*, district court did not abuse its discretion by denying his motion for new trial; there was sufficient evidence to show that he knowingly possessed firearm as five witnesses testified that he possessed firearm. *United States v. Mitchell, 726 Fed. Appx. 498, 2018 U.S. App. LEXIS 6742 (8th Cir. 2018)*.

215. —Prosecutorial misconduct

Defendant was not entitled to new trial based on alleged prosecutorial misconduct—when prosecutor likened gun in defendant's possession to gun used to assassinate President Lincoln—during closing arguments, because remark was isolated one, and evidence against defendant was overwhelming; defendant stipulated to being convicted felon who was found in possession of firearm that affected and traveled in interstate commerce; only issue at trial was whether defendant's possession of pistol was "knowing" under *18 USCS § 922(g)*. *United States v. Hargrove, 416 F.3d 486, 2005 FED App. 0301P, 2005 U.S. App. LEXIS 14521 (6th Cir. 2005)*.

Unpublished decision: In case in which defendant appealed his conviction for violating *18 USCS §§ 922(g)(1)* and *924(a)(2)* and (c)(1)(A)(i) and *21 USCS § 841(a)(1)* and (b)(1)(C), he argued that his conviction should be overturned due to prosecution's knowing use of false testimony, but he had not shown that officer's testimony was perjured or even inconsistent; officer testified at trial that he did not see bandana at time of arrest, and at grand jury when examining exhibit that depicted gun wrapped in green bandana, he described image in exhibit and identified gun as one he saw defendant holding at time of arrest; notably, he did not testify at trial that gun was or was not wrapped in bandana when arrest was initiated, only that he did not see bandana at that time. *United States v. Russell, 513 Fed. Appx. 67, 2013 U.S. App. LEXIS 4482 (2d Cir. 2013)*.

Although prosecutor's comment urging jury to draw adverse inference from defendant's failure to protest his innocence when he heard that he was suspect likely violated defendant's Fifth Amendment rights, new trial was unwarranted because prosecutor's misstatement was not egregious, court issued strong curative instruction, and evidence against defendant was strong; given evidence showing that assault rifle was found in car registered to defendant's girlfriend, that defendant was present near scene where rifle was found, that defendant lied to police, that defendant fled after police told girlfriend that defendant was suspect, and that defendant urged girlfriend to report car stolen, it was not likely that prosecutor's comment affected jury's determination that defendant was guilty of being felon in possession of firearm and ammunition in violation of *18 USCS § 922(g)*. *United States v. Rodriguez, 667 F. Supp. 2d 223, 2009 U.S. Dist. LEXIS 107456 (D. Mass. 2009)*, aff'd, *675 F.3d 48, 2012 U.S. App. LEXIS 6321 (1st Cir. 2012)*.

216. Habeas corpus

Government may reinstate counts it dismissed pursuant to plea agreement when district court, pursuant to motion filed by defendant, vacated defendant's plea-bargain sentence pursuant to *28 USCS § 2255* on ground that facts supporting plea no longer amounted to crime, since upon restoration of status quo ante, plea agreement no longer bound parties. *United States v. Bunner, 134 F.3d 1000, 1998 Colo. J. C.A.R. 714, 1998 U.S. App. LEXIS 740 (10th Cir.)*, cert. denied, *525 U.S. 830, 119 S. Ct. 81, 142 L. Ed. 2d 64, 1998 U.S. LEXIS 5026 (1998)*.

Defendant was not entitled to relief under *28 USCS § 2255* from his conviction for violating *18 USCS § 922(g)(1)*, even though his conviction for underlying offense, *18 USCS § 924(c)(1)*, had been set aside, since § 924 conviction had been disabling predicate offense at time he possessed firearm and ammunition. *United States v. Kahoe, 134 F.3d 1230, 1998 U.S. App. LEXIS 1077 (4th Cir. 1998)*.

Convicted felon's petition did not establish ground for habeas corpus relief, since rule that evidence of prior felony convictions used to support charge under *18 USCS § 922(g)(1)* should not be heard by jury where defendant offers to stipulate to their existence was not retroactive and was, therefore, inapplicable on collateral review. *Nelson v.*

United States, 184 F.3d 953, 1999 U.S. App. LEXIS 16821 (8th Cir.), cert. denied, *528 U.S. 1029, 120 S. Ct. 549, 145 L. Ed. 2d 427, 1999 U.S. LEXIS 7932 (1999)*.

Savings clause in 28 USCS § 2255 permitted petitioner to bring 28 USCS § 2241 petition challenging his 235-month sentence for his conviction for knowingly possessing firearms and ammunition while being convicted felon because his prior § 2255 motion was inadequate or ineffective to test legality of his detention as binding precedent had foreclosed petitioner's claim that he was erroneously sentenced above 10-year statutory maximum pursuant to Armed Career Criminal Act enhancement, U.S. Supreme Court subsequently overturned that circuit precedent, new rule applied retroactively on collateral review, petitioner's sentence exceeded statutory maximum, and savings clause in § 2255(e) reached his claim of illegal detention above statutory maximum. Bryant v. Warden, 738 F.3d 1253, 24 Fla. L. Weekly Fed. C 849, 2013 U.S. App. LEXIS 25606 (11th Cir. 2013), reh'g, en banc, denied, 2014 U.S. App. LEXIS 9158 (11th Cir. May 15, 2014).

Petitioner failed to show that he could have been convicted of a nonexistent offense, and thus, the savings clause in 28 U.S.C.S. § 2255(e) barred his 28 U.S.C.S. § 2241 petition; petitioner did not contend that he was unaware of his felony status, and he did not point to any facts or circumstances that would explain why, less than two years later, he forgot about or misapprehended the nature of his felony conviction for possession of cocaine. Abram v. McConnell, 2021 U.S. App. LEXIS 20174 (5th Cir. July 7, 2021).

Convicted felon-in-possession-of-ammunition is denied federal habeas relief, where he stipulated to having been previously convicted of possession of firearm under Massachusetts law, because, even aside from stipulation, he was convicted of committing that crime twice, it is felony in Massachusetts, and it is predicate offense under 18 USCS § 922(g)(1). Yanovitch v. United States, 985 F. Supp. 17, 1997 U.S. Dist. LEXIS 20997 (D. Mass. 1997).

217. —Ineffective assistance of counsel

District court's judgment granting inmate's petition under 28 USCS § 2255 to vacate his 72-month sentence for being felon in possession of firearm and ammunition under 18 USCS § 922(g) was reversed because inmate's counsel was not ineffective for failing to move to dismiss indictment based on fact that his certificate of discharge following completion of his sentence for criminal sexual misconduct did not expressly bar him from possessing firearm, as Minn. Stat. § 624.713, subd. 1(b) still prohibited him from possessing firearm for 10 years after his discharge from sentence, and therefore any motion to dismiss indictment would have been unsuccessful based on Eighth Circuit precedent. Hood v. United States, 342 F.3d 861, 2003 U.S. App. LEXIS 18790 (8th Cir. 2003), cert. denied, *540 U.S. 1163, 124 S. Ct. 1170, 157 L. Ed. 2d 1208, 2004 U.S. LEXIS 873 (2004)*.

Inmate who pleaded guilty to being felon in possession of firearm in violation of 18 USCS § 922(g)(1) was not entitled to habeas relief under 28 USCS § 2255 based on counsel's failure to advise inmate of potential for enhancement or upward departure at sentencing, as plea agreement and colloquy accurately stated inmate's potential sentence; counsel did provide ineffective assistance by failing to timely appeal imposition of upward departure under USSG § 5K2.6, but departure was proper given testimony by driver of van that inmate fired shots at van. United States v. Shedrick, 478 F.3d 519, 2007 U.S. App. LEXIS 4433 (3d Cir. 2007), review or reh'g granted, 2007 U.S. App. LEXIS 9470 (3d Cir. Apr. 26, 2007).

Defendant was not entitled to relief under 28 USCS § 2255 from his conviction for violating 18 USCS §§ 922 (g)(1), 924(a)(2) because (1) defendant's plea agreement was binding and allowed limited appeal; (2) permitted issues were resolved on direct appeal; (3) defendant failed to show that but for ineffective assistance of counsel, he would not have pled guilty when defendant admitted to knowing there were multiple firearms in his home. Sharpley v. United States, 499 F. Supp. 2d 208, 2007 U.S. Dist. LEXIS 46569 (N.D.N.Y. 2007), aff'd, 355 Fed. Appx. 488, 2009 U.S. App. LEXIS 26346 (2d Cir. 2009).

218. Miscellaneous

In prosecution on a charge of violating *18 USCS § 922(a)(3)* by transporting into New York, defendant's alleged state of residence, firearms obtained from Alabama, jury was justified in finding that defendant never became resident of Alabama and while there was still a resident of New York, in view of evidence showing that, among other things, defendant himself had characterized his trip to Alabama as "a visit to his uncle". *United States v. Jones, 481 F.2d 653, 1973 U.S. App. LEXIS 8970 (2d Cir. 1973)*.

Defendant was not prejudiced by judge's incorrect response of "no" to jury's question whether a convicted felon would ever have right to possess firearms again, since statement was true as to defendant who had never followed any procedure for reinstatement, and court's response was helpful to jury. *United States v. Felici, 54 F.3d 504, 1995 U.S. App. LEXIS 10228 (8th Cir.)*, cert. denied, *516 U.S. 897, 116 S. Ct. 251, 133 L. Ed. 2d 176, 1995 U.S. LEXIS 6586 (1995)*.

Prohibition of firearm possession by persons convicted of misdemeanor crime of domestic violence was not so serious as to entitle them to jury trial for presumptively petty offense. *United States v. Chavez, 204 F.3d 1305, 13 Fla. L. Weekly Fed. C 422, 54 Fed. R. Evid. Serv. (CBC) 426, 2000 U.S. App. LEXIS 2931 (11th Cir. 2000)*.

District court's action in submitting verbatim, specifically excerpted, record testimony that jury requested, without first showing jury's note to counsel and allowing them to comment before responding, constituted harmless error, and conviction for being felon in possession of firearm in violation of *18 USCS § 922(g)(1)* was affirmed. *United States v. Toliver, 330 F.3d 607, 2003 U.S. App. LEXIS 11180 (3d Cir. 2003)*, cert. denied, *540 U.S. 1185, 124 S. Ct. 1405, 158 L. Ed. 2d 90, 2004 U.S. LEXIS 1145 (2004)*.

Defendant's convictions for two counts of violating *18 USCS §§ 922(g)(1)* and *924(a)(2)* were affirmed since district court did not abuse its discretion by refusing to grant defendant continuance to locate witness who failed to appear; defense counsel's only effort to ensure appearance of witness was to call her night before, verifying time she was to appear; in light of that and failure to obtain subpoena, defendant did not show due diligence by his defense counsel in ensuring that witness would appear. *United States v. Hickerson, 489 F.3d 742, 2007 U.S. App. LEXIS 14449 (5th Cir.)*, cert. denied, *552 U.S. 1004, 128 S. Ct. 521, 169 L. Ed. 2d 363, 2007 U.S. LEXIS 11725 (2007)*.

Where appellant pled guilty to being unlawful user in possession of firearm, it was not abuse of discretion to deny appellant's motion to withdraw guilty plea, because plea was voluntary, intelligent, and knowing since appellant was clearly aware of elements of offense and understood what "unlawful user" entailed under *18 USCS § 922(g)(3)*. *United States v. McMullin, 568 F.3d 1, 2009 U.S. App. LEXIS 11501 (1st Cir.)*, cert. denied, *558 U.S. 928, 130 S. Ct. 342, 175 L. Ed. 2d 226, 2009 U.S. LEXIS 6546 (2009)*.

Where defendant was convicted on drug and firearm counts, new trial was not warranted based on officer misconduct, because, inter alia, (1) officers' misconduct did not relate to defendant's case, (2) non-dismissed counts stemmed largely from separate investigation, (3) even when one eliminated all traces of evidence from dismissed officers, there remained overwhelming evidence of defendant's guilt, and (4) there was no Brady violation. *United States v. Robinson, 627 F.3d 941, 2010 U.S. App. LEXIS 24521 (4th Cir. 2010)*.

Where defendant pled guilty before learning that pleading guilty would almost certainly result in deportation, it was abuse of discretion to deny defendant's pre-sentencing motion to withdraw guilty plea because defendant received inadequate legal advice about immigration consequences of plea, and counsel's failure to advise defendant of immigration consequences could have at least plausibly motivated defendant to plead guilty rather than go to trial. *United States v. Bonilla, 637 F.3d 980, 2011 U.S. App. LEXIS 4760 (9th Cir. 2011)*.

District court's continued polling of jury after it became clear that verdict was not unanimous was not reversible error, because there was no objection to continued polling of entire jury, district court took great pains to avoid doing anything that jury would perceive as coercive, and district court gave fair and perfectly balanced Allen charge when it instructed jury to deliberate further. *United States v. Penniegraft, 641 F.3d 566, 2011 U.S. App. LEXIS 11143 (4th Cir.)*, cert. denied, *565 U.S. 1020, 132 S. Ct. 564, 181 L. Ed. 2d 407, 2011 U.S. LEXIS 8016 (2011)*.

It was not error to find defendant competent, because (1) district court was confronted with several strong pieces of evidence confirming that defendant understood proceedings against defendant and could assist in defense, and (2) district court was not required to cross-examine psychiatric personnel who found defendant competent. *United States v. Reynolds, 646 F.3d 63, 2011 U.S. App. LEXIS 9926 (1st Cir. 2011)*.

Where defendant argued that because judge presided over competency hearing during which defendant made admissions of guilt, judge could not be impartial when overseeing bench trial, recusal was not warranted under *28 USCS § 455(a)*, because parties stipulated to admission of second competency hearing transcript, and opinions formed based on evidence introduced during course of case did not per se warrant recusal. *United States v. Reynolds, 646 F.3d 63, 2011 U.S. App. LEXIS 9926 (1st Cir. 2011)*.

There was no error in finding that defendant's jury-trial waiver was knowingly and voluntarily executed, because (1) court clearly articulated scope of defendant's right to jury trial, which defendant asserted defendant understood, (2) defendant's mental capacity did not undermine defendant's voluntary waiver of jury trial, and (3) court made clear to defendant nature of right involved and explained importance of right and implications of waiver. *United States v. Reynolds, 646 F.3d 63, 2011 U.S. App. LEXIS 9926 (1st Cir. 2011)*.

In defendant's criminal case for possession of firearm by convicted felon, *18 USCS § 922(g)(1)*, and possession of stolen firearm, § 922(j), there was no violation of 70 day requirement of *18 USCS § 3161(c)(1)* based on delay between indictment and trial because district court properly excluded for speedy trial purposes time for competency exam and two continuances granted for co-defendant; district court was not obligated to hold formal hearing after forensic psychologist concluded that defendant was competent to stand trial. *United States v. Harris, 660 F.3d 47, 2011 U.S. App. LEXIS 20860 (1st Cir. 2011)*.

In case in which defendant appealed his conviction for violating *21 USCS § 841(a)(1)* and *18 USCS §§ 922(g)(1)* and *924(c)* and (e)(1) and his argument was subject to plain error review that district court committed reversible error when it allowed alternate juror to be present in jury deliberation room, district court's decision to allow alternate juror into deliberation room violated *Fed. R. Crim. P. Rule 24(c)*; however, defendant had not alleged, nor had he pointed to anything on record indicating, that alternate juror actually participated in jury's deliberations in any way; he had not shown that his substantial rights were affected. *United States v. Dill, 712 F.3d 347, 2013 U.S. App. LEXIS 6782 (7th Cir. 2013)*.

Where defendant appealed his guilty plea conviction for violating *18 USCS §§ 922* and *924(e)*, district court abused its discretion by denying his motion to withdraw his plea after he presented fair and just reason to support his motion; once government and defendant brought to district court's attention its failure to comply with *Fed. R. Crim. P. 11*, it should have permitted defendant to withdraw his guilty plea. *United States v. Symington, 781 F.3d 1308, 25 Fla. L. Weekly Fed. C 1027, 2015 U.S. App. LEXIS 4850 (11th Cir. 2015)*.

Where defendant appealed his convictions, government did not do end-run around plea agreements by introducing video footage depicting defendant's August 20, 2013, arrest; prosecution was offering evidence to assist district court in deciding whether to impose consecutive or concurrent sentences, just as parties' agreements allowed. United States v Quiñones- *Melendez, 791 F.3d 201 (CA1 Puerto Rico 2015)*.

It was error to grant Government's request that defendant be medicated by force because it was clear error to find that Government had met its burden of proving that proposed treatment was substantially likely to restore defendant's competency since nothing in district court's decision indicated that it actually considered whether evidence proffered by Government sufficiently addressed defendant's particular medical situation. *United States v. Watson, 793 F.3d 416, 2015 U.S. App. LEXIS 12371 (4th Cir. 2015)*.

Where defendant pled guilty, remand was warranted because no valid conditional guilty plea was entered since government-consent requirement was not satisfied because prosecutor remained silent during colloquy in which district court stated that defendant would retain right to appeal denial of defendant's suppression motion, nowhere in plea colloquy transcript did court or either party make reference to conditional guilty plea or *Fed. R. Crim. P. 11(a)(2)*,

and only statement from defense counsel that even arguably related to issue was murky at best. *United States v. Fitzgerald, 820 F.3d 107, 2016 U.S. App. LEXIS 7635 (4th Cir. 2016)*.

Inadvertent delivery of envelope of cash to jury room during deliberations, that was never admitted into evidence, was harmless error because it was cumulative; officers described where cash was located and videotape shown to jury showed its recovery, thus, defendant's appeal of his drug and gun convictions under *18 USCS §§ 922(g)(1)*, *924(c)(1)*, *21 USCS § 841(a)(1)*, (b)(1)(B)(iii), (D), was affirmed. *United States v. Bentley, 489 F.3d 360, 376 U.S. App. D.C. 352, 2007 U.S. App. LEXIS 12929 (D.C. Cir.)*, cert. denied, *552 U.S. 1001, 128 S. Ct. 512, 169 L. Ed. 2d 357, 2007 U.S. LEXIS 11777 (2007)*.

At defendant's trial for being felon in possession of firearm and ammunition, in violation of *18 USCS § 922(g)(1)*, district court did not plainly err in allowing jury to ask questions of witnesses; although such practice could be dangerous, district court followed precautionary procedures that were recommended by multitude of circuits in U.S. Court of Appeal that allowed jurors to questions witnesses. *United States v. Rawlings, 522 F.3d 403, 380 U.S. App. D.C. 378, 2008 U.S. App. LEXIS 8005 (D.C. Cir. 2008)*.

Unpublished decision: In case in which defendant appealed his conviction for violating *18 USCS § 922(g)(1)*, he unsuccessfully argued that district court abused its discretion in denying Batson challenge he raised during voir dire of jury; defendant was wrong on facts since district court did not find prosecutor's proffered explanations to be false or pretextual and did not speculate about other possible race neutral explanations; rather, district court found as fact that prosecutor's challenges resulted from what it believed to be misperceptions of prosecutor with respect to demeanor and conduct of two jurors. *United States v. Jones, 408 Fed. Appx. 589, 2010 U.S. App. LEXIS 24004 (3d Cir. 2010)*, cert. denied, *563 U.S. 967, 131 S. Ct. 2168, 179 L. Ed. 2d 948, 2011 U.S. LEXIS 3346 (2011)*.

Unpublished decision: In case in which defendant appealed his conviction for violating *18 USCS § 922(g)(1)*, district court did not err by ruling government did not have to disclose evidence submitted ex parte of internal investigations regarding officers involved in his arrest; files were not probative of truthfulness or untruthfulness of officer witnesses, and therefore did not implicate Giglio decision. *United States v. Blackman, 407 Fed. Appx. 591, 2011 U.S. App. LEXIS 1514 (3d Cir. 2011)*.

Unpublished decision: In case in which two defendants appealed their convictions for violating *18 USCS §§ 1951* and *924(o)* and (c) and one defendant's conviction for violating *18 USCS § 922(g)*, under Tinklenberg decision, there was no Speedy Trial Act violation; that decision held that filing of pretrial motion fell within scope of *18 USCS § 3161(h)(1)(D)* irrespective of whether it actually caused, or was expected to cause, delay in starting trial. *United States v. Blanks, 439 Fed. Appx. 228, 2011 U.S. App. LEXIS 15167 (4th Cir.)*, cert. denied, *565 U.S. 1045, 132 S. Ct. 602, 181 L. Ed. 2d 441, 2011 U.S. LEXIS 8205 (2011)*.

Unpublished decision: Defendant's conviction for being felon in possession of firearm was upheld because it was not abuse of discretion to reject defendant's motion for psychological examination since defendant presented only "self-report" of general psychological issues, phone calls from jail revealed defendant's comprehension of charges, and defendant was able to converse with counsel such as to assist in defense. *United States v. Trent, 443 Fed. Appx. 860, 2011 U.S. App. LEXIS 17499 (4th Cir. 2011)*.

Unpublished decision: Defendant was incorrect that district court lacked subject-matter jurisdiction over charge for possessing firearm as felon, under *18 USCS § 922(g)(1)*, because district courts had jurisdiction over all federal prosecutions, and possession of firearm by felon was federal crime under § 922(g)(1). *United States v. Parker, 437 Fed. Appx. 500, 2011 U.S. App. LEXIS 17893 (7th Cir. 2011)*, remanded, *567 U.S. 949, 133 S. Ct. 62, 183 L. Ed. 2d 703, 2012 U.S. LEXIS 4893 (2012)*.

Unpublished decision: In case in which defendant appealed his conviction for violating *18 USCS §§ 922(g)(1)* and *924(e)*, based upon his possession of firearms as previously convicted felon, he unsuccessfully argued that government violated *18 USCS § 3161*; Speedy Trial Act clock started on June 6, 2006 when defendant's indictment and arraignment occurred, and stopped on May 9, 2009 when defendant pled guilty; defendant filed numerous

motions and continuance requests that stopped Speedy Trial Act clock, and just 17 non-excludable days passed between his indictment and his guilty plea. *United States v. Yarbrough, 452 Fed. Appx. 186, 2011 U.S. App. LEXIS 23198 (3d Cir. 2011)*, cert. denied, *565 U.S. 1273, 132 S. Ct. 1775, 182 L. Ed. 2d 554, 2012 U.S. LEXIS 2076 (2012)*.

Unpublished decision: In case in which defendant pled guilty to violating *18 USCS § 922(g)(1)*, district court complied with mandates of *Fed. R. Crim. P. 11* in accepting his guilty plea. *United States v. Harris, 458 Fed. Appx. 297, 2011 U.S. App. LEXIS 24941 (4th Cir. 2011)*.

Unpublished decision: In case in which defendant appealed his convictions for violating *21 USCS § 846* and *18 USCS § 922(g)(1)* by challenging district court's denial of his motion to withdraw his guilty plea, district court substantially complied with mandates of *Fed. R. Crim. P. 11* in accepting his guilty plea; his expectation that he would not be sentenced as armed career criminal did not establish fair and just basis for withdrawing his guilty plea; defendant acknowledged in his signed plea agreement that he knew he could face mandatory minimum fifteen-year prison term if he was designated armed career criminal. *United States v. Mincy, 480 Fed. Appx. 743, 2012 U.S. App. LEXIS 10453 (4th Cir. 2012)*.

Unpublished decision: In case in which defendant appealed his conviction for violating *21 USCS § 846* and *18 USCS §§ 922(g)(1)* and *924*, he argued *Fed. R. Crim. P. 11* hearing was flawed because he was not informed of correct minimum or maximum sentence under Fair Sentencing Act of 2010 (FSA), *Pub.L. No. 111-220*, *124 Stat. 2372*; his Rule 11 hearing was proper since at time that he pled guilty, which was after FSA's effective date, FSA was not being applied retroactively to those defendants whose criminal conduct occurred prior to enactment of FSA but were sentenced after FSA's effective date; at sentencing, defense counsel argued that reduced statutory sentence contained in FSA should apply to defendant, and district court agreed. *United States v. Quiller, 494 Fed. Appx. 308, 2012 U.S. App. LEXIS 19163 (4th Cir. 2012)*, cert. denied, *568 U.S. 1149, 133 S. Ct. 996, 184 L. Ed. 2d 773, 2013 U.S. LEXIS 944 (2013)*.

Unpublished decision: Where defendant pled guilty to being felon in possession of firearm, in violation of *18 USCS § 922(g)*, it was not abuse of discretion to deny defendant's motion to withdraw guilty plea, because, inter alia, defendant waited five months after pleading guilty to move to withdraw plea, offered conclusory allegations about defendant's original counsel's deficiency, did not clarify how counsel was coercive or otherwise deficient, and did not describe nature of defendant's confusion or source of defendant's fear. *United States v. Perez-Hernandez, 490 Fed. Appx. 275, 2012 U.S. App. LEXIS 19838 (11th Cir. 2012)*, cert. denied, *571 U.S. 855, 134 S. Ct. 133, 187 L. Ed. 2d 94, 2013 U.S. LEXIS 5780 (2013)*.

Unpublished decision: In case in defendant appealed his guilty plea conviction to violating *18 USCS § 922(g)*, there was no basis for argument that his plea was unknowing, involuntary, or unintelligent; he could not demonstrate that requirements of *Fed. R. Crim. P. 11* and constitutional requirements of Boykin decision had not been satisfied. *United States v. Tucker, 511 Fed. Appx. 166, 2013 U.S. App. LEXIS 1798 (3d Cir. 2013)*.

Unpublished decision: In case in which defendant appealed his conviction for violating *18 USCS § 922(g)(1)*, record demonstrated that district court did nor abuse its discretion when it failed to order sua sponte competency hearing before it accepted his plea. *United States v. Michel, 511 Fed. Appx. 918, 2013 U.S. App. LEXIS 4543 (11th Cir. 2013)*.

Unpublished decision: Any objection to district court's exercise of jurisdiction in defendant's case was patently frivolous because defendant was indicted for and pleaded guilty to being felon in possession of firearm in violation of *18 USCS § 922(g)*, law of United States. *United States v. Gaines, 515 Fed. Appx. 151, 2013 U.S. App. LEXIS 4978 (3d Cir. 2013)*.

Unpublished decision: Any objection to district court's exercise of jurisdiction in defendant's case was patently frivolous because defendant was indicted for and pleaded guilty to being felon in possession of firearm in violation of *18 USCS § 922(g)*, law of United States. *United States v. Gaines, 515 Fed. Appx. 151, 2013 U.S. App. LEXIS 4978 (3d Cir. 2013)*.

Unpublished decision: In case in which defendant pled guilty to violating *18 USCS § 922(g)(1)*, district court sentenced him to 180 months' imprisonment as career offender under *18 USCS § 924(e)(1)*, and appointed counsel moved to withdraw under Anders decision after defendant filed notice of appeal, challenge to voluntariness of plea agreement would be frivolous as district court substantially complied with *Fed. R. Crim. P. 11*. *United States v. Lowe, 512 Fed. Appx. 628, 2013 U.S. App. LEXIS 5826 (7th Cir. 2013)*.

Unpublished decision: In case in which defendant pled guilty to violating *18 USCS § 922(g)(1)*, district court sentenced him to 180 months' imprisonment as career offender under *18 USCS § 924(e)(1)*, and appointed counsel moved to withdraw under Anders decision after defendant filed notice of appeal, any challenges as to whether indictment adequately stated offense and whether district court erroneously denied defendant's motion to suppress gun that formed basis of charge against him would be frivolous; since defendant's plea agreement was unconditional, he waived all nonjurisdictional defects arising before his plea. *United States v. Lowe, 512 Fed. Appx. 628, 2013 U.S. App. LEXIS 5826 (7th Cir. 2013)*.

Unpublished decision: In case in which defendant pled guilty to violating *18 USCS § 922(g)(1)*, district court sentenced him to 180 months' imprisonment as career offender under *18 USCS § 924(e)(1)*, and appointed counsel moved to withdraw under Anders decision after defendant filed notice of appeal, defendant's challenge to district court's conclusion that he was armed career criminal was waived because he acknowledged in plea agreement that he understood court might deem him armed career criminal and also admitted to having three predicate convictions for violent felonies. *United States v. Lowe, 512 Fed. Appx. 628, 2013 U.S. App. LEXIS 5826 (7th Cir. 2013)*.

Unpublished decision: Where defendant pled guilty to possession of firearm by convicted felon under *18 USCS § 922(g)(1)*, and defendant argued that colloquy omitted possible penalties for violation of *18 USCS § 922(g)* without application of Armed Career Criminal Act (ACCA), colloquy was adequate because it was Government's position at time of guilty plea that defendant was subject to ACCA such that, even if district court had stated penalties for § 922(g) in addition to that of ACCA, defendant would have understood defendant was subject to ACCA's mandatory minimum fifteen-year sentence. *United States v. McClain, 517 Fed. Appx. 144, 2013 U.S. App. LEXIS 6587 (4th Cir. 2013)*, remanded, *612 Fed. Appx. 679, 2015 U.S. App. LEXIS 14412 (4th Cir. 2015)*.

Unpublished decision: Where defendant challenged denial of defendant's motion to suppress because defendant's trial counsel provided ineffective assistance by failing to seek conditional plea, defendant's argument was rejected because it was beyond any doubt that defendant's attorney did not provide ineffective assistance since defendant's claim that police did not have reasonable suspicion to stop defendant's vehicle and pat defendant down, or probable cause to arrest defendant and search vehicle, was meritless. *United States v. Darling, 519 Fed. Appx. 58, 2013 U.S. App. LEXIS 9655 (2d Cir. 2013)*.

Unpublished decision: In case in which defendant pled guilty to violating *18 USCS §§ 922* and *924* and *21 USCS § 841* and he appealed, arguing that participated in plea discussions, in violation of *Fed. R. Crim. P. 11(c)(1)*, by advising him about penal consequences of rejecting his written plea agreement after he announced that he did not want to plead guilty, district court's intervention preceded defendant's decision to plead guilty; it had crossed line into realm of participation. *United States v. Castro, 521 Fed. Appx. 890, 2013 U.S. App. LEXIS 11852 (11th Cir. 2013)*.

Unpublished decision: Two defendants convicted for possession of firearm by felon in violation of *18 USCS § 922(g)(1)* were not entitled to have their convictions reversed on basis of comments by district court in questioning and impeachment of witnesses because comments were not so prejudicial as to deny defendants opportunity for fair and impartial trial, and appellate court could not conclude that jury actually convicted defendants based upon any error by district court in questioning witnesses. *United States v. Ecklin, 528 Fed. Appx. 357, 91 Fed. R. Evid. Serv. (CBC) 870, 2013 U.S. App. LEXIS 12036 (4th Cir.)*, cert. denied, *571 U.S. 979, 134 S. Ct. 486, 187 L. Ed. 2d 328, 2013 U.S. LEXIS 7741 (2013)*.

Unpublished decision: District court did not abuse its discretion in concluding that defendant was not qualified to receive sentence reduction and in sentencing defendant to within-Guidelines sentence of 24 months for being felon in possession of firearm because defendant fired rifle across public highway, in violation of state statute, and had

criminal record. *United States v. Hauck, 532 Fed. Appx. 247, 2013 U.S. App. LEXIS 15403 (3d Cir. 2013)*, cert. denied, *571 U.S. 1082, 134 S. Ct. 707, 187 L. Ed. 2d 569, 2013 U.S. LEXIS 8752 (2013)*.

Unpublished decision: Where defendant waived right to appeal denial of pretrial suppression motion by failing to file objections to magistrate judge's recommendation, best course was to vacate judgment because defendant's plea was specifically premised on defendant's, Government's, and district court's mistaken belief concerning defendant's appellate rights, and it could not be treated as knowing and voluntary unconditional plea. *United States v. LeCraft, 544 Fed. Appx. 185, 2013 U.S. App. LEXIS 21638 (4th Cir. 2013)*.

Unpublished decision: Where defendant appealed his conviction for violating *18 USCS §§ 922(g)(1)* and *2*, his Brady claim was without merit since information, which was produced by government immediately after receiving it days before trial, would not have impeached officer's credibility because it did not relate to his character for truthfulness. *United States v. Coleman, 545 Fed. Appx. 156, 2013 U.S. App. LEXIS 23328 (3d Cir. 2013)*.

Unpublished decision: Where defendant appealed his 26-month sentence for violating *18 USCS §§ 922(g)(1)* and *924(a)(2)*, his claim that government breached plea agreement was subject to plain error; while government breached plea agreement by failing to recommend that defendant receive sentence at low end of U.S. Sentencing Guidelines (USSG) range, he had not shown how breach of plea agreement affected his sentence, which fell four months below USSG range. *United States v. Woodberry, 550 Fed. Appx. 759, 2013 U.S. App. LEXIS 25173 (11th Cir. 2013)*.

Unpublished decision: Where defendant's motion to suppress was denied and defendant entered unconditional guilty plea, district court's ruling on motion to suppress was not reviewable, because defendant's unconditional guilty plea, made knowingly, voluntarily, and with benefit of competent counsel, waived defendant's right to challenge denial of motion to suppress. *United States v. Lane, 553 Fed. Appx. 878, 2014 U.S. App. LEXIS 1162 (11th Cir. 2014)*.

Unpublished decision: Where defendant pled guilty to violating *18 USCS § 922(g)(1)* and counsel questioned whether district court complied with *Fed. R. Crim. P. 11* in accepting his guilty plea, district court complied with Rule 11, and his guilty plea was knowing and voluntary. *United States v. Satterwhite, 552 Fed. Appx. 261, 2014 U.S. App. LEXIS 1608 (4th Cir. 2014)*.

Unpublished decision: Where defendant appealed his convictions for violating *18 USCS §§ 924(a)(1)(A)* and *922(a)(1)(A)*, district court did not abuse its discretion when it denied his pretrial motion to disclose Bureau of Alcohol, Tobacco, and Firearms confidential informant (CI) whose tip started investigation or for in camera review of informant file; since defendant provided only speculation and suspicion that CI might have engaged in entrapment, he did not meet his burden to show that disclosure of CI's identity would be relevant or helpful to any defense. *United States v. Ibarra, 581 Fed. Appx. 687, 2014 U.S. App. LEXIS 12321 (9th Cir. 2014)*.

Unpublished decision: Where defendant argued that *18 USCS § 922(a)(1)* exceeded Congress's authority under Commerce Clause, such constitutional challenge did not affect district court's subject matter jurisdiction. *United States v. Burke, 577 Fed. Appx. 338, 2014 U.S. App. LEXIS 15356 (5th Cir. 2014)*, cert. denied, *574 U.S. 865, 135 S. Ct. 171, 190 L. Ed. 2d 121, 2014 U.S. LEXIS 6171 (2014)*, cert. denied, *574 U.S. 1093, 135 S. Ct. 984, 190 L. Ed. 2d 865, 2015 U.S. LEXIS 325 (2015)*.

Unpublished decision: Where defendant pled guilty to possessing with intent to distribute cocaine base and being felon in possession of firearm and ammunition and he appealed his judgment of conviction and sentence, his plea agreement contained appeal-waiver provision, and nothing in record suggested that his assent to plea agreement, and specifically to appeal-waiver provision, was unknowing or involuntary. *United States v. Lynch, 2015 U.S. App. LEXIS 7584 (6th Cir. Apr. 6, 2015)*.

Where defendant appealed his conviction for violating *18 USCS § 922(g)(1)*, he presented no evidence that lack of African-American jurors was due to systematic exclusion of group in jury selection process, and his claim failed that all-white venire panel violated his Sixth Amendment right to trial by impartial jury. *United States v. Evans, 830 F.3d*

761, 2016 U.S. App. LEXIS 13633 (8th Cir. 2016), reh'g, en banc, denied, 2016 U.S. App. LEXIS 18296 (8th Cir. Oct. 7, 2016), cert. denied, *137 S. Ct. 839, 197 L. Ed. 2d 77, 2017 U.S. LEXIS 824 (2017)*.

Where defendant appealed his guilty plea convictions for violating 18 USCS § 922(a)(1)(A) and (g)(1), his appeal was subject to plain error review, and, while there may have been some question as to whether district court's inquiry was clearly insufficient under Fed. R. Crim. P. 11, defendant had not shown how, but for such error, it was probable that he would not have pled guilty. United States v. Dawn, 842 F.3d 3, 2016 U.S. App. LEXIS 20566 (1st Cir. 2016), cert. denied, *137 S. Ct. 1361, 197 L. Ed. 2d 543, 2017 U.S. LEXIS 1780 (2017)*.

Where defendant appealed his conviction for violating 18 USCS § 922(g)(1), assuming that prosecutor's statement that cops do not lie placed prestige of government behind witnesses and vouched for their credibility, there was no prejudice to defendant's right to fair trial; government's rebuttal comments on police officers' testimony was in response to defense argument that police fabricated their accounts. United States v. Dixson, 2000 U.S. App. LEXIS 41318 (11th Cir. Dec. 29, 2000), remanded, 314 Fed. Appx. 197, 2008 U.S. App. LEXIS 19490 (11th Cir. 2008).

Defendant failed to present evidence sufficient to warrant denying the government's motion to exclude the justification defense to prosecution, assuming it was available, because his professional statement failed to show that he lacked a reasonable, legal alternative to violating the law given that he had the opportunity to safely and lawfully dispossess himself of the firearm after the alleged threat dissipated as he could had called the police upon driving away from the apartment building. United States v. Still, 2021 U.S. App. LEXIS 22165 (8th Cir. July 27, 2021).

Where defendant appealed his conviction and sentence for violating 18 USCS §§ 922(g)(1) and 924(a)(2), there was no Speedy Trial Act violation; his argument was foreclosed by Thomas decision that Speedy Trial Act's 30-day period was triggered upon his state arrest. United States v. Richardson, 674 Fed. Appx. 262, 2017 U.S. App. LEXIS 24 (4th Cir.), writ denied, *696 Fed. Appx. 647, 2017 U.S. App. LEXIS 16639 (4th Cir. 2017)*.

Where defendant appealed his convictions for violating 21 USCS §§ 846 and 841(b)(1)(A)(iii) and 18 USCS §§ 922(g)(1) and 924(e)(1), guilty plea was knowing and voluntary; nothing in Fed. R. Crim. P. 11 required pre-plea disclosure of draft U.S. Sentencing Guidelines calculations, and record showed district court complied with Fed. R. Crim. P. 11 by ensuring that he understood consequences of his guilty plea. United States v. Thomas, 724 Fed. Appx. 689, 2017 U.S. App. LEXIS 25159 (11th Cir. 2017), cert. denied, *139 S. Ct. 439, 202 L. Ed. 2d 334, 2018 U.S. LEXIS 6481 (2018)*.

Where defendant appealed his conviction for violating 18 USCS §§ 922(g)(10) and 924(a)(2), district court did not err in denying his motion for acquittal and renewed motion for acquittal; rational jury could have found that government presented evidence sufficient to meet all elements of crime charged. United States v. Felix, 727 Fed. Appx. 921, 2018 U.S. App. LEXIS 6217 (9th Cir. 2018), reh'g, en banc, denied, 2018 U.S. App. LEXIS 16537 (9th Cir. June 19, 2018).

Where defendant appealed his conviction for violating 18 U.S.C.S. §§ 922(g)(10 and 924(a)(2), district court did not err in denying his motion for acquittal and renewed motion for acquittal; rational jury could have found that government presented evidence sufficient to meet all elements of crime charged. United States v. Felix, 727 Fed. Appx. 921, 2018 U.S. App. LEXIS 6217 (9th Cir. 2018), reh'g, en banc, denied, 2018 U.S. App. LEXIS 16537 (9th Cir. June 19, 2018).

Appropriate statute of limitations for violation of 18 USCS § 922 is 5 years, as provided by 18 USCS § 3282. United States v. Agnes, 453 F. Supp. 1256, 1978 U.S. Dist. LEXIS 16750 (E.D. Pa. 1978), aff'd, *601 F.2d 576, 1979 U.S. App. LEXIS 13468 (3d Cir. 1979)*.

Government's motion for revocation of pretrial release order is granted, where defendant is charged with being felon in possession of firearm, apparently for having shot someone on account of drug debt or property dispute, because, despite mixed authority, court believes treating charge as categorical crime of violence is more consistent with (1) congressional intent relating to 18 USCS § 922(g), and (2) paramount consideration of public safety. United States v. Spry, 76 F. Supp. 2d 719, 1999 U.S. Dist. LEXIS 18800 (S.D. W. Va. 1999).

After defendant had been found under *18 USCS § 4241* as not competent to stand trial, where proposed drug dose to restore defendant to competency to stand trial would be started low and gradually increased to minimize side effects, there would be monitoring, and there was 70–80 percent success rate, government was authorized under *18 USCS § 4246* and 18 USCS § 4257 to administer drug over defendant's objection; charges against defendant under *18 USCS § 922(g)* were "serious" and government had important interest in prosecuting defendant that outweighed defendant's due process rights. *United States v. Algere, 396 F. Supp. 2d 734, 2005 U.S. Dist. LEXIS 33167 (E.D. La. 2005)*.

Where defendant was charged with unlawful possession of firearm and was not competent to stand trial, Government failed to meet its burden for its motion to forcibly medicate defendant to restore competency to stand trial because special circumstances substantially mitigated Government's interests, such as amount of time defendant had already spent in custody and would likely spend in custody prior to trial and sentencing, likelihood of future confinement, likely success of defendant's insanity defense, and potential placement of defendant on supervised release. *United States v. Duncan, 968 F. Supp. 2d 753, 2013 U.S. Dist. LEXIS 129448 (E.D. Va. 2013)*.

Defendant's convictions for weapons charges related to bank robbery and carjacking were affirmed, where district court did not err in concluding that defendant was competent to stand trial, in permitting defendant to represent himself, in placing defendant in stun belt and shackles during trial, in granting upward sentencing departure, and in refusing to suppress defendant's statement made during his arrest, but before he was read his Miranda rights. *United States v. Joseph, 333 F.3d 587, 2003 U.S. App. LEXIS 11464 (5th Cir.)*, cert. denied, *540 U.S. 973, 124 S. Ct. 446, 157 L. Ed. 2d 322, 2003 U.S. LEXIS 7818 (2003)*.

Unpublished decision: It was not abuse of discretion to cross-examine defendant about extrinsic drug arrest without disclosing in discovery police report of incident, because defendant did not make sufficiently specific request for police report. *United States v. Cruz-Camacho, 588 Fed. Appx. 886, 2014 U.S. App. LEXIS 19178 (11th Cir. 2014)*.

Unpublished decision: Defendant's argument that district court plainly erred by impermissibly involving itself in defendant's plea negotiations was rejected because district court did not comment on effect that defendant's plea decision would have on defendant's sentence, and any error was not plain since it was not reasonably probable that, but for district court's comments, defendant would have elected to go to trial. *United States v. Somers, 591 Fed. Appx. 753, 2014 U.S. App. LEXIS 21548 (11th Cir. 2014)*.

Unpublished decision: Where defendant appealed district court's denial of his motion for judgment of acquittal, there was sufficient evidence to support jury's findings that defendant violated *18 USCS §§ 924(c)(1)* and *922(g)(1)*; jury was entitled to reject his testimony that he brandished simulated firearm in form of cell phone and that he did not exercise dominion or control over ammunition. *United States v. Cheatham, 601 Fed. Appx. 194, 2015 U.S. App. LEXIS 2071 (4th Cir. 2015)*.

Unpublished decision: Where defendant had previously burglarized home of one of Assistant U.S. Attorneys, it was not error to deny defendant's motion to disqualify entire U.S. Attorney's Office for Kansas, because Government took proper course of action in prohibiting burglarized attorney from participating in defendant's prosecution, and defendant did not show prejudice regarding plea bargain. *United States v. Marquez, 603 Fed. Appx. 685, 2015 U.S. App. LEXIS 2732 (10th Cir. 2015)*.

Unpublished decision: Where defendant appealed his conviction for being felon in possession of firearm, district court did not commit clear error by allowing partial read back of officer's testimony after deliberations had begun; prior to read back, district court properly admonished jurors that they should not give readback undue weight or influence. *United States v. Lake, 611 Fed. Appx. 390, 2015 U.S. App. LEXIS 8058 (9th Cir. 2015)*.

Unpublished decision: Where defendant appealed his conviction for being felon in possession of firearm, arguing that district court erred failing to find violation of his constitutional right to speedy trial, district court's factual findings were supported by record and were not clearly erroneous; among other reasons for delay, defendant moved to Washington

state after his indictment and before his arrest without notifying his probation officer. *United States v. Lake, 611 Fed. Appx. 390, 2015 U.S. App. LEXIS 8058 (9th Cir. 2015)*.

Unpublished decision: Where defendant was charged with bank robbery, Hobbs Act robbery, carrying firearm during crime of violence, and possession of firearm by convicted felon and defendant was involuntarily committed for psychiatric treatment for paranoid schizophrenia, it was not error to grant Government permission to medicate defendant involuntarily for purpose of rendering defendant competent to stand trial, because Government satisfied Sell factors since, inter alia, bringing to trial individual accused of serious crime was important governmental interest. *United States v. Ruark, 611 Fed. Appx. 591, 2015 U.S. App. LEXIS 8700 (11th Cir. 2015)*.

Unpublished decision: Where defendant appealed his conviction and 24-month sentence for possession of firearm by convicted felon and defense counsel filed Anders motion to withdraw, there were no non-frivolous claims; he was fully advised of nature and consequences of his plea, and district court could reasonably find that defendant had actual or constructive possession of firearms. *United States v. Eastham, 618 Fed. Appx. 421, 2015 U.S. App. LEXIS 12165 (10th Cir. 2015)*.

Unpublished decision: It was not abuse of discretion to deny defendant's second request for extension of time to file pretrial motions, because waiting three weeks after deadline to request second continuance was far from diligent, district court did grant request to continue trial date, defendant provided zero compelling reasons for why pretrial motion period should be reopened, and defendant made no indication at time that defendant intended to submit any pretrial motions. *United States v. Barnes, 620 Fed. Appx. 668, 2015 U.S. App. LEXIS 14182 (10th Cir. 2015)*.

Unpublished decision: Where defendant claimed that district court impermissibly participated in plea negotiations when it stated that two-point guidelines reduction would still be available for acceptance of responsibility if defendant pleaded guilty, any error was harmless because defendant failed to rebut sufficiently Government's argument that single comment made by district court was not "material factor" in defendant's decision to plead guilty. *United States v. Martin, 651 Fed. Appx. 265, 2016 U.S. App. LEXIS 10294 (5th Cir. 2016)*, cert. denied, *137 S. Ct. 688, 196 L. Ed. 2d 567, 2017 U.S. LEXIS 281 (2017)*.

Unpublished decision: In case in which defendant appealed his guilty plea to violating *18 USCS § 922(g)(1)* on basis that plea agreement was invalid because it was not made knowingly, voluntarily, and intelligently, he unsuccessfully contended that district court did not sufficiently inquire into effects of medication he had taken night before his plea colloquy; district court asked critical question of whether medications helped him to understand proceedings. *United States v. Winnick, 490 Fed. Appx. 718, 2012 FED App. 0799N, 2012 U.S. App. LEXIS 15443 (6th Cir. 2012)*.

Unpublished decision: In case in which defendant appealed his guilty plea to violating *18 USCS § 922(g)(1)* on basis that plea agreement was invalid because it conferred no benefit upon him, he benefitted from plea agreement; in exchange for agreement, government promised to recommend three-level reduction for acceptance of responsibility; that full three-level reduction could only be awarded upon government's motion. *United States v. Winnick, 490 Fed. Appx. 718, 2012 FED App. 0799N, 2012 U.S. App. LEXIS 15443 (6th Cir. 2012)*.

Unpublished decision: In case in which defendant appealed his guilty plea to violating *18 USCS § 922(g)(1)* on basis that plea agreement was invalid because it was not made knowingly, voluntarily, and intelligently, he argued that his false statements regarding whether he graduated high school and whether he was still on probation should have alerted district court that he was incompetent to plead guilty; but nothing in record indicated that those answers were result of incompetency, as opposed to misstating truth, and his behavior throughout plea colloquy revealed his ability to comprehend proceedings. *United States v. Winnick, 490 Fed. Appx. 718, 2012 FED App. 0799N, 2012 U.S. App. LEXIS 15443 (6th Cir. 2012)*.

Unpublished decision: In case in which defendant appealed his guilty plea to violating *18 USCS § 922(g)(1)* on basis that plea agreement was invalid because it was not made knowingly, voluntarily, and intelligently, he argued that his plea was not made knowingly and voluntarily because he did not understand consequences of his plea agreement since base-offense level stipulated in plea agreement was different from base-offense level determined by

presentence investigation report and accepted by district court, he could not have understood consequences of agreement; as he was informed of 10-year statutory maximum, later downward adjustment of base-offense level was irrelevant. *United States v. Winnick, 490 Fed. Appx. 718, 2012 FED App. 0799N, 2012 U.S. App. LEXIS 15443 (6th Cir. 2012)*.

Unpublished decision: In case in which defendant appealed his guilty plea to violating *18 USCS § 922(g)(1)* on basis that plea agreement was invalid because it was not made knowingly, voluntarily, and intelligently, he argued that his plea was not made knowingly and voluntarily because he did not understand consequences of his plea agreement since he erroneously believed that he would receive downward departure for his mental health; he conceded that he had reviewed presentence investigation report with his attorney and that he had no objections to report, whose calculation did not include any downward departure; thus, he failed to establish that he misunderstood consequences of his plea agreement. *United States v. Winnick, 490 Fed. Appx. 718, 2012 FED App. 0799N, 2012 U.S. App. LEXIS 15443 (6th Cir. 2012)*.

Unpublished decision: In case in which defendant, who had been convicted of violating *18 USCS § 924(g)(1)*, argued in his pro se supplemental appellate brief that district court erred in failing to invoke abstention doctrine under guise of reverse vertical preemption, that argument appeared to be grounded in belief that federal government should yield to states when it comes to enforcing criminal laws, or at least those pertaining to firearm possession; however, dual sovereignty doctrine allowed federal government to prosecute case regardless of whether criminal conduct might be separately prosecuted by state. *United States v. Jackson, 491 Fed. Appx. 554, 2012 FED App. 0825N, 2012 U.S. App. LEXIS 16042 (6th Cir. 2012)*, cert. denied, *568 U.S. 1241, 133 S. Ct. 1612, 185 L. Ed. 2d 600, 2013 U.S. LEXIS 2093 (2013)*.

Unpublished decision: District court did not err in finding defendant competent to stand trial for multiple counts related to armed robberies in violation of *18 USCS § 2113*, *18 USCS § 924(c)*, *18 USCS § 1951*, *18 USCS § 922(g)(1)*, and *18 USCS § 1512(c)* because district court's approach to competency issue was cautious and deliberate, one doctor's conclusions of competency were not assailed in any meaningful detail on appeal and were unchallenged below, and doctor's rejection of another doctor's diagnosis of delusional disorder was entirely persuasive. *United States v. Davis, 515 Fed. Appx. 486, 2013 FED App. 0182N, 2013 U.S. App. LEXIS 3721 (6th Cir.)*, cert. denied, *570 U.S. 926, 133 S. Ct. 2875, 186 L. Ed. 2d 925, 2013 U.S. LEXIS 4783 (2013)*.

Unpublished decision: Defendant's confession was coerced and suppression was warranted because investigator was very clear that no one would be charged, and investigator's explicit statements were legally inaccurate since there was no evidence in record that would establish that investigator had authorization to bind either district attorney or federal prosecutors. *United States v. Siler, 526 Fed. Appx. 573, 2013 FED App. 0489N, 2013 U.S. App. LEXIS 9996 (6th Cir. 2013)*.

Where defendant appealed his conviction and sentence for violating *18 USCS § § 922(g)(1)* and *924(a)(2)*, there was no Speedy Trial Act violation; his argument was foreclosed by Thomas decision that Speedy Trial Act's 30-day period was triggered upon his state arrest. *United States v. Richardson, 674 Fed. Appx. 262, 2017 U.S. App. LEXIS 24 (4th Cir.)*, writ denied, *696 Fed. Appx. 647, 2017 U.S. App. LEXIS 16639 (4th Cir. 2017)*.

B. Searches, Seizures and Warrants

219. Probable cause

Where United States Marshall saw defendant flee, give chase, and drop what looked to be firearm to ground during his flight, probable cause supported arrest; subsequent search that uncovered bullets on his person was lawful search incident to arrest; and bullets recovered should not have been suppressed. *United States v. Sawyer, 224 F.3d 675, 2000 U.S. App. LEXIS 21060 (7th Cir. 2000)*.

Police had probable cause to search defendant's vehicle, where they found weapon, because police received multiple callers about defendant carrying weapon, which callers confirmed time, approximate location, and nature of crime,

and inconsistencies in their statements did not warrant finding that statements were untrustworthy; thus, motion to suppress was properly denied and defendant's conviction for being felon in possession of firearm, in violation of *18 USCS § 922(g)(1)*, was affirmed. *United States v. Anderson, 339 F.3d 720, 2003 U.S. App. LEXIS 16352 (8th Cir.)*, cert. denied, *540 U.S. 1084, 124 S. Ct. 948, 157 L. Ed. 2d 762, 2003 U.S. LEXIS 9163 (2003)*.

Although defendant argued that, because police officers were unaware of his true criminal history and of applicability of *18 USCS § 922(g)* at time that firearms were seized from his home, there was no probable cause for police officers to believe that his three firearms were incriminating, Fifth Circuit held that collective knowledge doctrine applied where other officers at scene were aware of defendant's criminal history and, thus, there was probable cause to believe that firearms were incriminating. *United States v. Waldrop, 404 F.3d 365, 2005 U.S. App. LEXIS 4523 (5th Cir. 2005)*.

District court properly denied defendant's pretrial motion, which sought to suppress drug and firearm evidence obtained during search incident to his arrest following traffic stop, which evidence led defendant to plead guilty to *21 USCS § 841(a)(1)* and *18 USCS § 922(g)(1)* crimes; the district court did not commit clear error in finding that arresting police officer's testimony was credible and that officer had probable cause to conduct traffic stop based on her observation that defendant was not wearing seat belt while driving, in violation of *625 Ill. Comp. Stat. 5/12-603.1*. *United States v. Dowthard, 500 F.3d 567, 2007 U.S. App. LEXIS 20616 (7th Cir. 2007)*.

Firearm found in vehicle was admissible at defendant's trial for violating *18 USCS § 922(g)(1)* by possessing firearm after being convicted of felony; search of vehicle, which was not included in warrant for search of defendant's residence, was justified under automobile exception to warrant requirement, as probable cause existed to conclude that vehicle contained evidence of illegal activity; vehicle had been used in conducting sales of crack cocaine to undercover detective on two occasions. *United States v. Blaylock, 535 F.3d 922, 2008 U.S. App. LEXIS 16192 (8th Cir. 2008)*, cert. denied, *558 U.S. 830, 130 S. Ct. 58, 175 L. Ed. 2d 46, 2009 U.S. LEXIS 5556 (2009)*.

Where warrant to search house was based partly on confidential informant's tip, warrant was supported by probable cause because commission of drug transaction outside of house and one participant's walking back into house plainly demonstrated sufficient nexus with house. *United States v. Ellison, 632 F.3d 347, 2011 FED App. 0050P, 2011 U.S. App. LEXIS 2614 (6th Cir. 2011)*.

Where officer searched defendant's car for passenger's identification, search violated Fourth Amendment because, although probable cause existed to arrest passenger, officer lacked probable cause to believe that vehicle contained evidence of crime since there was no specific particularized fact indicating that passenger had identification and that such identification was located in car. *United States v. Rodgers, 656 F.3d 1023, 2011 U.S. App. LEXIS 18564 (9th Cir. 2011)*.

Suppression was not warranted because (1) probable cause to arrest defendant existed at time of arrest since there was detailed tip from informant about planned drug sale that was substantially corroborated by police, and (2) search of defendant's car incident to defendant's arrest was lawful at that time. *United States v. Gill, 685 F.3d 606, 2012 FED App. 0221P, 2012 U.S. App. LEXIS 14563 (6th Cir. 2012)*.

Where officer obtained search warrant after discovering that arrestee had pleaded guilty to misdemeanor crime of domestic violence, but sentence had been suspended, officer was entitled to qualified immunity as to arrestee's unlawful search and entry claim because officer proceeded in objectively reasonable manner based on arguable probable cause since documents did not give strong indication that arrestee was not "convicted" for purposes of statute and Assistant United States Attorney independently reviewed materials. *Stonecipher v. Valles, 759 F.3d 1134, 2014 U.S. App. LEXIS 12384 (10th Cir.)*, cert. denied, *574 U.S. 1062, 135 S. Ct. 881, 190 L. Ed. 2d 705, 2014 U.S. LEXIS 8347 (2014)*.

In trial for violation of *18 USCS § 922*, officers lacked probable cause to search vehicle's trunk where it was implausible that trunk would contain additional evidence to support charges of driving on suspended license, operating unregistered vehicle, and driving without required vehicle identification tags. *United States v. Jackson, 415 F.3d 88, 367 U.S. App. D.C. 320, 2005 U.S. App. LEXIS 14951 (D.C. Cir. 2005)*.

Unpublished decision: Where officers saw defendant on couch with gun sitting beside defendant, defendant's warrantless arrest was lawful because (1) officers' knowledge of defendant's gun possession, combined with their reliable information that defendant was convicted felon, established probable cause to arrest defendant, and (2) reasonable, experienced agent placed in this situation would have believed exigent circumstances existed since defendant was observed with gun by defendant's side, confirming that defendant was felon-in-possession while also indicating grave risk to officers. *United States v. Burch, 466 Fed. Appx. 772, 2012 U.S. App. LEXIS 5351 (11th Cir.)*, cert. denied, *568 U.S. 912, 133 S. Ct. 343, 184 L. Ed. 2d 204, 2012 U.S. LEXIS 7224 (2012)*.

Unpublished decision: Where defendant appealed his conviction for possession of methamphetamine with intent to distribute and possession of firearm by unlawful user of controlled substances, district court did not have to suppress evidence from search of his home, which included 12.36 grams of actual methamphetamine and 20-gauge shotgun; affidavit included substantial basis to find probable cause to search his home, and supporting information was reliable and not stale. *United States v. Gragg, 576 Fed. Appx. 656, 2014 U.S. App. LEXIS 16525 (8th Cir. 2014)*.

In a conviction for possession of a firearm by a felon, defendant's motion to suppress was properly denied because there was probable cause sufficiently fresh to support seizure of his vehicle as despite the passage of time, evidence gathered by the police was sufficient to establish probable cause to search his vehicle when it was seized. Any probable cause to search his vehicle had not dissipated by the time the police seized it 52 days after the shooting. *United States v. Jenkins, 984 F.3d 1038, 450 U.S. App. D.C. 333, 2021 U.S. App. LEXIS 442 (D.C. Cir. 2021)*, reh'g denied, *2021 U.S. App. LEXIS 8221 (D.C. Cir. Mar. 19, 2021)*.

Officers had probable cause to believe that defendant was an alien in unlawful possession of a firearm and probable cause to seize the firearms because because defendant informed a special agent that the firearms were his, were registered to another, and that he was "not allowed" to own the firearms; officers also discovered conflicting forms of identification. *United States v. Khan, 989 F.3d 806, 2021 U.S. App. LEXIS 5611 (10th Cir. 2021)*.

Warrant for search of firearms dealer's facility was supported by probable cause, where agent had knowledge of dealer's inconsistent order for machine gun receivers and cancellation of machine gun registration just days before *18 USCS § 922(o)*'s anti-machine gun provision became effective, because agent thus had reason to believe evidence of violation of § 922(o) or falsification of firearms records under *18 USCS § 922(m)* could be found on premises. *United States v. Goff, 677 F. Supp. 1526, 1987 U.S. Dist. LEXIS 12733 (D. Utah 1987)*.

Police had probable cause to search vehicle without warrant under *18 USCS § 922*, where police knew driver made frequent purchases at store known to have sold several guns involved in crimes elsewhere, evidence linked driver to transportation of his purchases, signatures necessary for purchases had been falsified, and driver was observed entering vehicle with what appeared to be recent firearms purchase; search of car only after it had been impounded for day was proper, since police had right to make search at time of stop under automobile exception to warrant requirement. *United States v. Ratta, 743 F. Supp. 264, 1990 U.S. Dist. LEXIS 11148 (S.D.N.Y. 1990)*.

Warrantless search of defendant's impounded vehicle was permissible under automobile exception to Fourth Amendment's warrant requirement because (1) based on information received from defendant's wife, police officers had probable cause to believe that defendant's vehicle contained contraband, namely, firearm that defendant unlawfully possessed as illegal alien in violation of *18 USCS § 922(g)(5)*; and (2) defendant's vehicle was clearly operational and, hence, readily mobile. *United States v. Arriaza, 641 F. Supp. 2d 526, 2009 U.S. Dist. LEXIS 59299 (E.D. Va. 2009)*, aff'd, *401 Fed. Appx. 810, 2010 U.S. App. LEXIS 24207 (4th Cir. 2010)*.

Unpublished decision: In case in which defendant entered conditional guilty plea to violating *18 USCS § 922(g)(1)* and *21 USCS § 841(a)*, and he appealed district court's denial of his motion to dismiss based on lack of timely probable cause determination, his remedy for alleged McLaughlin violation was not dismissal; his remedy was to file Bivens action. *United States v. Terrell, 483 Fed. Appx. 161, 2012 FED App. 0573N, 2012 U.S. App. LEXIS 11332 (6th Cir. 2012)*.

220. —Affidavits

Defendant was properly convicted of knowingly receiving child pornography in violation of *18 USCS § 2252A* and of possessing firearm in violation of *18 USCS § 922(g)(1)* where police officers who searched defendant's home did so in objectively reasonable good faith reliance on search warrant; while defendant conceded that FBI agent's affidavit supported probable cause that evidence of practice of exchanging bail bonds for sex would be found at defendant's office, he argued that affidavit failed to demonstrate any likelihood that child pornography would be found at his home; however, affidavit and circumstances surrounding issuance of warrant supported determination that good-faith exception to exclusionary rule applied and issuance of second warrant encompassing firearms was proper. *United States v. Payne, 341 F.3d 393, 2003 U.S. App. LEXIS 15367 (5th Cir. 2003)*.

Search that uncovered drugs and firearms, which was conducted under warrant that authorized search of all persons present at premises who might have been concealing narcotics or other contraband, was not unconstitutional as to defendant, who was convicted of drug and firearms charges under *21 USCS §§ 841* and *846* and *18 USCS §§ 922(g)* and *924*; probable cause existed to issue "all persons" warrant based on affidavit describing drug activity at premises. *United States v. Abbott, 574 F.3d 203, 2009 U.S. App. LEXIS 16570 (3d Cir. 2009)*, aff'd, *562 U.S. 8, 131 S. Ct. 18, 178 L. Ed. 2d 348, 22 Fla. L. Weekly Fed. S 726, 2010 U.S. LEXIS 9008 (2010)*.

In case in which defendant, who was alleged to be president of local chapter of motorcycle gang, appealed his conviction for being felon in possession of firearm and ammunition, in violation of *18 USCS § 922(g)*, he unsuccessfully argued that evidence of guns and ammunition should have been suppressed because warrant was invalid; based on affidavit accompanying warrant, magistrate judge had substantial basis for concluding there was fair probability that evidence of crime would be found in his home. *United States v. Vasquez, 654 F.3d 880, 2011 U.S. App. LEXIS 16837 (9th Cir. 2011)*, cert. denied, *565 U.S. 1274, 132 S. Ct. 1778, 182 L. Ed. 2d 556, 2012 U.S. LEXIS 2106 (2012)*.

Search warrant was valid because, inter alia, (1) affiant's statement that confidential informant (CI) saw drugs being stored and sold at residence was not false, (2) affidavit was based on information obtained from CI whose reliability and basis for knowledge was provided, and (3) period of less than five days between CI's information about presence of drugs and application for and execution of warrant did not make information stale. *United States v. Moore, 661 F.3d 309, 2011 FED App. 0294P, 2011 U.S. App. LEXIS 23344 (6th Cir. 2011)*.

There was probable cause to search defendant's residence and car because affidavit supporting search warrant described evidence that someone using car in question tried to pass counterfeit bills of different denominations at different times, that car and residence were defendant's, that car was seen in front of residence, and that defendant was identified as having attempted to pass counterfeit bill on one of occasions; warrant was not defective based on alleged misstatements and omissions. *United States v. Carney, 675 F.3d 1007, 2012 FED App. 0097P, 2012 U.S. App. LEXIS 7114 (6th Cir. 2012)*.

Because officer's affidavit provided no evidence suggesting defendant was involved in murder 9 months earlier and provided no plausible connection between his home and gun sought, approving warrant was so obviously error that officers could not have relied on it in good faith; on charges of being felon in possession of firearms under *18 USCS § 922(g)(1)*, denying suppression of guns found in defendant's home was error. *United States v. Grant, 682 F.3d 827, 2012 U.S. App. LEXIS 11757 (9th Cir. 2012)*.

Where agent obtained search warrant based on agent's observation of defendant's presence at particular location and agent's observation of pistol, but defendant was wearing electronic monitoring device that did not issue any out-of-range alerts during time period in question, suppression was not warranted, because district court decided to credit agent's testimony as credible, and it was possible for events to have occurred within device's six-minute grace period. *United States v. Guzman-Batista, 783 F.3d 930, 2015 U.S. App. LEXIS 6691 (1st Cir. 2015)*.

Where defendant appealed his conviction for being felon in possession of firearm, because unchallenged statements in affidavit provided probable cause to search defendant's home, district court did not err by denying defendant's motion to hold Franks hearing and to suppress evidence. *United States v. Shockley, 816 F.3d 1058, 2016 U.S. App. LEXIS 5357 (8th Cir. 2016)*.

Where agent obtained warrants to search defendant's residence and stash house, suppression was not warranted, because affidavit contained evidence showing that defendant used home as communications point to further defendant's drug crimes, making it reasonably likely that search there would reveal incriminating evidence, and commonsense reading of affidavit showed that defendant participated in drug-related call with confidential source from defendant's house. *United States v. Rivera, 825 F.3d 59, 2016 U.S. App. LEXIS 10465 (1st Cir.)*, cert. denied, *137 S. Ct. 522, 196 L. Ed. 2d 425, 2016 U.S. LEXIS 7048 (2016)*.

Unpublished decision: In case in which defendant appealed his convictions for violating *21 USCS § 841(a)(1)* and *18 USCS § 922(g)(1)*, he unsuccessfully argued that district court erred when it denied his motion to suppress evidence seized from his apartment for lack of probable cause because search warrant affidavit contained misstatements that were made intentionally or with reckless disregard, and affidavit's remaining content did not support finding of probable cause; even if contested statements in search warrant affidavit were incorrect, he had failed to provide proof that those misstatements were made intentionally or with reckless disregard; absent that proof, defendant had not shown that search warrant lacked probable cause. *United States v. Bailey, 433 Fed. Appx. 807, 2011 U.S. App. LEXIS 14100 (11th Cir.)*, reh'g, en banc, denied, *451 Fed. Appx. 910, 2011 U.S. App. LEXIS 26185 (11th Cir. 2011)*.

Unpublished decision: Where defendant appealed his guilty plea conviction for violating *18 USCS § 922(g)(1)*, he unsuccessfully challenged district court's denial of his motion to suppress firearms evidence. His assertion that detective acted with reckless disregard for truth in failing to conduct further investigation into victim's allegations was belied by record, and his claim that warrant would not have been issued if it had indicated that police radio call was categorized as unfounded was unpersuasive. *United States v. Blakney, 558 Fed. Appx. 300, 2014 U.S. App. LEXIS 4494 (3d Cir. 2014)*.

Unpublished decision: Where defendant appealed his convictions for violating *21 USCS §§ 841(a)(1)* and *860* and *18 USCS §§ 2*, *922(g)(1)* and *924(c)* by arguing that probable cause affidavit for search warrant was insufficient to establish fair probability that contraband or evidence of crime would be found in his residence, affidavit was sufficient as facts established fair probability that defendant, who was not permitted to possess firearm because of his criminal history, had firearm at his residence. *United States v. Stanton, 566 Fed. Appx. 166, 2014 U.S. App. LEXIS 8470 (3d Cir.)*, cert. denied, *574 U.S. 1017, 135 S. Ct. 690, 190 L. Ed. 2d 400, 2014 U.S. LEXIS 7678 (2014)*.

Affidavit upon which search warrant is sought must contain statement of adequate supporting facts; where affidavit contained no facts to support conclusion that defendant illegally received and possessed firearm, nor to support conclusion that purchase by defendant's wife was straw purchase together with defendant's statement at time of his arrest that rifle was at his house were not sufficient to constitute probable cause, since record owner of rifle was his wife, as affidavit clearly states, defendant would reasonably have knowledge of location of rifle, but such knowledge does not establish possession or receipt by defendant within meaning of *18 USCS § 922(h)*. *United States v. Stine, 458 F. Supp. 366, 1978 U.S. Dist. LEXIS 17251 (E.D. Pa. 1978)*.

Affidavits recited insufficient facts to enable magistrate to find probable cause that there was conspiracy to violate federal firearms statutes where affiants alleged commission of at least 8 separate violations of federal firearms statutes as well as related numerous facts depicting ongoing commission of criminal offenses in and around area. *United States v. Giresi, 488 F. Supp. 445, 1980 U.S. Dist. LEXIS 10839 (D.N.J. 1980)*.

Allegations in affidavit in support of warrant application (that defendant was selling drugs and guns out of his residence) were sufficient to establish that defendant violated *18 USCS § 922(g)(3)*. *United States v. Shan, 563 F. Supp. 2d 361, 2008 U.S. Dist. LEXIS 51078 (D. Conn. 2008)*.

Where gun was found during search, suppression was warranted because (1) affidavit did not provide substantial basis on which magistrate could find probable cause to believe that evidence of violation of Pennsylvania Uniform Firearms Act (UFA) would be found in residence, and (2) good faith exception did not apply since affidavit revealed complete absence of indicia of probable cause that defendant violated UFA. *United States v. Jones, 818 F. Supp. 2d 845, 2011 U.S. Dist. LEXIS 50237 (E.D. Pa. 2011)*.

Unpublished decision: There was probable cause for warrant to search for particular gun in defendant's hotel room based on evidence that defendant shot someone with gun that was not recovered and it was reasonable to assume that defendant would keep gun. *United States v. Chambers, 597 Fed. Appx. 707, 2015 U.S. App. LEXIS 1009 (3d Cir.)*, cert. denied, *135 S. Ct. 2372, 192 L. Ed. 2d 160, 2015 U.S. LEXIS 3460 (2015)*.

Unpublished decision: Where officers executed search warrant at defendant's residence and found guns and drugs, but detective's affidavit contained false statements relating to prior drug charge and drug transaction between confidential informant (CI) and defendant, suppression was not warranted, because, inter alia, setting aside false statements, affidavit detailed four other occasions when defendant or girlfriend, under police surveillance, sold heroin to CI inside residence or at another predetermined location. *United States v. Colquitt, 604 Fed. Appx. 424, 2015 U.S. App. LEXIS 4031 (6th Cir.)*, cert. denied, *577 U.S. 854, 136 S. Ct. 121, 193 L. Ed. 2d 95, 2015 U.S. LEXIS 5720 (2015)*.

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