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18 U.S.C. § 922(g)(9) Case Law

Updated Through May 31, 2025

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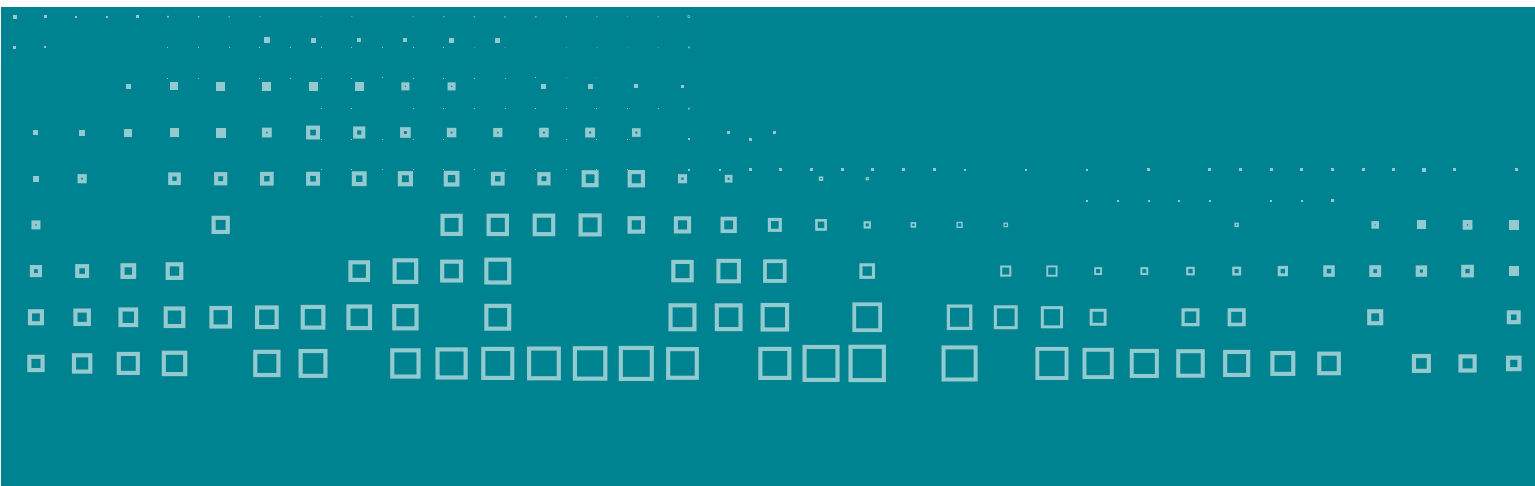
Acknowledgments

The Manatt logo consists of the word "manatt" in a white, lowercase, sans-serif font, centered within a solid orange rectangular background.

The National Center of Protection Orders and Full Faith & Credit and the Firearms Technical Assistance Project are deeply grateful to Manatt, Phelps & Phillips, LLP, whose attorneys volunteered numerous hours conducting research and writing on the critical and complex intersection of domestic violence and firearms law. That this firm chose to give so freely of its time and expertise—on subject matter this serious—speaks to its commitment not only to the law, but to the survivors that the law is meant to protect. To each member of Manatt who contributed to this effort: we are grateful for your dedication, your professionalism and your commitment to supporting prosecutors, attorneys, law enforcement and judges with the tools that they need to support survivors of intimate partner violence at a time that is most dangerous. Pro bono work of this depth and thoroughness is a testament to Manatt's leadership and commitment to increasing survivor safety. We sincerely appreciate Manatt's partnership and generosity.

About National Center on Protection Orders and Full Faith & Credit

The National Center on Protection Orders and Full Faith & Credit (NCPOFFC), a project of the Battered Women's Justice Project, provides training, technical assistance, and resources to improve the issuance, service, enforcement, and interstate recognition of protection orders. Established to support implementation of the Full Faith and Credit provisions of the Violence Against Women Act (VAWA), the Center works with judges, attorneys, advocates, law enforcement, prosecutors, court personnel, and other professionals to address challenges that arise across jurisdictions and to enhance survivor safety and offender accountability.



About Battered Women's Justice Project

The BWJP is a national nonprofit organization dedicated to improving legal and systemic responses to domestic violence, dating violence, sexual assault, stalking, human trafficking, and other forms of gender-based violence. BWJP provides policy development, research, training, technical assistance, and consultation to professionals across civil and criminal justice systems. Through its national centers and initiatives, BWJP works to advance survivor safety, strengthen community responses, and promote systemic change that supports justice and accountability.

About Firearms Technical Assistance Project (FTAP)

The Firearms Technical Assistance Project (FTAP) is a BWJP initiative funded by the U.S. Department of Justice, Office on Violence Against Women, that helps communities develop and strengthen responses to domestic violence cases involving firearms. FTAP provides training, technical assistance, and practical strategies to support the implementation of firearm prohibition and enforcement practices, improve multidisciplinary collaboration, and enhance survivor safety. The project is supported through a partnership with Esperanza United.

Preface

The Gun Control Act and its amendments, including the Violence Against Women Act, prohibit certain classes of persons from possessing, shipping or transporting any firearm or ammunition. Two classes of such prohibited persons are those who are subject to “qualifying” protection orders and those who have been convicted of a misdemeanor crime of domestic violence, pursuant to 18 U.S.C. §§ 922(g)(8) and (g)(9), respectively. The National Center on Protection Orders and Full Faith & Credit—an initiative of the Battered Women’s Justice Project—publishes resources like these Case Law Summaries to provide information on cases interpreting these subsections of 18 U.S.C. § 922.ⁱ

Many of the cases in these resources concern the constitutionality of 18 U.S.C. §§ 922(g)(8) and (g)(9) under the Second Amendment, including facial and as-applied challenges. Readers should keep in mind two important recent U.S. Supreme Court decisions when reviewing the Case Law Summaries—*New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022) (“*Bruen*”) and *United States v. Rahimi*, 602 U.S. 680 (2024) (“*Rahimi*”).

In 2022, the U.S. Supreme Court issued a decision in *Bruen* that established a new framework for courts to determine whether a regulation restricting a person’s right to possess a firearm unlawfully burdens that individual’s Second Amendment rights.ⁱⁱ Under *Bruen*, a court must first determine whether a challenged law in some way burdens an individual’s Second Amendment rights. If the answer is in the affirmative, the court must then determine whether the law is consistent with the Nation’s historical tradition of firearm regulation. Following this framework, the Supreme Court held

i. These resources do not identify or provide a Case Law Summary of every decision that cites to or references 18 U.S.C. §§ 922(g)(8) and (g)(9). Courts also continue to issue decisions concerning these provisions. Readers are reminded of the importance of doing their own independent research, analysis and verification.

ii. Prior to *Bruen*, courts generally used a two-step test wherein the court first assessed whether the regulated conduct fell within the Amendment’s original scope and then performed means-end scrutiny, applying intermediate scrutiny when the text and history of the challenged regulation were unclear in delineating the scope of the right.

that a New York law restricting New York’s issuance of public-carry licenses was an unconstitutional violation of the Second Amendment because it was inconsistent with “history and tradition.”

In 2024, the application of the *Bruen* framework returned to the U.S. Supreme Court in *Rahimi*. There, the defendant was convicted of unlawful possession of a firearm under § 922(g)(8) while subject to a domestic violence protection order and challenged the constitutionality of the statute. The Supreme Court conducted a review of the history of temporary disarmaments targeting individuals found to be a threat to others and upheld § 922(g)(8) as constitutional. The Supreme Court held that “an individual found by a court to pose a credible threat to the physical safety of another may be temporarily disarmed consistent with the Second Amendment.” The Supreme Court emphasized that the *Bruen* framework did not require finding a “historical twin” for modern firearm regulations, as laws are not “trapped in amber,” and clarified that the modern regulation need only be “consistent with the principles that underpin the Nation’s regulatory tradition” (such as laws protecting public safety).

Prior to *Rahimi*, there was significant variance in how lower courts nationwide applied the *Bruen* framework. Post *Rahimi*, there has been less variance as regards to both § 922(g)(8) and (g)(9). This updated resource includes additional post *Rahimi* decisions, many of which directly address or apply the *Bruen* framework. Certain Case Law Summaries now also include a “Note” indicating when a case has received direct negative treatment as of the preparation of this update. It is important to note that cases included in this resource that were decided **prior to *Bruen* or *Rahimi*** may not have received direct negative treatment but have been implicitly abrogated or called into question since those two decisions were rendered. Accordingly, readers are encouraged to independently review each case before relying upon it, including to evaluate it in light of *Bruen* and *Rahimi*, and to confirm that no subsequent case law or statutory change has put the holding or reasoning in question.

This document is for informational purposes only. Nothing contained in this document is intended as legal advice to any person or entity. Statutes are constantly changing. Please independently verify the information found in this document.

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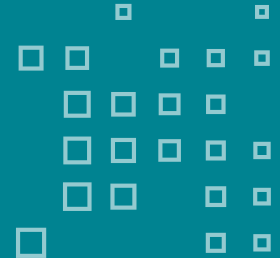


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First Circuit (Maine, Massachusetts, New Hampshire, Rhode Island, Puerto Rico)

***United States v. Renaud*, No. 2:24-cr-000126-JAW-1, 2025 WL 1261169, 2025 U.S. Dist. LEXIS 83363 (D. Me. Apr. 30, 2025)**

Facts/Procedural History: Defendant was charged with being a prohibited person in possession of a firearm in violation of § 922(g)(9). Defendant then moved to dismiss his indictment on the ground that the statute violated his Second Amendment right to bear arms because he was indefinitely disarmed without showing that he was a present threat to another person, as required by history and tradition. After his conviction, Defendant completed a batterer’s intervention program and had no further contact with the criminal justice system.

Issue: The Defendant argued, among other things, that § 922(g)(9), as applied to him, violated his Second Amendment right to bear arms because there was no historical analogue as required by *Bruen* to permanently disarming him under § 922(g)(9) and *Rahimi* only addressed the constitutionality of 922(g)(8) and its temporary ban on firearm possession of those with domestic violence restraining orders. Defendant also argued that evidence of his history of abuse was not relevant to the pending matter because the elements of § 922(g)(9) were so narrow.

Holding: The district court denied Defendant’s motion to dismiss. First, the district court found that evidence regarding Defendant’s history of abuse was relevant, partially due to Defendant’s “as applied” challenge to § 922(g)(9) where he argued in essence that he no longer posed a credible threat of violence. Second, the district court analyzed First Circuit precedent upholding § 922(g)(9) and determined that because such precedent was not explicitly overruled by either *Bruen* or *Rahimi*, § 922(g)(9) was still constitutional. The district court also applied the history and tradition standard and concluded that § 922(g)(9) supported restrictions on gun ownership for people who posed a threat to the safety of others. The district court then examined the factual record of Defendant’s history of abuse to find that the government had established that Defendant posed a then-present threat to the safety of others. Furthermore, there were options for removal of the lifetime ban, which the Defendant never sought. Therefore, § 922(g)(9) did not violate the Constitution as applied to Defendant.

Key Issue(s): Second Amendment (*Bruen*) (*Rahimi*)

***United States v. Minor*, No. 2:17-CR-00021-JDL-1, 2024 WL 1014187, 2024 U.S. Dist. LEXIS 40665 (D. Me. Mar. 8, 2024)**

Facts/Procedural History: In 2010, Defendant pled no contest to assault “against a family or household member” and was sentenced to a 113-day term of imprisonment. Defendant was later charged with unlawful possession of a firearm in violation of 18 U.S.C. § 922(g)(9). In 2017, Defendant was convicted under § 922(g)(9) following a jury trial and appealed. The First Circuit vacated his conviction and remanded the case with the parties’ agreement in light of *Rehaif v. United States*, 139 S. Ct. 2191 (2019), which was issued while Defendant’s appeal was pending. The Government then filed a superseding indictment to account for the change in law under *Rehaif*, and a second jury trial was held in 2020. Defendant was again found guilty, and he appealed. A divided First Circuit panel vacated Defendant’s 2020 conviction and remanded for further proceedings. The Government petitioned for a rehearing en banc. In 2023, the First Circuit granted the Government’s en banc petition. The First Circuit, sitting en banc, then vacated the 2020 conviction and remanded to the district court for a third round of proceedings. Defendant moved to dismiss the indictment.

Issue: Defendant argued that § 922(g)(9) “is unconstitutionally broad and facially invalid in defining prohibited persons and as applied to him in violation of the Second Amendment.” Specifically, he argued that, as an American citizen, his right to possess a firearm in his home was protected by the Second Amendment and the Government must prove that restricting that right through § 922(g)(9) “is consistent with the Nation’s historical tradition of firearm regulation.”

Holding: The district court denied the motion to dismiss. Operating under the assumption that the Constitution presumptively protects a domestic violence misdemeanor’s right to bear arms, the district court held that the Government met its burden and successfully showed that § 922(g)(9) is consistent with the nation’s historical tradition of firearm regulations. The Government presented several historical analogues that demonstrated the historical tradition of restricting persons considered to be untrustworthy or dangerous from possessing firearms. The district court found that persons convicted of violent offenses, such as assault, fit easily within the category of those considered untrustworthy or dangerous, justifying the restriction of their rights through § 922(g)(9). Finally, the district court summarily denied Defendant’s argument that § 922(g)(9) was facially overbroad, finding that Defendant failed to identify a single application of § 922(g)(9) that might be arguably overbroad.

Key Issue(s): Second Amendment (*Bruen*)

***United States v. Minor*, 63 F.4th 112 (1st Cir. 2023)**

Facts/Procedural History: Defendant had been convicted under Maine’s general purpose assault statute for assault against his then-spouse. In that case, Defendant pleaded no contest to simple assault after refusing to plead guilty to a charge of domestic violence assault because he did not want to lose the right to carry a firearm. Years later, during a police interview, Defendant told officers that he owned a firearm. A grand jury charged Defendant under 18 U.S.C. § 922(g)(9), and he was convicted at trial. Defendant appealed the conviction, and while it was pending the Supreme Court issued its decision in *Rehaif v. United States*, 139 S. Ct. 2191 (2019), which required that, for conviction for a knowing violation of 18 U.S.C. § 922(g), the Government must prove a defendant knew he possessed a firearm and knew he was part of the class of persons prohibited from possessing a firearm. In light of this ruling, the parties agreed to vacate Defendant’s conviction and the First Circuit remanded for a new trial. The Government filed a superseding indictment including the applicable knowledge standard under *Rehaif*. At the second jury trial the Government and Defendant disagreed on the proper jury instruction to represent the *Rehaif* standard. The Government’s definition prevailed and Defendant was convicted. Defendant appealed, and the First Circuit vacated his conviction on the grounds of instructional error. The Government petitioned for a rehearing *en banc* which the First Circuit granted.

Issue: Sitting *en banc*, the First Circuit considered the required mens rea for a conviction under § 922(g)(9) following the Supreme Court’s decision in *Rehaif*.

Holding: The *en banc* First Circuit reaffirmed the First Circuit panel’s holding, vacated the conviction, and remanded for a new trial. The *en banc* First Circuit held that the Government needed to prove that Defendant knew he had been convicted of a misdemeanor crime of domestic violence and that the jury instructions improperly altered the standard for mens rea under § 922(g)(9). The *en banc* First Circuit also provided guidance on the proper jury instructions, including that the Government did not need to prove Defendant’s knowing possession of a firearm was a crime, but rather that he knew he possessed a firearm and belonged to the category of person convicted of a misdemeanor crime of domestic violence. The case was remanded with proper instructions pursuant to the *en banc* First Circuit’s guidance.

Key Issue(s): Knowledge Requirement; Jury Instructions

***United States v. Carter*, 860 F.3d 39 (1st Cir. 2017)**

Facts/Procedural History: Defendant was convicted of violating Maine’s general assault statute and 13 years later was charged with violating 18 U.S.C. § 922(g)(9) for possession of a firearm by a person with a prior misdemeanor crime of domestic violence. Defendant conditionally pled guilty to the charge in 2011 and subsequently appealed his conviction. The First Circuit vacated and remanded his conviction to determine whether Defendant’s prior assault conviction satisfied the

definition of a misdemeanor crime of domestic violence under § 922(g)(9). Defendant renewed his motion to dismiss the indictment before the district court. The district court granted the motion to dismiss, holding that Defendant's prior offense under Maine's general assault statute could not be determined to meet the mens rea and "physical force" requirements to serve as a predicate offense under § 922(g)(9). The Government appealed.

Issue: On appeal, the First Circuit considered whether the state statute constituted a predicate offense under § 922(g)(9).

Holding: The First Circuit reversed the district court's ruling and held that Defendant's prior Maine misdemeanor conviction for assault was a conviction for a misdemeanor crime of domestic violence and thus constituted a predicate offense under § 922(g)(9).

Key Issue(s): Intent Element; Predicate Offense; Physical Force Requirement

United States v. Eustis, 680 F. App'x 1 (1st Cir. 2017)

Facts/Procedural History: Defendant was convicted of possessing a firearm after a prior misdemeanor conviction of domestic violence, in violation of 18 U.S.C. § 922(g)(9) and 924(a)(2). At sentencing, the district court applied an upward departure from the recommended guideline range of 33–41 months and imposed a 51-month sentence. In support of the upward departure, the district court considered: (1) multiple incidents of uncharged domestic violence; (2) the underlying facts of three prior assault convictions involving domestic partners; (3) a jailhouse phone call in which Defendant persuaded a victim to recant; and (4) a pattern of intimidation toward partners. Defendant appealed.

Issue: Defendant argued that the district court's upward departure from the sentencing guidelines based on uncharged conduct and prior convictions was improper because they had already been accounted for in his criminal history score.

Holding: The First Circuit affirmed the sentence. Citing U.S.S.G. § 4A1.3(a)(2)(E), the First Circuit held that the district court properly relied on prior similar adult conduct not resulting in a conviction to justify the upward departure. The First Circuit also concluded that the district court provided a sufficient explanation for the departure and that the increased sentence was reasonable given the seriousness and pattern of Defendant's conduct.

Key Issue(s): Sentencing; Uncharged Conduct

***United States v. Voisine*, 778 F. 3d 176 (1st Cir. 2015)**

Facts/Procedural History: Defendants were convicted of misdemeanor domestic violence under Maine Law. Defendant 1 assaulted his girlfriend, and Defendant 2 assaulted his wife. Both were later found in possession of firearms and were charged with violations of 18 U.S.C. § 922(g)(9). Defendants argued that their prior convictions did not qualify as misdemeanor crimes of domestic violence under § 922(g)(9) because they could have been based on reckless conduct. The district court rejected their claims, and both men entered conditional guilty pleas. Defendants appealed.

Issue: Defendants argued that a conviction for reckless domestic assault under Maine law did not qualify as a misdemeanor crime of domestic violence under § 922(g)(9).

Holding: The First Circuit affirmed Defendants’ convictions, holding that reckless domestic assault qualifies as a misdemeanor crime of domestic violence under the statute. In so holding, the First Circuit confirmed that the statutory text and relevant history support prohibiting individuals convicted of reckless domestic assault from possessing firearms.

Key Issue(s): Predicate Offense; Reckless Conduct

***United States v. Hines*, No. 1:12-cr-00204-JAW, 2014 U.S. Dist. LEXIS 64165 (D. Me. May 9, 2014)**

Facts/Procedural History: Defendant was convicted of possessing a firearm after having been convicted of a misdemeanor crime of domestic violence. Defendant’s prior conviction arose under Maine law, which prohibited intentionally, knowingly, or recklessly causing bodily injury or offensive physical contact to a family or household member. A federal grand jury indicted Defendant for unlawful firearm possession based on this prior offense. Defendant moved to vacate the conviction and dismiss the indictment, contending that the Maine statute did not satisfy the federal definition of misdemeanor crime of domestic violence because it encompassed reckless conduct. The district court initially denied the motions. Defendant moved for reconsideration in light of the Supreme Court’s recent ruling in *United States v. Castleman*, 134 S. Ct. 1405 (2014).

Issue: Defendant argued that a conviction under Maine’s domestic violence assault statute, which permitted conviction based on mere reckless conduct, did not qualify as a misdemeanor crime of domestic violence under 18 U.S.C. § 922(g)(9).

Holding: The district court vacated the conviction and ordered a new trial. The district court found that Maine’s domestic violence statute could not serve as a predicate offense under § 922(g)(9) because it allowed for a conviction based on reckless conduct, which did not constitute the “use of physical force” required by federal law.

Key Issue(s): Predicate Offense; Physical Force Requirement; Reckless Conduct

***United States v. Sales*, No. 2:13-cr-137-NT, 2014 U.S. Dist. LEXIS 94187 (D. Me. July 11, 2014)**

Facts/Procedural History: Defendant was charged under 18 U.S.C. § 922(g)(9) for possession of a firearm by an individual convicted of a misdemeanor crime of domestic violence. Defendant had a prior conviction under Vermont's simple assault statute for recklessly causing bodily injury to his girlfriend. Defendant filed a motion to reconsider an order that denied his motion to dismiss the indictment.

Issue: Defendant argued that his conviction for recklessly causing bodily injury under Vermont's simple assault statute did not meet the definition of a misdemeanor crime of domestic violence under § 922(g)(9) because the statute required proof of more than reckless intent.

Holding: The district court granted the Defendant's motion to reconsider and dismissed the indictment. The district court concluded that based on Supreme Court and First Circuit guidance, a conviction for recklessly causing bodily injury may not meet the federal definition of a misdemeanor crime of domestic violence.

Key Issue(s): Predicate Offense; Physical Force Requirement; Reckless Conduct; Intent Element

***United States v. Salley*, 651 F.3d 159 (1st Cir. 2011)**

Facts/Procedural History: Defendant was convicted of knowingly possessing a firearm following a prior conviction of a misdemeanor crime of domestic violence in violation of 18 U.S.C. § 922(g)(9). On appeal, Defendant challenged the conviction.

Issue: Defendant argued, among other things, that the prosecutor committed misconduct by making two statements during closing argument that allegedly highlighted the absence of evidence, which improperly drew attention to Defendant's decision not to testify, thereby violating his Fifth Amendment rights.

Holding: The First Circuit rejected the prosecutorial misconduct claim, finding that the prosecutor's comments were permissible in light of the defense strategy and did not directly reference the Defendant's choice not to testify.

Key Issue(s): Prosecutorial Misconduct; Fifth Amendment

***United States v. Booker*, 644 F.3d 12 (1st Cir. 2011)**

Facts/Procedural History: Defendants were convicted of assault against their respective significant others under Maine law. They were later charged with knowingly possessing firearms in violation of 18 U.S.C. § 922(g)(9). Maine's assault statute stated that a person could commit assault intentionally, knowingly, or recklessly. Defendants moved to dismiss the indictments.

Issue: Defendants argued that the Maine assault statute, which included reckless conduct, did not qualify as a misdemeanor crime of domestic violence. Defendants also argued that § 922(g)(9) violated the Second Amendment.

Holding: The First Circuit held that an offense with a *mens rea* of recklessness can qualify as a misdemeanor crime of domestic violence. Additionally, the First Circuit found that the statute did not violate the Second Amendment, as it substantially promoted an important governmental interest in preventing domestic gun violence.

Key Issue(s): Second Amendment; Predicate Offense; Physical Force Requirement; Reckless Conduct; Intent Element

***United States v. Bryant*, No. 1:11-cr-00021-JAW, 2011 U.S. Dist. LEXIS 39809 (D. Me. Apr. 13, 2011)**

Facts/Procedural History: Defendant was indicted for possession of ammunition after having been convicted of a misdemeanor crime of domestic violence in violation of 18 U.S.C. § 922(g)(9). Defendant moved to dismiss the indictment.

Issue: Defendant argued: (1) the charge infringed on his Second Amendment right to bear arms; and (2) the indictment failed to state a federal offense because the First Circuit's decision in *United States v. Nason*, 269 F.3d 10 (2001), which concluded that a conviction under Maine's assault statute constituted a misdemeanor crime of domestic violence, was no longer binding on the district court, and that Defendant's misdemeanor conviction did not meet the necessary *mens rea* and physical force requirements to trigger a violation of § 922(g)(9).

Holding: On the constitutional claim, the district court reaffirmed its prior rulings in *United States v. Booker*, 570 F. Supp. 2d 161 (D. Me. 2008); *United States v. Wyman*, 667 F. Supp. 2d 151 (D. Me. 2009); and *United States v. Pettengill*, 682 F. Supp. 2d 49 (D.Me. 2010), and concluded that § 922(g)(9) remained enforceable absent further direction from the First Circuit. As to the second claim, the district court found that *Nason* remained binding precedent, and that the indictment sufficiently alleged a federal offense since Defendant's prior conviction qualified as a predicate offense under § 922(g)(9).

Key Issue(s): Second Amendment; Predicate Offense; Knowledge Requirement; Physical Force Requirement

***United States v. Minor*, 31 F.4th 9 (1st Cir. 2011)**

Facts/Procedural History: Defendant, who had a conviction for a misdemeanor crime of domestic violence, was charged and convicted with possession of a firearm in violation of 18 U.S.C. § 922(g)(9). While waiting for his appeal, the Supreme Court issued their ruling in *Rehaif v. United States*, 139 S. Ct. 2191 (2019) declaring that a defendant must know he belongs to a category covered by § 922(g). Defendant's conviction was vacated and the case was remanded for a new trial, where Defendant was convicted again. Defendant appealed.

Issue: Defendant argued that a conviction under 18 U.S.C. § 922(g)(9) was not valid when the jury was not instructed to find that Defendant knew of his prohibited status, as required by *Rehaif*.

Holding: The First Circuit vacated Defendant's conviction and remanded the case for a new trial. The First Circuit held that the district court erred in failing to instruct the jury that it had to find Defendant knew he had been previously convicted of a misdemeanor, and that error was not harmless.

Key Issue(s): Knowledge Requirement; Jury Instructions

***United States v. Pettengill*, 682 F. Supp. 2d 49 (D. Me. 2010)**

Facts/Procedural History: Defendant was indicted under 18 U.S.C. § 922(g)(9) for possession of a firearm after being convicted for a misdemeanor crime of domestic violence in 2003. Defendant moved to dismiss.

Issue: Defendant argued, among other things, that the statute violated the Second Amendment.

Holding: The district court held that Defendant's Second Amendment rights were not infringed by the indictment because the prohibition on firearm possession for those convicted of domestic violence was constitutional.

Key Issue(s): Second Amendment

***United States v. Wyman*, No. CR-08-154-B-W, 2009 WL 426293 (D. Me. Feb. 20, 2009)**

Facts/Procedural History: Defendant had previously been convicted under the Maine general-purpose assault statute. He was later found in possession of a firearm and charged under 18 U.S.C. § 922(g)(9). Defendant moved to dismiss the indictment.

Issue: The district court considered whether the Maine general-purpose assault statute (1) lacked a domestic relationship element and the mens rea requirement to qualify as a predicate offense under § 922(g)(9), and (2) violated the Second Amendment under *Heller*.

Holding: The district court denied Defendant's motion. Addressing Defendant's Second Amendment claim, the district court cited to its previous decision in *United States v. Booker*, 570 F. Supp. 2d 161 (D. Me. 2008), to summarily reject Defendant's argument. The district court also held that, as per First Circuit precedent, § 922(g)(9) required only the mode of aggression, and not the relationship between the perpetrator and victim, to be defined as an element in the predicate misdemeanor. Finally, the district court relied on *Booker* to reject Defendant's argument regarding the mens rea requirement of the predicate offense.

Key Issue(s): Second Amendment; Knowledge Requirement

United States v. Booker, 570 F. Supp. 2d 161 (D. Me. 2008)

Facts/Procedural History: Defendant had been convicted of assaulting his then-wife under the Maine general-purpose assault statute. Years later, Defendant accidentally shot his hunting companion. When questioned, Defendant admitted he was an avid hunter and owned several firearms. After a records check showed his prior conviction, a search of his home revealed seven firearms in his possession. Defendant was indicted under 18 U.S.C. § 922(g)(9). Defendant filed a motion to dismiss on the grounds that § 922(g)(9) violated the Second Amendment. The district court denied the motion. Subsequently, the Supreme Court decided *Heller*, and Defendant moved for reconsideration of his motion in light of that decision.

Issue: The district court considered whether the Second Amendment, in light of *Heller*, protected people convicted of a misdemeanor crime of domestic violence from prohibitions on the possession of firearms.

Holding: The district court denied Defendant's motion for reconsideration. The district court found that, because of (1) the absence of a meaningful distinction between the felons described in *Heller* and the persons convicted of crimes of domestic violence as predictors of firearm violence, (2) the critical nature of the governmental interest in preventing domestic violence, and (3) the definitional tailoring of § 922(g)(9), a person convicted of a misdemeanor crime of domestic violence fell within the list of persons who could be prohibited from possessing firearms.

Key Issue(s): Second Amendment

United States v. Frechette, 456 F.3d 1 (1st Cir. 2006)

Facts/Procedural History: Defendant pled no contest under Maine's general-purpose assault statute after assaulting his then-live-in girlfriend. Later, Defendant was indicted under 18 U.S.C. § 922(g)(9) for owning a firearm. Defendant filed a motion to dismiss the indictment, arguing his prior conviction did not qualify as a predicate misdemeanor crime of domestic violence and because the conviction was secured without his knowing and intelligent waiver of his rights to counsel and a jury

trial. The Government entered evidence in support of Defendant's knowing waiver, and Defendant then requested an evidentiary hearing. The magistrate judge rejected the request, and Defendant timely objected. The district court overruled Defendant's objection to the denial of an evidentiary hearing, but granted his motion to dismiss. Among other things, the district court held that the state law of the predicate conviction should provide the standard for Defendant's jury waiver. The district court then entered a judgment of discharge. Both Defendant and the Government appealed.

Issue: On appeal, the First Circuit considered, among other things, whether the validity of Defendant's jury waiver was to be determined by federal constitutional standards or state law standards.

Holding: The First Circuit upheld the denial of an evidentiary hearing, but vacated the order of dismissal and remanded for further proceedings. The First Circuit held that the jury waiver was to be determined by federal constitutional standards. Under that standard, the First Circuit found that Defendant validly waived his rights to a jury trial and to counsel; thus, the district court correctly denied the request for evidentiary hearing.

Key Issue(s): Jury Waiver; Evidentiary Hearing

***United States v. Kinney*, Crim. No. 03-57-B-W, 2003 WL 23004995 (D. Me Feb. 11, 2004)**

Facts/Procedural History: Defendant pled guilty (without being represented by an attorney) to assaulting his wife. He was later charged for possessing a firearm under 18 U.S.C. § 922(g)(9). Defendant filed a motion to dismiss his predicate assault offense, alleging he had not waived his right to counsel or a jury trial in those proceedings. In light of *United States v. Hartsock*, 347 F.3d 1 (1st Cir. 2003), which required a defendant to prove his conviction fell within an applicable exception under 18 U.S.C. § 921(a)(33)(B)(i)(I), Defendant was granted leave to supplement his motion.

Issue: The district court considered whether Defendant had waived his right to counsel or a jury trial in connection with his state domestic violence conviction.

Holding: The district court denied the motion to dismiss, finding, based on the record, that Defendant had clearly understood that he was waiving his rights and had done so knowingly to try to end the domestic violence matter as quickly as possible.

Key Issue(s): Waiver of Right to Counsel; Jury Waiver; Predicate Offense

***United States v. Stedt*, 324 F. Supp. 2d 116 (D. Me 2004)**

Facts: Defendant was previously convicted of assault but was not ordered to forfeit any firearms or lose his right to possess a firearm because it was not required under Maine law. He was later charged under 18 U.S.C. § 922(g)(9) for possessing a firearm. Defendant moved to dismiss, arguing his conviction should be treated as one in which a misdemeanor had their civil rights restored since Maine did not restrict his civil rights, and should therefore be exempt from qualifying as a misdemeanor crime of domestic violence under the exception in 18 U.S.C. § 921(a)(33)(B)(ii).

Issue: The district court considered whether Defendant's assault conviction should be treated as one that provided for the restoration of Defendant's civil rights since he suffered no loss of civil rights, thus exempting him from qualifying as a domestic violence misdemeanor under § 922(g)(9).

Holding: The district court denied the motion. The district court rejected Defendant's argument, reasoning that, because Defendant's assault conviction did not provide for the loss of any civil rights, Defendant's rights could not have been "restored." The district court noted that to adopt Defendant's position would require the court to treat all persons convicted of misdemeanors in Maine as having their civil rights restored, meaning that no misdemeanor conviction under Maine law could ever serve as a predicate offense under § 922(g)(9).

Note: As of the date of this 2025 update, this case has received direct negative treatment.

Key Issue(s): Rights Restoration

***United States v. Hartsock*, 347 F.3d 1 (1st Cir. 2003)**

Facts/Procedural History: Defendant pled guilty to misdemeanor domestic assault against his wife. They later divorced. Subsequently, he called his ex-wife and threatened her "with regard to firearms." Officers located Defendant and found him in possession of several guns. He was charged under 18 U.S.C. § 922(g)(9). Defendant filed a motion to exclude the record of his prior domestic assault conviction, arguing that he fell into the exception under 18 U.S.C. § 921(a)(33)(B)(i)(I) because he was convicted without counsel and without properly waiving his right to counsel. The Government filed an interlocutory appeal, arguing that the exception under § 921(a)(33)(B)(i)(I) was an affirmative defense and therefore Defendant bore the burden of proof. The magistrate judge rejected this argument and found that the Government had not shown Defendant knowingly and intelligently waived his right to counsel in the earlier conviction. The district court adopted the magistrate judge's reasoning and granted the motion to exclude. The Government appealed.

Issue: On appeal, the First Circuit considered whether the Government or the Defendant bore the burden of proof for the § 921(a)(33)(B)(i)(I) exception.

Holding: The First Circuit reversed and remanded the district court's order. The First Circuit held that the exception was an affirmative defense and not an element of the crime, therefore it was the burden of the Defendant to prove. The motion was remanded for the district court to determine if Defendant could meet his evidentiary burden.

Key Issue(s): Waiver of Right to Counsel; Predicate Offense

***Bailey v. State*, No. CR-01-036, 2003 WL 21958211
(Me. Super. Ct. July 28, 2003)**

Facts/Procedural History: Defendant was charged with two counts—assault, and threatening display of or carrying a concealed weapon—after an incident with his wife. Defendant pled guilty to assault. Defendant was placed on probation and was prohibited from owning a firearm. Defendant filed for post-conviction review seeking to set aside his guilty plea to the assault charge and to return the matter for trial, arguing that his guilty plea was not knowingly made because he was not properly informed that the nature of the crime was domestic assault and that he would lose the right to possess a firearm under 18 U.S.C. § 922(g)(9).

Issue: The trial court considered, among other things, whether Defendant voluntarily and intellectually pled guilty.

Holding: The trial court set aside Defendant's guilty plea and returned the case for trial. The trial court found that because the transcripts showed Defendant was not fully informed he would lose his right to carry a firearm and had asserted during his plea negotiations that he would not accept an agreement where he lost this right, Defendant did not voluntarily and intellectually plead guilty.

Key Issue(s): Voluntariness of Guilty Plea

***United States v. Denis*, 297 F.3d. 25 (1st Cir. 2002)**

Facts/Procedural History: Defendant was convicted under the Maine general-purpose assault statute for assaulting his live-in girlfriend in 1996. Years later, on a tip, officers searched his home and found seven pounds of marijuana and a rifle. He was charged under 18 U.S.C. § 922(g)(9). Defendant filed a motion to dismiss the indictment, arguing his prior conviction did not have the mens rea to qualify as a predicate misdemeanor crime of domestic violence. The district court denied his motion. Defendant pled guilty, reserving his right to appeal. At sentencing he argued he was entitled to a sentence reduction because he had only used the rifle for lawful sporting purposes. The district court denied his request. He then appealed, arguing his conviction under § 922(g)(9) violated his due process rights because the statute was enacted after he was convicted of

the predicate offense and he therefore had no reason to believe his future firearm possession would become illegal at the time of conviction. He also claimed the district court erred in denying him a sentence reduction.

Issue: On appeal, the First Circuit considered whether Defendant's conviction under § 922(g)(9) was unconstitutional as an ex post facto judgment and whether Defendant was entitled to a sentencing reduction.

Holding: The First Circuit affirmed the district court, finding that a conviction for domestic assault was enough to put Defendant on notice that he could be subject to a regulation such as § 922(g)(9) and therefore ignorance of the law was not an excuse. The First Circuit also held that Defendant's conviction was not an ex post facto judgment because Defendant was no worse off than one who was ignorant of the statute. Lastly, the First Circuit found no error in the district court's finding that Defendant was not entitled to a sentencing reduction.

Note: As of the date of this 2025 update, this case has received direct negative treatment.

Key Issue(s): Ex Post Facto Clause

United States v. Nason, 269 F.3d 10 (1st Cir. 2001)

Facts/Procedural History: Defendant pled guilty to assaulting his wife under the Maine general-purpose assault statute. Years later, he pawned and then retrieved a rifle from a trading post. Upon questioning by a state trooper he admitted he owned the rifle and several other firearms. He was then indicted under 18 U.S.C. § 922(g)(9). Defendant pled guilty but before his sentencing in another case, *United States v. Southers*, which found that § 922(g)(9) required as an element the use or attempted use of physical force, cast doubt on the validity of his charge. No.00-83-P-H, 2001 WL 9863 (D. Me. 2001). Defendant moved to withdraw his guilty plea and dismiss his indictment. The district court declined to follow *Southers* and denied Defendant's motion. Defendant appealed.

Issue: On appeal, the First Circuit considered whether convictions for "offensive physical contact" under Maine's general-purpose assault statute qualified as a predicate offense under § 922(g)(9).

Holding: The First Circuit affirmed Defendant's conviction and sentence, finding that the legislative intent of § 922(g)(9) was to encompass crimes characterized by the application of *any* physical force regardless of whether that force resulted in bodily injury or risk of harm, which included convictions under the Maine general assault statute. The district court therefore did not err in denying Defendant's motion to dismiss or withdraw his plea.

Note: As of the date of this 2025 update, this case has received direct negative treatment.

Key Issue(s): Physical Force Requirement

***United State v. Swain*, 26 Fed. App'x 15 (1st Cir. 2001)**

Facts/Procedural History: Defendant had previously pled guilty to a misdemeanor crime of domestic violence under Maine's general-purpose assault statute for assaulting his wife. The Maine statute defined misdemeanor assault as "intentionally, knowingly, or recklessly caus[ing] bodily injury or offensive physical contact to another." Defendant was later charged with and pled guilty to illegal possession of an unregistered short-barreled rifle as a person previously convicted of a misdemeanor crime of domestic violence, in violation of 18 U.S.C. § 922(g)(9). Section 922(g)(9) required that the predicate misdemeanor crime of domestic violence have "as an element, the use or attempted use of physical force." Finding he was a "prohibited person" under § 922(g)(9), the district court sentenced Defendant to twenty-seven months after a reduction for acceptance of responsibility. Defendant appealed.

Issue: On appeal, the First Circuit considered whether a conviction under the Maine assault statute was a sufficient predicate offense to sustain a conviction under § 922(g)(9).

Holding: In a per curiam decision, the First Circuit affirmed the district court's sentence. The First Circuit relied on its previous decision in *United States v. Mason*, 269 F.3d 10 (1st Cir. 2001), which held that all convictions under the Maine statute necessarily involve as an element of the use of physical force. Therefore, by pleading guilty to an assault against his wife under the Maine statute, Defendant necessarily pled guilty to a crime with an element of physical force and was correctly determined to be a "prohibited person" under § 922(g)(9).

Key Issue(s): Physical Force Requirement; Sentencing

***United States v. Cadden*, 98 F. Supp. 2d 193 (D.R.I. 2000)**

Facts/Procedural History: Defendant had pled nolo contendere to simple domestic assault and was sentenced to a year of probation, which was completed without incident. Defendant was then charged with and pled guilty to possessing two pipe bombs. When calculating Defendant's sentence, the probation department determined that the pipe bombs were firearms and that Defendant was a "prohibited person" as someone who had been previously convicted of a misdemeanor crime of domestic violence under § 922(g)(9) because of his prior nolo plea. Defendant objected.

Issue: The district court considered whether Defendant, by pleading nolo contendere to a charge of misdemeanor domestic assault and serving a term of probation prior to pleading guilty for possessing the pipe bombs, had been "convicted" of a misdemeanor crime of domestic violence, and was therefore a prohibited person for purposes of sentencing.

Holding: The district court overruled the Defendant’s objection, holding that Defendant was a “prohibited person.” The district court relied on *Dickerson v. New Banner Inst., Inc.*, 460 U.S. 103 (1983), which found that a guilty plea followed by a sentence of probation was a conviction under § 922(g). Therefore, Defendant had been convicted of a misdemeanor crime of domestic violence and was a prohibited person for sentencing purposes.

Key Issue(s): Definition of “Conviction”; Sentencing

***United States v. Costigan*, No. CRIM. 00-9-B-H, 2000 WL 898455 (D. Me. June 16, 2000)**

Facts/Procedural History: Defendant was convicted twice for assault, a misdemeanor crime of violence, under a Maine statute that included as an element the use or attempted use of physical force. The victim of the assault was not married to Defendant, but the victim and Defendant had a sexually intimate relationship and lived together with the victim’s three children from a prior marriage. Defendant resided at the victim’s residence as a member of the family—the victim did Defendant’s laundry; she cooked dinner for Defendant and her children and they ate together as a family; Defendant participated in the discipline of the children, played with them, gave them money to purchase incidentals, and attended the children’s school activities; and Defendant’s family visited them at the victim’s residence. However, Defendant maintained his address at his mother’s post office box to prevent the victim from losing her Section 8 housing subsidies. Defendant became physically abusive to the victim and would leave to live at his mother’s residence from time to time. Defendant was later found to be in possession of a rifle and was indicted under 18 U.S.C. § 922(g)(9) for possessing a firearm after having been convicted of a misdemeanor crime of domestic violence. The matter went to trial.

Issue: The district court considered whether Defendant’s prior misdemeanor assault convictions were crimes of “domestic violence” within the meaning of § 922(g)(9) such that he could be found guilty under the statute.

Holding: The district court found Defendant guilty. The district court observed that “domestic violence” was defined as violence committed by (i) a current or former spouse; (ii) a person cohabitating or who has cohabitated with the victim as a spouse; or (iii) a person similarly situated to a spouse of the victim, and that only the second part of the definition applied to Defendant. After evaluating a number of factors present in the Defendant’s living situation with the victim, the district court concluded that Defendant was cohabitating as a spouse with the victim. The district court also found that § 922(g)(9) provided sufficient notice that Defendant’s prior conduct prohibited him from possessing a firearm.

Key Issue(s): Predicate Offense; Relationship Requirement; Due Process (Notice)

***United States v. Meade*, 175 F. 3d 215 (1st Cir. 1999)**

Facts/Procedural History: Defendant, while subject to an active protection order, threatened to shoot his wife while pounding on her apartment door in Lynn, Massachusetts. Upon Defendant's arrest, police retrieved a loaded handgun from Defendant's car; neither the handgun nor the ammunition found therein were manufactured in Massachusetts. He was charged with and found guilty of violating 18 U.S.C. §§ 922(g)(8) and (g)(9) and was sentenced to 78 months in prison. Defendant appealed, arguing that both §§ 922(g)(8) and (g)(9) were unconstitutional.

Issue: On appeal, the First Circuit considered, among other things, whether the district court erred in treating Defendant's previous conviction as a misdemeanor crime of domestic violence within the purview of § 922(g)(9) because the statute did not have as an element the relationship status between misdemeanant and victim; whether § 922(g)(9) was unconstitutionally vague; and whether § 922(g)(8) violated the Tenth Amendment and the Commerce and Due Process Clauses of the United States Constitution.

Holding: The First Circuit affirmed Defendant's conviction. The First Circuit held that Defendant's conviction was a misdemeanor crime of domestic violence within the meaning of § 922(g)(9) because Congress's intent behind enacting the statute was to include only the mode of aggression, not relationship status, as an element of the predicate offense. The First Circuit also held that § 922(g)(9) was not unconstitutionally vague because it contained no ambiguity as to the proscribed conduct and the persons to whom the prohibitions applied. In striking down Defendant's § 922(g)(8) claims, the First Circuit held that the statute did not invoke the Tenth Amendment, as it did not intrude on state court proceedings or the authority of state agents. The First Circuit also found that the statute was a valid exercise of Congress's power under the Commerce Clause. Finally, the First Circuit held that § 922(g)(8) did not violate due process because the statute involved conduct that was not "presumptively innocent" such that an exception under *Lambert v. California*, 355 U.S. 225 (1957), would apply.

Key Issue(s): Tenth Amendment; Commerce Clause; Predicate Offense; Due Process Clause; Vagueness

***Carew v. Centracchio et al.*, 17 F. Supp. 2d 56 (D.R.I. 1998)**

Facts/Procedural History: Plaintiff was previously charged with misdemeanor simple assault and was subject to a no contact order. Two years later, Plaintiff pled nolo contendere to the misdemeanor “Domestic Simple Assault” under Rhode Island law and was ordered to have no contact with his child’s mother. Plaintiff’s employer subsequently discharged him because he was disqualified from carrying a firearm, a requirement of his position as a security guard. Plaintiff sued the state of Rhode Island and the Adjutant General, alleging wrongful discharge because his nolo contendere plea was not a conviction under state law. The Adjutant General moved for summary judgment.

Issue: The district court considered whether a plea of nolo contendere to a charge of domestic assault was a conviction under state law, qualifying it as a predicate misdemeanor crime of domestic violence under 18 U.S.C. § 922(g)(9).

Holding: The district court granted the Adjutant General’s motion for summary judgment. The district court found that Plaintiff’s nolo contendere plea would not constitute a conviction once he successfully completed his probation term. However, Plaintiff was discharged from his job before completing probation, so his plea was still considered a conviction at that time, and he was therefore subject to the prohibitions in § 922(g)(9).

Key Issue(s): Definition of “Conviction;” Predicate Offense; Employment Discharge

Second Circuit (Connecticut, New York, Vermont)

United States v. Hall, No. 22-CR-86-LJV, 2023 WL 7166512 (W.D.N.Y. Oct. 31, 2023)

Facts/Procedural History: Defendant, who had a prior conviction of domestic violence, was indicted for illegal possession of firearms in violation of 18 U.S.C. § 922(g)(9). Defendant moved to dismiss his indictment.

Issue: The district court considered whether Defendant's indictment lacked merit because no one was injured and no property was damaged by his weapon possession.

Holding: The district court denied Defendant's motion to dismiss, summarily concluding that injury to person or damage to property was not an element of § 922(g)(9).

Key Issue(s): Injury as an Element

United States v. Wells, 826 F. Supp. 2d 441 (N.D.N.Y. 2011)

Facts/Procedural History: Defendant was previously convicted of misdemeanor unlawful imprisonment for physically restraining his wife, allegedly to prevent her from committing assault on him or leaving the family residence while intoxicated. Defendant was then charged with knowingly possessing a firearm in violation of 18 U.S.C. § 922(g)(9) in connection with ordering and possessing a hunting rifle. Defendant moved to dismiss the indictment.

Issue: Defendant argued that (1) the indictment did not allege the domestic relationship between Defendant and victim, (2) the indictment violated his Second Amendment rights because his predicate offense was not one of violence, and (3) misdemeanor unlawful imprisonment did not constitute a qualifying predicate offense under § 922(g)(9).

Holding: The district court denied Defendant's motion to dismiss. The district court held that the indictment contained sufficient language and detail to identify the victim as Defendant's wife, satisfying the domestic relationship requirement. The district court also rejected Defendant's Second Amendment argument because the underlying facts of Defendant's conviction showed he used physical force or violence, and the fact that he claimed it was "protective" was undermined by his voluntary guilty plea. Therefore, the district court concluded that Defendant was in the class of persons identified in *District of Columbia v. Heller* who may be prohibited from possessing firearms for engaging in domestic violence. Finally, the district court held that Defendant's conviction for

unlawful imprisonment was a qualifying predicate offense under § 922(g)(9) because, although the state statute encompassed both violent and non-violent conduct, the facts of Defendant’s specific conviction involved violent conduct.

Key Issue(s): Violence as Element of Conviction; Relationship Requirement; Second Amendment

***United States v. Kavoukian*, 315 F.3d 139 (2d Cir. 2002)**

Facts/Procedural History: Defendant pled guilty to second-degree menacing for displaying a rifle “in a manner intended to place [the woman] in fear.” The record contained no indication of the relationship between Defendant and the victim; and Defendant was sentenced to three years’ probation, with a permanent order of protection for the victim and her children. Defendant was subsequently indicted for firearm possession in violation of 18 U.S.C. § 922(g)(9) for incidents involving the same woman. Defendant moved to dismiss the counts alleging violations of § 922(g)(9), arguing that his state conviction was not a sufficient predicate offense. The district court granted Defendant’s motion, finding that the menacing conviction did not contain as an element the relationship between Defendant and victim. The Government appealed.

Issue: On appeal, the Second Circuit considered whether § 922(g)(9) required a domestic relationship as an element of the predicate offense.

Holding: The Second Circuit reversed, holding that § 922(g)(9) did not require the predicate misdemeanor crime of domestic violence to include a domestic relationship as a statutory element. However, the Second Circuit noted that the Government would have to prove that the victim of Defendant’s prior misdemeanor was in a domestic relationship with him. The Second Circuit remanded to the district court so it could determine whether the indictment sufficiently alleged such a domestic relationship.

Note: As of the date of this 2025 update, this case has received direct negative treatment.

Key Issue(s): Predicate Offense; Relationship Requirement

Third Circuit (Delaware, New Jersey, Pennsylvania, U.S. Virgin Islands)

D'Alessandro v. Pennsylvania State Police, 937 A.2d 404 (Pa. S. Ct. 2007)

Facts/Procedural History: Defendant, who had been previously convicted for simple assault in a domestic violence incident, applied for a license to carry a firearm. The Pennsylvania State Police (PSP) denied the application, finding Defendant was ineligible under 18 U.S.C. § 922(g)(9) based on his prior conviction. Defendant challenged the denial, arguing that his simple assault conviction did not constitute a misdemeanor crime of domestic violence. The Administrative Agency Law Judge (AALJ) in the Office of the Attorney General affirmed the PSP's denial after the PSP submitted a police report statement from the conviction, in which Defendant referred to the victim as his live-in girlfriend. The trial court reversed the AALJ's decision, ruling the police report evidence was inadmissible. PSP appealed.

Issue: The Pennsylvania Supreme Court considered whether Defendant's conviction of simple assault constituted an underlying predicate offense under § 922(g)(9), which required admissible proof that the defendant and victim were cohabitating or in a relationship similar to spouses.

Holding: The Pennsylvania Supreme Court reversed and remanded, holding that the police report statement was admissible. The Pennsylvania Supreme Court found that there was sufficient evidence to prove cohabitation to qualify Defendant's simple assault conviction as a misdemeanor crime of domestic violence, including that Defendant testified that he had a sexual relationship with the victim and that they lived at the same address.

Key Issue(s): Relationship Requirement

Frazier v. Northern State Prison, Dept. of Corrections, 921 A.2d 479 (N.J. App. Div. 2007)

Facts/Procedural History: Appellant was arrested on a domestic violence assault charge and later pled guilty to simple assault for repeatedly striking his girlfriend. Appellant was a corrections officer at the time and, following his conviction, his employer sought Appellant's removal on the bases of conduct unbecoming of an officer and being prohibited from using or possessing a firearm.

An Administrative Law Judge (ALJ) upheld his removal on the sole ground that Appellant was prohibited from possessing a firearm under 18 U.S.C. § 922(g)(9), and the State's Merit System Board adopted the ALJ's recommendation. Defendant appealed to the New Jersey trial court.

Issue: The appellate court considered whether Defendant's conviction for simple assault qualified as a predicate misdemeanor crime of domestic violence under § 922(g)(9).

Holding: The appellate court reversed the Merit System Board's decision, but remanded the case for further disciplinary proceedings. The appellate court found that simple assault, which consisted of an attempt by physical menace to put another in fear of imminent serious bodily injury, was not a misdemeanor crime of domestic violence under § 922(g)(9) because it did not have as an element the "use or attempted use of physical force." Therefore, Defendant was not prohibited from carrying a firearm. However, the case was remanded to the ALJ because Defendant's conviction and the conduct upon which it was based could have required separate disciplinary action.

Key Issue(s): Physical Force Requirement

Hesse v. Pennsylvania State Police, 850 A.2d 829 **(Pa. Commw. Ct. 2004)**

Facts/Procedural History: Petitioner was convicted of recklessly endangering another person for driving into a traffic attenuator while his estranged wife was a passenger. Petitioner subsequently applied for a permit to carry a firearm and was denied based on his prior conviction. Petitioner challenged this denial, but the Pennsylvania State Police subsequently confirmed the denial. Petitioner appealed to the Office of the Attorney General, and an administrative law judge upheld the denial. Petitioner sought review of the ALJ's order in Pennsylvania state court.

Issue: The appellate court considered whether Petitioner's conviction of reckless endangerment was a misdemeanor crime of domestic violence under 18 U.S.C. § 922(g)(9) such that Petitioner would be prohibited from being issued a firearm carry permit.

Holding: The appellate court reversed, finding that Petitioner's conviction for reckless endangerment did not have as an element a domestic relationship between the perpetrator and the victim, and was therefore not a crime of domestic violence under § 922(g)(9).

Key Issue(s): Relationship Element

***State v. Wahl*, 839 A.2d 120 (N.J. Super. Ct. App. Div. 2004)**

Facts/Procedural History: Defendant was convicted of a disorderly persons offense of simple assault against his wife after she filed a complaint alleging that Defendant physically assaulted her and possessed numerous weapons. As part of his conviction, Defendant agreed to forfeit his weapons and attend counseling for one year. At a review hearing, the trial court ordered Defendant's weapons returned to him because his doctor's report sufficiently proved Defendant was not a danger to himself or the public. The State appealed the order.

Issue: Among other things, the appellate court considered whether Defendant's conviction was a misdemeanor crime of domestic violence under 18 U.S.C. § 922(g)(9) to justify prohibiting Defendant from possessing firearms.

Holding: The appellate court reversed the portion of the order directing the seized firearms be returned to Defendant. The appellate court found that Defendant's conviction constituted a misdemeanor crime of domestic violence because the assault involved the requisite elements of the use of physical force against Defendant's current spouse.

Note: As of the date of this 2025 update, this case has received direct negative treatment.

Key Issue(s): Physical Force Element; Relationship Element

***Pennsylvania State Police v. McPherson*, 831 A.2d 800 (Pa. Commw. Ct. 2003)**

Facts/Procedural History: Petitioner pled guilty to disorderly conduct arising from a dispute with his ex-wife. He subsequently applied for a renewal of his permit to carry a firearm, but the Pennsylvania State Police (PSP) denied his application based on his past conviction. Petitioner appealed the denial to the Office of the Attorney General, where the administrative law judge sustained the appeal, concluding there was insufficient evidence that Petitioner's conviction was a predicate misdemeanor crime of domestic violence under 18 U.S.C. § 922(g)(9). The PSP petitioned for review of the ALJ's order.

Issue: The appellate court considered whether Petitioner's conviction of disorderly conduct was a sufficient predicate offense under § 922(g)(9).

Holding: The appellate court reversed the ALJ's order, holding that Petitioner's conviction of disorderly conduct required him to have engaged in "fighting or threatening, or violent or tumultuous behavior," which satisfied the "use or attempted use of physical force" element under § 922(g)(9). The appellate court also noted Petitioner specifically pled guilty to a charge alleging he "did push or shove [his ex-wife] to the ground," further establishing the requisite physical force requirement against a domestic partner was present.

Key Issue(s): Physical Force Requirement

Fourth Circuit (Maryland, North Carolina, South Carolina, Virginia, West Virginia)

***United States v. Nutter*, 137 F.4th 224 (4th Cir. 2025), petition for cert. filed, No. 25-5339 (Aug. 8, 2025)**

Facts/Procedural History: Defendant possessed firearms in violation of § 922(g)(9) and was indicted. Defendant moved to dismiss the indictment, arguing that § 922(g)(9) was unconstitutional because it violated the Second Amendment. The district court denied Defendant's motion, concluding that the statute complies with the nation's history and tradition of disarming individuals who were a threat to public safety. The district court sentenced Defendant to 12 months of imprisonment and three years of supervised release. Defendant appealed his conviction.

Issue: On appeal, Defendant argued that § 922(g)(9) was facially unconstitutional because the permanence of its ban disqualifying domestic-violence misdemeanants from firearm possession distinguished it from the temporary nature of § 922(g)(8) upheld in *Rahimi*.

Holding: The Fourth Circuit affirmed Defendant's conviction and held that the statute was constitutional under the Second Amendment. Under *Bruen*'s framework, the Fourth Circuit held that § 922(g)(9) fell within the nation's tradition of preventing individuals who posed a threat to public safety from possessing firearms. Further, the Fourth Circuit held that the permanence of the ban was an issue better suited to as-applied challenges or as policy arguments to Congress to advocate amending the statutory language, rather than concerns that would render the statute unconstitutional on its face.

Key Issue(s): Second Amendment (*Bruen*); Permanent Ban

***In re Butler*, 114 Va. Cir. 302 (Va. Cir. Dec. 10, 2024)**

Facts/Procedural History: Defendant was convicted of misdemeanor assault and battery. Virginia's governor restored Defendant's rights to possess a firearm. Defendant filed a petition to restore his right to possess a firearm under Virginia law.

Issue: Defendant argued that the Supremacy Clause did not prohibit a state court judge from restoring his right to possess a firearm even if he was ineligible to possess a firearm under 18 U.S.C. § 922(g)(9).

Holding: The Virginia appellate court denied Defendant's request to restore his right to possess a firearm. The appellate court found that it was prohibited under the Supremacy Clause from granting Defendant's request because if the state court restored Defendant's right to a firearm under state law, Defendant would be in immediate violation of federal law the moment he possessed a firearm.

Key Issue(s): Supremacy Clause

***United States v. Owens*, No. 5:23-CR-00146, 2024 WL 2260850 (S.D.W. Va. May 17, 2024)**

Facts/Procedural History: Defendant, who was convicted of misdemeanor assault and battery of a family member, was charged with possession of firearms, which were discovered upon the execution of a warrant relating to the alleged sex trafficking of a minor. Defendant moved to, among other things, dismiss the indictment on the ground that 18 U.S.C. § 922(g)(9) violated his Second Amendment rights in light of the Supreme Court's decisions in *Bruen* and *Rahimi*.

Issue: The district court considered whether § 922(g)(9) violated Defendant's Second Amendment rights.

Holding: The district court denied Defendant's motion to dismiss. The district court summarily agreed with other district courts holding that § 922(g)(9) did not violate the Second Amendment.

Key Issue(s): Second Amendment

***United States v. Delauder*, No. 2:23CR08, 2023 WL 5658924 (N.D.W. Va. Aug. 31, 2023)**

Facts/Procedural History: Defendant, who was previously convicted of domestic battery under a West Virginia statute, was indicted for unlawful possession of a firearm as a convicted domestic violence misdemeanant in violation of 18 U.S.C. § 922(g)(9) and unlawful possession of an unregistered firearm. Defendant moved to dismiss his indictment, arguing that § 922(g)(9) violated his Second Amendment right to keep and bear arms under *Bruen*.

Issue: The district court considered whether § 922(g)(9) violated Defendant's Second Amendment rights.

Holding: The district court denied Defendant's motion to dismiss. Citing *Heller*, *Bruen*, the district court held that the Second Amendment neither protected non-law-abiding citizens who had a domestic violence conviction nor possession of an unregistered firearm. The district court further found that, because the Second Amendment was designed to keep firearms away from dangerous people, § 922(g)(9)'s firearm prohibition was consistent with the nation's history and tradition.

Key Issue(s): Second Amendment

***United States v. Correa*, No. 3:09-CR-00052-FDW, 2023 WL 4919682 (W.D.N.C. Aug. 1, 2023)**

Facts/Procedural History: Defendant, who was previously convicted of inflicting corporal injury on a spouse and assault with a weapon likely to produce great bodily injury, was found guilty of possession of a firearm in violation of 18 U.S.C. § 922(g)(9), among other counts. Defendant, acting pro se, filed a motion for compassionate release to reduce his sentence to time served.

Issue: The district court considered whether Defendant had extraordinary and compelling reasons to support compassionate release.

Holding: The district court denied Defendant's motion. The district court rejected Defendant's arguments in support of compassionate release, finding that Defendant had failed to show an extraordinary or compelling reason. Further, the district court noted several factors weighing against compassionate release, including Defendant's history of disciplinary misconduct, drug trafficking, and domestic violence, thus Defendant had not met his burden. The district court did not address a substantive issue relating to § 922(g)(9).

Key Issue(s): Compassionate Release

***United States v. Proctor*, No. 2:23-CR-00074, 2023 WL 4710883 (S.D.W. Va. July 24, 2023)**

Facts/Procedural History: Defendant, who had four prior convictions of domestic battery, was charged with violating 18 U.S.C. § 922(g)(9). Defendant moved to dismiss, arguing that § 922(g)(9) violated his Second Amendment rights because it lacked an appropriate historical analogue imposing a comparable burden.

Issue: The district court considered whether § 922(g)(9) violated Defendant's Second Amendment rights.

Holding: The district court denied Defendant's motion to dismiss. The district court rejected Defendant's Second Amendment argument because the district court and other courts had widely rejected post-*Bruen* challenges to § 922(g)(9), and Defendant did not raise any arguments not already discussed in the district court's prior decision, *U.S. v. Nutter*, 624 F. Supp. 3d 636 (S.D.W. Va. 2022). Citing to *Nutter*, which the district court stated had identical issues to Defendant's motion, the district court found that § 922(g)(9) did not violate the Second Amendment.

Key Issue(s): Second Amendment

***United States v. Hughes*, No. 2:22-CR-00640-DCN-1, 2023 WL 4205226 (D.S.C. June 27, 2023)**

Facts/Procedural History: Defendant, who was previously convicted of domestic violence in the second degree, was subsequently convicted of, among other things, knowingly carrying a shotgun in violation of 18 U.S.C. § 922(g)(9). Defendant moved to dismiss the count for violating § 922(g)(9), arguing that it violated his Second Amendment rights.

Issue: The district court considered whether § 922(g)(9) violated Defendant's Second Amendment rights.

Holding: The district court denied Defendant's motion to dismiss. The district court held that § 922(g)(9) was constitutional, applying *Bruen*'s two-step framework to find that (1) the Second Amendment protections did not cover people convicted of domestic violence and (2) historical analogues to § 922(g)(9) existed at the founding to show historical intent to govern bad behavior by domestic abusers.

Note: As of the date of this 2025 update, this case has received direct negative treatment.

Key Issue(s): Second Amendment

***United States v. Benson*, No. 19-4543, 2022 WL 1515538 (4th Cir. 2022)**

Facts/Procedural History: Defendant, who had prior felony and misdemeanor convictions of domestic violence, pled guilty to one count of possessing a firearm in violation of 18 U.S.C. § 922(g)(9). Defendant appealed his conviction and sentence.

Issue: The Fourth Circuit considered whether Defendant's guilty plea was knowing and voluntary, and whether Defendant's convictions were for non-violent crimes.

Holding: The Fourth Circuit affirmed Defendant's conviction and sentence. The Fourth Circuit reviewed the record and found no plain error in the district court's determination that Defendant understood he took his guilty plea knowingly and voluntarily. Relying on other Fourth Circuit precedent, the Fourth Circuit also held that Defendant's convictions for domestic violence were categorically violent felonies.

Key Issue(s): Nonviolent Convictions; Knowing and Voluntary Plea; Plea Agreement

Harley v. Wilkinson, 988 F.3d 766 (4th Cir. 2021)

Facts/Procedural History: Plaintiff pled guilty to misdemeanor assault and battery of a family member, based on an altercation he had with his then-wife. As a result of his conviction, Plaintiff was prohibited for life from possessing a firearm under 18 U.S.C. § 922(g)(9). Plaintiff filed suit seeking declaratory judgment that § 922(g)(9) violated the Second Amendment and was unconstitutional as applied to him, and that he should no longer be subject to the lifetime prohibition because of his good behavior since conviction. Both parties moved for summary judgment, and the district court granted summary judgment for Defendants. Plaintiff appealed.

Issue: The Fourth Circuit considered whether § 922(g)(9) violated the Second Amendment as applied to Plaintiff.

Holding: The Fourth Circuit affirmed summary judgment in favor of Defendants. The Fourth Circuit applied intermediate scrutiny, holding that there was a reasonable fit between the statute and the substantial governmental interest of reducing gun violence. The Fourth Circuit found that the statutory prohibition against possession of firearms by individuals convicted of misdemeanor crimes of domestic did not violate the Second Amendment as applied because misdemeanants were only entitled to some degree of Second Amendment protections. Finally, the Fourth Circuit declined to read into Section 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, upholding a lifetime ban against firearm possession.

Note: As of the date of this 2025 update, this case has received direct negative treatment.

Key Issue(s): Second Amendment

***United States v. Adams*, No. 20-4484, 2021 WL 5122174 (4th Cir. 2021)**

Facts/Procedural History: Defendant, who had been previously convicted of domestic assault and battery, was convicted of unlawful possession of a firearm by a person convicted of misdemeanor domestic violence, violating 18 U.S.C. § 922(g)(9). Defendant appealed.

Issue: Among other things, the Fourth Circuit considered whether the Government was required to show that Defendant knew his prior domestic violence convictions legally disqualified him from firearm possession.

Holding: In a per curiam decision, the Fourth Circuit affirmed Defendant's conviction. The Fourth Circuit held that the Government did not have to prove that Defendant knew that his assault and battery conviction prevented him from possessing a firearm, only that he knew his status as a convicted misdemeanant at the time he possessed a firearm.

Key Issue(s): Knowledge Requirement

***Harley v. Barr*, No. 1:18-CV-396, 2019 WL 1673308 (E.D. Va. Apr. 16, 2019)**

Facts/Procedural History: Plaintiff was convicted of misdemeanor assault and battery of his ex-wife. Because 18 U.S.C. § 922(g)(9) prohibited him from possessing a firearm, Plaintiff filed suit against the Government, challenging the constitutionality of the statute. He cited to his record of public service and not having committed any other crimes in thirty years since his original conviction. The parties moved for summary judgment. Plaintiff argued that § 922(g)(9) violated his Second Amendment rights as applied to him.

Issue: The district court considered whether § 922(g)(9) violated Plaintiff's constitutional right to possess firearms.

Holding: The district court denied Plaintiff's motion for summary judgment and granted the Government's motion for summary judgment. The district court found § 922(g)(9)'s lifetime firearm ban on misdemeanor domestic abusers was reasonably tailored to the nation's substantial interest and Plaintiff could therefore not obtain judicial relief.

Key Issue(s): Second Amendment

***United States v. Locke*, 932 F.3d 196 (4th Cir. 2019)**

Facts/Procedural History: Defendant, who was previously convicted of assault and battery against a family or household member, was charged with possessing a firearm under 18 U.S.C. § 922(g)(9). Defendant moved to dismiss his indictment, which was denied by the district court. Defendant appealed, arguing his prior conviction did not qualify as a predicate offense under § 922(g)(9) because he did not knowingly and intelligently waive his right to a jury trial.

Issue: The Fourth Circuit considered whether Defendant's guilty plea was knowing and intelligent.

Holding: The Fourth Circuit affirmed the district court's denial. The Fourth Circuit held that Defendant's guilty plea was knowing and intelligent because Defendant's attorney conceded that the conviction was valid, so the underlying plea must have been valid as well. The relevant evidence also showed that Defendant was an adult, he was represented by counsel, there was no suggestion of mental incompetence, there was no suggestion of improper threats from the authorities, and he had prior experience with the criminal justice system. Therefore, his assault and battery conviction was a qualifying predicate offense under § 922(g)(9).

Key Issue(s): Jury Waiver; Predicate Offense

***United States v. Moss*, No. 1:18CR39, 2018 WL 6834708 (N.D.W. Va. Dec. 21, 2018)**

Facts/Procedural History: Defendant, who was convicted of domestic battery, was subsequently convicted of unlawful possession of a firearm in violation of 18 U.S.C. § 922(g)(9) and § 924(a)(2). Defendant moved for judgment of acquittal or new trial on the grounds that the Government did not prove that Defendant's weapon was a firearm under § 922(g)(9) and that he was entitled to a new trial because of the material difference between the dates of the charge in the indictment and the Government's proof at trial.

Issue: The district court considered whether the Government sufficiently proved that the weapons at issue met the definition of a firearm under § 922(g)(9) and whether the government's theory of the case prejudiced Defendant.

Holding: The district court denied Defendant's motion for judgment of acquittal or new trial. First, the district court held there was sufficient evidence for any rational trier of fact to conclude that the weapons were a "firearm" because Defendant did not question the statutory definition of a firearm at or before trial; a witness was able to identify all of the weapons at trial; and another witness was able to identify that Defendant used the weapons for hunting. Defendant's counsel also referred to the weapons as firearms throughout the trial. Second, the district court held that the Government's

theory of the case did not cause Defendant prejudice because the variance between the date of the evidence the Government intended to use to prove his unlawful possession and the date charged in the indictment did not surprise Defendant, nor hinder his preparation of a defense.

Key Issue(s): Definition of “Firearm”

***United States v. Masters*, No. CR 3:15-00244, 2016 WL 865319 (S.D.W. Va. Mar. 2, 2016)**

Facts/Procedural History: Defendant, who had a prior misdemeanor domestic battery conviction under a West Virginia statute, was charged with illegally possessing a firearm in violation of 18 U.S.C. § 922(g)(9). The West Virginia statute had two prongs, the second of which prohibited the “unlawful and intentional causing of harm.” Defendant moved to dismiss his indictment, arguing that for his domestic battery conviction to be considered a misdemeanor crime of domestic violence under § 922(g)(9), the offense must have had as an element “the use or attempted use of physical force,” which the second prong of the West Virginia statute did not have. Both Defendant and the Government conceded that the first prong of the statute required the use of physical force, but because the Government did not allege which prong of the statute Defendant was convicted under, Defendant argued that his indictment should be dismissed.

Issue: The district court considered whether the second prong of the West Virginia statute met the requisite showing of force under § 922(g)(9).

Holding: The district court denied Defendant’s motion to dismiss. The district court relied on *United States v. Castleman*, 134 S. Ct. 1405 (2014), which found that “bodily injury” under a Tennessee statute necessarily resulted from the “physical force” required by § 922(g)(9). Applying this reasoning, the district court held that, similar to “bodily injury” in *Castleman*, “physical harm” in the West Virginia statute required the use of “physical force.” Therefore, the second prong of the West Virginia statute required the use or attempted use of physical force, and Defendant’s prior conviction under that statute was a proper predicate offense under § 922(g)(9).

Key Issue(s): Physical Force Requirement

***United States v. Vinson*, 805 F.3d 120 (4th Cir. 2015)**

Facts/Procedural History: Defendant, who had a prior North Carolina conviction amounting to a misdemeanor crime of domestic violence (MCDV), was indicted for possession of a firearm by a prohibited person under 18 U.S.C. § 922(g)(9) after a rifle and ammunition were found during a consensual search. Defendant moved to dismiss the indictment, and the district court granted his motion. On appeal, the Fourth Circuit remanded with instructions that the district

court reinstate the indictment. Defendant filed for a rehearing by the Fourth Circuit, asserting another basis for affirming dismissal of the indictment against him. The Fourth Circuit granted the petition for rehearing.

Issue: Defendant argued that the North Carolina assault statute under which he was previously convicted did not categorically qualify as an MCDV under § 922(g)(9) because the level of intent was lower than that of a federal MCDV.

Holding: On rehearing, the Fourth Circuit affirmed the district court’s dismissal of the indictment. The Fourth Circuit found that the elements of assault under North Carolina law did not match those of a federal MCDV, in part because the various types of assault convictions permitted under North Carolina law included conduct that did not amount to a use of force. Because a defendant could hypothetically be convicted based solely on culpable negligence—a lesser standard of culpability than even recklessness—the relevant crime in North Carolina could not qualify as a predicate offense under § 922(g)(9).

Note: As of the date of this 2025 update, this case has received direct negative treatment.

Key Issue(s): Intent Element

***Correa v. United States*, No. 3:09-CR-52-FDW-7, 2013 WL 632295 (W.D.N.C. Feb. 20, 2013)**

Facts/Procedural History: Defendant was convicted of, among other things, possession of a firearm by an individual with a prior domestic violence conviction in violation of 18 U.S.C. § 922(g)(9). The Fourth Circuit affirmed Defendant’s conviction and sentence, which became final after 90 days in September 2012. Defendant filed a motion to vacate, set aside, or correct sentence in February 2013, on the basis that he had received ineffective assistance of counsel because his lawyer failed to argue that the firearm in question was not tested for Defendant’s fingerprints.

Issue: The district court considered whether Defendant’s motion was timely given the one-year statute of limitations period for filing a motion to vacate.

Holding: The district court denied Defendant’s motion as untimely. The district court found that the motion was filed five months after the one-year limitation and that Defendant did not meet his burden to show that equitable tolling should apply. The district court did not reach the merits of Defendant’s motion.

Key Issue(s): Equitable Tolling; Statute of Limitations

***United States v. Chester*, 514 F. App'x 393 (4th Cir. 2013)**

Facts/Procedural History: Defendant had previously been convicted of domestic assault and battery, a misdemeanor offense under West Virginia law. During a subsequent search of Defendant's home after he grabbed his wife by the throat and threatened to kill her, police recovered a 12-gauge shotgun and a 9mm handgun, which Defendant admitted belonged to him. Defendant was then indicted for possessing firearms after having been convicted of a misdemeanor crime of domestic violence in violation of 18 U.S.C. § 922(g)(9). Defendant moved to dismiss the indictment, arguing that § 922(g)(9), both on its face and as applied to him, violated his Second Amendment right to keep and bear arms under *Heller*. The district court denied the motion, and Defendant entered a conditional guilty plea to preserve his right to raise the constitutional argument on appeal. On appeal, the Fourth Circuit, 628 F.3d 673, vacated and remanded. On remand, the district court, ruling on Defendant's constitutional challenge, held that § 922(g)(9) survived intermediate scrutiny and did not violate Second Amendment. Defendant appealed.

Issue: The Fourth Circuit considered several issues, including: whether strict scrutiny applied in this case; whether § 922(g)(9) was substantially related to the important governmental goal of reducing the incidence and severity of domestic violence incidents; and whether § 922(g)(9) was an overbroad, facially invalid infringement upon the Second Amendment right to keep and bear arms.

Holding: The Fourth Circuit affirmed the district court. The Fourth Circuit determined that intermediate scrutiny was the proper level of scrutiny as determined in its previous decision in the case. It also found that the Government carried its burden of establishing a reasonable fit between the substantial governmental objective of reducing domestic gun violence and keeping firearms out of the hands of people convicted of a crime involving the use or attempted use of force against a spouse, former spouse, or other person with whom such person had a domestic relationship, or people who have threatened the use of a deadly weapon against such a person. Finally, the Fourth Circuit held that the district court properly rejected Defendant's overbreadth argument because the statute was constitutionally applied to him and so he could not claim it could be unconstitutionally applied to others.

Key Issue(s): Second Amendment; Intermediate Scrutiny

***United States v. Kelly*, 917 F. Supp. 2d 553 (W.D.N.C. Jan. 7, 2013)**

Facts/Procedural History: Defendant was found guilty in January 2001 of assault on a female. He was later charged with possession of a firearm after being convicted of a misdemeanor crime of domestic violence in violation of 18 U.S.C. § 922(g)(9). Defendant filed a motion in limine to preclude the Government from introducing certain evidence at trial, including evidence of his possession of a firearm and evidence outside of his prior record of conviction for assault to show that the conviction

had the use of force as an element. The district court converted the portion of Defendant's motion in limine seeking to exclude evidence outside Defendant's prior record into a motion to dismiss sua sponte because the district court believed resolving this issue would be dispositive.

Issue: The district court considered whether North Carolina's crime of assault on a female had as an element the use or attempted use of physical force.

Holding: The district court granted the portion of Defendant's motion that it had sua sponte converted into a motion to dismiss. The district court noted that prior Fourth Circuit case law had held that a misdemeanor crime of domestic violence under § 922(g)(9) required the use or attempted use of force capable of causing physical pain or injury. Because conviction for assault on a female under North Carolina law permitted an offensive touch or indirect force, the district court concluded that the Defendant's former conviction did not qualify as a misdemeanor crime of domestic violence under § 922(g)(9). Because the district court had converted Defendant's motion into a motion to dismiss, the district court looked for any basis in the record supporting the charge under § 922(g)(9). The district court determined that the only document in the record supporting the facts of Defendant's conviction for assault was a police/incident report. However, the district court held that this document was not admissible under Supreme Court precedent, so it could not be used to support a finding of a predicate offense under § 922(g)(9).

Note: As of the date of this 2025 update, this case has received direct negative treatment.

Key Issue(s): Physical Force Requirement; Predicate Offense

United States v. Staten, 666 F.3d 154 (4th Cir. 2011)

Facts/Procedural History: Officers responded to a domestic disturbance call from Defendant's wife. Upon arriving at Defendant's home, Defendant's wife reported, among other things, that there were three rifles hanging on the wall in the living room. Defendant admitted to having been previously convicted of misdemeanor domestic assault; the officers then seized the three firearms and arrested Defendant for being a prohibited person in possession of a firearm in violation of 18 U.S.C. § 922(g)(9). Defendant moved to dismiss the charge on the grounds that it violated his Second Amendment rights. The district court denied the motion, and Defendant entered a conditional guilty plea that reserved his right to appeal the district court's decision. After sentencing, Defendant appealed.

Issue: The Fourth Circuit considered whether § 922(g)(9) survived a Second Amendment challenge, where the Government had the burden of establishing a reasonable fit between § 922(g)(9) and a substantial governmental objective.

Holding: The Fourth Circuit affirmed the district court’s denial of Defendant’s motion to dismiss. The Government satisfactorily argued that reducing gun violence and lowering recidivism among domestic violence misdemeanants were the substantial governmental objectives that § 922(g)(9) was created to support. The Fourth Circuit considered issues with domestic violence and recidivism in the United States and determined that § 922(g)(9) satisfied the reasonable fit requirement.

Note: As of the date of this 2025 update, this case has received direct negative treatment.

Key Issue(s): Second Amendment; Reasonable Fit

***Ross v. Fed. Bureau of Alcohol, Tobacco, & Firearms*, 807 F. Supp. 2d 362 (D. Md. 2011)**

Facts/Procedural History: Plaintiff was convicted of misdemeanor assault in 1960 and the murder of his wife, a felony, in 1965. The murder conviction was later reversed, and Plaintiff was released from prison in 1983. In 2010, he attempted to purchase a hunting rifle but was given a “Delayed” designation upon a background check showing his prior conviction. Claiming that a “delay” constituted an effective denial of his right to purchase a gun, Plaintiff brought *pro se* action against several federal agencies and agency officials as Defendants, asserting various claims, including that 18 U.S.C. § 922(g)(9) violated the Second Amendment. Defendants moved to dismiss.

Issue: Among other things, Defendants argued that Plaintiff’s Second Amendment challenge to § 922(g)(9)’s restriction on access to guns lacked foundation.

Holding: The district court granted Defendants’ motion to dismiss Plaintiff’s Second Amendment challenge. Noting that several other circuits had upheld the constitutionality of § 922(g)(9), the district court also upheld the statute.

Key Issue(s): Second Amendment

***United States v. White*, 606 F.3d 144 (4th Cir. 2010)**

Facts/Procedural History: Defendant was convicted of assault and battery against a family or household member. Later, Defendant was indicted for possessing a firearm after having been convicted of a misdemeanor crime of domestic violence in violation of 18 U.S.C. § 922(g)(9). Defendant moved to dismiss the indictment, which was denied by the district court. Defendant entered a conditional guilty plea and was sentenced to 57 months’ imprisonment. Defendant then appealed.

Issue: Defendant argued that his conviction was not a misdemeanor crime of domestic violence (MCDV) because the elements of the Virginia crime, which required only an intentional touching, could not meet the federal definition for MCDV, which required the offense to have “as an element, the use or attempted use of physical force.”

Holding: The Fourth Circuit reversed and vacated Defendant’s conviction and sentence. The Fourth Circuit held that “physical force” for § 922(g)(9) purposes meant force capable of causing physical pain or injury and that Defendant’s conviction under Virginia law did not qualify as an MCDV.

Note: As of the date of this 2025 update, this case has received direct negative treatment.

Key Issue(s): Physical Force Requirement

United States v. Hayes, 337 F. App’x 285 (4th Cir. 2009)

Facts/Procedural History: In 1994, Defendant pled guilty to a misdemeanor battery against his then-wife. Ten years later, officers responded to a call regarding domestic violence at his home, where they found a rifle. He was arrested and charged under 18 U.S.C. § 922(g)(9). Defendant moved to dismiss his indictment on the grounds that his prior conviction was not a misdemeanor crime of domestic violence, in that the law that he violated did not require a domestic relationship between the victim and the offender. The district court denied his motion, Defendant entered a conditional guilty plea, and was sentenced to five years’ probation. Defendant appealed his conviction. The Fourth Circuit reversed and remanded, finding the underlying conviction did not require as an element a domestic relationship and therefore did not qualify as a predicate offense under § 922(g)(9). On grant of certiorari, the Supreme Court held that Congress defined a misdemeanor crime of domestic violence to include an offense committed by a person who had a specified domestic relationship with the victim, whether or not the underlying misdemeanor statute designated the domestic relationship as an element of the crime. The Supreme Court, 129 S. Ct. 1079, then reversed and remanded back to the Fourth Circuit for further proceedings.

Issue: The Fourth Circuit considered whether the Government lacked “judicially noticeable evidence” of a domestic relationship for Defendant’s conviction and should not have been allowed to prove the domestic relationship with extrinsic evidence.

Holding: In a per curiam decision, the Fourth Circuit affirmed Defendant’s conviction. Using Supreme Court and Fourth Circuit case law, the Fourth Circuit found that the use of extrinsic evidence to prove that the victim of a predicate offense had a domestic relationship with Defendant was allowed.

Key Issue(s): Relationship Requirement

***United States v. Rice*, No. CR. 7:06-1093-HMH, 2007 WL 128889 (D.S.C. Jan. 16, 2007)**

Facts/Procedural History: Defendant pled guilty to one count of criminal domestic violence pursuant to South Carolina law, which stated that it was unlawful to: (1) cause physical harm or injury to a person's own household member; or (2) offer or attempt to cause physical harm or injury to a person's own household member with apparent present ability under circumstances reasonably creating fear of imminent peril. Defendant was later charged with one count of possessing a firearm in violation of 18 U.S.C. § 922(g)(9). Defendant filed a motion in limine, seeking to suppress evidence of the prior conviction for criminal domestic violence.

Issue: Defendant argued that since South Carolina law included merely the threat of physical violence as behavior that could support conviction, a conviction for criminal domestic violence under state law could not stand alone as a predicate misdemeanor crime of domestic violence under § 922(g)(9).

Holding: The district court granted Defendant's motion in limine. The district court agreed with Defendant that his prior state conviction did not qualify as a misdemeanor crime of domestic violence because the South Carolina law encompassed threats of violence, which could not qualify as the use or attempted use of physical force under § 922(g)(9).

Key Issue(s): Predicate Offense; Physical Force Requirement

***In re Parsons*, 218 W. Va. 353 (W.Va. 2005)**

Facts/Procedural History: Defendant pled nolo contendere to domestic assault after being charged with "wanton endangerment involving a firearm" and "domestic battery" for abusing his girlfriend and pointing a gun at her. Defendant was a police officer at the time, and after the nolo contendere plea, was sentenced to six months' probation. During the pendency of his probation, he was prohibited by West Virginia law from using or possessing any firearms. After his probation expired, he petitioned the trial court to regain his right to possess a firearm. The trial court found that granting Defendant's request would have violated 18 U.S.C. § 922(g)(9) and denied his petition. Defendant appealed.

Issue: Defendant argued that the denial of his ability to possess a gun was a loss of a civil right that must be restored; that the West Virginia legislature did not intend to disqualify domestic assault misdemeanants from ever possessing a firearm; and that the elements of a misdemeanor crime of domestic violence under federal law did not match the elements of West Virginia domestic assault.

Holding: The West Virginia Supreme Court affirmed the trial court's decision. The West Virginia Supreme Court held that because the right to possess a firearm was not a civil right, Defendant's conviction of domestic assault did not result in the loss of his civil rights, and thus there was nothing

to be “restored.” The West Virginia Supreme Court also held that the West Virginia domestic assault law intended to prohibit restoration of the ability to possess a firearm if that possession would violate federal law. Finally, the West Virginia Supreme Court held that a violation of § 922(g)(9) did not require that the underlying statute include as an element a domestic relationship between the victim of the domestic violence and the misdemeanor. It required only that the misdemeanor was committed against a person who was enumerated in one of the domestic relationships specified in 18 U.S.C. § 921(a)(33)(A)(ii).

Note: As of the date of this 2025 update, this case has received direct negative treatment.

Key Issue(s): Rights Restoration; Relationship Requirement

United States v. Artis, 132 Fed. App’x 483 (4th Cir. 2005)

Facts/Procedural History: In 2003, Defendant entered a guilty plea for one count of misdemeanor domestic violence in Virginia juvenile court, where his right to a jury trial attached only upon appeal to the Virginia circuit court. Defendant was later convicted for possessing a firearm in violation of 18 U.S.C. § 922(g)(9). Defendant appealed.

Issue: Defendant argued that his prior conviction for domestic violence did not qualify as a predicate offense for the purposes of § 922(g)(9).

Holding: In a per curiam decision, the Fourth Circuit affirmed his conviction. The Fourth Circuit held that because Defendant did not have a right to a jury trial in juvenile court and he did not later invoke his right to a jury trial because he failed to file a notice of appeal, the district court correctly found that Defendant was not entitled to a jury trial as a matter of law under 18 U.S.C. § 921(a)(33)(B). Therefore, his conviction in juvenile court correctly qualified as a predicate offense under § 922(g)(9).

Note: As of the date of this 2025 update, this case has received direct negative treatment.

Key Issue(s): Waiver of Jury Trial

United States v. Morse, 97 Fed. App’x 430 (4th Cir. 2004)

Facts/Procedural History: Defendant struck the victim in the face after she informed him that she was leaving him for another man, and he was convicted of assault and battery against a family or household member. He was later found to be in possession of a firearm. Defendant entered a conditional guilty plea for two counts of possessing a firearm or ammunition after being convicted of a misdemeanor crime of domestic violence in violation of 18 U.S.C. § 922(g)(9). Defendant appealed.

Issue: Defendant argued that his prior conviction for assault and battery against a family or household member was not a predicate misdemeanor crime of domestic violence for purposes of § 922(g)(9). He also argued that § 922(g)(9) violated (i) his Fifth Amendment right to notice that it was illegal for him to possess a firearm or ammunition; (ii) the Commerce Clause; (iii) the Tenth Amendment; and (iv) the Fourteenth Amendment’s Equal Protection Clause.

Holding: In a per curiam decision, the Fourth Circuit affirmed Defendant’s conviction, finding that Defendant’s conviction for assault and battery against a family or household member was properly considered a predicate crime for his § 922(g)(9) conviction. The Fourth Circuit noted that Defendant cohabited with the victim of his crime and thus would be considered a “family or household member” under Virginia law. Citing to Fourth Circuit precedent as well as case law from other circuits, the Fourth Circuit summarily rejected Defendant’s constitutional law claims.

Key Issue(s): Predicate Offense; Commerce Clause; Fifth Amendment; Tenth Amendment; Fourteenth Amendment

United States v. Ayers, 64 Fed. App’x 400 (4th Cir. 2003)

Facts/Procedural History: Defendant was indicted by a federal grand jury for possession of a firearm after being convicted of a misdemeanor crime of domestic violence, in violation of 18 U.S.C. § 922(g)(9). Defendant moved to dismiss, arguing that § 922(g)(9) was unconstitutional under the Commerce Clause and Fifth and Tenth Amendments. The district court denied Defendant’s motion. Defendant then entered a conditional guilty plea, reserving the right to appeal the adverse determination of his motion to dismiss. Defendant later appealed.

Issue: Defendant argued that Congress exceeded its authority under the Commerce Clause in enacting § 922(g)(9) because it was merely a criminal statute that had nothing to do with interstate commerce. He also argued that the statute violated the Tenth Amendment and the Due Process Clause of the Fifth Amendment.

Holding: The Fourth Circuit affirmed Defendant’s conviction, summarily rejecting Defendant’s arguments based on circuit precedent that upheld § 922(g) as constitutional under the Commerce Clause and Fifth and Tenth Amendments.

Key Issue(s): Commerce Clause; Fifth Amendment; Tenth Amendment

United States v. Finnell, 256 F. Supp. 2d 493 (E.D. Va. 2003)

Facts/Procedural History: Defendant pled guilty to assault and battery against a family or household member for assaulting his minor stepdaughter. Years later, he assaulted his wife by pushing her to the floor, kneeling on her chest, and placing the barrel of a pistol against her face. He also threatened to kill her and struck her head against the floor. After his wife reported the incident, police interviewed Defendant, who admitted to possessing several firearms, including some he had hidden at a friend's house. Defendant was convicted of violating 18 U.S.C. § 922(g)(9) and sentenced to four years of prison followed by three years of supervised release. He appealed to the Fourth Circuit, which affirmed his conviction and sentence, and the Supreme Court subsequently denied his petition for certiorari. Defendant then filed a motion to vacate, set aside, or correct sentence.

Issue: Defendant argued that § 922(g)(9) violated the Eighth, Ninth, Thirteenth, and Fourteenth Amendments of the United States Constitution.

Holding: The district court denied Defendant's motion. The district court first determined that all of Defendant's claims were procedurally barred because he had not raised them during trial or on direct appeal, and Defendant did not satisfy his burden to show why the claims should be heard subject to review on collateral attack. Then the district court, assuming *arguendo* that Defendant's claims were not procedurally barred, found that each of Defendant's claims would have failed on substantive grounds as well. The district court held that § 922(g)(9) did not violate (i) the Eighth Amendment because Defendant's sentence was proportional to the crime committed; (ii) the Ninth Amendment because the Ninth Amendment does not impinge on Congress's authority to restrict firearm ownership; (iii) the Thirteenth Amendment because the prohibition against slavery and involuntary servitude was completely unrelated to § 922(g)(9); and (iv) the Fourteenth Amendment because that amendment applied only to the states, not the federal government.

Key Issue(s): Eighth Amendment; Ninth Amendment; Thirteenth Amendment; Fourteenth Amendment

United States v. Jennings, 323 F.3d 263 (4th Cir. 2003)

Facts/Procedural History: In 1997, Defendant was convicted of criminal domestic violence in South Carolina. He received a suspended sentence of 30 days but was never incarcerated. In 2000, after Defendant was found to be in possession of a pistol and ammunition, he was indicted under 18 U.S.C. § 922(g)(9). Defendant moved to dismiss the indictment, arguing that he should have been allowed to possess a firearm because his civil rights had been restored after his 1997 conviction, meaning that under 18 U.S.C. § 921(a)(33)(B)(ii) his prior conviction was not a misdemeanor crime of domestic violence. The district court denied the motion. Defendant then filed another motion to dismiss the indictment on the grounds that he did not knowingly and intelligently waive his right to counsel or to a jury trial. The district court denied this motion as well. Defendant entered a

conditional guilty plea, reserving his right to appeal the district court's rejection of his motions to dismiss. He later filed a motion for reconsideration, which was denied by the district court. He was sentenced to 15 months' imprisonment. Defendant appealed.

Issue: Defendant argued that he could not be convicted of violating § 922(g)(9) because under § 921(a)(33)(B)(ii), the prior conviction was not a predicate crime of domestic violence, as his civil rights were "restored" following his 1997 conviction and he had not knowingly and intelligently waived his right to counsel or a jury trial as required by the Sixth Amendment.

Holding: The Fourth Circuit affirmed Defendant's conviction. The Fourth Circuit noted that under § 921(a)(33)(B)(ii), a person was not considered to have been convicted of a misdemeanor crime of domestic violence if the offense was one for which the person had had their civil rights restored. The Fourth Circuit held that Defendant had never had his civil rights taken away, so he could not have had them "restored" to exempt him from prosecution under § 922(g)(9). The Fourth Circuit, in reviewing the district court judge's procedures for securing a defendant's waiver of his rights to counsel and a jury trial, determined that the process met the Sixth Amendment constitutional minimums. Thus, Defendant knowingly and intelligently waived his right to counsel and his right to a jury trial and was properly considered to have been convicted of the predicate offense for the purposes of § 922(g)(9).

Key Issue(s): Rights Restoration; Sixth Amendment

United States v. Mills, 82 Fed. App'x 287 (4th Cir. 2003)

Facts/Procedural History: Defendant had three prior convictions for a misdemeanor crime of domestic violence. A sheriff was dispatched to Defendant's home after Defendant was reported to have shot a teddy bear (which was given to him by his girlfriend) with a revolver. Defendant was indicted for possessing a firearm after being convicted of a misdemeanor crime of domestic violence (MCDV) in violation of 18 U.S.C. § 922(g)(9). He sought dismissal of the indictment on constitutional grounds but was denied by the district court. During the case proceedings, Defendant stipulated to his three prior MCDV convictions and that he shot the teddy bear. Defendant was convicted after a bench trial. He was sentenced to 15 months in prison. Defendant appealed his § 922(g)(9) conviction and sentence.

Issue: Defendant argued: (1) that § 922(g)(9) failed to provide adequate notice regarding Defendant's change in status; (2) that the statute violated Due Process by creating a permanent irrebuttable presumption that a defendant was incapable of reform because the statute provided no way to regain the right to possess a firearm; (3) that the statute denied Defendant equal protection of the law because it deprived MCDV offenders of the right to possess firearms while other misdemeanants did not lose that right; and (4) that the statute violated the Commerce Clause.

Holding: In a per curiam decision, the Fourth Circuit affirmed Defendant’s conviction. The Fourth Circuit rejected Defendant’s notice argument because a person who had previously been convicted of an MCDV had sufficient notice that he could be subjected to regulation regarding possession of firearms. The Fourth Circuit also rejected his argument regarding a supposed irrebuttable presumption because there existed other mechanisms for Defendant to regain his right to possess a firearm. The Fourth Circuit next rejected his equal protection claim because MCDV offenders were not a suspect class for equal protection purposes, and no fundamental right was implicated when such an offender was deprived of the right to possess a firearm. Finally, the Fourth Circuit summarily rejected Defendant’s Commerce Clause argument, citing to prior Fourth Circuit case law.

Key Issue(s): Due Process (Notice); Equal Protection; Commerce Clause

United States v. Rice, 65 Fed. App’x 490 (4th Cir. 2003)

Facts/Procedural History: Defendant was convicted under 18 U.S.C. § 922(g)(9) for possessing a firearm after having been convicted of misdemeanor domestic violence. Defendant appealed.

Issue: Among other things, Defendant argued that the jury was given erroneous instructions, because to support the interstate commerce element of § 922, the Government must have proved a “present and substantial connection” between the firearm and interstate commerce.

Holding: The Fourth Circuit affirmed Defendant’s conviction. Relying on prior Fourth Circuit case law, the Fourth Circuit rejected his interstate commerce argument and found that Defendant failed to show that the district court made a prejudicial error with the instructions given to the jury.

Key Issue(s): Commerce Clause; Jury Instructions

United States v. Ball, 7 Fed. App’x 210 (4th Cir. 2001)

Facts/Procedural History: Defendant was convicted of battering his wife. Later, Defendant aimed a loaded gun at his wife’s head and threatened to kill her, and was convicted after a jury trial for violating 18 U.S.C. § 922(g)(9). He was sentenced to 24 months’ imprisonment. Defendant appealed.

Issue: Defendant argued, among other things, that the district court lacked jurisdiction because § 922(g)(9) lacked a sufficient nexus to interstate commerce; that his prosecution violated the Ex Post Facto Clause of the U.S. Constitution because his battery conviction predated the enactment of § 922(g)(9); that his prosecution violated Due Process because he lacked notice that his conduct was illegal; that the predicate offense, simple battery under West Virginia law, was not a qualifying offense under § 922(g)(9) because simple battery did not require the battery to be against a current or former spouse; and that there was insufficient evidence to support the jury’s verdict.

Holding: The Fourth Circuit affirmed Defendant’s conviction and sentence. It summarily rejected the interstate commerce argument, citing prior case law. The Fourth Circuit also rejected Defendant’s ex post facto claim because the conduct prohibited by § 922(g)(9) was *possession* of a firearm. The Fourth Circuit further rejected Defendant’s due process challenge because a conviction for assaulting his wife was sufficient notice that he could not reasonably expect to have been free from regulation when possessing a firearm. Next, the Fourth Circuit rejected his contention that the predicate offense did not constitute the requisite misdemeanor crime of domestic violence because § 922(g)(9) required only one element—the use or attempted use of physical force—and the relationship between perpetrator and victim did not have to be defined in the predicate offense. The Fourth Circuit also found that the evidence was sufficient to support the conviction, rejecting, among other arguments, Defendant’s contention that the Government should have been required to prove that he had actual knowledge that his possession of a firearm was an illegal act.

Note: As of the date of this 2025 update, this case has received direct negative treatment.

Key Issue(s): Ex Post Facto Clause; Due Process; Commerce Clause

United State v. Metheny, 11 Fed. App’x 92 (4th Cir. 2001)

Facts/Procedural History: Defendant pled no contest to domestic battery after his wife alleged that he had burned her arm with a cigarette. Defendant was later charged with violating 18 U.S.C. § 922(g)(9), among other things. During a hearing on the revocation of Defendant’s bond, his wife testified that he had not burned her intentionally. Defendant pled guilty to possession of a firearm after being convicted of a misdemeanor crime of domestic violence. Over Defendant’s objections that, among other things, he was innocent of the domestic violence offense, the district court imposed a sentence of 57 months’ imprisonment. Defendant appealed the prison sentence imposed by the district court.

Issue: Defendant argued, among other things, that he should have been granted a downward departure because, in light of his wife’s testimony, he was actually innocent of the predicate domestic violence offense.

Holding: In a per curiam decision, the Fourth Circuit affirmed the sentence, finding that Defendant’s claim of actual innocence was not an established fact and that the district court correctly determined that it lacked authority to consider Defendant’s collateral attack on his prior conviction.

Key Issue(s): Predicate Offense; Sentencing

***United States v. Mitchell*, 209 F. 3d 319 (4th Cir. 2000)**

Facts/Procedural History: Defendant was convicted of misdemeanor assault and battery for assaulting his wife. Later, Defendant's wife notified police that Defendant had threatened her and that he possessed a handgun and homemade silencer. Defendant consented to a search by police, and the responding officers found a .38 caliber handgun and 23 rounds of ammunition. Defendant was convicted under 18 U.S.C. § 922(g)(9) and appealed.

Issue: The Fourth Circuit considered, among other things: whether the Government was required to prove that Defendant knew that possessing a firearm was illegal as a convicted domestic assailant; whether, as applied to Defendant, the statute violated the Ex Post Facto Clause because he purchased his firearm and was convicted of misdemeanor domestic violence prior to § 922(g)(9)'s enactment; and whether his conviction violated the Due Process Clause of the Fifth Amendment because he did not have notice that his continued possession of the firearm was illegal.

Holding: The Fourth Circuit affirmed the district court's judgment. Relying on Supreme Court precedent, the Fourth Circuit held that the Government was only required to prove knowledge of *possession* of a firearm to convict under § 922(g)(9). The Fourth Circuit also rejected Defendant's Ex Post Facto argument because the conduct prohibited by the statute was possession of a firearm, and Defendant illegally possessed the firearm after enactment of the statute—it was immaterial that the purchase of the firearm and his domestic violence conviction occurred prior to § 922(g)(9)'s enactment. The Fourth Circuit also rejected Defendant's Due Process claim because ignorance of the law did not excuse violating the law, and Defendant's conduct in assaulting his wife put him on sufficient notice.

Key Issue(s): Knowledge Requirement; Ex Post Facto; Due Process

***United States v. Organ*, No. 00-4151, 2000 WL 1350660 (4th Cir. 2000)**

Facts/Procedural History: Defendant was convicted of a misdemeanor crime of domestic violence and was subsequently found to be in possession of a firearm. He was indicted under 18 U.S.C. § 922(g)(9) and, after the district court denied his motion to dismiss the indictment, was convicted and sentenced. Defendant appealed the district court's decision to deny his motion to dismiss.

Issue: Defendant argued that the district court should have granted his motion because his prosecution violated the notice and fair warning principles of Due Process and that Congress exceeded its powers under the Commerce Clause in enacting § 922(g)(9).

Holding: The Fourth Circuit affirmed Defendant's conviction and sentence, rejecting Defendant's arguments based on the Fourth Circuit's prior decisions.

Key Issue(s): Due Process; Commerce Clause

***United States v. Mendoza*, No. 98-4479, 1999 WL 89377 (4th Cir. 1999)**

Facts/Procedural History: Defendant was convicted of misdemeanors involving domestic violence following bench trials in 1996 and 1997. Defendant appealed the second conviction, but he waived his right to a jury trial on appeal and again pled guilty. Following another incident of domestic violence in 1997, Defendant was arrested and found in possession of a handgun. Defendant was convicted for possession of a firearm by a person previously convicted of a crime involving domestic violence in violation of 18 U.S.C. § 922(g)(9). Defendant appealed his conviction.

Issue: Defendant argued, among other things, that there was no evidence that he knew that the firearm traveled in interstate commerce; that the Government was required to prove he knew his possession of the firearm was illegal; and that the evidence was insufficient to show he had been previously convicted of a misdemeanor crime involving domestic violence because he did not knowingly waive his right to a jury trial when he was tried and convicted of the domestic violence misdemeanors, claiming neither he nor his attorney were aware of § 922(g)(9).

Holding: The Fourth Circuit affirmed Defendant's conviction and sentence. The Fourth Circuit found that there was clear evidence at trial that the firearm traveled in interstate commerce. The Fourth Circuit also rejected Defendant's knowledge argument, relying on Fourth Circuit case law that held the Government need only show Defendant knew he possessed a firearm, which it had done. Finally, the Fourth Circuit held that Defendant failed to show that his waiver of a jury trial was not knowing or intelligent.

Key Issue(s): Knowledge Requirement; Interstate Commerce Element

***United States v. Brackett Frye*, No. 98-4289, 1998 WL 654423 (4th Cir. 1998)**

Facts/Procedural History: In 1994, Defendant was convicted of misdemeanor assault and battery against his wife. Three years later, while being questioned by police about a harassment complaint brought by his ex-girlfriend, Defendant admitted that he had a gun. A police search revealed the gun, and a grand jury indicted Defendant on one count of violating 18 U.S.C. § 922(g)(9). Defendant entered a conditional guilty plea, reserving the right to challenge on appeal the district court's holdings that § 922(g)(9) did not violate the Ex Post Facto Clause of the United States Constitution and that scienter was not an element of § 922(g)(9). After sentencing, Defendant appealed.

Issue: On appeal, Defendant argued that because his domestic violence conviction predated the effective date of § 922(g)(9), his conviction under that statute violated the ex post facto clause of the U.S. Constitution. Defendant also argued that the Government was required to prove scienter to convict him under § 922(g)(9).

Holding: The Fourth Circuit affirmed Defendant’s conviction. The Fourth Circuit held that the conviction did not violate the ex post facto clause because to violate it, a law must: (1) be retrospective (i.e., it must change the legal consequences of an act completed before the law’s effective date) and (2) disadvantage a defendant by changing the definition of criminal conduct or increasing the punishment for a crime. Defendant’s illegal act—possessing a firearm after his misdemeanor domestic violence conviction—was not completed until 1997, which was after § 922(g)(9) went into effect. Regarding the scienter argument, the Fourth Circuit held that because the Government was not required to show that a defendant knew that the law prohibited him from possessing a firearm under § 922(g)(1), it was not required to do so under 922(g)(9), and Defendant made no showing to support his argument.

Key Issue(s): Ex Post Facto Clause; Knowledge Requirement

In Re Application of John Doe, 1998 Va. Cir. LEXIS 428 (Rockingham Cir. Ct. 1998)

Facts/Procedural History: Applicant had a prior conviction for assault and battery for pulling his then-wife’s hair. Several years later, Applicant attempted to renew a concealed handgun permit, which was denied under 18 U.S.C. § 922(g)(9) on the basis of his prior conviction for domestic assault. Applicant appealed.

Issue: The trial court considered whether Virginia law mandated the issuance of a concealed handgun permit in Applicant’s case.

Holding: The trial court granted Applicant’s request for a renewal of his concealed handgun permit. The trial court held that under the applicable Virginia law no reference was made to federal law as a potential impediment to issuing or renewing a concealed carry permit. The trial court reasoned that it had no authority to inquire about the applicant’s status under federal law and noted that its determination had no bearing on Applicant’s ability to lawfully possess a firearm under the federal law. The trial court also noted that it was not certain whether Applicant’s prior conviction even met the definition of a misdemeanor crime of domestic violence under § 922(g)(9); however, the trial court found it was not necessary to resolve that issue in light of its finding regarding its authority to inquire about Applicant’s status under federal law.

Key Issue(s): Gun Licenses and Permits to Carry

Fifth Circuit (Louisiana, Mississippi, Texas)

United States v. Reese, No. 23-30567, 2024 WL 1478879 (5th Cir. 2024)

Facts/Procedural History: Defendant pleaded guilty to possession of firearms by a person convicted of domestic violence in violation of 18 U.S.C. § 922(g)(9). Defendant appealed.

Issue: On appeal, Defendant argued that § 922(g)(9) was unconstitutional under the Second Amendment in light of *Bruen*.

Holding: The Fifth Circuit affirmed Defendant's conviction. The Fifth Circuit reviewed for plain error only. The Fifth Circuit acknowledged that it had previously rejected a post-*Bruen*, plain-error challenge to the constitutionality of a related provision, § 922(g)(1) on the ground that no clear or obvious error existed where there was no binding precedent holding § 922(g)(1) unconstitutional and it was unclear whether *Bruen* dictated such a result. Applying that reasoning here, the Fifth Circuit found that Defendant could not show there was any clear or obvious error, as it was unclear whether § 922(g)(9) was unconstitutional under *Bruen*, and the application of *Bruen* to § 922(g)(9) would require an extension of precedent.

Key Issue(s): Second Amendment

United States v. Freeman, No. 23-10647, 2024 WL 885124 (5th Cir. 2024)

Facts/Procedural History: Defendant was convicted of being a prohibited person in possession of a firearm in violation of 18 U.S.C. § 922(g)(9). Defendant appealed his conviction. The Government filed a motion for summary affirmance.

Issue: On appeal, Defendant argued that § 922(g)(1) was unconstitutional on its face because it exceeded Congress's authority under the Commerce Clause. Defendant conceded the argument was foreclosed by existing precedent but wished to preserve the argument for further review. Defendant did not challenge the statute of his conviction, § 922(g)(9).

Holding: The Fifth Circuit affirmed Defendant's conviction and granted the Government's motion for summary affirmance. The Fifth Circuit applied prior Fifth Circuit precedent that ruled § 922(g)(1) was constitutional under the Commerce Clause and precluded Defendant's argument.

Key Issue(s): Commerce Clause

***United States v. Donahue*, 680 F. Supp. 3d 812 (S.D. Tex. 2023)**

Facts/Procedural History: Defendant was charged with possession of a firearm after being previously convicted for misdemeanor domestic violence in violation of 18 U.S.C. § 922(g)(9). Defendant moved to dismiss the indictment.

Issue: In moving to dismiss the indictment, Defendant argued that the indictment was an unconstitutional violation of his Second Amendment rights in light of *Bruen* because the Government failed to prove that the nation’s history and traditions supported firearm restrictions like § 922(g)(9), which prevent misdemeanants from possessing firearms.

Holding: The district court denied Defendant’s motion to dismiss the indictment. The district court found that the Second Amendment covered Defendant’s conduct, i.e., possession of a firearm by a misdemeanant, so the conduct was presumptively protected under the Second Amendment. Nonetheless, the district court held that § 922(g)(9) was consistent with the nation’s historical tradition of firearm regulation. Although the nation did not historically regulate firearm possession among individuals convicted of domestic violence, the historical record reflected significant regulation of firearms among individuals deemed to be dangerous and designed to ensure public safety and responsible gun ownership, sufficiently analogous to the restriction imposed by § 922(g) (9).

Key Issue(s): Second Amendment (*Bruen*)

***United States v. Porter*, No. 5:22-CR-00277, 2023 WL 2527878 (W.D. La. Mar. 14, 2023)**

Facts/Procedural History: Defendant was indicted on one count of knowingly possessing a firearm in violation of 18 U.S.C. § 922(g)(9), among other counts. Defendant filed a motion to dismiss this count of the indictment.

Issue: In moving to dismiss the count of the indictment, Defendant challenged § 922(g)(9) as unconstitutional in light of *Bruen*.

Holding: The district court denied Defendant’s motion to dismiss, finding that § 922(g)(9) was a constitutional limitation on Defendant’s Second Amendment right to bear arms. First, the district court held that the Second Amendment did not facially protect Defendant’s conduct, i.e., possessing a firearm while having a conviction for domestic abuse battery, because Defendant was not part of the “law-abiding” people to whom the Second Amendment applied. Second, the district court found that the Government met its burden of demonstrating that § 922(g)(9) was consistent with the nation’s historical tradition of firearm regulation. The district court reasoned that individuals

convicted of § 922(g)(9) were criminally adjudicated perpetrators of violence, so § 922(g)(9) was sufficiently analogous to historical “going armed” firearm regulations, which precluded firearm ownership by individuals belonging to a class that was deemed dangerous.

Key Issue(s): Second Amendment (*Bruen*)

***United States v. Merrill*, 803 Fed. Appx. 773 (5th Cir. 2020)**

Facts/Procedural History: Defendant was previously convicted of a misdemeanor domestic assault offense for striking his father. Defendant pled guilty to possession of a firearm by a person convicted of a misdemeanor crime of domestic violence, in violation of 18 U.S.C. § 922(g)(9). Defendant appealed his conviction.

Issue: On appeal, Defendant challenged the sufficiency of the factual basis for his plea by arguing that a misdemeanor crime of domestic violence did not include an offense in which a son hit his father.

Holding: The Fifth Circuit affirmed the sufficiency of Defendant’s plea. Because Defendant raised this claim for the first time on appeal, the Fifth Circuit employed the plain error standard of review. The Fifth Circuit noted that for purposes of § 922(g)(9), a misdemeanor crime of domestic violence included offenses committed by a “parent[] or guardian of the victim, ... or by a person similarly situated to a... parent[] or guardian of the victim.” Under that framework, the Fifth Circuit held that it was not “obvious or clear” that the district court erred in determining that Defendant’s predicate offense was a misdemeanor crime of domestic violence.

Key Issue(s): Plea Agreement; Relationship Requirement; Predicate Offense

***United States v. Daniels*, 316 F. Supp. 3d 949 (N.D. Tex. 2018)**

Facts/Procedural History: Defendant was convicted under the Tennessee domestic assault statute, § 39-13-101(a), which made it a crime to “[i]ntentionally or knowingly cause[] another to reasonably fear imminent bodily injury.” The charging documents did not make clear whether Defendant was charged under the statute’s subsection (a)(1) or (a)(2). Defendant was later charged with possessing a firearm in violation of 18 U.S.C. § 922(g)(9). Defendant moved to dismiss the indictment.

Issue: In moving to dismiss the indictment, Defendant argued that § 39-13-101(a)(2) was not a misdemeanor crime of domestic violence for the purpose of § 922(g)(9) because the statute did not require as an element of the crime the use or attempted use of physical force, or the threatened use of a deadly weapon.

Holding: The district court granted Defendant’s motion to dismiss. The district court found that Defendant may have been convicted under the Tennessee statute’s subsection (a)(2), which the district court found was not a misdemeanor crime of domestic violence that satisfied § 922(g)(9). The district court analyzed the force requirement under both subsections (a)(1) and (a)(2) because it was not clear under which subsection of § 39-13-101(a) Defendant had been convicted. Subsection (a)(1) concerned battery, which required offensive touch, and thus constituted a misdemeanor crime of domestic violence. Subsection (a)(2) concerned assault, which required an attempt or an offer to apply force to another. Because common law assault did not necessarily result in physical contact with another, physical force was not a necessary element of subsection (a)(2), and it did not constitute a misdemeanor crime of domestic violence.

Key Issue(s): Physical Force Requirement

United States v. Smith, 41 F. Supp. 3d 530 (N.D. Miss. 2014)

Facts/Procedural History: Defendant was twice convicted of Miss. Code Ann. § 97-3-7, simple assault—domestic violence. § 97-3-7(1) established three permutations of simple assault: (1) attempting to cause, or purposely, knowingly, or recklessly causing bodily injury; (2) negligently causing bodily injury; or (3) attempting to put someone in fear of imminent bodily harm. Later, Defendant was charged with, and pleaded guilty to, violating 18 U.S.C. § 922(g)(9). Defendant filed motions to withdraw the plea and dismiss the indictment.

Issue: In moving to dismiss the indictment, Defendant argued that § 97-3-7 did not require the “use of physical force” element necessary to qualify as a misdemeanor crime of domestic violence under § 922(g)(9).

Holding: The district court granted the motion to dismiss the indictment. Because Defendant’s arrest warrants and affidavits of arrest did not indicate under what subsection of § 97-3-7(1) Defendant had been charged, the district court had to consider whether the use, attempted use, or threatened use of physical force was a necessary element of § 97-3-7 as a whole. Given one possible ground of conviction under the statute was negligently causing bodily harm, for which use of force would not be a necessary element, the district court held that physical force was not a facially evident element of Defendant’s convictions, and each underlying assault did not qualify as a misdemeanor crime of domestic violence under § 922(g)(9).

Note: As of the date of this 2025 update, this case has received direct negative treatment.

Key Issue(s): Physical Force Requirement

***United States v. Stokes*, 41 F. Supp. 3d 525 (N.D. Miss. 2014)**

Facts/Procedural History: Defendant was convicted of Miss. Code Ann. § 97-3-7, simple assault—domestic violence. Section 97-3-7(1) established three permutations of simple assault: (1) attempting to cause, or purposely, knowingly, or recklessly causing bodily injury; (2) negligently causing bodily injury; or (3) attempting to put someone in fear of imminent bodily harm. Later, Defendant was charged with, and pleaded guilty to, violating 18 U.S.C. § 922(g)(9). Defendant filed motions to withdraw the plea and dismiss the indictment.

Issue: In moving to dismiss the indictment, Defendant argued that § 97-3-7 did not require the “use of physical force” element necessary to qualify as a misdemeanor crime of domestic violence under § 922(g)(9).

Holding: The district court granted the motion to dismiss the indictment. Because Defendant’s arrest warrants and affidavits of arrest did not indicate under what subsection of § 97-3-7(1) Defendant had been charged, the district court had to consider whether the use, attempted use, or threatened use of physical force was a necessary element of § 97-3-7 as a whole. Given one possible ground of conviction under the statute was negligently causing bodily harm, for which use of force would not be a necessary element, the district court held that physical force was not a facially evident element of Defendant’s convictions, and each underlying assault did not qualify as a misdemeanor crime of domestic violence under § 922(g)(9).

Note: As of the date of this 2025 update, this case has received direct negative treatment.

Key Issue(s): Physical Force Requirement

***United States v. Stroud*, No. 10–354, 2012 WL 5472115 (W.D. La. Nov. 9, 2012)**

Facts/Procedural History: Defendant pleaded guilty to a misdemeanor crime of domestic violence, third degree in 2002. In 2010, Defendant was found in possession of firearms and charged with violating 18 U.S.C. § 922(g)(9). Defendant filed motions, including a motion to dismiss the charge and a motion for pretrial determination on admissibility of a predicate conviction.

Issue: In filing the motions, Defendant argued that he did not knowingly and intelligently make his guilty plea concerning the 2002 domestic violence conviction, rendering the predicate offense for his § 922(g)(9) indictment invalid.

Holding: The district court granted Defendant’s motion to dismiss and disallowed the underlying conviction to form the basis for the indictment under § 922(g)(9). The district court held that a trial court must have clear and consistent involvement in advising defendants of their rights when defendants make guilty pleas, and Defendant likely did not receive adequate advice of his rights

with respect to the 2002 conviction. Given the district court could not determine whether Defendant made his guilty plea to the predicate offense knowingly and intelligently, the district court granted Defendant's motion to dismiss the indictment under § 922(g)(9).

Key Issue(s): Plea Agreement; Predicate Offense

United States v. Bethurum, 343 F.3d 712 (5th Cir. 2003)

Facts/Procedural History: Defendant pled guilty to, and was convicted of, misdemeanor attempted assault with bodily injury for kicking his wife, waiving his rights to counsel and a jury trial. Later, Defendant was charged with violating 18 U.S.C. § 922(g)(9). Before trial, Defendant moved to dismiss the indictment, arguing that he had pleaded guilty to the predicate offense without knowingly and intelligently waiving his rights to counsel and a jury trial. The district court determined the Government had the burden to prove at trial the validity of Defendant's waivers. A jury found Defendant guilty of violating § 922(g)(9), and Defendant filed a post-verdict motion for judgment of acquittal. The district court granted Defendant's motion, setting aside the jury verdict and entering a judgment of acquittal, based on its determination that a factfinder could not reasonably find that Defendant made a knowing and intelligent waiver of his rights without direct proof that he knew the waivers would result in the deprivation of his future right to possess a firearm. The Government appealed the district court's grant of the Defendant's motion.

Issue: In reply to the Government's appeal, Defendant argued that his waivers of counsel and jury trial could not have been made knowingly and intelligently because he was not aware that the guilty plea would affect his ability to possess a firearm.

Holding: The Fifth Circuit vacated the district court's order granting Defendant's motion for judgment of acquittal and remanded the case for reinstatement of the jury verdict. The Fifth Circuit held that questions of whether waivers were made voluntarily were questions of law to be decided by the judge, and that as a matter of law, failure to advise a pro se defendant of the effect of waiver on their right to future firearm possession did not render waiver unknowing or involuntary. The Fifth Circuit ruled that the district court erred by burdening the Government with proving beyond a reasonable doubt that Defendant knowingly and voluntarily waived his rights.

Note: As of the date of this 2025 update, this case has received direct negative treatment.

Key Issues: Waiver of Right to Counsel; Waiver of Right to Jury Trial

United States v. Shelton, 325 F.3d 553 (5th Cir. 2003)

Facts/Procedural History: In 1998, Defendant pleaded guilty to, and was convicted of, a misdemeanor offense of assault against his live-in girlfriend. During a later court appearance, Defendant conceded that he used physical force by "grabbing the complainant by the shirt and

throwing the complainant onto a bed.” In 2000, Defendant was charged with unlawful possession of a firearm in violation of 18 U.S.C. § 922(g)(9). After presentation of evidence at a bench trial, Defendant moved for judgment of acquittal on the grounds that his prior assault conviction was not a misdemeanor crime of domestic violence because it did not satisfy the force requirement or did Defendant constitute a person “cohabitating with the victim.” The district court found Defendant guilty of violating § 922(g)(9). Defendant filed a post-conviction motion for a new trial, which the district court denied. Defendant appealed the conviction.

Issue: On appeal, Defendant argued that there was insufficient evidence to establish whether the misdemeanor conviction contained elements of use of force and domestic relationship sufficient to be a predicate offense for purposes of § 922(g)(9).

Holding: The Fifth Circuit court affirmed the conviction. The Fifth Circuit determined that Defendant’s predicate offense included the use of physical force as a required element because it required bodily injury, and thus the predicate offense constituted a misdemeanor crime of domestic violence under § 922(g)(9). Citing precedent from other circuits, the Fifth Circuit held that the predicate offense did not need to contain an element of a relationship between Defendant and the victim to satisfy § 922(g)(9).

Note: As of the date of this 2025 update, this case has received direct negative treatment.

Key Issues: Physical Force Requirement; Relationship Requirement; Predicate Offense

White v. Weinstein, No. 05-02-00608-CV, 2002 WL 31831362 (Tex. Ct. App. Dec. 18, 2002)

Facts/Procedural History: Appellant was represented by Appellee in several divorce and criminal proceedings, in which Appellant pleaded nolo contendere to charges of deadly conduct and terroristic threat. Appellant sued Appellee for legal malpractice for failing to inform him of the firearm possession consequences of his plea based on 18 U.S.C. § 922(g)(9). Appellee moved for summary judgment on the grounds that Appellee owed no duty to inform Appellant of the consequences of 18 U.S.C. § 922(g)(9) because Appellant had not violated § 922(g)(9). The trial court granted Appellee’s motion for summary judgment.

Holding: The appellate court found that Appellee owed Appellant no duty to inform him that his gun ownership would become illegal under federal law upon the plea. Additionally, an opinion by the Fifth Circuit ordered that the § 922(g)(9) charges against Appellant be dismissed because Appellant’s gun ownership did not violate the statute when his prior convictions were not misdemeanor crimes of domestic violence under § 922(g)(9).

Key Issue(s): Ineffective Assistance of Counsel

***United States v. White*, 258 F.3d 374 (5th Cir. 2001)**

Facts/Procedural History: In 1994, Defendant was convicted of two offenses: (1) reckless conduct, for “knowingly pointing a firearm at and in the direction of” his then-wife; and (2) terroristic threat, for “intentionally and knowingly threaten[ing] to commit an offense involving violence to” someone who Defendant later married, “namely, threatened to kill [her], with intent to place [her] in fear of imminent serious bodily injury.” In 1998, Defendant was found in possession of firearms and charged with violating 18 U.S.C. § 922(g)(9), on the grounds that the reckless conduct and terroristic threat offenses served as predicate offenses. Defendant moved to dismiss the indictment because the alleged predicate offenses were not misdemeanor crimes of domestic violence, among other grounds. The district court denied the motion. Defendant pleaded guilty to one count of violating § 922(g)(9). Defendant appealed the conviction.

Issue: On appeal, Defendant argued that neither prior conviction qualified as a predicate offense under § 922(g)(9) because neither offense involved an element of the use or attempted use of physical force, or the threatened use of a deadly weapon.

Holding: The Fifth Circuit reversed Defendant’s conviction and remanded to the district court for further proceedings. The Fifth Circuit held that Defendant’s prior convictions did not require an element of physical force and were not a misdemeanor crime of domestic violence under § 922(g)(9).

Note: As of the date of this 2025 update, this case has received direct negative treatment.

Key Issue(s): Physical Force Requirement; Predicate Offense

Sixth Circuit (Kentucky, Michigan, Ohio, Tennessee)

Wilburn v. Bureau of Alcohol, Tobacco, Firearms & Explosives, 771 F. Supp. 3d 950 (E.D. Mich. 2025)

Facts/Procedural History: In 2008, Plaintiff was convicted of a misdemeanor crime of domestic violence, but that conviction was set aside in 2022 by a Michigan state court under Michigan law. After his conviction was set aside, Plaintiff received a certificate from the FBI stating that he was eligible to buy a firearm related to a separate conviction for theft by false pretenses. Plaintiff subsequently purchased numerous firearms. However, when Plaintiff attempted to purchase another firearm in 2023, the National Instant Criminal Background Check System (NICS) issued a denial and referred Plaintiff to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). ATF asserted that Plaintiff was prohibited from possessing firearms under 18 U.S.C. § 922(g)(9) and required Plaintiff to transfer seven of his firearms to his mother. Plaintiff sued the ATF, alleging violations of the Second Amendment on the ground that his domestic abuse conviction was set aside for purposes of § 921(a)(33)(B)(ii), such that it no longer disqualified him from possessing guns. The ATF moved to dismiss, and Plaintiff moved for a preliminary injunction.

Issue: ATF argued, among other things, that Plaintiff was still prohibited from possessing a firearm because the relief he received under Michigan law did not fully “expunge” or “set aside” his conviction under federal law.

Holding: The district court granted ATF’s motion to dismiss and denied Plaintiff’s motion for a preliminary injunction as moot. The district court held that under federal law, a conviction is only “set aside” for § 922(g)(9) purposes if the state procedure completely removes all legal effects of the conviction. Because Michigan law expressly provided that a conviction may still have various effects even after it is set aside, such as in connection with sentencing for subsequent felony offenses and making determinations regarding charging and plea offers, Michigan’s set-aside procedure did not expunge or set aside Plaintiff’s conviction for purposes of federal law.

Key Issue(s): Convictions Set Aside Under State Law

***United States v. Staats*, 765 F. Supp. 3d 632 (N.D. Ohio 2025)**

Facts/Procedural History: Defendant was charged and indicted, among other things, for possessing a firearm following a domestic violence conviction under 18 U.S.C. § 922(g)(9). Defendant then moved to dismiss the indictment.

Issue: Defendant argued, among other things, that § 922(g)(9) was unconstitutional both facially and as applied to him.

Holding: The district court denied Defendant’s motion to dismiss. The district court found, among other things, that § 922(g)(9) was constitutional facially and as applied to Defendant. First, the district court held that the Sixth Circuit had already found that § 922(g)(9) was not susceptible to a facial challenge in *United States v. Gailles*, 118 F.4th 822, 830 (6th Cir. 2024). Second, the district court found that § 922(g)(9) was constitutional as applied to Defendant, who the district court deemed dangerous due to his previous conviction of misdemeanor domestic violence.

Key Issue(s): Second Amendment (*Bruen* and *Rahimi*)

***United States v. Peppers*, No. 3:24-CR-87, 2024 WL 5202640, 2024 U.S. Dist. LEXIS 231285 (N.D. Ohio Dec. 23, 2024)**

Facts/Procedural History: Defendant was convicted of two misdemeanor crimes of domestic violence in 2018. In 2024, Defendant possessed a pistol and was charged with violating 18 U.S.C. § 922(g)(9), among other charges. Defendant moved to dismiss the indictment.

Issue: Defendant argued that § 922(g)(9) was unconstitutional under the Second Amendment, both facially and as applied to him.

Holding: The district court denied Defendant’s motion to dismiss. After briefing on the motion to dismiss concluded, the Sixth Circuit decided *United States v. Gailles*, 118 F.4th 822, 830 (6th Cir. 2024), which held that § 922(g)(9) was facially constitutional under the Second Amendment. The district court therefore concluded that *Gailles* precluded Defendant’s facial challenge. To analyze Defendant’s as-applied challenge, the district court decided to adopt the approach for addressing as-applied challenges under the Second Amendment set forth in *United States v. Williams*, 113 F.4th 637 (6th Cir. 2024). Under the *Williams* framework, when the Government charges a defendant with a qualifying violation of law for which it is assumed all violators are dangerous, such as misdemeanor crimes of domestic violence, the burden shifts to the defendant to prove that the class-wide presumption of dangerousness based on the defendant’s prior convictions doesn’t apply to him. Because the district court concluded that Defendant’s two prior convictions were misdemeanor crimes of domestic violence and Defendant did not even attempt to demonstrate that the class-wide presumption of dangerousness did not apply to him, the district court rejected Defendant’s as-applied challenge to § 922(g)(9).

Key Issue(s): Second Amendment

***United States v. Turner*, No. 24-5175, 2024 WL 5002652, 2024 U.S. App. LEXIS 30968 (6th Cir. 2024)**

Facts/Procedural History: Defendant was previously convicted of a misdemeanor for domestic violence, preventing him from lawfully possessing firearms and ammunition. A federal grand jury indicted Defendant for possessing firearms as a person convicted of a misdemeanor involving domestic violence, in violation of 18 U.S.C. § 922(g)(9). Defendant pled guilty. Defendant appealed.

Issue: On appeal, Defendant challenged the constitutionality of § 922(g)(9) both facially and as applied to him.

Holding: The Sixth Circuit rejected Defendant's constitutional challenges. First, the Sixth Circuit found Defendant's facial challenge was without merit given previous Sixth Circuit precedent finding that the statute did not violate the Second Amendment on its face. Second, the Sixth Circuit found the as-applied challenge also failed. Defendant did not preserve the issue for appeal at the district court level, resulting in plain error review. Defendant's argument that he was a non-violent misdemeanant was contrary to the facts showing he coordinated an assault on his then-girlfriend by six people; therefore, his "as applied" challenge failed.

Key Issue(s): Second Amendment; Preserving Issue for Appeal

***United States v. Odom*, No. 24-5363, 2024 WL 5002655, 2024 U.S. App. LEXIS 30954 (6th Cir. 2024)**

Facts/Procedural History: Defendant was convicted of domestic assault against his girlfriend on three separate occasions. Defendant was later indicted for possessing firearms as a person with misdemeanor domestic-violence convictions, in violation of 18 U.S.C. § 922(g)(9). Defendant moved to dismiss the indictment, arguing that § 922(g)(9) violated the Second Amendment, facially and as applied to him, in light of *Bruen*. The district court denied the motion, and Defendant pleaded guilty to the indictment. Defendant appealed.

Issue: On appeal, Defendant argued that § 922(g)(9) violated the Second Amendment, facially and as applied to him.

Holding: The Sixth Circuit rejected Defendant's challenges. First, the Sixth Circuit held that the Sixth Circuit had already found non-meritorious a facial challenge of § 922(g)(9). Second, the Sixth Circuit found that Defendant's as-applied challenge also failed because he "[f]ell squarely within the category of people who pose a clear threat to the physical safety of others" and therefore may be disarmed without offending the Second Amendment.

Key Issue(s): Second Amendment

***United States v. Pickett*, 757 F. Supp. 3d 813 (M.D. Tenn. 2024)**

Facts/Procedural History: Defendant was convicted of misdemeanor domestic violence after he slammed a woman to the ground and kicked and hit her. Subsequently, Defendant was found with ammunition during a shooting at a carwash. He was charged with and convicted of violating 18 U.S.C §§ 922(g)(1) and 922(g)(9). Defendant filed a motion to dismiss his indictment and vacate his convictions.

Issue: Defendant argued that his charges under §§ 922(g)(1) and (g)(9) violated his Second Amendment rights as applied to him because he did not present a danger to the public while armed under the test laid out in *United State v. Williams*, 113 F.4th 637 (6th Cir. 2024). He also argued that his convictions were duplicitious.

Holding: The district court denied in part and granted in part Defendant’s motion to dismiss. The district court found under the *Williams* test that Defendant’s criminal history and the violent facts underlying his predicate conviction “left no doubt” that Defendant was dangerous and could be prohibited from possessing a firearm. Therefore, §§ 922(g)(1) and (g)(9) did not violate Defendant’s Second Amendment rights as applied to him. However, the district court agreed that the convictions would be duplicitious if Defendant was charged separately for both, because existing Sixth Circuit precedent held that multiple punishments for violations of § 922(g)’s various subdivisions based on a single incident of firearm possession were impermissible. As such, the district court merged Defendant’s convictions so that the judgement would reflect only a single conviction under § 922(g).

Key elements: Second Amendment; Multiplicitous Charges

***United States v. Gales*, 118 F.4th 822 (6th Cir. 2024)**

Facts/Procedural History: Defendant was convicted of three domestic violence misdemeanors. Subsequently, after an automobile accident, Defendant was found to be in possession of firearms and was charged with a violation of 18 U.S.C. § 922(g)(9). Defendant moved to dismiss the indictment. The district court denied his motion and Defendant appealed.

Issue: Defendant argued that § 922(g)(9) was facially unconstitutional under *Bruen*, violating his Second Amendment rights.

Holding: The Sixth Circuit affirmed the district court’s ruling, utilizing *Rahimi*’s application of the *Bruen* analysis. First, the Sixth Circuit found that domestic-violence misdemeanants were included as “the people” in the Second Amendment’s protection of “the right of the people to keep and bear Arms,” and thus, the Second Amendment presumptively protected their right to possess firearms. Second, the Sixth Circuit held that § 922(g)(9) fit within the historical tradition of regulations preventing firearm possession by individuals who pose a threat of physical violence to another.

Key Issue(s): Second Amendment (*Bruen*)

***United States v. Kaiser*, No. 1:22-CR-647, 2024 WL 4300552,
2024 U.S. Dist. LEXIS 174017 (N.D. Ohio Sept. 26, 2024)**

Facts/Procedural History: Defendant had a criminal record that included three convictions: involuntary manslaughter with a firearm, aggravated assault, and domestic violence. In 2022, a grand jury charged Defendant with possession of a firearm in violation of 18 U.S.C. § 922(g)(9), among other charges. In 2023, Defendant filed a motion to dismiss the indictment, which the Government opposed.

Issue: Defendant argued that under *Bruen*, § 922(g)(9) violated his Second Amendment rights because it was a lifetime ban on possessing firearms, inconsistent with the Nation's historical tradition.

Holding: The district court denied Defendant's motion to dismiss and upheld his charges. The court held that *Rahimi*'s analysis under § 922(g)(8), which found that there was a historical tradition of disarming those who have been shown to be a "credible threat," should extend to § 922(g)(9) because § 922(g)(9) pertained to a more serious category of crimes, and a conviction of such crimes (i.e. misdemeanor domestic violence) provided even stronger evidence that a person posed a credible threat to another's safety and should be disarmed. Therefore, the court ruled that Defendant's previous misdemeanor domestic violence conviction combined with his other convictions demonstrated he was dangerous. Because Defendant posed a credible threat under the *Rahimi* standard, the district court held that § 922(g)(9) as applied to Defendant was constitutional.

Key Issue(s): Second Amendment (*Bruen*) (*Rahimi*); Credible Threat

***United States v. Wheeler*, No. 2:23-CR-0066, 2024 U.S. Dist.
LEXIS 66500 (S.D. Ohio Apr. 11, 2024)**

Facts/Procedural History: In 2019, Defendant was charged with assault for allegedly punching his live-in girlfriend in the head. Defendant later pleaded guilty to an amended misdemeanor charge of attempted domestic violence and the assault count was dismissed. In 2022, Defendant unknowingly sold a firearm to an undercover ATF agent. An investigation ensued, revealing two additional domestic violence offenses in 2020 and 2021. In 2023, a grand jury indicted Defendant, charging him with a violation of 18 U.S.C. § 922(g)(9). Defendant filed a motion to dismiss.

Issue: Defendant argued that (1) his underlying state-court conviction was a "legal fiction," (2) his domestic violence conviction was not a categorical match to the § 922(g)(9) requirement, (3) § 922(g)(9) was unconstitutional on its face under the Second Amendment, and (4) § 922(g)(9) was unconstitutional as applied to him.

Holding: The district court denied Defendant’s motion. First, the district court found that a defendant could not collaterally attack the validity of a state-court conviction and declined to entertain challenges to the validity of Defendant’s domestic violence conviction. Second, the district court held that the conviction was a categorical match to the § 922(g)(9) requirement because the crime contained an element of use or attempted use of physical force. Third, turning to the constitutionality of § 922(g)(9), the district court held that the statute survived under both Sixth Circuit precedent in *Stimmel v. Sessions*, 879 F.3d 198 (6th Cir. 2018) and the *Bruen* framework. Using the *Bruen* framework, the district court held that prohibitions on the possession of firearms by those convicted of misdemeanor crimes of domestic violence were consistent with historical regulations designed to keep firearms away from dangerous people. Fourth, the district court was unpersuaded by Defendant’s as-applied arguments. Defendant’s arguments that he was not a dangerous person were undermined by his charges with additional domestic violence offenses in subsequent years.

Key Issue(s): Second Amendment, Due Process

***State v. Elkins*, 2024-Ohio-1314, 2024 WL 1507656 (Ohio Ct. App. Apr. 8, 2024)**

Facts/Procedural History: Defendant was charged with a misdemeanor crime of domestic violence after an altercation where he allegedly forcefully grabbed his wife, bruising her arm in the process. After a bench trial, the trial court found Defendant guilty of a first-degree misdemeanor. Before sentencing, Defendant filed a motion for acquittal of the domestic violence charge and asked the trial court to instead find him guilty of disorderly conduct, a lesser-included offense. The trial court denied Defendant’s motion. Following his conviction, Defendant was given and signed a document that informed him that it may be unlawful for him to possess or purchase firearms under 18 U.S.C. § 922(g)(9). Defendant appealed.

Issue: On appeal, Defendant argued, among other things, that § 922(g)(9) was unconstitutional, as applied to him, under the Second and Fourteenth Amendments.

Holding: The appellate court affirmed the conviction and rejected Defendant’s constitutional arguments. The appellate court first noted that Defendant failed to raise the constitutionality of § 922(g)(9) at trial, which generally constitutes a waiver of the argument on appeal. Further, the appellate court held that Appellant could not demonstrate plain error on the part of the trial court in conjunction with the alleged “application” of § 922(g)(9) because the trial court did not bar Defendant from possessing or owning firearms pursuant to § 922(g)(9) and did not otherwise impose any firearms prohibition associated with § 922(g)(9). Rather, the trial court merely informed

Defendant of the potential future consequences of § 922(g)(9). Finally, since § 922(g)(9) had not yet been applied to Defendant, the appellate court also held that the constitutionality of § 922(g)(9) was not ripe for review.

Key Issue(s): Waiver of Constitutional Arguments; Preserving Issue for Appeal; Collateral Consequence; Ripeness; Judicial Notification

***United States v. Lucas*, No. 5:22-CR-561, 2024 U.S. Dist. LEXIS 35789 (N.D. Ohio Mar. 1, 2024)**

Facts/Procedural History: Defendant was charged with one count of possessing a firearm and ammunition while subject to a domestic violence conviction, in violation of 18 U.S.C. § 922(g)(9). Defendant filed a motion to dismiss.

Issue: Defendant argued that § 922(g)(9) was unconstitutional under *Bruen*.

Holding: The district court denied the motion. Looking to language in *Bruen* on the limited nature of the Second Amendment, and to determinations made by other Sixth Circuit courts, the district court concluded that the ruling in *Bruen* did not alter the Supreme Court’s prior determinations that restrictions on the right of convicted felons to possess weapons were constitutional. The district court stated, “Unfortunately for Defendant and those making similar challenges, the vast majority of courts to address the issue, including this one and other courts within the Sixth Circuit, have concluded that the ruling in *Bruen* did not ‘overturn, re-write, or alter’ the Supreme Court’s prior determinations that restrictions on the right of convicted felons to possess weapons are constitutional.” Defendant did not provide compelling reasons for the district court to deviate from its prior decisions.

Key Issue(s): Second Amendment

***United States v. Foster*, No. 3:23-CR-56-RGJ, U.S. Dist. LEXIS 20482 (W.D. Ky. Feb. 6, 2024)**

Facts/Procedural History: Defendant was convicted of two misdemeanors for a domestic violence assault between 2016 and 2017. In 2023, Defendant was charged with possession of a firearm in violation of 18 U.S.C. § 922(g)(9). Defendant filed a motion to dismiss, arguing that the federal statute is unconstitutional under *Bruen*.

Issue: Defendant argued that § 922(g)(9) was unconstitutional under *Bruen*.

Holding: The district court denied Defendant’s motion, citing to *Heller*, holding that the Second Amendment granted the right to keep and bear arms on “responsible, law-abiding citizens.” The district court concluded that even when using *Bruen*’s framework, § 922(g)(9) was constitutional. At the time of the Second Amendment’s ratification, regulations limited the right to bear arms to individuals who did not pose a dangerous threat, in both civil and criminal contexts.

Key Issue(s): Second Amendment

United States v. Fair, No. 22-5109, 2024 U.S. App. LEXIS 2615 (6th Cir. 2024)

Facts/Procedural History: Defendant was found guilty of possessing a firearm (1) after having been convicted of a felony, in violation of 18 U.S.C. § 922(g)(1) and (2) after having been convicted of a domestic violence misdemeanor, in violation of 18 U.S.C. § 922(g)(9). Both counts involved Defendant’s possession of the same firearm on the same date. Defendant was sentenced and then appealed.

Issue: Defendant argued that the trial court erred in sentencing Defendant on both counts under double jeopardy grounds. The Government contended that the district court cured any double jeopardy concerns by merging the § 922(g) counts for sentencing, imposing only one sentence and imposing only one special assessment.

Holding: The Sixth Circuit affirmed the district court’s judgment but remanded with instructions to vacate one of Defendant’s §922(g) convictions. As Defendant received multiple convictions for the same offense, the district court plainly erred in failing to vacate one of Defendant’s § 922(g) convictions as required under *Ball v. United States*, 470 U.S. 856 (1985).

Key Issue(s): Double Jeopardy

United States v. Lamb, No. 22-4031, 2023 WL 8628956 (6th Cir. 2023)

Facts/Procedural History: Defendant was arrested after police officers responded to a 911 call from the mother of two of his children reporting that he had assaulted her with a firearm because he was displeased with her performance of a sexual act. While detained at a local jail, Defendant spoke with the victim on the phone twice on a recorded line, during which the victim confirmed she was beaten with the firearm. Defendant pleaded guilty to illegally possessing a firearm in violation of 18 U.S.C. § 922(g)(9). His presentencing report applied a four-level sentence enhancement citing his possession of the firearm in connection with felony domestic violence. The victim declined to testify and later recanted her accusations in two interviews over a year after the incident in question.

The district court found the victim's initial accusation, and subsequent recorded phone calls, more credible than her later recantations. The district court also cited Defendant's long history of domestic violence charges in determining sentencing.

Issue: Defendant appealed, arguing that the district court (1) erred in relying on the victim's inconsistent statements when applying a sentencing enhancement, and (2) violated his constitutional rights when it relied on judge-found facts to impose his sentence.

Holding: The Sixth Circuit affirmed. The Sixth Circuit held that the district court did not clearly err in relying on the victim's initial statements to find that Defendant struck her with a firearm because they considered the inconsistencies of the victim's statements and stated their reasons as to why they found the former accusations more credible. Nor did the district court err in conducting fact-finding for sentencing purposes. Citing to *United States v. Gates*, 461 F.3d 703, 708 (6th Cir. 2006), the Sixth Circuit held that judicial fact-finding in sentencing proceedings under a preponderance of the evidence standard did not violate either Fifth Amendment due process rights, or the Sixth Amendment right to trial by jury.

Key Issue(s): Victim Statements; Sentencing; Fifth Amendment; Sixth Amendment

***United States v. Ferguson*, No. 23-5259, 2023 U.S. App. LEXIS 30766 (2023)**

Facts/Procedural History: Defendant was charged with possession of a firearm after having been convicted of a misdemeanor domestic violence offense, in violation of 18 U.S.C. §§ 922(g)(9) and 924(a)(2). He pled guilty. Given Defendant's extensive criminal history, including involving a shooting at a car wash, the probation officer recommended an upward variance of the guidelines range of 18–24 months' imprisonment. After considering the sentencing factors under 18 U.S.C. § 3553(a), the district court adopted the probation officer's recommendation and imposed a sentence of 36 months' imprisonment. Defendant appealed.

Issue: Defendant argued that his above-guidelines sentence was unreasonable because the district court should not have considered the unrelated car wash shooting in its determination.

Holding: The Sixth Circuit affirmed the district court's upward variance and sentence of 36 months' imprisonment. The Sixth Circuit found the upward variance was reasonable because the district court did not use the car wash shooting to depart upward from the guidelines. Instead, it weighed the car wash incident in its consideration of certain § 3553(a) factors and in determining whether Defendant's criminal history score adequately reflected his danger to the community and his likelihood of recidivism or reform.

Key Issue(s): Sentencing

***United States v. Caluya*, No. 23-3611, 2023 WL 7274671 (6th Cir. 2023)**

Facts/Procedural History: In 2020, Defendant was convicted of illegally possessing a firearm in violation of 18 U.S.C. § 922(g)(9) and sentenced to 33 months' imprisonment followed by three years of supervised release. While on supervised release in December 2022, Defendant was in an automobile accident and fled the scene. Officers discovered a plastic bag in the car that later tested positive for heroin and fentanyl. Based on this and other violations, the district court revoked Defendant's supervised release and imposed a sentence of five months' imprisonment followed by two years of supervised release. Defendant appealed.

Issue: Defendant argued that the district court erred in finding that he violated the terms of his supervised release because it relied solely on an officer's hearsay testimony, which Defendant claimed was unreliable, without specifically finding that the interest of justice did not require additional witnesses. Defendant also argued that the evidence was insufficient to support the revocation of his supervised release.

Holding: The Sixth Circuit affirmed the district court's decision and found that the revocation of supervised release was not an abuse of discretion. The Sixth Circuit found, among other things, that under the circumstances, the officer's testimony constituted reliable hearsay evidence.

Key Issue(s): Revocation of Supervised Release

***United States v. Givens*, No. 23-5362, 2023 U.S. App. LEXIS 28903 (6th Cir. 2023)**

Facts/Procedural History: Defendant fired a gun through a window of the home of his ex-girlfriend while she was inside. Later that day, Defendant entered the home of another ex-girlfriend against her will, took her cell phone and car keys, threatened to kill her, did not allow her to leave, and made her drive him to a hotel in another county. After being arrested, Defendant pled guilty to illegally possessing a firearm in violation of 18 U.S.C. §922(g)(9), in addition to another charge. Defendant appealed and his attorney simultaneously requested to withdraw.

Issue: Defendant's attorney stated that she examined the record and found no non-frivolous grounds to raise on appeal. Defendant's brief raised eight issues on appeal, including: the voluntariness of Defendant's guilty plea and the district court's plea colloquy; the validity of Defendant's appeal waiver; and various claims of ineffective assistance of counsel and prosecutorial misconduct.

Holding: The Sixth Circuit granted counsel's motion to withdraw and affirmed the district court's judgment, holding that nothing in the record provided a basis for challenging the voluntariness of his guilty plea, the district court's plea colloquy, or his assent to the appeal-waiver provision. Defendant was under oath and assured the district court that he had reviewed the plea agreement and understood the terms; Defendant admitted to the facts laid out by the prosecutor; and Defendant assured the district court he was not threatened in any way to accept the plea. The Sixth Circuit further concluded that his claims of ineffective assistance of counsel and prosecutorial misconduct were not viable.

Key Issue(s): Validity of Plea Agreement

***Taylor v. United States*, No. 3:20-cr-93, 2023 WL 6464173 (N.D. Ohio 2023)**

Facts/Procedural History: Defendant was convicted of illegally possessing a firearm in violation of 18 U.S.C. § 922(g)(9) in 2020 and sentenced to 27 months' imprisonment followed by three years of supervised release. In 2022, eight months after Defendant's deadline to appeal, he filed a motion to vacate due to ineffective assistance of counsel.

Issue: Defendant argued that his Sixth Amendment right to counsel was violated because his attorney failed to file a motion to dismiss on the grounds that Defendant allegedly did not know he could not possess a firearm. Defendant also contended that the statute of limitations did not apply to his motion because he was innocent of the charge.

Holding: The district court denied Defendant's motion, holding that he had failed to establish a basis to excuse his failure to comply with the statute of limitations where Defendant filed his motion over eight months after the day that his judgment became final. The district court held that Defendant was charged with and pled guilty to violating § 922(g)(9), meaning he knew of his status as an individual convicted of a domestic violence misdemeanor and his possession of a firearm. Even if he did not offer any new evidence, proof of actual knowledge that possessing a firearm was illegal was not necessary to convict a defendant of illegal possession of a firearm under § 922(g). The Government only had to prove that Defendant knew he possessed a firearm and that he was convicted of a misdemeanor crime of domestic violence.

Key Issue(s): Statute of Limitations for Appeal; Proof of Actual Knowledge

***United States v. Grant*, 15 F.4th 452 (6th Cir. 2021)**

Facts/Procedural History: Defendant shot his ex-girlfriend and was apprehended by the police while in possession of a gun. He pled guilty to two counts of violating 18 U.S.C. § 922(g), one for being a convicted felon and one for a domestic violence misdemeanor. The district court entered judgment on both counts and imposed concurrent 120-month sentences. Defendant appealed.

Issue: Defendant challenged the entry of two separate convictions stemming from the same firearm incident.

Holding: The Sixth Circuit found that the district court violated Defendant’s double jeopardy rights, as it was not permitted to have multiple punishments based on § 922(g)’s subdivisions for a single incident of firearm possession. The Sixth Circuit held, among other things, that the Government may pursue multiple charges as differing theories, but only one conviction can result under § 922(g) for a single incident of possession.

Key Issue(s): Double Jeopardy

***State ex rel. Suwalski v. Peeler*, 2021-Ohio-4061, 167 Ohio St. 3d 38 (Ohio Nov. 18, 2021)**

Facts/Procedural History: Appellant was convicted of a misdemeanor crime of domestic violence and was prohibited from owning a firearm pursuant to 18 U.S.C. § 922(g)(9). Shortly after, Appellant won a state court action to have his firearm restrictions relieved and rights restored. Appellant’s ex-wife filed an appeal claiming the county judge lacked jurisdiction to relieve Appellant of his restrictions. Appellant argued otherwise. The appellate court reversed the trial court finding that the judge lacked the jurisdiction to relieve Appellant of his restriction. Appellant appealed.

Issue: Appellant argued that the trial court judge had jurisdiction to relieve him of the gun possession restriction.

Holding: The Ohio Supreme Court upheld the ruling that the judge had no power to relieve Appellant of his firearm restrictions because federal law only allowed state judges to remove restrictions that were placed under state law. Appellant never lost any rights under Ohio law, only federal law. Moreover, no subsequent state law could relieve Appellant of his federal restrictions. Thus, the judge’s grant of relief to Appellant was unauthorized, because nothing in federal or Ohio law permitted the judge to grant the application.

Note: As of the date of this 2025 update, this case has received direct negative treatment.

Key Issues: Federalism; Relief of Restrictions

***Stimmel v. Sessions*, 879 F.3d 198 (6th Cir. 2018)**

Facts/Procedural History: In 1997, Defendant pled no contest to an Ohio statute that prohibited causing physical harm to a family or household member, a first-degree misdemeanor of domestic violence. In 2002, Defendant attempted to buy a gun but was prevented from doing so after his 1997 conviction appeared on his background check, under 18 U.S.C. § 922(g)(9). Defendant sued to challenge the statute, claiming, among other things, that § 922(g) unconstitutionally burdened his Second Amendment rights. The district court dismissed his complaint, finding that his challenge failed as a matter of law and that under strict scrutiny, § 922(g) was narrowly tailored to achieve the government's compelling interest of preventing domestic gun violence. Defendant appealed.

Issue: Defendant argued that the domestic violence misdemeanor restriction under § 922(g) violated his Second Amendment rights.

Holding: The Sixth Circuit applied intermediate scrutiny and concluded that the statute did not violate Defendant's Second Amendment rights. The Sixth Circuit first relied on *Heller* to support its conclusion that the Second Amendment did not protect gun ownership by those who break laws. Although the Second Amendment could not historically exclude individuals who had abused family members or intimate partners, § 922(g) did not impose a significant burden on domestic violence misdemeanor, as it provided relief from their firearm disability. Thus, under intermediate scrutiny, § 922(g) was a reasonable fit to serve the government's interest. The Sixth Circuit relied on legislative authority given Congress's power to determine certain prohibitions on gun ownership. To support the conclusion that Congress had a substantial interest in disarming abusers, the Sixth Circuit relied on research that showed that domestic abusers had high recidivism rates, were a continued risk to their families, and were more likely to kill their victims when harmed.

Note: As of the date of this 2025 update, this case has received direct negative treatment.

Key Issue(s): Second Amendment; Purchase of Firearms

***Laubis v. Witt*, 597 Fed. App'x 827 (6th Cir. 2015)**

Facts/Procedural History: Defendant was charged with domestic violence against his intimate partner and pled guilty. Defendant then surrendered his firearms to the county sheriff once his partner's petition for a domestic violence order was granted, as 18 U.S.C. § 922(g) prohibited any person convicted of a misdemeanor crime of domestic violence from possessing firearms. Once the order expired, Defendant contacted the sheriff about his confiscated weapons after he learned that three sheriff's deputies had been charged with taking confiscated guns and selling them or using them for personal use. The sheriff refused to release the firearms on the basis of § 922(g). Defendant

filed suit against the sheriff in district court. Defendant claimed that the sheriff violated his rights under the Second Amendment, among other claims. The sheriff filed a motion to dismiss, which was granted. Defendant appealed.

Issue: Defendant argued that the sheriff's refusal to return his firearms violated his Second Amendment rights.

Holding: The Sixth Circuit affirmed the district court's judgment, holding that the sheriff's refusal to return the firearms did not violate Defendant's Second Amendment rights. The Sixth Circuit relied on *Heller*, for the proposition that Second Amendment rights were not unlimited and included historical, categorical prohibitions on the possession of firearms by felons and the mentally ill.

Key Issue(s): Second Amendment; Return of Firearms

***United States v. Roberts*, 529 F. App'x 488 (6th Cir. 2013)**

Facts/Procedural History: Defendant was arrested for selling drugs. Officers seized a firearm on his property. Defendant was charged with distribution of a controlled substance, firearm possession while being a felon (18 U.S.C. § 922 (g)(1)) and unlawful drug user (18 U.S.C. § 922(g)(3)), and convicted of domestic violence (18 U.S.C. § 922(g)(9)). At sentencing, the Government argued that Defendant was subject to a sentencing enhancement due to prior convictions. The district court applied the enhancement, and Defendant was sentenced to 235 months' imprisonment. Defendant appealed.

Issue: Defendant argued that the evidence against him was insufficient because witnesses were not credible and failed to show his knowledge and intent to control the firearm, in violation of his Fourteenth Amendment rights. Defendant also argued that the district court erred in failing to conduct a colloquy allowing him to contest the existence of a prior conviction.

Holding: The Sixth Circuit affirmed the district court's ruling. The Sixth Circuit found that the evidence was sufficient so that a reasonable juror could conclude that Defendant distributed a controlled substance. The Sixth Circuit also found that even assuming the district court was required to conduct a colloquy, the failure to do so did not affect Defendant's substantial rights. Additionally, the Government informed Defendant of potential sentence enhancements due to his prior convictions before trial, and Defendant only contested one prior conviction on appeal, and was barred by the statute of limitations. The Sixth Circuit affirmed the conviction and sentence of Defendant.

Key Issue(s): Fourteenth Amendment; Procedural Defect; Actual or Constructive Control

***Thompson v. United States*, No. 2:04cv10132, 2007 WL 2109834 (E.D. Mich. 2007)**

Facts/Procedural History: In 2001, Petitioner was found guilty of conspiracy to possess with the intent to distribute illegal drugs, possession of a firearm in furtherance of a drug trafficking offense, and possession of a firearm by a person convicted of a domestic violence crime under 18 U.S.C. § 922(g)(9). He was sentenced to a total of 195 months' imprisonment. Petitioner filed a motion to vacate his sentences under 28 U.S.C. § 2255.

Issue: Petitioner argued that he was improperly convicted because he was no longer a prohibited person under § 922(g)(9) at the time he possessed the firearm.

Holding: Petitioner's motion to vacate was granted in part and denied in part. The district court found that there was a fundamental defect in the proceedings that led to Defendant's conviction under § 922(g)(9) and ordered that the conviction under the corresponding count be vacated. The district court considered *United States v. Wegrzyn*, 305 F.3d 593 (6th Cir. 2002), which was undecided when Petitioner filed his direct appeal. *Wegrzyn* held that "a misdemeanor convicted of domestic violence in Michigan who was not sentenced to periods of incarceration should be able to possess firearms upon completion of the sentence of probation." The district court found that Petitioner was sentenced to six months' probation and completed his probationary term on April 3, 1996. In the superseding indictment, the Government then charged Petitioner with possession of a handgun on December 3, 1998, after he had completed probation. Under *Wegrzyn*, Defendant was not prohibited from possessing a firearm on that date, as Michigan provided for the restoration of the right to legally possess a firearm after release from custody or upon successful completion of the probationary sentence.

Key Issue(s): Rights Restoration; Procedural Defect

***United States v. Jenkins*, No. 1:05-CR-135, 2007 U.S. Dist. LEXIS 11381 (E.D. Tenn. 2007)**

Facts/Procedural History: Defendant pled guilty in 1999 to misdemeanor assault under Tennessee law. Defendant was subsequently charged with knowingly making false statements to a licensed firearms dealer that he had not been convicted of a misdemeanor crime of domestic violence. Defendant challenged the charge.

Issue: Defendant argued that his prior conviction under Tennessee law did not qualify as a misdemeanor crime of domestic violence under 18 U.S.C. § 921(a)(33)(A) and challenged the statute's relationship requirement.

Holding: The district court held that Defendant’s 1999 misdemeanor assault conviction qualified as a misdemeanor crime of domestic violence under 18 U.S.C. § 921(a)(33)(A) and that Defendant was prohibited under federal law from possessing or purchasing firearms under 18 U.S.C. § 922(g)(9). The district court determined there was no need to look beyond the judgment itself for a domestic assault conviction because the defendant’s conviction for domestic assault appeared on the face of the judgment itself, noting “Simple assault (Dom Vio.) (Domestic).” While there was no Sixth Circuit precedent concerning the relationship requirement, the opinion cited *United States v. Heckenliable*, 446 F.3d 1048 (10th Cir. 2006) as another circuit’s controlling authority on the relationship requirement, as well as *Shepard v. United States*, 544 U.S. 13 (2005) in determining what documents courts can use to illustrate relationships in these cases.

Key Issue(s): Predicate Offense; Relationship Requirement

United States v. Watkins, 407 F. Supp. 2d 825 (E.D. KY 2006)

Facts/Procedural History: Defendant was convicted of assault in the fourth degree. Defendant was then charged with a violation of 18 U.S.C. §922(g)(9) for possessing a gun following a previous misdemeanor conviction involving domestic violence. Defendant moved to dismiss the indictment.

Issue: Defendant argued that assault in the fourth degree was not a misdemeanor crime of domestic violence because the assault statute did not require a domestic relationship between the offender and the victim.

Holding: The district court held that the fact that the Kentucky assault statute did not have a domestic relationship element was not a sufficient basis to dismiss the indictment. The district court stated that while the Sixth Circuit had not formed case law in this area, it agreed with a majority of courts holding that the underlying misdemeanor crime need not have, as an element, a domestic relationship between victim and offender; what mattered was whether such a relationship existed in fact, regardless of the language of the underlying statute.

Key Issue(s): Relationship Requirement

Eibler v. Dept. of Treasury, 311 F. Supp. 2d 618 (N.D. Ohio 2004)

Facts/Procedural History: Petitioner was convicted of misdemeanor assault under Ohio law in 1998. In 2002, Petitioner attempted to purchase a firearm from a local gun shop but was denied the purchase. He subsequently received a letter from the Bureau of Alcohol, Tobacco and Firearms notifying him that under 18 U.S.C. § 922(g)(9) he was prohibited from purchasing or possessing weapons based on his prior conviction for domestic violence. Petitioner filed suit in federal court,

arguing that he was improperly denied a firearm purchase because he had not been convicted of a misdemeanor crime of domestic violence, and he and the victim, his girlfriend, did not have the requisite relationship. Defendant filed a motion for summary judgment.

Issue: The district court considered whether Petitioner was improperly denied a firearm purchase under § 922(g)(9) because he had not been convicted of a misdemeanor crime of domestic violence, and he and the victim, his girlfriend, did not have the requisite relationship under the statute.

Holding: The district court granted Defendant’s motion for summary judgment, finding that the denial of the firearm purchase did not violate § 922(g)(9). The district court found that the existence of a domestic relationship was not a required element of the predicate offense. The district court also found that Petitioner and his girlfriend were “similarly situated” to being spouses and so had the requisite relationship. The district court noted the two not living together at the time of the assault was not dispositive, so long as they had “a long-time close and personal relationship.”

Key Issue(s): Required Elements of Misdemeanor Offense; Relationship Requirement

City of Cleveland v. Carpenter, 803 N.E.2d 871 (Ohio Mun. Ct. 2003)

Facts/Procedural History: The Cleveland Police Department seized eight firearms from Defendant’s residence after responding to a domestic complaint. Defendant was charged with domestic violence but ultimately pled no contest to a lesser charge of misdemeanor assault under Cleveland Codified Ordinance 621.03. The City did not initiate formal forfeiture proceedings for the seized firearms. Defendant challenged the City’s retention of his eight firearms.

Issue: Defendant argued that retaining his firearms without due process violated his Fourth and Fourteenth Amendment rights. The prosecutor objected to the release of the firearms on several grounds, including that Defendant was prohibited under 18 U.S.C. § 922(g)(9) from possessing the firearms.

Holding: Among other things, the trial court found that although the assault conviction was not designated a domestic assault, such a designation was not necessary under federal law, and the requisite relationship existed between Defendant and his ex-wife. The trial court noted that it was bound to follow the federal law under the Supremacy Clause of the U.S. Constitution.

Key Issue(s): Return of Firearms; Relationship Requirement

City of Cleveland v. Gould, 2002-Ohio-2724, 2002 WL 1264164 (Ohio Ct. App. June 6, 2002)

Facts/Procedural History: Defendant was convicted of a domestic violence misdemeanor. He appealed the conviction after probation and paying a fine.

Issue: The city argued that Defendant's appeal was moot because he paid his fine and served his probation. Defendant argued his appeal was not moot because he would suffer a loss of his Second Amendment right to possess firearms pursuant to 18 U.S.C. § 922(g)(9).

Holding: The appellate court affirmed the conviction and declared Defendant's appeal moot because he presented no evidence that he ever applied to own a gun or owned a gun.

Key Issue(s): Right to Appeal in State Court

United States v. Wegrzyn, 305 F.3d 593 (6th Cir. 2002)

Facts/Procedural History: Defendant was convicted of a misdemeanor crime under Michigan law and was later charged with possessing a firearm in violation of 18 U.S.C. § 922(g)(9). A Michigan statute stripped misdemeanants of their civil right to vote only while they were confined in a correctional facility and restored their civil right to vote immediately upon release. The district court found that any person confined and then released in Michigan for a misdemeanor domestic violence crime would therefore be exempt from § 922(g)(9)'s prohibition, by operation of 18 U.S.C. § 921(a)(33)(B)(ii), which exempted a person from § 922(g)(9) who "has had civil rights restored (if the law of the applicable jurisdiction provides for the loss of civil rights under such an offense)."

Issue: The Sixth Circuit considered whether the district court correctly found that any person confined and released in Michigan for a misdemeanor domestic violence crime was exempt from § 922(g)(9)'s prohibition.

Holding: The Sixth Circuit agreed with the district court and found that misdemeanants, like Defendant, who were not incarcerated should be able to possess firearms after serving their sentences. Otherwise, "the untenable situation would occur in which an individual who presumably committed a more egregious offense justifying incarceration would nevertheless be allowed – upon completion of the jail sentence -- to possess a firearm, while another misdemeanant whose transgression did not merit such severe punishment would be treated more harshly at the conclusion of a more lenient punishment." The Sixth Circuit noted that this result gave effect to the congressional intent to allow states to have input in the definition of the parameters of the crime, and to the expressed intent of the Michigan legislature. The Sixth Circuit further noted that the Michigan legislature's decision to strip misdemeanants of the right to vote was highly unusual, and that had such a law not been passed, the § 921(a)(33)(B)(ii) exemption would not have come into play.

Key Issue(s): Rights Restoration

***United States v. Beavers*, 206 F.3d 706 (6th Cir. 2000)**

Facts/Procedural History: Defendant pled guilty in 1995 to a misdemeanor assault charge. Defendant then pled guilty to possessing a firearm in violation of 18 U.S.C. § 922(g)(9). At his plea hearing, Defendant stated that while he did not know the law existed, he was guilty of possessing the firearms. Defendant moved to withdraw his guilty plea and to dismiss the indictment on the grounds that the statute violated his due process rights under the Fifth Amendment. The district court denied the motion to dismiss. Defendant then entered a conditional guilty plea and was sentenced to two months' imprisonment, followed by two months of home confinement and two years of supervised release, and was fined \$2,000. Defendant appealed.

Issue: Defendant argued that his conviction of a misdemeanor crime of domestic violence did not provide him with sufficient notice of his inability to own or possess a firearm. Defendant also argued that the statute was unconstitutional as applied to him because the state of Michigan misled him by returning one of pistols in July 1996 after he finished his probation without telling him about the applicability of § 922(g)(9).

Holding: The Sixth Circuit concluded that Defendant's conviction of a misdemeanor crime of domestic violence provided him with sufficient notice that the government might regulate his ability to own or possess a firearm. The Sixth Circuit also rejected Defendant's argument of unconstitutionality of the statute as applied to him because, among other things, the state of Michigan was "under no obligation to update state-law violators on recent additions to federal law," and the returned pistol was only one of three firearms for which he was indicted under the federal statute.

Key Issue(s): Due Process (Notice)

***United States v. Trabue*, No. 99-6406, 2000 WL 1828671 (6th Cir. 2000)**

Facts/Procedural History: Defendant pointed a gun at his girlfriend's stomach and pulled the trigger. Defendant then poured lighter fluid on her clothing and flicked a cigarette at her, telling her that killing her was not a threat, but a promise. Defendant's girlfriend obtained a protection order against him. Less than two months after Defendant's former girlfriend obtained the protection order, Defendant struck her and her son in the head with a gun and held two of his children hostage. A SWAT team was called in, and Defendant was subsequently arrested. Defendant was indicted on one count of possessing a firearm while subject to a protection order, in violation of 18 U.S.C. § 922(g)(8), and one count of possessing a firearm after having previously been convicted of a misdemeanor crime of domestic violence, in violation of 18 U.S.C. § 922(g)(9). Defendant entered a guilty plea for both counts, and the district court sentenced him to 57 months' imprisonment, and two years of supervised release. He appealed.

Issue: Defendant appealed the length of his sentence.

Holding: The Sixth Circuit affirmed the lower court's sentence, noting that the Sixth Circuit gave due deference to a district court's application of the sentencing guidelines to the facts of a case.

Key Issue(s): Sentencing

Seventh Circuit (Illinois, Indiana, Wisconsin)

Van Oudenhoven v. Wisconsin Dep't of Just., 10 N.W.3d 402 (Wis. Ct. App. 2024)

Facts/Procedural History: Plaintiff had a prior conviction of misdemeanor battery involving a woman he shared a child with, which was later expunged pursuant to Wisconsin law. When Plaintiff applied to purchase a handgun, the Wisconsin Department of Justice (DOJ) denied the application, claiming that Plaintiff's conviction was still valid and was related to domestic violence, and therefore his purchase of a handgun would have violated 18 U.S.C. § 922(g)(9). Plaintiff petitioned the Wisconsin circuit court to review the Wisconsin DOJ's denial, which the Wisconsin circuit court sustained. Plaintiff appealed, arguing that the Wisconsin DOJ did not have authority to deny his purchase under § 922(g)(9) and that the statute could not apply to him because his misdemeanor battery conviction had been expunged.

Issue: The Wisconsin court of appeals determined (1) whether the Wisconsin DOJ had the authority to deny a Wisconsin-based firearm purchase pursuant to § 922(g)(9); and (2) whether Plaintiff's conviction was "expunged" pursuant to § 921(a)(33)(B)(ii), exempting him from the prohibitions of § 922(g)(9).

Holding: The Wisconsin court of appeals upheld the denial of Plaintiff's application. The Wisconsin court of appeals held that the Wisconsin DOJ was authorized to deny Plaintiff's Wisconsin-based firearm purchase pursuant to federal law because the federal Government had delegated the Wisconsin DOJ as the federal law liaison for Wisconsin firearm purchases. The Wisconsin court of appeals also held that Plaintiff's conviction for misdemeanor battery qualified as a misdemeanor crime of domestic violence as defined by § 922(g)(9) and § 921(a)(33)(A)(ii) because he used physical force against someone with whom he shared a child. Finally, the Wisconsin court of appeals found that, because expungement pursuant to the Wisconsin statute under which Plaintiff's conviction was expunged did not completely remove all effects of his conviction, Plaintiff's underlying conviction remained valid. Specifically, expungement under Wisconsin law only removed evidence of the conviction from Wisconsin state court files, but the Wisconsin executive branch was still permitted to access those records to determine whether a convicted person was able to purchase a handgun in Wisconsin.

Key Issue(s): State Authority to Deny Firearm Application; Expungement

***United States v. Hatch*, No. 1:22-CR-59 HAB, 2024 WL 340762 (N.D. Ind. 2024)**

Facts/Procedural History: After Defendant allegedly sold methamphetamine to a confidential informant on multiple occasions, a grand jury indicted him on five drug counts, including four counts of distribution and one count of possession with intent to distribute methamphetamine. Defendant also faced two gun counts: possession of a firearm in furtherance of a drug trafficking crime, and unlawful possession of a firearm by an individual convicted of a misdemeanor domestic relations offense, in violation of 18 U.S.C. § 922(g)(9). Defendant moved to dismiss the § 922(g)(9) charge.

Issue: Defendant argued that the charge violated his Second Amendment rights under *Bruen*.

Holding: The district court denied the motion. The district court held that § 922(g)(9) was constitutional under *Bruen* because the Government identified a well-established historical analogue in the historical treatment of dangerous persons.

Key Issue(s): Second Amendment

***Doubek v. Kaul*, 973 N.W.2d 756 (Wis. 2022)**

Facts/Procedural History: Defendant broke into his wife's trailer in 1993 carrying a firearm and was convicted of a disorderly conduct misdemeanor. In 2016, he applied for a license to carry a concealed weapon and was prohibited from obtaining one due to his past misdemeanor crime. DOJ revoked his license, and the trial court upheld the revocation. Defendant appealed.

Issue: Defendant challenged whether the state DOJ's determination that his misdemeanor conviction for disorderly conduct warranted revoking his license.

Holding: The Wisconsin Supreme Court reversed the decision to uphold the DOJ's determination. Under federal law, a crime was a misdemeanor crime of domestic violence only if it "has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon." 18 U.S.C. § 921(a)(33)(A)(ii). Under Wis. Stat. § 947.01(1), disorderly conduct required: (1) the defendant engaged "in violent, abusive, indecent, profane, boisterous, unreasonably loud or otherwise disorderly conduct," (2) under circumstances that tend "to cause or provoke a disturbance." Because the Wisconsin statute did not make threatened use of a deadly weapon or physical force an element of the crime of disorderly conduct, it was not a misdemeanor crime of domestic violence under federal law.

Key Issue(s): Concealed Carry Law

***United States v. Dowthard*, 948 F.3d 814 (7th Cir. 2020)**

Facts/Procedural History: In 2018, Defendant was charged with firearm possession after “previously having been convicted of a crime punishable by imprisonment for a term exceeding one year” in violation of 18 U.S.C. § 922(g)(1) and § 924(e). One of his prior felony convictions was for attempted aggravated domestic battery involving strangulation under 720 ILCS 5/12-3.3(a-5) and 720 ILCS 5/8-4(a). Defendant pled guilty and appealed.

Issue: Defendant argued that his felony conviction for attempting aggravated domestic battery did not make him an “armed career criminal” because it was not a violent felony.

Holding: The Seventh Circuit affirmed the decision of the district court and held that the district court did not commit plain error in accepting Defendant’s guilty plea. The Seventh Circuit also held that Defendant’s prior conviction for attempted aggravated domestic battery qualified as a predicate “violent felony” because an “Illinois attempt to commit a crime that would involve force necessarily involves an attempt to use force.”

Key Issue(s): Definition of Violent Felony

***Johnson v. Dep’t of State Police*, 161 N.E.3d 161 (Ill. 2020)**

Facts/Procedural History: Appellant pled guilty in 2001 to a misdemeanor battery charge after she hit her then-husband. While she received advice from the local sheriff that her conviction did not qualify as a crime of domestic violence under state law, she subsequently learned she was federally barred from possessing a firearm under 18 U.S.C. § 922(g)(9). Appellant filed a petition for relief in the circuit court arguing, among other things, that the perpetual ban on her ability to possess firearms violated her Second Amendment rights. The circuit court ruled § 922(g)(9) (and related state statutes) violated Appellant’s Second Amendment rights as applied to the specific facts of the case and ordered reinstatement of her Firearm Owners’ Identification (FOID) card. The Government appealed the order directly to the Illinois Supreme Court.

Issue: The Illinois Supreme Court considered whether reinstatement of Appellant’s state firearm license would be contrary to federal law.

Holding: The Illinois Supreme Court held that the state appellate court properly restored Appellant’s civil rights for firearm possession under the FOID Card Act of Illinois. The Illinois Supreme Court observed that “conviction” under § 922(g)(9) excluded instances where, as a matter of state law, the conviction was expunged, or the person had received a pardon or had their civil rights restored. Accordingly, the Illinois Supreme Court did not address the constitutionality of § 922(g)(9).

Key Issue(s): Rights Restoration

***United States v. Maez*, 960 F.3d 949 (7th Cir. 2020)**

Facts/Procedural History: Defendant was found guilty of violating 18 U.S.C. § 922(g). Defendant appealed.

Issue: Defendant argued that the Supreme Court in *Rehaif v. United States*, 139 S. Ct. 2191 (2019) imposed a requirement that, in order to be convicted, individuals must have possessed weapons with the knowledge that such possession is illegal, and that the Government had made no such showing.

Holding: The Seventh Circuit rejected appellants' argument that *Rehaif* imposed a requirement that, in order to be convicted, individuals must have possessed weapons with the knowledge that such possession is illegal. The Seventh Circuit stated, "because § 924(a)(2) does not require willfulness, ignorance of the statutory prohibition itself is not a defense."

Note: Cert. denied by *Maez v. United States*, 141 S. Ct. 2814 (2021).

Key Issue(s): Knowledge Requirement

***United States v. Payne*, 964 F.3d 652 (7th Cir. 2020)**

Facts/Procedural History: Defendant was charged with possession of a firearm as a felon under 18 U.S.C. § 922(g) and 924(a)(2). He pleaded guilty without a plea agreement, and the district court's colloquy did not reveal "definitively whether Defendant had known he was a convicted felon at the time he possessed the gun." Defendant appealed.

Issue: Defendant argued that the Supreme Court's decision in *Rehaif*, where it was held that a defendant must know that "he belonged to the relevant category of persons barred from possessing a firearm," raised a reasonable probability that he would not have pled guilty had he known about this element.

Holding: The Seventh Circuit affirmed the decision of the district court. Because both parties agreed that the failure to address the status element was clear error, Defendant had to show that the error affected his "substantial rights and the integrity of the judicial proceedings", and "a reasonable probability that, but for the error, he would not have entered the plea." In order to meet this burden, Defendant had to show that "a jury might believe, despite prior felony convictions, that the defendant was ignorant of his sentencing exposure." The Seventh Circuit found that, because Defendant had been convicted of three prior felonies and had been present at multiple hearings where he was told he could not possess a firearm, it was implausible that he could have met this burden.

Key Issue(s): Knowledge Requirement

***United States v. Bloch*, No. 15-1648, 2016 U.S. App. LEXIS 10999 (7th Cir. 2016)**

Facts/Procedural History: Defendant was convicted of unlawful possession of a firearm by a felon and unlawful possession of a firearm after a domestic-violence misdemeanor conviction and received a sentence of 105 months' imprisonment and a three-year term of supervised release. The district court explained its justification for imposing a term of supervised release. Defendant appealed.

Issue: Defendant challenged whether the district court provided sufficient explanation for imposing a term of supervised release.

Holding: The Seventh Circuit affirmed the district court's sentence, finding that the district court properly calculated the guidelines range, assessed its appropriateness, and explained its justification by a discussion of the 18 U.S.C. § 3553 factors. Defendant also had the opportunity to object to the conditions.

Key Issue(s): Sentencing

***O'Neill v. Dir. of the Ill. Dep't of State Police*, 28 N.E.3d 1020 (Ill. App. Ct. 3d Dist. 2015)**

Facts/Procedural History: Defendant's firearm identification card was revoked after he was convicted for battery and reckless conduct resulting from an incident of domestic violence. Defendant petitioned to get his card reinstated. The lower court required the Department to reinstate Defendant's card. The decision was challenged.

Issue: Defendant argued to have his firearm identification card reinstated. The Department of State Police argued that federal law prohibited Defendant from possessing a gun and, therefore, he was not entitled to reinstatement under state law.

Holding: The appellate court reversed the lower court's decision to reinstate the card. The appellate court concluded that pursuant to 18 U.S.C. § 922(g)(9), the Department could not reinstate the ownership card.

Key Issue(s): Firearm Owner's Identification Card

***Leonard v. State*, 2014AP2892, 2015 WL 3674019 (Wis. Ct. App. 2015)**

Facts/Procedural History: Defendant was arrested at his home, and police seized seven firearms and ammunition. Defendant moved to have his firearms returned to him. The trial court entered a written order denying Defendant’s motion for return of the firearms and ammunition. Defendant appealed.

Issue: Defendant argued that Wis. Stat. § 968.20(1m)(b) did not prohibit return of his firearms and ammunition because they were not used in the commission of the crime for which he was convicted. Defendant also argues that he was not barred from possessing the firearms and ammunition under 18 U.S.C. § 922(g)(9) because he was not convicted of a misdemeanor crime of domestic violence.

Holding: The appellate court held that one of Defendant’s guns could not be returned because it was used in the commission of the disorderly conduct offense. However, the rest of the guns were ordered to be returned to Defendant. Furthermore, the appellate court held that “a person commits disorderly conduct when he or she in a public or private place, engages in violent, abusive, indecent, profane, boisterous, unreasonably loud or otherwise disorderly conduct under circumstances in which the conduct tends to cause or provoke a disturbance [.]” Wis. Stat. § 947.01. Because the appellate court could not determine whether the force at issue was directed at Defendant’s wife, the appellate court found that Defendant was not prohibited from possessing firearms under § 922(g)(9).

Key Issue(s): State Firearm Prohibition; Predicate Offense

***People v. Frederick*, 40 N.E.3d 63 (Ill. App. Ct. 2015)**

Facts/Procedural History: Defendant pled guilty to a misdemeanor battery after battering a woman with whom he cohabitated. In 2011, 20 years post-conviction, Illinois police revoked Defendant’s firearm owner’s identification (FOID) card when he attempted to purchase a firearm, citing his battery conviction as a disqualifying “misdemeanor crime involving domestic violence” under 18 U.S.C. § 922(g)(9). Defendant petitioned the trial court for FOID card reissuance, which the trial court granted, finding that Defendant was unlikely to pose a public safety risk because of the time elapsed since his conviction. The state moved for reconsideration, which the trial court denied. The state appealed.

Issue: The appellate court considered whether § 922(g)(9) prevented Defendant from having a FOID card. Defendant did not dispute that his battery conviction was a misdemeanor crime of domestic violence under § 922(g)(9).

Holding: The appellate court reversed the trial court's order, holding that a 2013 amendment to Illinois law prohibited the state from issuing FOID cards to persons prohibited by federal law from possessing firearms.

Key Issue(s): Firearm Owner's Identification Card (FOID); Authority under State Statute

***United States v. Franck*, No. 13-CR-133, 2014 U.S. Dist. LEXIS 25852 (E.D. Wis. Feb. 27, 2014)**

Facts/Procedural History: Defendant was charged with possession of a firearm by a person previously convicted of a misdemeanor crime of domestic violence, in violation of 18 U.S.C. §§ 922(g)(9) and 924(a)(2). Defendant moved to suppress the firearm.

Issue: Defendant argued that the warrant that led to the discovery of the firearm on which the charge was based was not supported by probable cause.

Holding: The district court denied the motion to suppress. The district court held that the fact that the officer thought there was probable cause to believe that Defendant was prohibited from possessing firearms because of a domestic violence restraining order, when it was actually because of a misdemeanor crime of domestic violence, is irrelevant. "[A]n arresting officer's state of mind is irrelevant to the existence of probable cause."

Key Issue(s): Probable Cause

***United States v. Stein*, 712 F.3d 1038 (7th Cir. 2013)**

Facts/Procedural History: Defendant hit his girlfriend and then pled guilty to misdemeanor battery. As part of Defendant's plea bargain, the state prosecutor dismissed a domestic abuse charge, but Defendant was still prevented from owning a gun. Defendant was charged with violating 18 U.S.C. § 922(g)(9). Defendant argued he was unaware of his prohibited status under § 922(g)(9), so he could not be found guilty of "knowingly" violating the federal ban on gun possession. He also argued that his lawyer had misadvised him of his ability to possess a gun. The district court ruled that evidence of Defendant's knowledge was irrelevant. Defendant appealed.

Issue: Defendant argued that he should have been allowed to present evidence showing his lack of knowledge of his prohibited status.

Holding: The Seventh Circuit rejected Defendant's argument and affirmed the district court's ruling. The Seventh Circuit found that "knowingly" only required proof of knowledge of the facts that constitute the offense. The Seventh Circuit pointed to § 922(g)(8), under which "knowingly"

meant knowledge of the facts constituting the offense, not knowledge that those facts make gun possession illegal, and found no principled reason for drawing an analytical distinction between § 922(g)(8) and § 922(g)(9).

Key Issue(s): Knowledge Requirement

***United States v. Pierotti*, No. 13–CR–042, 2013 WL 5278655 (E.D. Wis. Sept. 19, 2013)**

Facts/Procedural History: Defendant was convicted of a misdemeanor crime of domestic violence, which made him a prohibited person under 18 U.S.C. § 922(g)(9). He later attempted to purchase a hunting rifle. He falsely denied his previous misdemeanor crime of domestic violence when filling out his ATF form. The Government indicted Defendant for making a false statement and at trial, the jury found him guilty of knowingly making a false statement.

Issue: At sentencing, Defendant argued for an offense reduction under U.S.S.G. § 2K2.1 (b)(2), which provides: “If the defendant, other than a defendant subject to subsection (a)(1), (a)(2), (a)(3), (a)(4), or (a)(5), possessed all ammunition and firearms solely for lawful sporting purposes or collection, and did not unlawfully discharge or otherwise unlawfully use such firearms or ammunition, decrease the offense level determined above to level 6.” The Government argued against the reduction because Defendant never possessed the gun.

Holding: The district court agreed with Defendant and permitted a sentence reduction under U.S.S.G. § 2K2.1 because he intended to use the firearm solely for lawful sporting purposes. The district court noted that § 2K2.1 (b)(2) can be read to permit reduction not only for actual possessors but also those who attempted to acquire a firearm for sporting purposes. There was evidence that Defendant attempted to purchase a hunting rifle, had no criminal history relating to offenses involving firearms, and there was no indication that his possession was restricted by local law. Considering his familial history, his attempt to acquire a firearm for hunting, and his attempts to verify if it was appropriate to get a gun, even if Defendant knew he was a prohibited person under § 922(g)(9), the district court deemed probation sufficient but not greater than necessary to satisfy the purposes of sentencing.

Key Issue(s): Sentencing; False Statement

***United States v. Donovan*, 410 F. App’x 979 (7th Cir. 2011)**

Facts/Procedural History: Defendant was on probation for domestic violence, when he was arrested again for a domestic altercation. At his arrest, he had an AK-47 at the scene, which was recovered. Defendant was charged with violating 18 U.S.C. § 922(g)(9) and pled guilty. He was sentenced to 46 months’ imprisonment and three years of supervised release. Defendant appealed.

Issue: Defendant argued that § 922(g)(9) violated the Second Amendment because § 922(g)(9) would restrict his use of firearms for hunting/sport purposes. He further argued that the Government had not shown a reasonable connection between prohibiting his possession of firearms and the government's goal of reducing the use of firearms in perpetrating violence against domestic partners.

Holding: The Seventh Circuit affirmed the district court's sentence, finding that although Defendant's guilty plea did not waive his right to a constitutional challenge under the *Blackledge-Menna* exception ("the right not to be hauled into court at all upon the felony charges"), his argument under the Second Amendment was precluded by the Seventh Circuit's recent decision in *United States v. Skoien*, 614 F.3d 638 (7th Cir. 2010), finding a reasonable connection between prohibiting the possession of firearms by those convicted of a misdemeanor crime of domestic violence and the government's goal of preventing the use of firearms against victims of domestic violence.

Key Issue(s): Second Amendment

United States v. Skoien, 614 F.3d 638 (7th Cir. 2010)

Facts/Procedural History: A grand jury indicted Defendant for possessing a firearm in violation of 18 U.S.C. § 922(g)(9). He was sentenced to 24 months' imprisonment. On appeal, Defendant successfully argued to remand the case back to the district court, for the Government to properly establish a reasonable fit between the regulation and the government interest. The Government filed a petition for rehearing.

Issue: On rehearing en banc, Defendant continued to argue that § 922(g)(9) was unconstitutional under the Second Amendment, relying on *Heller*. Defendant also argued that the perpetual prohibition of the possession of firearms for a misdemeanor conviction was unjust, as an individual may pose less risk to others with the passage of time.

Holding: The Seventh Circuit found that categorical limitations on the possession of firearms was valid under the Second Amendment and *Heller*, noting that categorical limitations are not a constitutional anomaly. The Seventh Circuit also held that § 922(g)(9) did not impose perpetual disarmament, because convicted individuals had the option to pursue pardon, expungement or the restoration of their civil rights (depending on state law). The Seventh Circuit also took note of Defendant's continuing risk to his domestic partners, given his two convictions for domestic violence, referring to the high recidivism rate of domestic abusers and the established fact that firearms in domestic situations cause injury or death.

Note: Cert. denied by *Skoien v. United States*, No. 10-7005, 2011 LEXIS 2138 (2011).

Key Issue(s): Second Amendment; Perpetual Disarmament

***State v. Baldauf*, 652 N.W.2d 133 (Wis. Ct. App. 2002)**

Facts/Procedural History: Defendant was charged with misdemeanor battery. At his first appearance, Defendant was told of his right to counsel but decided to proceed without an attorney. He then failed to appear at a pretrial conference and was arrested. Defendant appeared pro se at the jury trial and pled no contest to a reduced charge of disorderly conduct. The trial court did not inform Defendant of potential consequences under 18 U.S.C. § 922(g)(9), but reaffirmed that Defendant wanted to proceed pro se. Defendant was convicted. Defendant, then with counsel, sought to withdraw his plea of no contest, stating that he did not fully understand the benefits of counsel, and he was not warned of the § 922(g)(9) prohibition. The trial court denied Defendant's request to withdraw his plea, as he was properly advised about the benefits of counsel, and the trial court was not required to warn Defendant of the federal firearms prohibition given it was not a direct consequence of the conviction. Defendant appealed.

Issue: Defendant argued that he did not validly waive his right to counsel.

Holding: The appellate court rejected Defendant's argument. The trial court advised Defendant of his right to counsel multiple times, and Defendant responded that he understood. The appellate court further held that the trial court was not required to advise Defendant of this prohibition since the trial court made no explicit factual determination that Defendant's disorderly conduct conviction was related to domestic violence. Moreover, the appellate court held that the prohibition was not an "automatic consequence" of the guilty plea and was a collateral, not a direct, consequence.

Key Issue(s): Voluntariness of Guilty Plea; Collateral Consequences

***United States v. Brown*, 235 F. Supp. 2d 931 (S.D. Ind. 2002)**

Facts/Procedural History: Defendant was indicted for possessing firearms in violation of 18 U.S.C. § 922(g)(9) and for knowingly providing false information in connection with the purchase of a firearm on ATF Form 4473 when he answered "no" to a question about whether he had a prior conviction. Defendant moved to dismiss both counts.

Issue: Defendant argued that though he was convicted of a misdemeanor domestic violence under Indiana law, it was not a qualifying conviction because his civil rights had been restored under 18 U.S.C. § 921(a)(33)(B)(ii). The Government argued that Defendant had not been deprived of his civil rights as a result of the conviction, and so the exception in 18 U.S.C. § 921(a)(33)(B)(ii) was not applicable.

Holding: The district granted Defendant's motion, finding Defendant not disqualified under § 922(g)(9). The district court held that courts cannot disregard the plain meaning of a congressional statute, even if it produces results contrary to the legislative intent.

Key Issue(s): Rights Restoration

Gillespie v. Indiana, 736 N.E.2d 770 (Ind. App. 2000)

Facts/Procedural History: Defendant, a former Indianapolis police officer, was convicted in 1995 of a qualifying misdemeanor crime of domestic violence pursuant to a plea agreement and was terminated by the police department. Defendant filed motions for post-conviction relief and to withdraw his guilty plea in state court. The motions were denied, and Defendant appealed.

Issue: Defendant argued: (1) 18 U.S.C. § 922(g)(9) was “new evidence not available at the time of his conviction”; (2) the trial court’s inability to advise him of the law resulted in an unintelligent and involuntary plea; and (3) the trial court erred by not allowing him to withdraw his guilty plea because he had not been fully advised of the consequences of the plea.

Holding: The appellate court rejected all three arguments. The court held that the enactment of the federal law did not cast doubt on the inference that Defendant was guilty of felonious assault and so could not have produced a different result at trial. The court also held that the court is not required to advise a defendant of collateral or potential consequences of a guilty plea. The court rejected Defendant’s third argument for the same reasons it rejected the two other arguments.

Key Issue(s): Voluntariness of Guilty Plea

Gillespie v. City of Indianapolis, 185 F.3d 693 (7th Cir. 1999)

Facts/Procedural History: Defendant, an employee of the Indianapolis Police Department, lost his job because he was no longer able to carry a firearm, pursuant to 18 U.S.C. § 922(g)(9). In October 1995, Defendant pled guilty to a misdemeanor charge of battery involving his former wife, which constituted a misdemeanor crime of domestic violence for purposes of § 922(g)(9). Defendant challenged the new federal firearms ban on several constitutional grounds, each of which the district court rejected. Defendant appealed.

Issue: Defendant argued that 18 U.S.C. § 922(g)(9) violated (i) the Tenth Amendment by intruding upon an area of authority reserved to the States,” (ii) the due process clause of the Fifth Amendment because the statute implicated a fundamental right (the right to bear arms under the Second Amendment), so the district court should have applied the strict scrutiny standard of review, and (iii) the Second Amendment.

Holding: The court held the statute did not violate the Tenth Amendment because Congress clearly had the power to regulate interstate commerce, and the statute included the requisite jurisdictional element (firearms “in or affecting commerce”). The court also rejected Defendant’s Fifth Amendment argument that the statute implicates a fundamental right and then determined that the statute withstood rational basis review because Congress could have rationally concluded that those who have been convicted of misdemeanor crimes of domestic violence have the highest

likelihood of using a firearm to harm a family member. Finally, the court rejected Defendant's Second Amendment because he did not demonstrate a "reasonable relationship between his inability to carry a firearm and the preservation of a well-regulated militia."

Note: As of the date of this 2025 update, this case has received direct negative treatment.

Key Issue(s): Tenth Amendment; Due Process (Notice); Second Amendment

State v. Molzner, 600 N.W.2d 56 (Wis. Ct. App. 1999)

Facts/Procedural History: Defendant was charged with misdemeanor disorderly conduct following an incident involving his wife. He entered a guilty plea without legal representation and was sentenced to probation. Subsequently, Defendant sought to withdraw his plea.

Issue: Defendant argued that he was unaware his conviction would trigger a federal ban on firearm possession under 18 U.S.C. § 922(g)(9), and that the federal firearm prohibition constituted a direct consequence of Defendant's guilty plea—necessitating advisement, rather than a collateral consequence which did not require the court to inform the defendant.

Holding: The appellate court rejected Defendant's argument and held that the effect of the federal law was a collateral consequence about which a court was under no obligation to advise the Defendant as to its effect. In finding that the Defendant's status under § 922(g)(9) was a collateral consequence, the appellate court held that the federal statute did not have "a definite, immediate and automatic effect on the Defendant's range of punishment for domestic disorderly conduct."

Key Issue(s): Voluntariness of Guilty Plea; Collateral Consequences

United States v. Lewitzke, 176 F. 3d 1022 (7th Cir. 1999)

Facts/Procedural History: Defendant was convicted of possessing six firearms in violation of 18 U.S.C. § 922(g)(9). At trial, Defendant argued that the guns found in his home were left there by his father, brother, and friends, since they regularly stopped by to engage in recreational target shooting. Defense witnesses testified that Defendant was aware that he was no longer permitted to possess firearms due to his prior domestic violence conviction, and that Defendant surrendered possession of all of his guns to his father. Defendant was convicted, then appealed.

Issue: Defendant argued that the statute irrationally barred persons convicted of misdemeanor crimes of domestic violence from possessing firearms, in violation of the Equal Protection Clause.

Holding: The Seventh Circuit affirmed the constitutionality of § 922(g)(9), finding that the statute did not violate the Equal Protection Clause. Applying the rational basis test, the Seventh Circuit found that the rationale for keeping guns out of the hands of those convicted of domestic violence was "eminently reasonable," and Congress could have reasonably believed that such individuals could resort to violence again.

Key Issue(s): Equal Protection

Eighth Circuit (Arkansas, Iowa, Missouri, Minnesota, Nebraska, North Dakota, South Dakota)

United States v. Bernard, 136 F.4th 762 (8th Cir. 2025)

Facts/Procedural History: Defendant was convicted in state court of domestic abuse assault causing injury. Nearly 20 years later, officers searched Defendant's residence and seized six firearms, nearly 50 firearm magazines, and over 4,000 rounds of ammunition. Defendant was then charged with a violation of 18 U.S.C. § 922(g)(9) for possessing firearms after having been convicted of a misdemeanor crime of domestic violence. Defendant initially pled guilty. Defendant then moved to withdraw his plea and dismiss the indictment, arguing that § 922(g)(9) was unconstitutional on its face because there was no historical tradition supporting a lifetime ban on the possession of firearms by people convicted of a misdemeanor offense. The district court denied the motion. Defendant appealed.

Issue: On appeal, Defendant challenged the constitutionality of § 922(g)(9) on its face.

Holding: The Eighth Circuit held that § 922(g)(9) was facially constitutional because there was a historical tradition of disarming those who posed a clear threat to the physical safety of others. Further, the Eighth Circuit held that the permanence of the ban did not mean it was facially unconstitutional because given the historical tradition of regulating firearms possession by those who present a credible threat of safety to others, a permanent or indefinite prohibition on gun possession by convicted domestic abusers was not unconstitutional on its face. Additionally, not all applications of § 922(g)(9) were permanent given possession rights could be restored via pardon or petition.

Key Issue(s): Second Amendment; Permanent Ban

***United States v. Denis*, No. 24-03099-01-CR-S-BCW, 2025 WL 913635 (W.D. Mo. Mar. 18, 2025), report and recommendation adopted, No. 6:24-CR-03099-BCW-1, 2025 WL 904396 (W.D. Mo. Mar. 25, 2025)**

Facts/Procedural History: In 2020, Defendant was indicted for possession of firearms in violation of 18 U.S.C. § 922(g)(9) and for making false statements during firearm purchases in violation of § 922(a)(6). Defendant had previously pled guilty to misdemeanor domestic assault in 2003 for “recklessly caus[ing] physical injury to [his] victim by pulling her hair.” Defendant moved for relief based on the Ex Post Facto Clause.

Issue: Defendant argued that application of § 922(g)(9) to his 2003 misdemeanor conviction involving reckless conduct violated the Ex Post Facto Clause and his due process rights because the meaning of misdemeanor crime of domestic violence had changed after his misdemeanor conviction following the Supreme Court’s decision in *Voisine v. United States*, 579 U.S. 686 (2016).

Holding: The magistrate judge denied Defendant’s motion to dismiss, and the district court adopted the magistrate judge’s report and recommendation. First, the magistrate judge held that the Ex Post Facto Clause did not apply to judicial decisions, and therefore the Supreme Court’s decision in *Voisine*, which determined that the definition of a misdemeanor crime of domestic violence contained no exclusion for convictions based on reckless behavior, provided no basis for dismissal of Defendant’s indictment. Second, the magistrate judge rejected Defendant’s due process challenge because *Voisine* was not an “unforeseeable and retroactive judicial expansion of statutory language” since it merely clarified the meaning of § 922(g)(9) as intended by Congress. Finally, the magistrate judge concluded that, even if the Ex Post Facto Clause applied to the *Voisine* decision, Defendant’s argument would still fail because there is no violation of the Ex Post Facto Clause when a law punishes conduct that occurs after the law was changed and Defendant’s firearm possession occurred over four years after *Voisine* was decided.

Key Issue(s): Ex Post Facto Clause; Due Process Clause

***State v. Kieffer*, 17 N.W.3d 651 (Iowa 2025)**

Facts/Procedural History: Defendant was convicted of domestic abuse assault after strangling his girlfriend. During Defendant’s sentencing, the trial court issued a no-contact order and a separate “notice of firearms prohibition” (Brady Notice) under state law that prohibited Defendant from possessing firearms. Defendant appealed his conviction and firearm prohibition.

Issue: Defendant argued, among other things, that the firearm prohibition violated his Second Amendment rights.

Holding: The Iowa Supreme Court affirmed Defendant's conviction and firearm prohibition. The Iowa Supreme Court noted that Defendant's conviction was considered a misdemeanor crime of domestic violence under 18 U.S.C. § 922 (g)(9) that would criminalize future possession of firearms. The United States Supreme Court in *Rahimi* surveyed the Nation's historical tradition of firearm regulation and concluded that temporary disarmament of individuals posing a threat of physical violence to another was permitted. The Iowa Supreme Court further observed that federal courts since *Rahimi* have affirmed the constitutionality of § 922(g)(9). Accordingly, the firearm prohibition in Defendant's sentencing order did not offend the Second Amendment under the current landscape of federal jurisprudence.

Key Issue(s): Second Amendment

***United States v. Denis*, No. 6:24-CR-03099-BCW-1, 2025 WL 317283, 2024 U.S. Dist. LEXIS 238665 (W.D. Mo. Dec. 27, 2024)**

Facts/Procedural History: Defendant was indicted on, among other things, one count of possession of a firearm by a person convicted of a misdemeanor crime of domestic violence, in violation of 18 U.S.C. § 922(g)(9). The underlying conviction involved a guilty plea to third-degree domestic assault for recklessly pulling the hair of the mother of his child. Defendant moved to dismiss the indictment.

Issue: Defendant argued that § 922(g)(9) was unconstitutional on three grounds: (1) it violated the Second Amendment (facially and as applied); (2) it was unconstitutionally vague under the Fifth Amendment; and (3) it was overbroad in violation of due process.

Holding: The magistrate judge recommended denying Defendant's motion to dismiss. The magistrate judge found that the statute: (1) did not violate the Second Amendment under *Bruen* and *Rahimi* because it aligned with the historical tradition of disarming individuals who posed a threat to others, including domestic violence misdemeanants; (2) was not void for vagueness, as its terms were clearly defined in 18 U.S.C. § 921(a)(33) and have been upheld by both the Supreme Court and the Eighth Circuit; and (3) was not overbroad on its face as the overbreadth doctrine did not apply in the Second Amendment context and the statute was constitutionally applied as to Defendant.

Key Issue(s): Fifth Amendment; Second Amendment; Due Process

***United States v. Head*, No. 5:23-CR-50147-RAL, 2024 U.S. Dist. LEXIS 39677 (D.S.D. Jan. 11, 2024)**

Facts/Procedural History: Defendant was charged with possession of a firearm by a prohibited person in violation of 18 U.S.C. §§ 922(g)(1), 922(g)(9), and 924(a)(8). Defendant filed a motion to dismiss the indictment but did not address § 922(g)(9) in his motion.

Issue: Defendant argued that 18 U.S.C. § 922(g)(1) violated the Second Amendment and should be dismissed. Defendant acknowledged that the Eighth Circuit had recently upheld the constitutionality of § 922(g)(1) under the *Bruen* framework but sought to preserve his arguments for further review in the event the Supreme Court overruled the Eighth Circuit’s decision.

Holding: The magistrate judge recommended denying the motion to dismiss. The magistrate judge found that the Eighth Circuit’s decision in *United States v. Jackson*, 69 F.4th 495 (8th Cir. 2023), upholding the constitutionality of § 922(g)(1), remained binding precedent. The magistrate judge also noted that other courts in the circuit had applied the reasoning from *Jackson* to uphold the constitutionality of § 922(g)(9), finding that individuals convicted of domestic violence offenses were not “law-abiding citizens” within the scope of *Bruen* and *Heller*.

Key Issue(s): Second Amendment (*Bruen*, *Heller*)

***United States v. Brooks*, No. CR23-53-LTS-MAR, 2023 U.S. Dist. LEXIS 204454 (N.D. Iowa Nov. 15, 2023)**

Facts/Procedural History: Defendant was indicted for illegally possessing a firearm in violation of 18 U.S.C. § 922(g)(9) based on a 1999 felony drug conviction and a 1991 misdemeanor domestic violence conviction. Defendant moved to dismiss the indictment pursuant to *Bruen*. A magistrate judge filed a report and recommendation to deny the motion, and Defendant filed objections to the report and recommendation.

Issue: Defendant argued that § 922(g)(9) was facially unconstitutional under the Second Amendment because it was inconsistent with the nation’s traditional regulation of the possession of firearms, which did not involve firearm regulation for domestic violence perpetrators.

Holding: The district court overruled Defendant’s objections, accepted the magistrate judge’s report and recommendation without modification, and denied the motion to dismiss the indictment. The district court concluded that § 922(g)(9) is consistent with the nation’s historical tradition of firearm regulation based on past regulations applied to “dangerous persons” as well as felons, finding sufficient similarity between domestic violence perpetrators and felons in general.

Key Issue(s): Second Amendment

***United States v. Jones*, No. 22-CR-2047, 2023 U.S. Dist. LEXIS 206276 (N.D. Iowa Nov. 17, 2023)**

Facts/Procedural History: In September 2022, a grand jury indicted Defendant with illegally possessing a firearm in violation of 18 U.S.C. § 922(g)(9), among other charges. Defendant was not arrested pursuant to the indictment until September 2023 because Defendant was in state custody for a separate offense. One month later, the district court appointed counsel and Defendant had his initial appearance and arraignment that same day. Defendant moved to dismiss the indictment.

Issue: Defendant argued that the one year delay between his indictment and his arrest violated his Sixth Amendment right to a speedy trial.

Holding: The district court denied Defendant's motion. The district court found that, because the delay from indictment to arrest was not caused by the Government, but due to Defendant's multiple requests for continuances in his state proceedings, the delay was not presumptively prejudicial and therefore did not violate his Sixth Amendment right.

Key Issue(s): Sixth Amendment

***United States v. Brooks*, No. 23-CR-53, 2023 U.S. Dist. LEXIS 206324 (N.D. Iowa 2023)**

Facts/Procedural History: In 2023, Defendant was indicted with illegally possessing a firearm in violation of 18 U.S.C. § 922(g)(9) based on a 1991 misdemeanor domestic violence conviction. Defendant filed a motion to dismiss the indictment.

Issue: Defendant argued that § 922(g)(9) was unconstitutional on its face and as applied to Defendant under *Bruen*.

Holding: The magistrate judge's Report and Recommendation concluded that Defendant's facial challenge to § 922(g)(9) failed but recommended the district court hold his as-applied challenge in abeyance until trial. With respect to Defendant's facial challenge, the magistrate judge cited *United States v. Bena*, 664 F.3d 1180 (8th Cir. 2011), a pre-*Bruen* case that upheld the similar provision § 922(g)(8) in part because of historical evidence of the common-law tradition of imposing firearm restrictions on "citizens who are not law-abiding and responsible." The magistrate judge agreed with another district court case's observation that such facial constitutional challenges to § 922(g)(9) must fail if *Bena* is still good law. The magistrate judge further concluded that the facial challenge also fails under *Bruen*. The magistrate judge observed that courts have diverged on the textual analysis of what constitutes "the people" in the text of the Second Amendment but found that the fact that a person is not law-abiding should inform whether the Second Amendment protects their conduct, not whether they are considered part of the "people" the Second Amendment protects.

Accordingly, magistrate judge concluded that historical evidence of regulations on gun ownership by dangerous persons sufficiently supported regulations on domestic abusers, who are similarly dangerous and prone to violence. In recommending the district court hold Defendant's as-applied challenge in abeyance, the magistrate judge reasoned that it was possible that Defendant's past convictions did not qualify as misdemeanor crimes of domestic violence under § 922(g)(9).

Key Issue(s): Second Amendment (*Bruen*)

***United States v. Springer*, No. 23-CR-1013, 2023 U.S. Dist. LEXIS 134957 (N.D. Iowa 2023)**

Facts/Procedural History: In 2023, Defendant was indicted for illegally possessing a firearm under 18 U.S.C. § 922(g)(9), as well as other drug offenses. The indictment alleged that Defendant possessed handguns on two separate occasions after he had previously been convicted of a misdemeanor crime of domestic violence. Defendant moved to dismiss the indictment.

Issue: Defendant argued that 18 U.S.C. § 922(g)(9) was facially unconstitutional under *Bruen* because it was inconsistent with the nation's historical tradition of firearm regulation.

Holding: The district court denied the motion, holding that § 922(g)(9) was consistent with the nation's traditional regulation of possession of firearms by criminals and was therefore constitutional under *Bruen*. The district court also addressed Defendant's attempt to distinguish a prior case in which the same district court upheld the constitutionality of § 922(g)(9) by asserting that he had not demonstrated a proclivity toward violence since he had only one prior domestic assault conviction. The district court rejected Defendant's argument on the ground that proclivity was not proven only by a pattern of conduct and stated, "We need not wait, as a society, for defendant to repeatedly beat women to find he has a proclivity toward violence such that we should bar him from possessing firearms."

Key Issue(s): Second Amendment

***State v. D. H. S.*, No. A20-0966, 2021 WL 1082342 (Minn. Ct. App. Mar. 22, 2021)**

Facts/Procedural History: Defendant was convicted of misdemeanor fifth-degree assault of his wife in 1991. In February 2020, he filed a petition for an expungement of his conviction. At the hearing on his request for expungement, the Government objected to the petition, arguing that Defendant's conviction provides for a lifetime firearms ban under 18 U.S.C. § 922(g)(9) and an expungement would make it difficult to enforce such a prohibition. The trial court denied the request for expungement, finding that Defendant "ha[d] failed to establish by clear and convincing evidence

that expunging [his] record would yield a benefit to [him] commensurate with the disadvantages to the public and public safety of sealing the record and burdening the court and authorities to issue, enforce, and monitor an expungement order.” Defendant appealed.

Issue: On appeal, Defendant argued that the § 922(g) ban should not apply to him because it was enacted after his conviction and therefore violated the U.S. Constitution’s prohibition against ex post facto laws.

Holding: The appellate court affirmed the decision of the trial court. Relying on *State v. Grillo*, 661 N.W.2d 641 (Minn. App. 2003), the appellate court reasoned that 18 U.S.C. § 922(g)(9) applied to future, not past conduct, so it was not an ex post facto law and was not unconstitutional, either facially or as applied to Defendant.

Key Issue(s): Applying §922(g)(9) to a Sentence Enacted Before 1996; Ex Post Facto

***United States v. Hamilton*, No. 20-1582, 2021 WL 451030 (8th Cir. 2021)**

Facts/Procedural History: Defendant pled guilty to being a felon in possession of a firearm under 18 U.S.C. § 922(g)(9). The district court sentenced Defendant to 180 months of imprisonment after concluding that Defendant’s three prior convictions for Minnesota recidivist domestic assault qualified as violent felonies, triggering a sentence enhancement under the Armed Career Criminal Act (ACCA). Defendant appealed.

Issue: On appeal, Defendant argued that his domestic assault convictions were not violent felonies under the ACCA, and that when determining whether a crime qualified as a felony under the ACCA, a court should look to the punishment prescribed for the conduct that constituted the crime without any recidivism enhancements.

Holding: The Eighth Circuit affirmed the district court’s sentencing. The Eighth Circuit rejected Defendant’s argument in reliance on *United States v. Perry*, 908 F.3d 1126 (8th Cir. 2018), which held that a Minnesota domestic-assault conviction was a violent felony because it required force.

Key Issue(s): Sentencing Enhancement

***United States v. Sanders*, 956 F.3d 534 (8th Cir. 2020)**

Facts/Procedural History: Officers were called to the residence of Defendant’s girlfriend in response to a report of domestic disturbance between Defendant and his girlfriend. The officers entered the residence after hearing crying to ensure that everyone in the residence was safe. A minor in the home reported to the officers that Defendant had a gun in his hand when he was fighting with his girlfriend. Police looked for the gun in the residence and found it in a couch. Defendant was

arrested on state domestic assault charges, and a no-contact order was issued. Defendant entered a conditional guilty plea to being a prohibited person in possession of a firearm under §§ 922(g)(9), 922(g)(1), and 924(a)(2). Defendant moved to suppress the firearm that the officers found in the residence while responding to the domestic disturbance at the residence. The district court denied the motion and applied a two-level enhancement to Defendant's sentencing. Defendant appealed.

Issue: On appeal, Defendant argued that the firearm must be suppressed because the officers' initial warrantless entry into the residence was not supported by the community caretaker exception and, once inside, their search for a firearm was not supported by exigent circumstances. Defendant further argued that there was insufficient evidence to support the district court's sentence enhancement.

Holding: The Eighth Circuit affirmed the decision of the district court. The Eighth Circuit held that the officers had a reasonable basis to enter the house without a warrant and that the scope of the encounter was carefully tailored to satisfy the officers' purpose for entry. The Eighth Circuit based its opinion on the community caretaker exception to the warrant requirement, finding that such an invasion was reasonable if the Government's interest in entering, based on specific and articulable facts, outweighed an individual's interest in freedom from the government intrusion. The officers had reason to believe, based on the facts known at the time, that the safety of the minors and Defendant's girlfriend inside the residence was at risk. Thus, the Eighth Circuit concluded that the officer's warrantless entry was justified. As to the scope of the search, the Eighth Circuit further held that the officers had an objectively reasonable belief there was a gun in the house and conducted a limited search out of legitimate concern for safety. Finally, the Eighth Circuit affirmed the district court's sentence enhancement, finding that a statement Defendant made to his girlfriend that her comments about the domestic incident "need to go away" sufficiently supported the enhancement.

Note: As of the date of this 2025 update, this case has received direct negative treatment.

Key Issue(s): Fourth Amendment (Exception to Warrant Requirement)

United States v. Long, 870 F.3d 741 (8th Cir. 2018)

Facts/Procedural History: Defendant was convicted of being a prohibited person in possession of a firearm in violation of § 922(g)(9), among other charges. Defendant had previously pled guilty to an offense of domestic abuse in tribal-court. Defendant claimed that his counsel in tribal-court was not a licensed attorney or law school graduate and alleged that he could not find the counsel's name in the State Bar of South Dakota's Membership Directory. Defendant moved to dismiss the prohibited person count, and the district court denied the motion. Defendant appealed.

Issue: On appeal, Defendant argued that his underlying tribal-court conviction for domestic violence was obtained without counsel and thus could not qualify as a predicate conviction for the purposes of § 922(g)(9).

Holding: The Eighth Circuit affirmed the district court's order. The Eighth Circuit found that Defendant was represented by lay counsel and did not challenge whether his counsel was licensed to practice in the tribal court. Because the right to counsel could be fulfilled either by a professional attorney or by lay counsel in tribal court, the Eighth Circuit concluded that Defendant's domestic violence conviction constituted a valid predicate offense under § 922(g)(9).

Key Issue(s): Right to Counsel Requirement; Valid Predicate Offense; Tribal Court

United States v. Guide, 891 F.3d 744 (8th Cir. 2018)

Facts/Procedural History: In 2013, Defendant pled guilty in South Dakota state court to misdemeanor simple assault–domestic abuse. Defendant, a native Karen speaker with limited English proficiency, was provided with interpreter services and court forms in his native language. In 2015, law enforcement officers discovered a firearm in Defendant's vehicle, and he was charged under 18 U.S.C. § 922(g)(9) as a prohibited person in possession of a firearm. Defendant moved to dismiss the indictment, and the district court denied the motion. Defendant appealed.

Issue: On appeal, Defendant argued that his 2013 misdemeanor conviction could not serve as a predicate offense under § 922(g)(9) because he did not knowingly waive his right to a jury trial and did not understand the nature of the proceedings when he entered his guilty plea.

Holding: The Eighth Circuit affirmed the district court's denial of the motion to dismiss. The Eighth Circuit held that Defendant knowingly and voluntarily waived his right to a jury trial in the 2013 proceedings based on evidence that Defendant's attorney routinely advised clients of their jury trial rights and that Defendant received waiver forms in his native language. Accordingly, the Eighth Circuit concluded that the 2013 conviction qualified as a misdemeanor crime of domestic violence under § 922(g)(9).

Key Issue(s): Right to Jury Trial Requirement

United States v. Hayes, No. 5:14-CR-04082, 2017 WL 1955334 (N.D. Iowa May 11, 2017)

Facts/Procedural History: Defendant was convicted of two counts arising from the same incident of possessing a single firearm: possession of a firearm by a felon under 18 U.S.C. § 922(g)(1) and possession of a firearm by a prohibited person under 18 U.S.C. § 922(g)(9). Defendant moved to dismiss, requesting that the court vacate one of the convictions and/or grant a new trial. The

magistrate judge issued a report and recommendation to deny the motion to dismiss and request for new trial, reasoning that the two counts could be merged for sentencing purposes. Defendant filed an objection to the magistrate judge's report and recommendation.

Issue: Defendant argued that his convictions under both §§ 922(g)(1) and 922(g)(9) were multiplicitous because they arose from the same incident in violation of *United States v. Richardson*, 439 F.3d 421 (8th Cir. 2006).

Holding: The district court granted the motion to dismiss but denied the request for a new trial. The district court held that the charges were multiplicitous and should not have been permitted in the indictment. The district court found that prosecution on multiple counts for the same conduct arising from the same incident violated the Double Jeopardy Clause. The district court further noted that, in the future, alternative means of violating a statute should be charged in a single count. However, because the district court found that there was no prejudice to the Defendant as a result of the two charges, the district court held that a new trial was unnecessary.

Key Issues: Multiplicitous Charges and Double Jeopardy

United States v. Horse Looking, 828 F.3d 744 (8th Cir. 2016)

Facts/Procedural History: Defendant was charged in South Dakota state court with simple assault of his then-wife in violation of S.D. Codified Laws § 22–18–1. Defendant admitted to pushing his then-wife and pled guilty. Three years later, he was indicted for possession of a firearm by a prohibited person under 18 U.S.C. § 922(g)(9). Defendant moved to dismiss the indictment. The district court denied the motion, and Defendant appealed.

Issue: Defendant argued that the district court erred in construing his guilty plea as a conviction under the portion of § 22–18–1 that included a force element because the plea did not specify which section of the statute formed the basis for the conviction.

Holding: The Eighth Circuit reversed the district court's order. The Eighth Circuit held that it was not possible to determine which section of § 22–18–1 formed the basis for Defendant's underlying conviction. Although Defendant's conduct could have supported a conviction under a subsection requiring the use of physical force, the record did not establish that he was in fact convicted under that subsection. Because the conviction did not necessarily involve the use of physical force, the Eighth Circuit held that it could not qualify as a misdemeanor crime of domestic violence under § 922(g)(9).

Key Issue(s): Elements of Misdemeanor Crime of Domestic Violence; Physical Force Requirement

***United States v. Parrow*, 844 F.3d 801 (8th Cir. 2016)**

Facts/Procedural History: Defendant pled guilty to being a prohibited person in possession of a firearm under 18 U.S.C. § 922(g)(9) based on a prior conviction for Domestic Abuse–Strangulation under Minn. Stat. § 609.2247. The district court sentenced Defendant to 77 months’ imprisonment, finding that the predicate offense qualified as a “crime of violence” and that it was committed in connection with another felony offense. Defendant appealed.

Issue: On appeal, Defendant argued that Domestic Abuse–Strangulation was not a “crime of violence” under the Sentencing Guidelines and that his other felony offense under Iowa Code § 724.4(1) could not support a sentencing enhancement because it was also a firearms possession offense.

Holding: The Eighth Circuit affirmed the sentence. Applying the categorical approach, the Eighth Circuit examined the elements of Minn. Stat. § 609.2247 and found that a conviction requires proof that the defendant knowingly impeded the victim’s normal breathing or circulation of blood by applying pressure to the throat or blocking the nose or mouth. The Eighth Circuit held that such conduct necessarily involved the use of force capable of causing physical pain or injury and therefore qualified as a “crime of violence” under § 4B1.2(a)(1) of the Sentencing Guidelines. The Eighth Circuit further held that Defendant’s other felony offense under Iowa Code § 724.4(1) also supported his sentence enhancement because it was possible to be in violation of § 922(g)(9) without committing the Iowa firearms offense, which prohibited carrying *concealed* firearms.

Key Issue(s): Sentencing Enhancements

***United States v. Smith*, 820 F.3d 356 (8th Cir. 2016)**

Facts/Procedural History: Police responded to a call about a missing woman who had not returned as scheduled and might have been held against her will by Defendant, despite a no-contact order. Officers went to Defendant’s residence and, after he refused to consent to a search of his residence, arrested him on outstanding warrants. Believing the missing woman might be inside and in danger, officers entered the home without a warrant and found the woman unrestrained in a bedroom, along with an AK-47 partially covered by a bed sheet. Defendant was indicted for possession of a firearm by a prohibited person under 18 U.S.C. § 922(g)(9). He moved to suppress the firearm, arguing the warrantless entry violated his Fourth Amendment rights. The district court denied the motion, concluding that the entry was justified under the community caretaking exception and that the firearm was admissible under the plain view doctrine. Defendant pled guilty and appealed.

Issue: On appeal, Defendant argued that the district court erred in denying his motion to suppress because the officers’ warrantless entry was not justified by the community caretaking exception and violated his Fourth Amendment rights.

Holding: The Eighth Circuit affirmed the district court’s denial of the motion to suppress. The Eighth Circuit held that the officers had a reasonable belief, based on specific and articulable facts, that the missing woman could be in danger and required their immediate assistance, justifying entry under the community caretaking function. The Eighth Circuit also found that the officers’ actions were carefully tailored to that purpose and that the AK-47, partially visible on the bed where the woman was found, was lawfully seized under the plain view doctrine.

Key Issue(s): Fourth Amendment; Community Caretaking Exception; Plain View Doctrine

***United States v. Hayes*, No. CR14-4082-MWB, 2015 WL 8482749 (N.D. Iowa Dec. 9, 2015)**

Facts/Procedural History: Defendant was charged with being a felon in possession of a firearm with an obliterated serial number and possessing a firearm after having been convicted of a misdemeanor crime of domestic violence in violation of 18 U.S.C. §§ 924(a)(2) and 922(g)(9). Defendant was found to be in the possession of a Mossberg Model 500AB, 12 gauge shotgun. Defendant moved to dismiss the charges.

Issue: Defendant argued that he could not be charged with possession of a firearm because the Mossberg shotgun did not meet the statutory definition of “firearm” under § 921.

Holding: The district court denied the motion to dismiss. The district court held that under § 921(a)(3), a “firearm” included any weapon designed to expel a projectile by the action of an explosive, and that although § 921(a)(4)(B) excluded certain shotguns from the definition of “destructive device,” there was no similar exclusion for shotguns in the definition of “firearm.” The district court therefore concluded that the Mossberg shotgun qualified as a firearm under the statute.

Key Issue(s): Definition of Firearm

***United States v. England*, No. 1:14-cr-73, 2014 U.S. Dist. LEXIS 141837 (S.D. Ohio Oct. 6, 2014)**

Facts/Procedural History: Defendant was charged with violating 18 U.S.C. §§ 922(g)(9) and 924(a)(2) based on allegations that he possessed firearms and ammunition following a conviction for assault in the fourth degree under Kentucky Revised Statute § 508.030. Defendant maintained that he and the victim were never married, had no familial relationship or child in common, and had never cohabitated as spouses. While Defendant admitted they had a romantic relationship and engaged in sexual relations, he asserted they did not share a residence or expenses. Defendant moved to dismiss the indictment.

Issue: Defendant argued that his prior assault conviction did not qualify as a misdemeanor crime of domestic violence under § 922(g)(9) because (1) the Kentucky statute was a simple misdemeanor assault statute with no reference to domestic violence, and (2) the nature of his relationship with the victim did not meet the definition of “domestic” under 18 U.S.C. § 921(a)(33).

Holding: The district court denied the motion to dismiss. The district court first found that, to qualify as a predicate offense under § 922(g)(9), the misdemeanor crime must include the use or attempted use of physical force as an element, but the existence of a domestic relationship need not be an element of the crime. The district court then held that Defendant’s relationship with the victim sufficiently qualified the assault as a crime of domestic violence under § 921(a)(33)(A)(ii) because the victim fell within the category of persons “similarly situated to a spouse, parent, or guardian” based on her romantic relationship and sexual history with Defendant.

Key Issue(s): Predicate Offense

***United States v. Recker*, No. 12–CR–2003–LRR, 2012 U.S. Dist. LEXIS 124900 (N.D. Iowa Sept. 4, 2012)**

Facts/Procedural History: Defendant was convicted in 1991 for domestic abuse assault and again in 2004 for simple assault. Years later, Defendant was charged with possessing firearms after having previously been convicted of two misdemeanor crimes of domestic violence in violation of 18 U.S.C. § 922(g)(9). Defendant filed a motion requesting that the district court admit certain evidence in support of his defense against the firearms charge.

Issue: Defendant requested that the district court admit evidence to show that (1) Defendant did not use or display a firearm during the misdemeanor crimes of domestic violence and (2) Defendant had a good faith belief that he could lawfully possess a firearm.

Holding: The district court denied the motion to admit evidence. With respect to the first category of evidence, the district court held that whether Defendant used or displayed a firearm during the underlying crimes of domestic violence was not relevant to a firearms charge under § 922(g)(9). With respect to the second category of evidence, the district court held that Defendant’s subjective belief about the lawfulness of his firearm possession was irrelevant because the Government only needed to prove that Defendant knew of the facts constituting the offense, i.e. Defendant’s previous convictions and possession of a firearm, not that Defendant knew his possession was illegal.

Key Issue(s): Relevance of Evidence in Defense of § 922(g)(9) Conviction

***United States v. Allman*, No. 12-CR-30056, 2012 U.S. Dist. LEXIS 135428 (D.S.D. 2012)**

Facts/Procedural History: This case arose out of an altercation on the Rosebud Sioux Tribe Reservation during which two individuals were shot. After the shots were fired, Defendant fled the scene. His vehicle was stopped and searched, and he later made statements to both tribal and federal law enforcement officers. Defendant's criminal history included a prior misdemeanor conviction for domestic violence. He was charged with violating 18 U.S.C. § 922(g)(9) as a prohibited person in possession of a firearm, along with four other assault-related counts. Defendant filed a motion to sever the § 922(g)(9) count from the remaining charges.

Issue: Defendant argued that the § 922(g)(9) count should be severed because evidence of his prior misdemeanor domestic violence conviction would unduly prejudice the jury if tried together with the other assault counts.

Holding: The district court denied the motion to sever. The district court held that a limiting jury instruction restricting consideration of the prior domestic violence incident to the /s§ 922(g)(9) count would be sufficient to prevent unfair prejudice. The court further found that a stipulation acknowledging Defendant's prior conviction, together with the limiting instruction, would allow the § 922(g)(9) charge to be tried with the remaining counts without causing undue prejudice.

Key Issue(s): Severing § 922(g)(9) from Other Charges

***United States v. Fischer*, 641 F.3d 1006 (8th Cir. 2011)**

Facts/Procedural History: In January 2006, Defendant was charged in Nebraska state court with third degree domestic assault for yelling at, striking, and biting the nose of his former girlfriend, who was also the mother of his children. Defendant pled no contest. More than two years later, Defendant's girlfriend reported to the police a domestic disturbance involving Defendant. By Defendant's own admission, he had gotten angry and fired a shotgun. Defendant was charged with possession of a firearm after conviction for a misdemeanor crime of domestic violence under 18 U.S.C. § 922(g)(9). Defendant moved to dismiss the indictment on the ground that his Nebraska conviction was not a misdemeanor crime of domestic violence as defined in § 922(g)(9). The district court denied the motion. Defendant then pled guilty to possession of a firearm in violation of § 922(g)(9) but reserved the right to appeal the district court's denial of his motion to dismiss the indictment.

Issue: On appeal, Defendant argued that his state conviction for third degree attempted assault did not qualify as a misdemeanor crime of domestic violence under 18 U.S.C. § 921(a)(33)(A) because the conviction did not have "as an element, the use or attempted use of physical force."

Holding: The Eighth Circuit affirmed the district court’s order denying the motion to dismiss the indictment. Relying on the documents accepted by the state court as the factual basis for Defendant’s no contest plea for third degree attempted assault, the Eighth Circuit found that the evidence showed Defendant had hit his ex-girlfriend in the face and bit her nose, thus satisfying the force requirement for a qualifying conviction of a misdemeanor crime of domestic violence.

Note: As of the date of this 2025 update, this case has received direct negative treatment.

Key Issue(s): Predicate Offense

United States v. Amerson, 599 F.3d 854 (8th Cir. 2010)

Facts/Procedural History: Defendant pled guilty to attempted domestic assault in a Nebraska state court for slapping his girlfriend and pushing her head into a wall. He was then indicted by a federal grand jury under 18 U.S.C. § 922(g)(9) for the possession of a firearm after being convicted of a misdemeanor crime of domestic violence. The district court denied his motion to dismiss the indictment. After a conditional guilty plea, Defendant was sentenced to 18 months’ incarceration. Defendant appealed the district court’s denial of his motion to dismiss.

Issue: On appeal, Defendant argued (1) that his Nebraska conviction did not involve “use or attempted use of physical force” as required by 18 U.S.C. § 921(a)(33)(A)(ii); (2) that “he did not knowingly and intelligently plead guilty to the state charge, because the state court did not advise him of the possibility of a future firearm conviction” under § 922(g)(9); and (3) that the state court’s failure to disclose the possibility of conviction under § 922(g)(9) violated Nebraska Revised Statute § 29-2291(1).

Holding: The Eighth Circuit affirmed the district court’s conviction. The Eighth Circuit held that (1) the transcript of the plea hearing to which Defendant’s counsel stated he had no objection showed Defendant assented to factual findings that satisfied the force requirement of § 921(a)(33)(A)(ii); (2) the state court had no duty to inform Defendant of consequences of a plea that did not relate to the length or nature of a sentence, and a conviction under § 922(g)(9) was not a direct consequence of his plea; and (3) Nebraska Revised Statute § 29-2291(1) did not become effective until after Defendant’s sentencing and therefore did not apply to his conviction.

Key Issue(s): Predicate Offense; Sentencing; Due Process (Notice)

United States v. Glenn, 403 F. App’x 133 (8th Cir. 2010)

Facts/Procedural History: Defendant was arrested following reports that shots were fired in the hallway outside his apartment and was subsequently convicted of being a felon in possession of a firearm and ammunition in violation of 18 U.S.C. §§ 922(g)(1), 922(g)(9), and 924(a)(2). Defendant appealed his conviction.

Issue: On appeal, Defendant argued, among other things, that there was not enough evidence for the district court to conclude he possessed the firearm and ammunition.

Holding: The Eighth Circuit affirmed the district court, finding that the evidence presented at trial was sufficient to support Defendant's conviction of possession of a firearm and ammunition in violation of 18 U.S.C. §§ 922(g)(1), 922(g)(9), and 924(a)(2). Specifically, the Eighth Circuit concluded that credible witness testimony supported a finding that the Defendant was in possession of a firearm and ammunition, and noted that Defendant did not dispute that he suffered the predicate convictions under the statute or that the firearm and ammunition traveled in interstate commerce.

Key Issue(s): Sufficiency of Evidence

United States v. Yocum, 401 F. App'x 166 (8th Cir. 2010)

Facts/Procedural History: Defendant pled guilty to the possession of firearms following a conviction of a misdemeanor crime of domestic violence and while being a user of controlled substances (marijuana, ecstasy, and crack cocaine), in violation of 18 U.S.C. §§ 922(g)(9) and 922(g)(3). Defendant was sentenced to 87 months' imprisonment for both counts, to be served concurrently. Defendant appealed his conviction and sentencing.

Issue: Defendant argued on appeal that the district court erred in convicting and sentencing him under both §§ 922(g)(9) and 922(g)(3) because both counts arose out of a single incident of firearms possession and therefore he should have only been convicted and sentenced once under § 922(g).

Holding: The Eighth Circuit found plain error on the part of the district court in convicting and sentencing Defendant for two violations under § 922(g) stemming from a single act of firearm possession. The Government conceded the plain error. The Eighth Circuit therefore reversed and remanded the case back to the district court, ordering the two convictions to be merged into a single count and appropriate resentencing take place in accordance with a single conviction.

Key Issue(s): Sentencing; Multiplicitous Charges

United States v. Gammage, 580 F.3d 777 (8th Cir. 2009)

Facts/Procedural History: Defendant was convicted of knowingly possessing a firearm after being convicted of a misdemeanor crime of domestic violence under 18 U.S.C. § 922(g)(9) and was sentenced as an armed career criminal to 180 months. The armed career criminal finding and enhanced sentence arose from the fact that Defendant had already been convicted of three other burglary offenses. Defendant appealed his sentencing.

Issue: On appeal, Defendant argued that the district court erred in concluding that he had been convicted of burglary three times before, and that he therefore should not have been labeled an armed career criminal and given an enhanced sentence.

Holding: The Eighth Circuit reversed and remanded for resentencing, finding that Defendant was not subject to an enhanced sentence since he was not shown to have actually been convicted of three prior offenses. In making this determination, the Eighth Circuit reviewed the district court record and determined that the only evidence of the third burglary conviction was an indictment for burglary.

Key Issue(s): Prior Convictions; Enhanced Sentencing

***United States v. Huntley*, No. CR06-4112-MWB, 2007 WL 778403 (N.D. Iowa Mar. 12, 2007)**

Facts/Procedural History: Defendant was indicted for possession of a firearm following a conviction of a misdemeanor crime of domestic violence in violation of 18 U.S.C. § 922(g)(9) (Counts 1 and 4), distribution of methamphetamine (Count 2), and using a firearm during and in relation to a drug trafficking crime (Count 3). Defendant moved to dismiss Counts 1 and 4 of the indictment.

Issue: Defendant argued that his underlying conviction, a 1995 assault conviction under Iowa Code § 708.1(1), did not constitute a misdemeanor crime of domestic violence for the purposes of § 922(g)(9).

Holding: The district court denied Defendant's motion to dismiss. The district court held that Defendant's guilty plea to assault under Iowa Code § 708.1(1) constituted an offense with an element of physical force under 18 U.S.C. § 921(a)(33)(A)(ii). In so holding, the district relied on the state court judgment, which established that the conviction was under the subsection requiring proof of physical force. The district court also reiterated that § 922(g)(9) did not require that the existence of a domestic relationship be an element of the underlying misdemeanor offense itself; rather, the domestic relationship element must be proven at trial as part of the federal charge.

Key Issue(s): Physical Force Requirement; Relationship Requirement

***Buster v. United States*, 447 F.3d 1130 (8th Cir. 2006)**

Facts/Procedural History: At the advice of counsel, Defendant pled guilty to being a prohibited person in possession of a firearm in violation of 18 U.S.C. § 922(g)(9), as well as for conspiracy to distribute cocaine and marijuana. Defendant had a prior predicate offense for assaulting his girlfriend with whom he lived. Defendant moved to set aside or vacate the predicate offense. The district court denied the motion and Defendant appealed.

Issue: Defendant argued that his counsel was ineffective for advising him to plead guilty to possessing a firearm following conviction for domestic abuse because a live-in girlfriend did not qualify as a “person similarly situated to a spouse” as defined in 18 U.S.C. § 921(a)(33)(A)(ii).

Holding: The Eighth Circuit affirmed the district court’s denial of Defendant’s motion, holding that a live-in girlfriend was an individual similarly situated to a spouse for the purposes of 18 U.S.C. §§ 922(g)(9) and 921(a)(33)(A)(ii). In so holding, the Eighth Circuit noted that two other circuits had directly addressed identical issues. *United States v. Shelton*, 325 F.3d 553 (5th Cir. 2003); *United States v. Denis*, 297 F.3d 25 (1st Cir. 2002). Both the First and the Fifth Circuits had ruled that a “live-in” girlfriend could qualify as an individual similarly situated to a spouse.

Key Issue(s): Qualifying Relationship

***United States v. Ray*, 411 F.3d 900 (8th Cir. 2005)**

Facts/Procedural History: Defendant was a federally licensed gun dealer. After being convicted of a misdemeanor crime of domestic violence, law enforcement learned that Defendant had guns in his apartment. A warrant was issued and authorities recovered 72 firearms. Defendant was convicted and sentenced under 18 U.S.C. § 922(g)(9) for possession of a firearm after a misdemeanor conviction for a crime of domestic violence. Defendant appealed his conviction.

Issue: On appeal, Defendant argued that the Government was estopped from prosecuting him under § 922(g)(9) because of the statements on his Federal Firearm License, which listed six prohibitions but lacked information on the § 922(g)(9) prohibition. Defendant argued that the warning on the license affirmatively misstated the law for purposes of estoppel-by-entrapment by not explaining that the list of prohibitions on the license was illustrative rather than exhaustive.

Holding: The Eighth Circuit affirmed Defendant’s conviction and sentencing, holding that the Federal Firearms License did not support an estoppel-by-entrapment defense. Rather, the Eighth Circuit noted that it had previously found that an incomplete explanation of law cannot support an estoppel-by-entrapment defense in *U.S. v. Benning*, 248 F.3d 772 (8th Cir. 2001). The Eighth Circuit explained that this was because it was not the law that a person was presumed to know what was illegal based only on what the Government told them.

Key Issue(s): Estoppel-by-Entrapment

***United States v. Pfeifer*, 371 F.3d 430 (8th Cir. 2004)**

Facts/Procedural History: Defendant was convicted of simple assault against his wife in 1985, eleven years before Congress enacted 18 U.S.C. § 922(g)(9). At his 1985 arraignment, Defendant stated that he wished to proceed without a lawyer and pled guilty. He went hunting with a rifle in 2001 and was charged with violating § 922(g)(9). Defendant was convicted and appealed his conviction.

Issue: On appeal, Defendant argued that: (1) as applied to him, § 922(g)(9) violated the Ex Post Facto Clause of the U.S. Constitution because it increases the punishment for his misdemeanor conviction from 17 years earlier; and (2) the statute was unconstitutionally vague since it did not provide fair warning that his possession of a firearm was prohibited conduct

Holding: The Eighth Circuit affirmed the conviction. The Eighth Circuit recognized that other circuits, including the Seventh, Fourth, and Second, had already concluded that § 922(g)(9) did not violate the Ex Post Facto Clause. The Eighth Circuit went on to find that it was immaterial that the predicate offense occurred before the statute was enacted because the critical factor was that the prohibited conduct—possession of a firearm—occurred after the enactment of the statute. The Eighth Circuit also rejected Defendant’s vagueness challenge, citing two previous Eighth Circuit cases in which the court held that firearm possession was a highly regulated activity, and the general nature of the convictions should put the defendants on notice that subsequent possession of a gun might be subject to regulation. In addition, the Eighth Circuit concluded that, in any event, the overwhelming evidence in the record of Defendant’s actual knowledge of § 922(g)(9), alone, would have satisfied due process requirements.

Key Issue(s): Ex Post Facto Clause; Due Process (Notice)

***United States v. Brun*, No. 03-192, 2004 U.S. Dist. LEXIS 1774 (D. Minn., Feb. 2, 2004)**

Facts/Procedural History: Defendant pled guilty to fifth degree domestic assault. The transcript from the entry of plea/sentencing hearing showed that Defendant shoved his ex-wife, told her to leave him alone, and broke a car window. Defendant was later charged with being a prohibited person in possession of a firearm in violation of 18 U.S.C. §§ 922(g)(9) and 924(a)(2). Defendant entered a conditional guilty plea, admitting to all elements except that he had been convicted of a crime of domestic violence.

Issue: The court considered whether the Government had established that Defendant had committed a crime of domestic violence as defined by the applicable statutes. The Minnesota statute to which Defendant pled guilty had two subsections, only one of which contained a physical force requirement that would establish he had committed a crime of domestic violence.

Holding: The district court rejected Defendant’s conditional guilty plea. First, the district court determined that plea transcripts from Defendant’s domestic assault proceedings were admissible evidence. Because the plea transcripts could not definitively show which subsection of the Minnesota statute Defendant pled guilty to, the district court held that the Government could not establish that Defendant pled guilty to a crime of domestic violence and therefore could not establish that Defendant was ineligible to possess a firearm.

Key Issue(s): Physical Force Requirement

United States v. Cuervo, 354 F.3d 969 (8th Cir. 2004)

Facts/Procedural History: Defendant was charged with numerous narcotics and firearm offenses, including violating 18 U.S.C. § 922(g)(9). Defendant stipulated at trial to his gun possession but contested the fact that his prior assault was a crime of domestic violence because his victim was his secretary. Defendant was convicted of many of the charged counts, including three counts of being an ineligible person in possession of a firearm under 18 U.S.C. § 922(g)(9). Defendant appealed.

Issue: On appeal, Defendant argued, among other things, that the evidence supporting his firearm conviction was insufficient and that his secretary was not similarly situated to a spouse.

Holding: The Eighth Circuit affirmed the conviction, holding that the jury was free to determine as a matter of fact that Defendant’s secretary was in a position similar to a spouse. The Eighth Circuit found that the jury’s determination was supported by sufficient evidence presented at trial, which showed that Defendant and his secretary shared an intimate personal relationship.

Note: As of the date of this 2025 update, this case has received direct negative treatment.

Key Issue(s): Relationship Requirement

United States v. Medicine Eagle, 266 F. Supp. 2d 1039 (D.S.D. 2003)

Facts/Procedural History: Defendant was charged with violating § 922(g)(9) for possessing firearms while subject to a valid court-ordered restraining order arising from a disorderly conduct conviction in South Dakota state court. He moved to dismiss the indictment.

Issue: Defendant argued that his disorderly conduct conviction could not serve as a predicate offense. He argued that the conviction was not a misdemeanor crime of domestic violence because it did not include “the use or attempted use of physical force” as an element of the offense. He noted that under South Dakota law the disorderly conduct offense could be committed in ways that did not involve the use of physical force.

Holding: The district court denied Defendant’s motion to dismiss. Although the district court agreed with Defendant that a disorderly conduct conviction could result from acts that did not involve physical force, a court could look beyond the predicate offense to the underlying acts in order to determine whether there was an element of physical force. The district court further concluded that “where, as here, the earlier conviction results from a guilty plea and the charging document sheds no light whatsoever on whether the defendant committed a crime that had an element of physical force to it, courts may and should delve further and consider court records in its review process.” Thus, the district court examined the affidavit of probable cause executed by the arresting officer, which alleged that Defendant struck his wife in the mouth with his fist, and Defendant’s written and oral statements to the state court, which acknowledged that he had hit his wife. In addition, the district court noted that Defendant, in the initial charging document, had been charged with “[t]he public offense of Simple Assault ... in that he did intentionally cause bodily injury to another.” Thus, the district court concluded that the charging documents “as a whole” showed that Defendant was accused of and pled guilty to an offense that involved an element of physical force.

Note: As of the date of this 2025 update, this case has received direct negative treatment.

Key Issue(s): Physical Force Requirement

***Blackburn v. Jansen*, 241 F. Supp. 2d 1047 (D. Neb. 2003)**

Facts/Procedural History: Plaintiff was arrested for assaulting his wife and the responding officers seized his firearms. The prosecutor ultimately dismissed the assault charges, and Plaintiff sought the return of his firearms. The prosecutor’s office refused to release the weapons because of Plaintiff’s 2001 conviction for a misdemeanor crime of domestic violence involving abuse of his son. Plaintiff subsequently sued the prosecutor and law enforcement officials involved. In bringing suit under 42 U.S.C. § 1983, Plaintiff alleged, among other things, that § 922(g)(9) violated the Second, Fifth, and Eighth Amendments. Defendants moved to dismiss.

Issue: Defendants claimed immunity and argued that Plaintiff’s factual allegations failed to establish a constitutional violation.

Holding: The district ruled that the suit against the Defendants in their individual capacities was barred because the defendants enjoyed absolute prosecutorial and/or qualified immunity. The district court also summarily concluded based on *United States v. Lewis*, 236 F.3d 948 (8th Cir. 2001), that Plaintiff’s constitutional claims were without merit. The district court specifically noted that the Second Amendment right to bear arms applied where possession had a reasonable relationship to the preservation or efficiency of a well-regulated militia. Because Plaintiff made no showing regarding a relationship between his firearms possession and the preservation of a militia, the Second Amendment was not implicated.

Note: As of the date of this 2025 update, this case has received direct negative treatment.

Key Issue(s): Second Amendment; Equal Protection; Eighth Amendment

United States v. Larson, 13 Fed. App'x 439 (8th Cir. 2001)

Facts/Procedural History: Defendant pled guilty in 1992 to a Minnesota misdemeanor assault charge. The statute set forth two separate bases for an assault conviction: (1) acting with intent to cause fear in another of immediate bodily harm or death; or (2) intentionally inflicting or attempting to inflict bodily harm upon another. Defendant was later charged with three counts of violating various subsections of 18 U.S.C. § 922, including § 922(g)(9). Defendant filed a motion in limine to dismiss the Minnesota assault conviction as a predicate to the § 922 charges. The district court granted the motion in limine, and the Government appealed.

Issue: On appeal, the Eighth Circuit considered whether it was sufficiently clear from the state-court record which of the two prongs of the Minnesota statute underlaid Defendant's conviction.

Holding: The Eighth Circuit affirmed the district court's decision, agreeing that neither the plea transcript nor the record of conviction nor the charging document from the Minnesota state proceeding revealed which clause Defendant had pled guilty under. Because only a conviction under the second clause of the Minnesota statute could serve as a predicate for a section 922(g)(9) conviction, Defendant's guilty plea could not be shown to be a qualifying misdemeanor crime of domestic violence.

Key Issues: Force Physical Force Requirement

United States v. Hutzell, 217 F. 3d 966 (8th Cir. 2000)

Facts/Procedural History: In 1996, Defendant pled guilty to a state charge of domestic abuse assault. Two years later, during an argument with his girlfriend, Defendant fired a gun. He was charged with violating 18 U.S.C. § 922(g)(9). He entered a conditional guilty plea and moved to dismiss the indictment. The district court denied the motion, and the Eighth Circuit affirmed. Defendant was subsequently convicted and appealed his conviction and sentencing.

Issue: On appeal, Defendant argued that his conviction was improper because he was unaware of § 922(g)(9) when he fired the gun, and no one could be presumed to have had notice that the conduct described in the statute was unlawful. Defendant further challenged the district court's refusal to grant a downward departure at sentencing.

Holding: The Eighth Circuit affirmed the conviction and sentencing. The Eighth Circuit rejected Defendant's notice argument because, given the current level of concern about domestic violence exhibited in "daily news reports and other media attention", it was "disingenuous for [Defendant] to claim that his conviction under the statute involved the kind of unfair surprise that the Fifth Amendment prohibits." For the same reason, the Eighth Circuit affirmed the district court's refusal to grant a downward departure at sentencing.

Key Issue(s): Due Process (Notice)

***United States v. Ficke*, 58 F. Supp. 2d 1071 (D. Neb. 1999)**

Facts/Procedural History: In 1994, Defendant entered a pro se plea of no contest to a charge of misdemeanor assault in connection with a domestic violence incident. The county court judge sentenced Defendant to six months of probation and ordered the Defendant to complete anger control classes. In 1998, law enforcement officers arrested Defendant after his wife reported that Defendant assaulted her. The officers found and confiscated three firearms from Defendant's possession. Defendant was indicted on one count of violating § 922(g)(9) and entered a guilty plea. Two weeks later, a district court in Texas made its decision in *U.S. v. Emerson*, 46 F. Supp. 2d 598 (N.D. Tex. 1999), finding the related provision § 922(g)(8) unconstitutional, and Defendant filed a motion to withdraw his guilty plea. The motion was denied, but the district court advised Defendant that it would entertain a motion to dismiss if it were filed before sentencing. Defendant filed such motion.

Issue: In his motion to dismiss, Defendant argued that § 922(g)(9) was an unconstitutional violation of the fundamental due process principles of notice and fair warning.

Holding: The district court agreed and dismissed the indictment. The district court, relying heavily on the *Emerson* case and Judge Posner's dissent in *U.S. v. Wilson*, 159 F.3d 280 (7th Cir. 1998), reasoned that Defendant would have had no way of knowing that "mere possession of hunting firearms had become felonious conduct two years after his misdemeanor conviction unless he spent considerable time in law libraries keeping track of amendments to federal firearms statutes... or he otherwise received notice of the section's enactment and its application to his situation."

Note: As of the date of this 2025 update, this case has received direct negative treatment.

Key Issue(s): Due Process (Notice)

***United States v. Myers*, 187 F.3d 644 (8th Cir. 1999)**

Facts/Procedural History: Defendant was indicted on two count of violating § 922(g) for the following: (1) knowing possession of firearms that had been transported in interstate commerce after having been convicted of a misdemeanor crime of domestic violence in violation of § 922(g)(9); and (2) knowing possession of thirteen firearms that had been transported in interstate commerce while subject to a court protection order restraining him from harassing, stalking, or threatening his wife, in violation of § 922(g)(8). Defendant pled guilty to the § 922(g)(9) violation, and the § 922(g)(8) count was dismissed after his guilty plea. Defendant appealed his conviction.

Issue: On appeal, Defendant challenged the constitutionality of the §§ 922(g)(8) and (9) under the Tenth Amendment.

Holding: The Eighth Circuit affirmed Defendant’s conviction, holding that the statutes did not violate the Tenth Amendment because both subsections contain the jurisdictional element required for a valid exercise of Congress’s powers under the Commerce Clause.

Key Issue(s): Tenth Amendment; Commerce Clause

United States v. Smith, 171 F. 3d 617 (8th Cir. 1999)

Facts/Procedural History: In 1994, Defendant pled guilty in Iowa state court to an assault involving an incident with the mother of his child and was convicted of misdemeanor assault. The Iowa state court appointed counsel to represent Defendant on the assault charge, but his counsel did not appear at his plea hearing. Following counsel’s failure to appear, Defendant signed a “Waiver of Right to Counsel” and pled guilty; he was fined \$100. In 1996, Defendant shot and wounded the mother of his child and was indicted for violating § 922(g)(9). Defendant moved to dismiss the indictment, and the district court denied the motion. Defendant then conditionally pled guilty and appealed the denial of his motion to dismiss.

Issue: On appeal Defendant challenged the application of § 922(g)(9), arguing that the Iowa Code assault crime did not contain the required elements of the use or attempted use of physical force and an intimate partner relationship, and he did not intelligently and knowingly waive his right to counsel. Additionally, Defendant argued that § 922(g)(9) was impermissibly vague and violated his right to equal protection.

Holding: The Eighth Circuit affirmed the district court’s denial of Defendant’s motion to dismiss. The Eighth Circuit held that Defendant’s prior Iowa assault conviction under Iowa Code § 708.1(1) qualified as a misdemeanor crime of domestic violence because the state court complaint established that the offense included the use or attempted use of physical force, as required by 18 U.S.C. § 921(a)(33)(A)(ii). The Eighth Circuit rejected Defendant’s argument that the predicate offense must also have a domestic relationship as an element, explaining that the statute requires the domestic relationship to be proven at trial, not to appear as an element in the underlying misdemeanor. The Eighth Circuit also concluded that Defendant voluntarily and intelligently waived his right to counsel at the plea hearing, noting that he signed a written waiver and had previously requested and received appointed counsel. Finally, the Eighth Circuit found that Defendant’s vagueness, equal protection, and other constitutional challenges were without merit, concluding that § 922(g)(9) was not unconstitutionally vague or discriminatory, and that it was rational for Congress to rely on state restoration provisions and pardon mechanisms.

Note: As of the date of this 2025 update, this case has received direct negative treatment.

Key Issue(s): Predicate Offense; Physical Force Requirement; Waiver of Right to Counsel; Due Process (Notice); Equal Protection

Ninth Circuit (Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Washington, Guam, Northern Mariana Islands)

Brinson v. Bondi, No. 22-CV-09076-JSC, 2025 WL 1266925 (N.D. Cal. May 1, 2025)

Facts/Procedural History: Plaintiff entered a nolo contendere plea to misdemeanor battery involving a former girlfriend. Plaintiff attempted to purchase a firearm and was notified by the California Department of Justice that he was “ineligible to either possess or purchase firearms.” Plaintiff was barred from purchasing firearms due to 18 U.S.C. § 922(g)(9) prohibition on misdemeanants purchasing firearms. Plaintiff sued Attorney General Pamela Bondi for erroneous denial of a firearm, arguing that the California Department of Justice misapplied § 922(g)(9) because his girlfriend was not his spouse. Defendant moved for summary judgment.

Issue: Defendant argued that under the statute, Plaintiff was legally ineligible to purchase a firearm.

Holding: The district court granted Defendant’s summary judgment motion, finding Plaintiff was legally ineligible to purchase a firearm. In doing so, the district court held that it was undisputed that Plaintiff was “similarly situated to a spouse” of his domestic violence victim under § 922(g)(9).

Key Issue(s): Relationship Requirement

Molina v. United States, No. CR 21-545 PA, 2025 WL 806324 (C.D. Cal. Feb. 6, 2025)

Facts/Procedural History: Defendant was a gang member with multiple felony convictions, including “infliction of corporal injury on his spouse.” While on supervised release, Defendant was arrested with a firearm. Defendant pled guilty to being a felon in possession of a firearm under both 18 U.S.C. § 922(g)(1) and (g)(9), where he acknowledged understanding the plea agreement and the consequences. Defendant then moved for habeas review under § 2255.

Issue: Defendant argued in his § 2255 habeas motion, among other things, that the § 922(g)(9) prohibition on firearm possession for misdemeanor domestic violence offenses violated his Second Amendment rights.

Holding: The district court held that § 922(g)(9) is constitutional on its face and as applied. The district court reasoned that convictions for domestic violence are sufficiently analogous to the circumstances addressed in *Rahimi*, where the Supreme Court upheld the constitutionality of firearm restrictions imposed through domestic violence protective orders as it relates to the disarming of individuals who are judged to be a threat to public safety.

Key Issue(s): Second Amendment

***Decker v. Fed. Bureau of Investigation*, No. 2:24-CV-09039-HDV-JDE, 2024 WL 5319140 (C.D. Cal. Dec. 17, 2024), report and recommendation adopted, No. 2:24-CV-09039-HDV-JDE, 2025 WL 71723 (C.D. Cal. Jan. 8, 2025)**

Facts/Procedural History: In 2014, Plaintiff pled no contest to battery under Cal. Penal Code § 242 after he was involved in an altercation with unidentified individuals. According to Plaintiff, the plea agreement had been explicitly structured to avoid any domestic violence classification. When Plaintiff sought to purchase a firearm in 2024, he was denied because the FBI had classified his conviction as a misdemeanor crime of domestic violence under 18 U.S.C. § 922(g)(9). Plaintiff, proceeding pro se and in forma pauperis, sued the FBI challenging the denial of his firearm purchase. The case was assigned to a magistrate judge, who twice issued screening orders instructing the pro se Plaintiff to submit amended complaints to resolve various pleading deficiencies. Plaintiff subsequently filed a second amended complaint, and the magistrate judge again screened the complaint on its own motion to determine whether Plaintiff sufficiently stated a claim on which relief may be granted.

Issue: The magistrate judge considered whether the FBI's classification of Plaintiff's conviction under Cal. Penal Code § 242 as a misdemeanor crime of domestic violence under 18 U.S.C. § 922(g)(9) violated Defendant's due process and Second Amendment rights because the FBI improperly relied on extrinsic evidence in classifying his previous conviction and the FBI's actions were inconsistent with the historical framework in *Bruen*.

Holding: The magistrate judge issued a Report and Recommendation (R&R) to dismiss Plaintiff's complaint for failure to state a claim. The magistrate judge concluded that Plaintiff's conviction under § 242 qualified as a misdemeanor crime of domestic violence under § 922(g)(9). The "physical force" requirement of § 922(g)(9) was satisfied by the level of force involved in common-law battery, which may include a "relatively minor" assault like offensive touching. The magistrate judge also concluded that the FBI was permitted to consider evidence outside of Plaintiff's conviction record. A predicate offense to § 922(g)(9) does not require a qualifying domestic relationship as an element; instead, such relationship may be independently proved during the prosecution under § 922(g)(9). Because Plaintiff's predicate offense did not involve domestic violence on its face, the magistrate

judge found that the FBI was permitted to review extrinsic evidence to confirm a domestic relationship between Plaintiff and his victim. Finally, the magistrate judge held that disarming individuals convicted of misdemeanor crimes of domestic violence under § 922(g)(9) was consistent with the country's history and tradition of disarming dangerous individuals under *Bruen*. The district court summarily adopted the Report and Recommendation without issuing a substantive decision.

Key Issue(s): Predicate Offense; Relationship Requirement; Second Amendment

***United States v. DeFrance*, 124 F.4th 814 (9th Cir. 2024)**

Facts/Procedural History: In 2013, Defendant pled guilty to assaulting his girlfriend in violation of Montana Code § 45-5-206(1)(a), a misdemeanor involving a person causing "bodily injury," which was defined by statute to include "mental illness or impairment." In 2018, Defendant was found in possession of three firearms. A federal grand jury indicted Defendant on one count of violating 18 U.S.C. § 922(g)(9). The district court denied Defendant's motion to dismiss the indictment, and he was convicted and sentenced. Defendant appealed his conviction.

Issue: On appeal, Defendant argued that a violation of Montana Code § 45-5-206 could be committed without the use or attempted use of physical force and thus could not constitute a misdemeanor crime of domestic violence necessary to satisfy § 922(g)(9).

Holding: The Ninth Circuit reversed Defendant's conviction, vacated the sentence, and remanded for resentencing or other proceedings. The Ninth Circuit determined that Montana Code § 45-5-206 did not necessarily require the use or attempted use of force as an element because it could be violated by inflicting emotional injury. Although Montana courts had not addressed this interpretation of § 45-5-206, Ninth Circuit decisions interpreting § 45-5-206 and Montana Supreme Court decisions interpreting similar assault statutes suggested that use or attempted use of force was not an element of § 45-5-206. The Ninth Circuit therefore held that, because Defendant could show a "realistic probability, not a theoretical probability" that § 45-5-206 would apply in a case without use of physical force, § 45-5-206 did not qualify as a misdemeanor crime of domestic violence under § 922(g)(9).

Key Issue(s): Physical Force Requirement; Predicate Offense

***White v. United States*, No. 5:23-CV-02215-DSF-SP, 2024 WL 4868287 (C.D. Cal. Sept. 24, 2024)**

Facts/Procedural History: In 2004, Plaintiff was convicted of a misdemeanor crime of domestic violence for physically assaulting his wife. In 2015, Plaintiff was prohibited from purchasing a firearm because of his 2004 conviction. Plaintiff brought suit against Defendants (Attorney General of the United States and U.S. Attorney for the Central District of California in their official capacities), seeking declaratory and injunctive relief. Defendants moved for summary judgment.

Issue: In opposing the motion for summary judgment, Plaintiff argued that 18 U.S.C. § 922(g)(9) violated his right to keep and bear arms under the Second Amendment because there was no historical tradition of domestic violence misdemeanor laws that permanently disarmed individuals.

Holding: The district court granted Defendants' motion for summary judgment. The district court held, citing *Rahimi*, that § 922(g)(9) was an acceptable limitation on the Second Amendment because it was consistent with the nation's history of firearm regulation on those deemed to be a threat to public safety. The court rejected Plaintiff's argument that there were no historical analogues to § 922(g)(9), pointing to the historical laws considered by the Supreme Court in *Rahimi* and noting that under *Bruen* an historical twin was not required. Citing to Ninth Circuit precedent which concluded that Congress retained the power to disarm narrow segments of the population deemed a threat to public safety, the district court held that § 922(g)(9) was an acceptable exercise of this power.

Key Issue(s): Second Amendment (*Bruen*) (*Rahimi*)

***United States v. Navarro*, No. 5:22-CR-00063-JWH, 2024 WL 3378919 (C.D. Cal. July 11, 2024)**

Facts/Procedural History: Defendant, who had prior convictions for felony vandalism and a misdemeanor of inflicting corporal injury on a spouse, cohabitant, or child's parent, was indicted for one count of possession of a firearm in violation of 18 U.S.C. §§ 922(g)(1) and (g)(9). Defendant moved to dismiss the indictment, arguing that the charges violated his Second Amendment rights under *Bruen*. The district court denied Defendant's motion to dismiss, holding that Defendant was not protected by the Second Amendment because *Bruen* addressed the rights of "law-abiding" citizens, whereas Defendant had been convicted of misdemeanor domestic violence. Following the district court's denial, the Ninth Circuit issued a decision in *United States v. Duarte*, 101 F.4th 657 (9th Cir. 2024), finding that § 922(g)(1), which prohibited those convicted of a crime carrying a sentence of more than one year's imprisonment from possessing a firearm, was unconstitutional as applied to non-violent offenders. *Duarte* held that a non-violent offender was protected under the Second Amendment and that the government failed to demonstrate a historical analogue imposing

a comparable burden on the right of armed self-defense for non-violent felons. Defendant moved for reconsideration of the district court's denial in light of *Duarte*. Before the district court ruled on Defendant's motion for reconsideration, the Supreme Court decided *Rahimi*, which upheld the constitutionality of § 922(g)(8) and found that a domestic violence offender may be temporarily disarmed in certain circumstances.

Issue: The district court determined whether the Ninth Circuit's ruling in *Duarte* extended to domestic violence convictions prosecuted under § 922(g)(9).

Holding: The district court denied Defendant's motion for reconsideration. The district court distinguished Defendant's charge from the Ninth Circuit's holding in *Duarte*, citing historical precedent for disarming individuals deemed dangerous to public safety. The district court further relied on the Supreme Court's decision in *Rahimi*, because it explicitly upheld constitutional restrictions on firearm possession by domestic violence offenders and Defendant had a domestic violence conviction.

Key Issue(s): Second Amendment (*Bruen*) (*Rahimi*)

***Brinson v. Garland*, No. 22-cv-09076-JSC, 2024 U.S. Dist. LEXIS 94640 (N.D. Cal. May 28, 2024)**

Facts/Procedural History: Plaintiff was convicted of misdemeanor battery in 1997 against a woman with whom he had a "dating relationship." The Government forbid Plaintiff from subsequent possession of a firearm under 18 U.S.C. § 922(g)(9) as someone who had been convicted of a "misdemeanor crime of domestic violence." Plaintiff sued the Government for erroneous denial of a firearm and moved for summary judgment.

Issue: Plaintiff argued, among other things, that his relationship to the victim was not a qualifying relationship under § 922(g)(9) because the Government could not establish the victim was a spouse or "similarly situated to a spouse."

Holding: The district court denied Plaintiff's motion and held that the Government may conduct discovery on whether he was similarly situated to a spouse of his battery victim. The district court observed that the state statute to which Plaintiff pled guilty to in 1997 did not require any findings of fact with respect to cohabitation within the relationship at issue. Whether Plaintiff's relationship with the battery victim satisfied the "domestic relationship" requirement of § 922(g)(9) was a question of fact, and the Government was entitled to conduct discovery to determine whether § 922(g)(9) applied.

Key Issue(s): Relationship Requirement

***Humphrey v. U.S. Federal Bureau of Investigations,*
No. 3:22-cv-00193-SLG, 2024 U.S. Dist. LEXIS 35709
(D. Alaska Feb. 29, 2024)**

Facts/Procedural History: Plaintiff was convicted in 2010 of two misdemeanor crimes of domestic violence (MCDV) under local Alaskan municipality laws. He challenged the FBI's determination that the convictions disqualified him from firearm possession under 18 U.S.C. § 922(g)(9) on the basis that the local convictions did not fall under the federal definition of MCDV until 2022. The district court initially ruled Plaintiff was not federally prohibited from posing firearms because applying § 922(g)(9) retroactively would violate the Ex Post Facto Clause. The Government filed a motion to amend the judgment citing Ninth Circuit precedent regarding the applicability of the Ex Post Facto Clause to § 922(g) offenses.

Issue: The district court considered whether Plaintiff was properly disqualified under federal law from firearm possession due to prior misdemeanor convictions, whether applying that disqualification violated the Ex Post Facto Clause, and, among other things, whether the prohibition on Plaintiff's possession of firearms was an unconstitutionally broad ban on his Second Amendment rights.

Holding: The district court held the prior misdemeanor convictions qualified under § 922(g)(9) and that the application of the law did not violate the Ex Post Facto Clause. With respect to the constitutionality questions, the district court noted it and many other courts have continued to uphold the constitutionality of the firearm prohibition on individuals with MCDV convictions pursuant to § 922(g)(9) and dismissed Plaintiff's constitutional claims with prejudice.

Key Issue(s): Second Amendment; Ex Post Facto

United States v. Martin, No. 1:21-cr-00228, 2024 U.S. Dist. LEXIS 20680 (E.D. Cal. Feb. 5, 2024)

Facts/Procedural History: Defendant was convicted of a domestic violence-related battery misdemeanor in 2018. The Government later obtained a search warrant for Defendant's home after he was identified as present at the January 6, 2021 riots at the United States Capitol Building. The Government seized firearms during its search of Defendant's home and charged him with a violation of 18 U.S.C. § 922(g)(9). Among other things, Defendant moved to dismiss the action on the grounds that § 922(g)(9) was unconstitutional.

Issue: Defendant argued § 922(g)(9) was unconstitutional following *Bruen* because the Government failed to demonstrate a sufficiently analogous historical analogue for disarming those who engage in acts of spousal battery.

Holding: The district court denied Defendant’s motion to dismiss and declined to hold that § 922(g)(9) violated the Second Amendment post-*Bruen*. The district court found, among other things, that the Government’s reliance on general historical tradition was sufficient to satisfy its burden to justify the firearm regulation of § 922(g)(9) and that the Supreme Court had repeatedly addressed the reach of § 922(g)(9) without questioning its constitutionality. Accordingly, Defendant’s indictment was consistent with established precedent, including post-*Bruen* decisions affirming restrictions on those deemed dangerous.

Key Issue(s): Second Amendment (*Bruen*)

***United States v. Yates*, No. 1:21-cr-00116-DCN, 2023 U.S. Dist. LEXIS 138381 (D. Idaho Aug 7, 2023)**

Facts/Procedural History: Defendant was charged in 2021 with illegally possessing a firearm in violation of 18 U.S.C. § 922(g)(9). He filed a motion to dismiss on the grounds that, among other things, § 922(g)(9) was unconstitutional on its face and as applied to him. The district court denied the motion, and Defendant was found guilty. Defendant appealed and argued that, under the recently decided *Bruen* case, the denial of the motion to dismiss was improper. The Ninth Circuit vacated the ruling and remanded for proceedings consistent with *Bruen*. Before addressing other issues, the district court requested briefing as to whether the Government needed to utilize a historian as an expert witness.

Issue: The district court considered whether it could be determined if a law was consistent with the Nation’s historical tradition of firearm regulation without the use of historians as expert witnesses.

Holding: The district court held that the Government may, but was not required to, retain a historical expert as part of meeting its burden of persuasion that § 922(g)(9) was constitutional. It was within the Government’s discretion to choose how to show a regulation was consistent with the Nation’s historical tradition of firearm regulation.

Key Issue(s): Second Amendment

***United States v. DeFrance*, No. CR 21-29-M-DLC, 2023 U.S. Dist. LEXIS 120943 (D. Mont. July 7, 2023)**

Facts/Procedural History: Defendant was convicted under Montana’s partner or family member assault law. In 2021, Defendant was found guilty of illegally possessing a firearm in violation of 18 U.S.C. § 922(g)(9), among other charges. The Government established that Defendant was barred from lawfully possessing a firearm because he was “similarly situated to a spouse” of his

victim, his girlfriend at the time, and therefore a qualifying relationship existed under the statute. Defendant filed a combined motion for acquittal, motion to arrest judgment, and alternative motion for a new trial.

Issue: Defendant argued, among other things, that a 2022 amendment to § 922(g)(9) adding “dating relationship” to the list of qualifying relationships displayed by “negative implication” that the version of the statute in effect at the time of Defendant’s conviction did not apply to his relationship with his then-girlfriend.

Holding: The district court denied Defendant’s motion. The district court held that the 2022 amendment to the statute did not retroactively alter the meaning of § 922(g)(9) in effect during Defendant’s charged conduct. The district court reaffirmed that a person may be “similarly situated to a spouse” within the meaning of the statute without cohabitation or shared parenthood and found sufficient evidence that Defendant’s relationship with his then-girlfriend met that standard.

Note: As of the date of this 2025 update, this case has received direct negative treatment.

Key Issue(s): Predicate Offense; Relationship Requirement

***United States v. Padgett*, No. 3:21-cr-00107-TMB-KFR, 2023 U.S. Dist. LEXIS 68410 (D. Alaska Jan. 4, 2023)**

Facts/Procedural History: Defendant, who was previously convicted of misdemeanor domestic violence, was charged with possession a firearm in violation of 18 U.S.C. § 922(g)(9). He moved to dismiss the indictment on the grounds that § 922(g)(9) was unconstitutional when the *Bruen* framework was applied.

Issue: Defendant argued § 922(g)(9) is unconstitutional on its face and as applied to him. He argued there was no historical tradition of prohibiting people with domestic violence misdemeanor convictions from possessing firearms.

Holding: The district court denied the motion. It found § 922(g)(9) was consistent with the Second Amendment’s text and the Nation’s traditional regulation of possession of firearms by those who are not “law-abiding.” The district court further observed its holding was consistent with the “overwhelming majority” of courts to consider the constitutionality of § 922(g)(9) post-*Bruen*.

Key Issue(s): Second Amendment (*Bruen*)

***United States v. Yates*, No. 1:21-CR-00116-DCN, 2021 WL 4942030 (D. Idaho Oct. 22, 2021)**

Facts/Procedural History: Defendant was convicted of a misdemeanor crime of domestic violence under Idaho Code § 18-918 in 2002. In March 2021, United States Probation Officers found a firearm in a room Defendant was renting from his father. Defendant stated he was unsure whether he could legally possess the firearm due to his prior misdemeanor domestic battery conviction. A grand jury indicted Defendant under 18 U.S.C. § 922(g)(9). Defendant filed a motion to dismiss the indictment.

Issue: Defendant argued that § 922(g) violated the Tenth Amendment as an invalid exercise of federal power and that it infringed his Second Amendment rights. Defendant also argued that under *Rehaif v. United States*, 139 S. Ct. 2191 (2019), the Government was required to prove that he knew he was prohibited from possessing a firearm.

Holding: The district court denied the motion to dismiss. The district court rejected the Tenth Amendment challenge, finding that § 922(g) was a valid exercise of Congress's Commerce Clause power. The district court further rejected Defendant's Second Amendment challenge, holding that § 922(g)(9) was supported by an important government interest and was substantially related to that interest, thus making it constitutional under intermediate scrutiny. Finally, the district court held that under *United States v. Singh*, 979 F.3d 697 (9th Cir. 2020), the Government was only required to prove that Defendant knew he possessed a firearm and knew he belonged to a category of persons that were prohibited from possessing firearms—not that Defendant knew he was prohibited from possessing a firearm.

Note: As of the date of this 2025 update, this case has received direct negative treatment.

Key Issue(s): Second Amendment; Tenth Amendment

***United States v. Stanard*, 849 F. App'x 649 (9th Cir. 2021)**

Facts/Procedural History: Defendant was convicted of being a felon in possession of a firearm and ammunition under 18 U.S.C. § 922(g)(1), possessing an unregistered silencer, and conspiring to obstruct justice. The firearms and ammunition were discovered when Defendant's wife consented to a search of their home and garage following a domestic violence report. Defendant moved to suppress the evidence, and the district court denied the motion. Defendant was found guilty and appealed.

Issue: On appeal, Defendant argued that (1) the district court erred in denying his motion to suppress because his wife's consent was involuntary; (2) § 922(g)(1) and 26 U.S.C. § 5861(d) exceeded Congress's authority under the Commerce Clause; (3) the indictment was deficient under *Rehaif v. United States*, 139 S. Ct. 2191 (2019), for failing to allege his knowledge of his felon status; and (4) his convictions for possession of a firearm and ammunition were multiplicitous.

Holding: The Ninth Circuit affirmed the conviction. The Ninth Circuit found that Defendant's wife voluntarily consented to the search and that the search was valid. The Ninth Circuit held that it was bound by precedent upholding the constitutionality of § 922(g)(1) and § 5861(d) under the Commerce and Taxing Clauses. The Ninth Circuit also found no plain error under *Rehaif* because there was overwhelming evidence that Defendant knew he was a felon prohibited from possessing firearms. Finally, the Ninth Circuit concluded that the firearm and ammunition convictions were not multiplicitous because they involved separate firearms and ammunition stored in different locations, supporting separately chargeable offenses.

Key Issue(s): Fourth Amendment; Commerce Clause; Knowledge Requirement; Multiplicitous Charges

Hernandez v. State Pers. Bd., 60 Cal. App. 5th 873 (Cal. App. 2021)

Facts/Procedural History: Petitioner was convicted of misdemeanor domestic violence under California Penal Code § 273.5 after physically assaulting his girlfriend during an altercation. Petitioner had been in a romantic relationship with the victim for approximately five months and regularly stayed with her four or five nights per week. Following his conviction, the California Department of Corrections and Rehabilitation terminated Petitioner's employment as a correctional sergeant, citing the federal prohibition on firearm possession under 18 U.S.C. § 922(g)(9). Petitioner appealed his dismissal to the State Personnel Board, which adopted an administrative law judge's determination that his relationship with the victim met the statutory definition of "similarly situated to a spouse" under 18 U.S.C. § 921(a)(33)(A). The trial court denied Petitioner's petition for writ of mandate, and Petitioner appealed.

Issue: Petitioner argued that his relationship with the victim did not meet the definition of being "similarly situated to a spouse" under § 921(a)(33)(A), and therefore his conviction could not serve as a predicate offense for disqualification under § 922(g)(9).

Holding: The appellate court affirmed the trial court. The appellate court held that frequent overnight stays over the course of several months in a romantic relationship between Defendant and his then girlfriend satisfied the "similarly situated to a spouse" requirement under federal law. Because substantial evidence supported the determination that Petitioner's relationship qualified under the statute, the appellate court found no abuse of discretion in Defendant's termination.

Key Issue(s): Predicate Offense; Relationship Requirement

***United States v. Valencia-Barragan*, 819 F. App'x 508, 511 (9th Cir. 2020)**

Facts/Procedural History: Defendant pled guilty to being a prohibited person in possession of a firearm under 18 U.S.C. § 922(g)(9) but reserved the right to appeal the district court's denial of his motion to suppress the firearm and statements made to law enforcement. The firearm was recovered from Defendant's vehicle after he fled from police officers who were attempting to restrain him during a stop. Defendant appealed his conviction.

Issue: On appeal, Defendant argued, among other things, that under *Rehaif v. United States*, 139 S. Ct. 2191 (2019), the Government failed to prove he knew he was prohibited from possessing a firearm due to his prior misdemeanor domestic violence conviction.

Holding: The Ninth Circuit affirmed the conviction. The Ninth Circuit found no plain error under *Rehaif* because Defendant had been convicted of the qualifying misdemeanor five years earlier and completed a domestic abuse treatment program and because the record did not show a reasonable probability that he would have persisted in a not guilty plea absent the alleged error.

Key Issue(s): Knowledge Requirement

***United States v. Arnold*, 836 F. App'x 500 (9th Cir. 2020)**

Facts/Procedural History: Defendant was previously convicted for a domestic violence misdemeanor and enrolled in a 52-week domestic violence program. Years later, Defendant was convicted of, among other things, possession of a firearm in violation of 18 U.S.C. § 922(g)(9). Defendant appealed.

Issue: With regard to § 922(g)(9), Defendant argued the indictment failed to allege – and the district court failed to find – that Defendant both knew he possessed a firearm and that he belonged to a relevant category of persons barred from possessing a firearm.

Holding: The Ninth Circuit rejected Defendant's argument. It determined there was no "plain error" for the failure to include the knowledge element in the indictment. Defendant failed to demonstrate the omission of the information in the indictment affected his substantial rights or seriously affected the fairness of the judicial proceedings. Because Defendant had a previous domestic violence misdemeanor charge and had enrolled in a year-long domestic violence program, he had the requisite knowledge.

Key Issue(s): Knowledge Requirement

***Garcia v. City & County of Honolulu*, No. CV 18-00100 ACK-RLP, 2019 WL 1982517 (D. Haw. May 3, 2019)**

Facts/Procedural History: Plaintiff was previously married to an officer with the Honolulu Police Department. Between 2008 and 2009, Plaintiff obtained multiple protective orders and a pre-decree relief order against her ex-husband based on allegations of domestic abuse, stalking, and threats involving firearms. These orders prohibited her ex-husband from contacting Plaintiff and their children, from coming near her residence, and from possessing firearms in her or her children's presence. Despite these orders, Plaintiff reported multiple violations, including armed threats and unauthorized contact with the children. Plaintiff filed several incident reports and internal complaints with the Honolulu Police Department (HPD). She alleged that HPD officers, pursuant to an entrenched custom or practice, mishandled these complaints because they involved fellow officers. Plaintiff filed suit asserting claims under 42 U.S.C. § 1983 and state law. The operative complaint cited the firearm prohibition under 18 U.S.C. § 922(g)(9), as part of the institutional context and motivation for the City's alleged deliberate indifference to Plaintiff. Defendants moved to dismiss.

Issue: Among other things, Defendant argued that the § 1983 municipal liability claim should be dismissed because Plaintiff failed to allege facts showing that the City had actual knowledge of a policy or custom of mishandling domestic abuse complaints involving HPD officers, and failed to plausibly allege deliberate indifference under *Monell v. Department of Social Services of City of New York*, 436 U.S. 658 (1978).

Holding: The district court denied the motion to dismiss as to Plaintiff's municipal liability claim. The district court found that Plaintiff plausibly alleged a longstanding custom of disparate treatment of domestic abuse complaints involving HPD officers. The district court held that under *Monell*, Plaintiff was not required to show that policymakers had actual knowledge of the custom where the complaint established constructive knowledge through the volume and duration of her reports. The district court further held that Plaintiff plausibly alleged deliberate indifference, citing HPD's repeated failure to act despite policy violations and officer misconduct. While the district court did not make findings under 18 U.S.C. § 922(g)(9), it acknowledged Plaintiff's theory that the City had institutional incentives to avoid domestic violence convictions that would trigger firearm disabilities and result in the loss of employment of HPD officers, reinforcing the plausibility of the deliberate indifference claim.

Key Issue(s): Municipal Liability

***Brandsrud v. Becerra*, No. CV 16-164-SVW (AGR), 2018 U.S. Dist. LEXIS 84238 (C.D. Cal. Mar. 14, 2018)**

Facts/Procedural History: Plaintiff filed a pro se civil rights action under 42 U.S.C. § 1983 against the California Attorney General, alleging constitutional violations related to the denial of his ability to possess or transfer firearms. Plaintiff had been arrested in 1997 for felony domestic violence under California Penal Code § 273.5(a). The felony charge was later dismissed, and Plaintiff pled no contest to a misdemeanor charge of battery under California Penal Code § 242. He was sentenced to a fine, community service, and a 52-week batterers' program. In 2013, after attempting to transfer firearms inherited from his father, Plaintiff was notified by the California Department of Justice and the FBI that his misdemeanor battery conviction rendered him ineligible to possess firearms under 18 U.S.C. § 922(g)(9). Plaintiff sought relief under § 1983 and challenged the accuracy of his criminal history record. Defendant moved to dismiss.

Issue: The magistrate judge considered whether Plaintiff stated a claim under 18 U.S.C. § 925A based on his allegations that there was erroneous information in his state criminal history record that prevented him from acquiring a firearm.

Holding: The magistrate judge recommended granting the motion to dismiss with prejudice. The magistrate judge found that Plaintiff's no contest plea to misdemeanor battery was legally equivalent to a conviction and that his enrollment in a 52-week batterers' program supported the conclusion that the offense involved domestic violence. The magistrate judge further concluded that Plaintiff failed to state a claim under § 925A because he did not plausibly allege that the State provided any erroneous information to federal authorities.

Key Issue(s): Accuracy of Criminal Record

***United States v. Doty*, 724 F. App'x 613 (9th Cir. 2018)**

Facts/Procedural History: Defendant was convicted of unlawful possession of a firearm in violation of 18 U.S.C. § 922(g)(9), based on a prior misdemeanor conviction for domestic violence battery under Nevada law. Defendant appealed the conviction.

Issue: On appeal, Defendant argued that his conviction was invalid under § 922(g)(9) because his underlying state conviction was obtained under a civil statute—Nev. Rev. Stat. § 33.018—which he claimed could not serve as a predicate offense under 18 U.S.C. § 921(a)(33)(A).

Holding: The Ninth Circuit affirmed the conviction. The Ninth Circuit concluded that Defendant was actually convicted under Nev. Rev. Stat. § 200.485, a criminal statute titled "Battery which constitutes domestic violence." The Ninth Circuit noted that both Nevada statutes and precedent confirmed that § 200.485 was the operative provision for domestic violence battery convictions in Nevada, not § 33.018 as Defendant claimed. Because Defendant's appeal was based entirely on the

mistaken belief that he was convicted under a civil statute, the Ninth Circuit found it unnecessary to determine whether § 200.485 categorically matched the federal definition of a misdemeanor crime of domestic violence, which Defendant failed to raise in his opening brief.

Key Issue(s): Predicate Offense

***United States v. Martinez*, No. 17-CR-00257-LHK-1, 2018 U.S. Dist. LEXIS 138329 (N.D. Cal. August 14, 2018)**

Facts/Procedural History: Defendant was stopped by a law enforcement officer while driving and arrested for possession of marijuana, driving with an invalid license plate, and possession of a loaded handgun. The officer subsequently applied for and obtained a search warrant for Defendant's home and discovered that Defendant had been convicted of a misdemeanor crime of domestic violence. The search warrant was executed, and officers found three firearms, a substantial amount of ammunition, and drug paraphernalia. Defendant was then indicted on two counts of possessing firearms as a prohibited person in violation of 18 U.S.C. § 922(g)(9). Defendant moved to suppress the discovered evidence.

Issue: Defendant argued, among other things, that the evidence obtained during the search of his home violated the Fourth Amendment and that the officers lacked probable cause.

Holding: The district court denied Defendant's motion. The district court held that suppression of evidence was not warranted because the search of Defendant's residence was conducted in objectively reasonable reliance on a search warrant, triggering the good faith exception under *United States v. Leon*, 468 U.S. 897 (1984). The district court further found that the affidavit supporting the search warrant presented a "colorable argument for probable cause" to search for firearms and gang-related evidence, based on Defendant's prior domestic violence conviction, the handgun found in Defendant's vehicle, and indicia of Defendant's gang affiliation.

Note: As of the date of this 2025 update, this case has received direct negative treatment.

Key Issues: Fourth Amendment; Probable Cause

***Fisher v. Kealoha*, 855 F.3d 1067 (9th Cir. 2017)**

Facts/Procedural History: Plaintiff was convicted in 1997 of harassing his wife and daughter in violation of a Hawaii state statute. The state court granted his request for the return of his firearms after he completed probation, on the condition that there were no outstanding circumstances that otherwise prohibited his possession of firearms under state or federal law. When Plaintiff applied for a permit to obtain an additional firearm more than ten years later, the police department denied the application and informed him his 1997 conviction prohibited him from possessing firearms. Plaintiff sued for monetary and injunctive relief, arguing, among other things, that the order to surrender

his existing firearms violated his Second Amendment rights. The district court granted summary judgment for the Defendant on the grounds that the 1997 conviction qualified as a misdemeanor crime of domestic violence that prohibited possession of firearms pursuant to 18 U.S.C. § 922(g)(9). Plaintiff appealed.

Issue: Plaintiff argued that § 922(g)(9) did not apply in states lacking all four of the expungement mechanisms provided by 18 U.S.C. § 921(a)(33)(B)(ii) (expungement, set-aside, pardon, and civil rights restoration) and that § 922(g)(9) impermissibly infringed upon his Second Amendment rights as applied to him.

Holding: The Ninth Circuit affirmed the district court decision. It first found the unavailability of a procedure for expungement, set-aside, pardon, or civil rights restoration under Hawaii law did not remove Plaintiff from § 922(g)(9) application. The Ninth Circuit further assessed the constitutionality of § 922(g)(9) under intermediate scrutiny and found that keeping firearms out of the hands of domestic abusers was an important government interest. Pardon, expungement, set-aside, and civil rights restoration provisions were exceptions to § 922(g)(9) and not preconditions to its enforcement.

Key Issue(s): Second Amendment

***United States v. Enick*, No. 2:17-CR-00013-BLW, 2017 WL 2531943 (D. Idaho June 9, 2017)**

Facts/Procedural History: Defendant was convicted of an assault misdemeanor under the Spokane Municipal Code. Years later, he was charged with unlawful possession of a firearm in violation of 18 U.S.C. § 922(g)(9) on the grounds that his previous misdemeanor involving domestic violence disqualified him from ownership. Defendant moved to dismiss.

Issue: Defendant argued his previous assault misdemeanor did not qualify as a misdemeanor crime of domestic violence under § 922(g)(9).

Holding: The district court granted Defendant's motion to dismiss. It held the text of § 922(g)(9) only applied misdemeanors under "Federal, State, or Tribal law." Because Defendant's misdemeanor charge was pursuant to a local ordinance, the district found that § 922(g)(9) did not apply.

Key Issue(s): Predicate Offense

***United States v. Tran*, 694 F. App'x 847 (9th Cir. 2017)**

Facts/Procedural History: Defendant pled guilty to being a prohibited person in possession of firearms in violation of 18 U.S.C. § 922(g)(9), based on a prior misdemeanor conviction for domestic violence. At sentencing, Defendant requested a reduction in his base offense level under U.S.S.G.

§ 2K2.1(b)(2), asserting that he possessed the firearms solely for lawful sporting purposes or collection. The district court denied the request and sentenced Defendant to one year and one day in custody. Defendant appealed.

Issue: Defendant argued on appeal that the district court failed to adequately explain its rejection of a base offense level reduction and that the sentence imposed was substantively unreasonable under 18 U.S.C. § 3553(a).

Holding: The Ninth Circuit affirmed the sentence. The Ninth Circuit held that the district court sufficiently explained its finding that Defendant had not met his burden of proving that he possessed the firearms solely for lawful sporting purposes or collection, and that § 2K2.1(b)(2) therefore did not apply. The Ninth Circuit further held that the sentence of one year and one day was substantively reasonable in light of the totality of the circumstances and the factors set forth in § 3553(a).

Key Issue(s): Sentencing

***Fortson v. City Att’y of L.A.*, No. CV 12-5256-MWF SP, 2013 WL 1431624 (C.D. Cal. Mar. 4, 2013)**

Facts/Procedural History: Plaintiff pled no contest to misdemeanor spousal battery in violation of a state law in 2009. Police officers later seized Plaintiff’s firearms in 2011 despite Plaintiff’s claims that the sentencing court permitted the possession in light of Plaintiff’s employment as a security guard. Plaintiff was charged with, among other things, unlawful possession of a firearm within ten years of a misdemeanor conviction for spousal battery in violation of a state law. Plaintiff sued Defendants for malicious prosecution and Defendants moved to dismiss.

Issue: Plaintiff claimed, among other things, that law enforcement officials permitted the violation of his Second Amendment rights by enforcing the state law prohibiting him from possessing firearms.

Holding: With respect to Plaintiff’s Second Amendment claim, the magistrate judge recommended dismissal with leave to amend. The state law at issue had previously been upheld under *Heller*’s standard as a lawful firearm regulation. In addition, the court compared the state law to 18 U.S.C. § 922(g)(9) and noted that multiple appellate courts had upheld the constitutionality of § 922(g)(9).

Key Issue(s): Second Amendment (*Heller*)

***Shirey v. L.A. Cnty. Civil Serv. Comm’n*, 216 Cal. App. 4th 1 (Cal. App. 2013)**

Facts/Procedural History: Plaintiff, a deputy sheriff, was charged with a misdemeanor violation of inflicting corporal injury on his girlfriend in 1993. He was found guilty of the lesser-included offense of simple battery. The battery conviction was later set aside after Plaintiff completed probation. More than ten years later, the law enforcement agency discharged him on the ground that he was prohibited from possessing a firearm under 18 U.S.C. § 922(g)(9). Plaintiff filed a complaint in state court alleging that Defendants misinterpreted federal law in upholding the agency’s decision to discharge him. The trial court entered judgment in favor of Defendants. Plaintiff appealed.

Issue: On appeal, Plaintiff argued his conviction for simple battery did not qualify as a conviction of a domestic violence crime under § 922(g)(9).

Holding: The appellate court reversed and remanded the trial court’s decision upholding Plaintiff’s termination. It held that the conviction for simple battery under the state penal code did not qualify as a predicate misdemeanor crime of domestic violence under the meaning of § 922(g)(9). For a state criminal offense to qualify as a predicate misdemeanor conviction under federal law, it must contain as an element the use or attempted use of physical force. The appellate court noted the state code’s definition of battery as the unlawful use of force omitted the word physical.

Key Issue(s): Predicate Offense

***United States v. First*, 731 F.3d 998 (9th Cir. 2013)**

Facts/Procedural History: A tribal court convicted Defendant, a Native American, for a misdemeanor crime of domestic violence in 2003. Defendant appeared before the court without a lawyer and was not offered the assistance of a court-appointed lawyer. Years later, the Government indicted Defendant for possessing a firearm in violation of 18 U.S.C. § 922(g)(9) because he possessed a firearm after having been convicted of a misdemeanor crime of domestic violence. The district court dismissed the indictment on the grounds that Defendant could not be charged with a violation of § 922(g)(9) when he had been denied his Sixth Amendment right to counsel in the predicate misdemeanor proceeding. The Government appealed.

Issue: Defendant argued, among other things, that because he did not have the assistance of an attorney when he was convicted for the predicate offense, the subsequent § 922(g)(9) conviction likewise violated the Sixth Amendment.

Holding: The Ninth Circuit reversed the dismissal and remanded the matter to the district court. The court held that a misdemeanor conviction obtained in trial court could qualify as a predicate offense to a § 922(g)(9) prosecution so long as the defendant was provided whatever right to counsel existed

in that proceeding. The court found the “right to counsel” in a statute defining misdemeanor crimes of domestic violence referred to the right that existed in the underlying proceeding. Accordingly, Defendant was not entitled to counsel in the underlying tribal proceeding.

Key Issue(s): Predicate Offense; Sixth Amendment

***Baker v. Holder*, 475 Fed. App’x. 156 (9th Cir. 2012)**

Facts/Procedural History: Plaintiff’s application to purchase a firearm was denied due to a previous conviction for a misdemeanor crime of domestic violence under 18 U.S.C. § 922(g)(9). He filed a complaint alleging, among other things, that § 922(g)(9) was invalid as applied to him on both statutory and constitutional grounds. The district court dismissed the complaint with prejudice. Plaintiff appealed.

Issue: The court considered whether Plaintiff’s Second Amendment claim challenging the constitutionality of § 922(g)(9) stated a claim for relief.

Holding: The Ninth Circuit held Plaintiff could amend his complaint and reversed the district court’s order dismissing the case with prejudice. While a previous Ninth Circuit decision foreclosed Plaintiff’s statutory claims, the Supreme Court had recently found in *Heller* that the Second Amendment “conferred an individual right to keep and bear arms.” Accordingly, Plaintiff was permitted to amend his complaint.

Key Issue(s): Second Amendment (*Heller*)

***Enos v. Holder*, 855 F. Supp. 2d 1088 (E.D. Cal. 2012)**

Facts/Procedural History: Individuals were each convicted of a misdemeanor crime of domestic violence more than ten years ago. While California law had restored their right to possess a firearm after ten years, they were still prohibited from possessing a firearm under 18 U.S.C. § 922(g)(9). They filed suit as plaintiffs seeking declaratory relief to restore their right to possess firearms under federal law, arguing, among other things, that 18 U.S.C. § 922(g)(9) as applied violated their Second Amendment rights. Defendants filed a motion to dismiss.

Issue: Plaintiffs argued that their civil rights were restored and that they should have regained their right to own firearms under 18 U.S.C. § 921(a)(33)(B)(ii). Plaintiffs also argued that as applied to them, § 922(g)(9) violated their Second Amendment rights.

Holding: The district court granted Defendant’s motion with prejudice. It held that Plaintiffs did not qualify for expungement under § 921(a)(33)(B)(ii) despite their records being cleared under California law. The court reasoned that the plaintiffs’ civil rights were not “restored” within the meaning of

the statute because the relevant civil rights in this context were the right to vote, hold public office, and sit on a jury. The district court further determined that § 922(g)(9) was a presumptively lawful categorical ban on firearm possession.

Key Issue(s): Rights Restoration; Second Amendment

***United States v. Perkins*, 2:12-CR-00354-LDG CW, 2012 WL 6089664 (D. Nev. Dec. 6, 2012)**

Facts/Procedural History: Defendant was charged with two counts of unlawful possession of a firearm in violation of 18 U.S.C. § 922(g)(9) after pleading guilty to a misdemeanor battery involving domestic violence. After the indictment, Defendant moved in state court to withdraw his original plea, and the conviction was later modified to disturbing the peace. The Government filed a motion in limine to exclude evidence of the modified conviction and Defendant's claimed lack of knowledge that he was prohibited from possessing firearms.

Issue: The Government argued that evidence of Defendant's post hoc modification of his underlying conviction and his ignorance of the law were irrelevant to the charges under § 922(g)(9) and should be excluded.

Holding: The district court granted the Government's motion in limine. The district court held that the relevant issue under § 922(g)(9) was whether Defendant had a qualifying conviction at the time he possessed the firearms, and the later modification of his conviction did not affect his status during the relevant period of firearm possession. The district court further held that Defendant's lack of knowledge about the legal prohibition on firearm possession was not relevant and did not implicate due process because the statute only required knowledge of the fact of possession, not knowledge of the legal consequences.

Key Issue(s): Predicate Offense; Knowledge Requirement

***Fisher v. Kealoha*, No. CIV. 11-00589 ACK, 2012 WL 2526923 (D. Haw. June 29, 2012)**

Facts/Procedural History: Plaintiff was convicted of two misdemeanor counts of harassment involving a domestic relationship in 1997, resulting in probation and an order to surrender his firearms. After successfully completing probation, Plaintiff's firearms were returned pursuant to a court order. Over a decade later, in 2009, Plaintiff applied for a permit to acquire additional firearms but was denied based on his prior harassment conviction, and he was ordered to surrender his firearms again. Plaintiff transferred ownership of his firearms to his wife to avoid prosecution.

Plaintiff filed suit under 42 U.S.C. § 1983, asserting violations of his Second and Fourteenth Amendment rights, and filed a motion for preliminary injunction compelling the police chief to rescind the denial and issue a permit.

Issue: Plaintiff argued that the denial of his firearm permit and order to surrender firearms violated his Second Amendment right to keep arms for self-defense in the home and his Fourteenth Amendment right to procedural due process.

Holding: The district court granted the preliminary injunction. The district court found that Plaintiff was likely to succeed in showing that his harassment conviction did not qualify as a “crime of violence” under Hawaii law because it did not necessarily involve injury or threat of injury and did not meet the federal definition of a misdemeanor crime of domestic violence under 18 U.S.C. § 921(a)(33). The district court concluded that Plaintiff had a clear Second Amendment right to possess firearms in his home for self-defense under *Heller*, and that the police chief’s denial without meaningful process deprived him of that right without sufficient procedural safeguards. The district court also found that Plaintiff demonstrated a likelihood of irreparable harm because the deprivation of a constitutional right is presumed to be irreparable, that the balance of the equities favored Plaintiff, and that the public interest was served by vindicating Second Amendment rights in the home without implicating broader public carry concerns. The court therefore ordered the Defendant to issue the permit.

Key Issue(s): Definition of Crime of Violence; Second Amendment; Procedural Due Process; Preliminary Injunction

Jennings v. Mukasey, 511 F.3d 894 (9th Cir. 2007)

Facts/Procedural History: Plaintiff pled nolo contendere in 1985 to a misdemeanor assault with force likely to produce great bodily injury against his former wife. Plaintiff’s conviction was later dismissed. After the conviction was dismissed, Plaintiff applied, as the owner and president of a firearms dealership corporation, for a renewal of firearm license on behalf of the corporation. The application was denied by the ATF because Plaintiff answered “no” in response to a question regarding conviction for a misdemeanor crime of domestic violence. The ATF reasoned that Plaintiff was the responsible party for the corporation and therefore the corporation was prohibited under 18 U.S.C. § 922(g)(9) from possessing firearms. The ATF also asserted that Plaintiff had violated 18 U.S.C. § 924(a)(1)(A) by falsely stating that he had never been convicted of a misdemeanor crime of domestic violence. Plaintiff filed a petition in the district court to overturn the ATF’s decision. The district court upheld the decision to deny Plaintiff’s application for a firearm permit and Plaintiff appealed.

Issue: On appeal, Plaintiff argued that his conviction had been expunged and thus the corporation, for which he was the responsible party, should not have been prohibited from possessing firearms under § 922(g)(9).

Holding: The Ninth Circuit affirmed the district court's decision. It held that Plaintiff's misdemeanor crime of domestic violence conviction had not been "expunged" under the applicable California Penal Code section. Plaintiff received statutory relief for his misdemeanor conviction, but the conviction itself was not expunged under the meaning of the state statute.

Key Issue(s): Expungement

United States v. Epps, 240 Fed. App'x 247 (9th Cir. 2007)

Facts/Procedural History: Defendant pled guilty to a misdemeanor crime of domestic violence. He was later arrested for, and convicted of, possession of a firearm in violation of 18 U.S.C. § 922(g)(9). Before Defendant's § 922(g)(9) conviction, the state court withdrew his prior guilty plea on the grounds that it was not knowingly and intelligently entered. Defendant appealed his § 922(g)(9) conviction.

Issue: Defendant argued he should not have been charged with § 922(g)(9) because he was not convicted of a predicate misdemeanor crime of domestic violence after the state court withdrew his guilty plea for that misdemeanor crime.

Holding: The Ninth Circuit affirmed Defendant's conviction. The court found that Defendant's predicate conviction had not been "expunged or set aside" because the conviction was set aside only after he was arrested for violating § 922(g)(9). The predicate conviction could thus serve as the basis for a § 922(g)(9) conviction.

Key Issue(s): Predicate Offense

United States v. Lenihan, 488 F.3d 1175 (9th Cir. 2007)

Facts/Procedural History: Defendant pled guilty to a misdemeanor crime of domestic violence without being represented by counsel. A transcript was not made for Defendant's plea hearing, but the district court judge's practice was to advise defendants that, among other things, domestic violence convictions could impact their ability to lawfully carry a firearm. Defendant was convicted of possession of a firearm by a person convicted of a misdemeanor crime of domestic violence pursuant to 18 U.S.C. § 922(g)(9). He appealed.

Issue: Defendant argued that his guilty plea for the predicate misdemeanor violated his Sixth Amendment right to counsel because he was not informed that it could lead to a subsequent prosecution for possession of a firearm in violation of § 922(g)(9).

Holding: The Ninth Circuit affirmed Defendant’s conviction. It held that the lack of a rigorous warning on waiving the right to counsel at pre-trial stages did not invalidate Defendant’s predicate conviction.

Key Issue(s): Sixth Amendment; Predicate Offense

United States v. Nobriga, 474 F.3d 561 (9th Cir. 2006)

Facts/Procedural History: Defendant was convicted of a state misdemeanor for abuse of a family or household member. He later was charged with violating 18 U.S.C. § 922(g)(9) for possession of a firearm after having been previously convicted of a misdemeanor crime of domestic violence. The district court denied Defendant’s motion to dismiss, finding that while the Hawaii statute was not categorically a “misdemeanor crime of domestic violence,” the charging documents together with the judgment demonstrated he pled guilty to a misdemeanor crime of domestic violence. Defendant appealed.

Issue: Defendant argued his underlying conviction was not a misdemeanor crime of domestic violence because, among other things, the underlying conviction did not involve the “violent use of force.”

Holding: The Ninth Circuit reversed. It found that an individual could be guilty of the state misdemeanor for abuse through a showing of reckless use of force, not just an intentional use of force. Because the record supported a finding that Defendant only acted with recklessness, the Ninth Circuit found the motion to dismiss should have been granted.

Note: As of the date of this 2025 update, this case has received direct negative treatment. 579 U.S. 686 (2016).

Key Issue(s): Predicate Offense

Duffy v. State, 120 P.3d 398 (Mont. 2005)

Facts/Procedural History: Plaintiff was arrested for “partner or family member assault.” He remained in jail until his court appearance the next morning where he then entered a guilty plea after a clerk had allegedly advised him that he did not have a case. Plaintiff filed a motion to withdraw his plea, claiming his guilty plea was involuntary and that the judge did not inform him of the collateral consequences, i.e., 18 U.S.C. § 922(g)(9)’s firearm prohibition. The district court denied Plaintiff’s motion and Plaintiff appealed.

Issue: Plaintiff argued that his plea was involuntary because, among other reasons, the judge failed to inform him of § 922(g)(9).

Holding: The Montana Supreme Court affirmed the district court’s denial of Plaintiff’s petition to withdraw his guilty plea. The Montana Supreme Court held that, although evidence suggested the judge had in fact notified Plaintiff of the collateral consequences, Montana law did not require a judge to inform a defendant of those collateral consequences.

Key Issue(s): Plea Agreement; Collateral Consequences

United States v. Brailey, 408 F.3d 609 (9th Cir. 2005)

Facts/Procedural History: Defendant assaulted his wife and pled guilty to felony charges. In 1997, the Utah court granted his petition to reduce his felony conviction to a class A misdemeanor assault. In 2000, the Utah legislature enacted Utah Code Ann. § 76-10-503, which changed Utah law to permit a person convicted of a misdemeanor to possess a firearm. At some point thereafter, Defendant entered a conditional guilty plea to being a prohibited person in possession of a firearm in violation of 18 U.S.C. § 922(g)(9). Defendant then appealed his conditional guilty plea.

Issue: Defendant argued he fell within the federal statute’s exception under 18 U.S.C. § 921(a)(33)(B) (ii) for persons convicted of misdemeanors who have had their “civil rights restored.” He argued that his rights had been “restored” because the new Utah statute provided that persons convicted of misdemeanors are no longer prevented from possessing a firearm under Utah state law.

Holding: The Ninth Circuit affirmed the district court’s finding that the Utah statutory amendment did not “restore” Defendant’s “civil rights” within the meaning of federal law. The Ninth Circuit reasoned that Defendant’s misdemeanor conviction did not deprive him of any “core civil rights” (i.e., the right to vote, the right to serve on a jury, and the right to hold public office) and therefore his civil rights could not have been “restored” within the meaning of the federal exception when the Utah statute was amended in 2000. The Ninth Circuit concluded that, because the restoration exception was inapplicable, Defendant, having been convicted of a misdemeanor crime of domestic violence, was properly charged with committing a federal crime under § 922(g)(9).

Key Issue(s): Rights Restoration

United States v. Serrao, 301 F. Supp. 2d 1142 (D. Haw. 2004)

Facts/Procedural History: Defendant was originally charged in Hawaii state court with abuse of a family and household member after attacking his wife. The case was transferred to another state court, and the complaint was orally amended to Assault in the Third Degree under Hawaii law. Defendant pled no contest to the amended charge. Defendant was later indicted in federal court for violating 18 U.S.C. § 922(g)(9). Defendant moved to dismiss the federal indictment.

Issue: Defendant argued that Assault in the Third Degree under Hawaii law criminalized conduct that does not necessarily involve the use of physical force, which is a required element under § 922(g)(9). Defendant also argued that there was no record showing that his no contest plea admitted to conduct involving physical force.

Holding: The district court agreed and dismissed the indictment. The district court found that the Hawaii Assault in the Third Degree statute does not require proof of physical force as an element and that the record did not demonstrate that Defendant's plea established conduct involving the use of physical force. The district court considered declarations by the state prosecutor describing the underlying conduct as an assault on Defendant's wife but concluded that these statements did not clearly establish that the prior offense involved physical force, even though it was likely that it did.

Note: As of the date of this 2025 update, this case has received direct negative treatment.

Key Issue(s): Physical Force Requirement

United States v. Belless, 338 F.3d 1063 (9th Cir. 2003)

Facts/Procedural History: Defendant pled guilty in Wisconsin state court to assault and battery after grabbing his wife by the chest and neck and pushing her against a car. He was later charged and convicted in federal district court of illegally possessing a firearm in violation of 18 U.S.C. § 922(g)(9). Before trial, Defendant moved to dismiss the indictment. The district court denied the motion, and Defendant appealed to the Ninth Circuit.

Issue: On appeal, Defendant argued that his underlying conviction did not qualify as a misdemeanor crime of domestic violence under 18 U.S.C. § 922(g)(9) because (1) a domestic relationship was not an element of the state offense, and (2) the state offense did not require the use of physical force to meet the federal statutory standard.

Holding: The Ninth Circuit reversed the district court's order. First, the Ninth Circuit rejected Defendant's argument that the state offense must contain a domestic relationship element, holding that 18 U.S.C. § 922(g)(9) required proof of the domestic relationship but did not require it to be an element of the predicate misdemeanor. Second, the Ninth Circuit held that the conduct underlying the state offense must involve more than mere de minimis or rude touching to meet the "physical force" requirement of 18 U.S.C. § 921(a)(33)(A). However, because the record did not clearly establish the conduct underlying Defendant's no contest plea, the Ninth Circuit stated it could not conclude that the trier of fact in the state case necessarily found Defendant guilty of conduct that serves as a predicate misdemeanor. Finally, the Ninth Circuit confirmed that the underlying misdemeanor conviction must have been obtained with counsel or with a knowing and intelligent waiver of that right under 18 U.S.C. § 921(a)(33)(B)(i)(I). Because Defendant was self-represented in the state court

case and the waiver form he signed did not include a warning of the dangers of self-representation, the Ninth Circuit found Defendant did not knowingly and intelligently waive his right to counsel when he pled guilty to the misdemeanor offense.

Note: As of the date of this 2025 update, this case has received direct negative treatment.

Key Issue(s): Predicate Offense; Physical Force Requirement; Waiver of Right to Counsel

State v. Liefert, 43 P.3d 329 (Mont. 2002)

Facts/Procedural History: Defendant was charged for unlawfully possessing a firearm in violation of 18 U.S.C. § 922(g)(9), after pleading guilty under Montana state law to partner assault. After the federal violation was charged, Defendant filed a motion to withdraw his guilty plea to partner assault, asserting that the plea was not voluntary because he was not informed of the federal firearm prohibition that would result from the plea. The trial court denied the motion and Defendant appealed. The appellate court likewise denied Defendant's motion, concluding that Defendant did not have to be advised of the federal prohibition because it was a collateral consequence of his sentence. Defendant appealed again to the Montana Supreme Court.

Issue: On appeal, Defendant argued that the federal statute preempted Montana law, which provided for a discretionary, not mandatory, firearm prohibition, and therefore the trial court was required to inform Defendant of the firearm restriction because it was required to give fair warning regarding the punishment that could result from a guilty plea.

Holding: The Montana Supreme Court affirmed the trial court's denial of Defendant's motion, holding that the trial court only had a responsibility to inform Defendant of the direct consequences of the guilty plea and that the federal firearms prohibition constituted merely a collateral consequence of Defendant's plea. The Montana Supreme Court reasoned that the federal firearms prohibition did not have a "definite, immediate, and largely automatic effect," because Defendant himself had discretionary control over whether he would violate § 922(g)(9) by choosing to possess a firearm. The Montana Supreme Court further noted that prosecution of § 922(g)(9) was not automatic but rather under the discretion of the federal government.

Key Issue(s): Voluntariness of Guilty Plea; Collateral Consequence

***United States v. Rodriguez-DeHaro*, 192 F. Supp. 2d 1031 (E.D. Cal. 2002)**

Facts/Procedural History: Defendant was charged with violating 18 U.S.C. §§ 922(a)(6) and 924(a)(2) for making a false statement on an application to purchase a firearm regarding his previous conviction of a misdemeanor crime of domestic violence. Defendant was previously charged with a misdemeanor violation of battery against a person who is the parent of the defendant's child, or is the defendant's former spouse, fiancé, or dating partner, and ultimately pled guilty to a lesser included offense of simple battery. Defendant moved to dismiss the federal indictment.

Issue: Defendant argued that his previous conviction was not a misdemeanor crime of domestic violence as defined by federal law, that he did not have the requisite knowledge when filling out the application, and that 18 U.S.C. § 922(a)(6) is unconstitutionally vague and overbroad.

Holding: The district court denied the motion to dismiss. The district court rejected Defendant's first challenge, finding that the definition of misdemeanor crime of domestic violence in the federal statute did not require that the predicate offense included the "domestic status of the victim" as an element. The district court also held that where a charge was for making a false statement on an application to purchase a firearm rather than violating § 922(g)(9) itself, there was no need to consider the definition of misdemeanor crime of domestic violence under federal law because the application itself defined what a misdemeanor crime of domestic violence was for purposes of filling out the form. The district court also rejected the claim that a person completing the form would need technical legal knowledge to do so properly. Finally, the district court rejected Defendant's vagueness/overbreadth argument, finding that 18 U.S.C. §§ 922(a)(6) and 924(a)(2) set forth the prohibited conduct in straightforward language capable of being understood by a person of ordinary intelligence.

Key Issue(s): False or Fictitious Statement; Predicate Offense; Knowledge Requirement; Vagueness

***United States v. Skuban*, 175 F. Supp. 2d 1253 (D. Nev. 2001)**

Facts/Procedural History: Defendant was convicted for assaulting his mother, which under Nevada law was considered a domestic violence misdemeanor. He was then indicted for possession of a firearm in violation of § 922(g)(9). Defendant filed a motion to dismiss the indictment.

Issue: Defendant argued that his conviction for assaulting his mother did not qualify as a predicate misdemeanor for purposes of the federal law, because the statute specifies the qualifying relationships, and child-parent was not listed.

Holding: The district court granted Defendant's motion to dismiss. The district court held that a child-aggressor and parent-victim relationship was not specified in the statute as one that met the predicate requirements for a misdemeanor crime of domestic violence. The district court also

agreed with Defendant that such a relationship did not fall within the category of “persons similarly situated to a spouse, parent, or guardian of the victim” under the statute because a child was not similarly situated to any of those specific categories of aggressors.

Key Issue(s): Relationship Requirement

***United States v. Jackson*, No. 98-50764, 2000 U.S. App. LEXIS 4865 (9th Cir. 2000)**

Facts/Procedural History: Defendant was convicted in federal district court of possessing a firearm after having been convicted of a misdemeanor crime of domestic violence in violation of 18 U.S.C. § 922(g)(9). The underlying domestic violence conviction arose from a guilty plea in state court. After his federal conviction, Defendant appealed to the Ninth Circuit.

Issue: On appeal, Defendant argued that his underlying state conviction did not satisfy 18 U.S.C. § 921(a)(33)(A) because he did not knowingly and intelligently waive his right to a jury trial when entering the plea, asserting that he never authorized his attorney to plead guilty on his behalf.

Holding: The Ninth Circuit affirmed the conviction, holding that the district court’s finding that Defendant knowingly and intelligently waived his right to a jury trial in the state proceeding was not clearly erroneous. The Ninth Circuit relied on the state court order memorializing that Defendant had been fully advised of his constitutional rights at the plea hearing. The Ninth Circuit also noted that when Defendant later appeared in state court on a bench warrant, he signed an order reinstating his probation without contesting his guilt. The record from a state evidentiary hearing further supported the finding, as Defendant’s former counsel testified that his practice was to advise clients of their rights and not to enter pleas without authorization.

Key Issue(s): Waiver of Right to Jury Trial

***United States v. Hancock*, 231 F.3d 557 (9th Cir. 2000)**

Facts/Procedural History: Defendant was convicted in 1994 and 1995 of multiple state misdemeanors involving domestic violence against his then-wife. In 1998, after his ex-wife obtained a protective order prohibiting Defendant from possessing a firearm, officers removed twelve firearms from Defendant’s home. He was indicted under 18 U.S.C. § 922(g)(9). Defendant moved to dismiss the indictment on due process and equal protection grounds and later requested jury instructions on knowledge of illegality and entrapment by estoppel. The district court denied both the motion and the proposed instructions. Defendant was convicted and sentenced to five years’ probation. He appealed.

Issue: On appeal, Defendant argued that § 922(g)(9) violated due process and equal protection as applied to him because: (1) the statute retroactively criminalized possession of firearms he lawfully purchased before his convictions and before the statute's enactment; (2) he lacked notice of the statute; and (3) Arizona law did not permit restoration of civil rights for misdemeanor convictions, resulting in harsher treatment for misdemeanants than for felons.

Holding: The Ninth Circuit affirmed the conviction. The Ninth Circuit held that § 922(g)(9) required only that Defendant knowingly possessed a firearm, not that he knew it was unlawful to do so under the statute. The Ninth Circuit further found that, even if knowledge of the statute was required, § 922(g)(9) was extensively publicized in news outlets and therefore subject to public knowledge. The Ninth Circuit also rejected Defendant's due process challenge, holding that Defendant did not fall into the limited exception to the rule that "ignorance of the law is no excuse" because Defendant knowingly possessed firearms and, by committing the domestic violence offenses, removed himself from the class of ordinary and innocent citizens who would not expect special restrictions on their possession of firearms. The Ninth Circuit also found no equal protection violation on the ground that Congress reasonably could have concluded that felons who had been through a state's restoration process and had regained their civil rights (without any restriction on their possession of firearms) were more fit to own firearms than domestic-violence misdemeanants who had not had their convictions expunged or been pardoned. On Defendant's claim regarding when he purchased and possessed the firearms, the Ninth Circuit found that Government officials had not intentionally misled the Defendant at the time he purchased the firearms, because Defendant had not yet committed any domestic violence misdemeanors and, even if he had, he would not have been banned from possessing firearms at the time. Therefore, the district court rightly rejected Defendant's request for jury instructions on entrapment by estoppel.

Key Issue(s): Knowledge Requirement; Due Process (Notice); Equal Protection; Second Amendment; Entrapment by Estoppel

***State ex rel. McDougall v. Strohson (Cantrell)*, 190 Ariz. 120 (Ariz. 1997)**

Facts/Procedural History: Defendant was charged in Phoenix Municipal Court with misdemeanor assault under Arizona law for allegedly assaulting his girlfriend's son, which was designated a domestic violence offense under Arizona statutes. Defendant requested a jury trial even though simple assault did not qualify for a jury trial under Arizona law because his conviction would make him ineligible to possess a firearm under 18 U.S.C. § 922(g)(9). The municipal court granted Defendant's request for a jury trial. The State filed a special action in the Arizona Supreme Court challenging the municipal court's order.

Issue: Defendant argued that he was entitled to a jury trial on the misdemeanor assault charge because, if convicted, he would be prohibited under federal law from possessing a firearm, which he claimed was a sufficiently serious consequence to trigger the right to a jury trial.

Holding: The Arizona Supreme Court held that Defendant was not entitled to a jury trial under Arizona law. The Arizona Supreme Court emphasized that the right to a jury trial depends primarily on the potential punishment authorized by the Arizona statute, and courts should not consider collateral consequences imposed by other jurisdictions, such as federal firearm prohibitions. The Arizona Supreme Court concluded that the loss of firearm rights is not the type of “universal grave consequence” that invokes the right to a jury trial under state law. The Arizona Supreme Court also declined to follow federal standards on jury entitlement and reaffirmed that Arizona’s broader right to jury trial is governed by its own precedent.

Note: As of the date of this 2025 update, this case has received direct negative treatment.

Key Issue(s): Right to Jury Trial; Collateral Consequences

Tenth Circuit (Colorado, Kansas, New Mexico, Oklahoma, Utah, Wyoming)

United States v. Jackson, 138 F.4th 1244 (10th Cir. 2025)

Facts/Procedural History: Defendant was convicted of a misdemeanor crime of domestic violence. In December 2021, police found two loaded guns in Defendant's car and charged him under 18 U.S.C. § 922(g)(9) for possession of firearms by a person convicted of a misdemeanor crime of domestic violence. While out on bail, Defendant was arrested again, and during a search of his home, police found three more firearms. Defendant pled guilty to violating § 922(g)(9) and was sentenced to 72 months' imprisonment. Defendant appealed.

Issue: On appeal, Defendant argued that § 922(g)(9) was unconstitutional under the Second Amendment.

Holding: The Tenth Circuit rejected Defendant's Second Amendment challenge and affirmed Defendant's conviction and sentence. Among other things, the Tenth Circuit held that § 922(g)(9) was constitutional because there was a longstanding tradition in the United States of disarming those who pose a danger to public safety. Applying *Bruen*'s two-step framework, the Tenth Circuit found: (1) the Second Amendment's plain text covered Defendant's conduct because possession of a firearm was covered under the Second Amendment; and (2) restricting offenders of violent crimes such as domestic violence from possessing guns was in line with the United States' firearm regulation because there was a historical tradition of disarming individuals deemed dangerous.

Key Issue(s): Second Amendment (*Bruen*)

Marquez v. Schaefer, 571 P.3d 920 (Colo. App. May 1, 2025)

Facts/Procedural History: In 1997, Plaintiff was convicted under a municipal ordinance of assault involving domestic violence, pled guilty, and was sentenced to probation. Plaintiff completed his probation. Later, in 2023, Plaintiff applied to purchase a firearm. The Colorado Bureau of Investigation (CBI) denied his firearm purchase due to his 1997 conviction, under 18 U.S.C. § 922(g)(9). Plaintiff brought suit to appeal CBI's decision, arguing that his conviction under a municipal ordinance should not disqualify him from purchasing a firearm. The trial court dismissed his complaint. Plaintiff appealed.

Issue: On appeal, Plaintiff argued that his conviction under a municipal ordinance, which was not labeled as a misdemeanor under state law, should not have triggered the federal prohibition of firearms possession under § 922(g)(9).

Holding: The appellate court affirmed the trial court’s decision to dismiss Plaintiff’s complaint. The appellate court pointed to the amended language of § 921(a)(33)(A)(i), which included crimes under local law punishable by more than one year—in addition to misdemeanors punishable by up to one year—and thus would have included the municipal ordinance. The appellate court therefore found that Plaintiff’s conviction qualified as a misdemeanor crime of domestic violence under federal law.

Key Issue(s): Predicate Offense

United States v. Benton, 988 F.3d 1231 (10th Cir. 2021)

Facts/Procedural History: A jury found Defendant guilty of possession of a firearm after having been previously convicted of a misdemeanor crime of domestic violence in violation of 18 U.S.C. § 922(g). Defendant appealed.

Issue: On appeal, Defendant argued that under *Rehaif v. United States*, 139 S. Ct. 2191 (2019), the Government was required to prove that Defendant not only knew of his prior domestic violence misdemeanor conviction, but also that he knew his prior conviction made it unlawful for him to possess a firearm.

Holding: The Tenth Circuit affirmed the conviction, holding that under *Rehaif*, the Government only had to prove that Defendant knew he possessed a firearm and knew of his prior misdemeanor crime of domestic violence—not that Defendant knew his status legally prohibited him from possessing a firearm.

Key Issue(s): Knowledge Requirement

United States v. Pauler, 857 F.3d 1073 (10th Cir. 2017)

Facts/Procedural History: Defendant was convicted in 2009 of violating a Wichita, Kansas municipal domestic battery ordinance by punching his girlfriend and was subsequently convicted in 2014 with possession of a firearm in violation of § 922(g)(9). Defendant moved to dismiss the indictment for failure to state an offense. The district court denied the motion, and Defendant appealed.

Issue: On appeal, Defendant argued that § 922(g)(9) was not triggered by a conviction under a city ordinance but only by domestic violence misdemeanors that are in violation of “Federal, State, or Tribal law” under § 921(a)(33).

Holding: The Tenth Circuit reversed the district order's order and remanded the case with instructions for the district court to vacate Defendant's conviction and sentence and to dismiss the indictment. The Tenth Circuit held that, because § 921(a)(33) lists only "Federal, State, and Tribal law," Congress must have intended to exclude municipal ordinances from the definition of qualifying predicate offenses under § 921(a)(33). Therefore, Defendant's violation of a municipal domestic battery ordinance did not trigger the prohibition against firearms in § 922(g)(9).

Key Issue(s): Predicate Offense

United States v. Pope, 613 F.3d 1255 (10th Cir. 2010)

Facts/Procedural History: Defendant was charged with possession of a firearm after a misdemeanor crime of domestic violence conviction in violation of 18 U.S.C. § 922(g)(9). Defendant moved to dismiss the indictment, arguing that § 922(g)(9) violated his Second Amendment rights. The district court denied the motion, finding the constitutional challenge could not be resolved pretrial. Defendant pled guilty but reserved the right to appeal the denial of his motion to dismiss.

Issue: Defendant argued on appeal that the application of § 922(g)(9) violated his Second Amendment rights because he possessed the firearm at home for self-defense, and that the district court erred by refusing to decide this constitutional challenge before trial.

Holding: The Tenth Circuit affirmed the district court's ruling, holding that the Second Amendment challenge could not be decided before trial because it relied on disputed facts outside the indictment that were intertwined with the question of guilt or innocence. The Tenth Circuit explained that under Federal Rule of Criminal Procedure 12(b), courts may not resolve factual disputes related to the general issue of guilt by pretrial motion when those facts are contested. Accordingly, the Tenth Circuit directed that the constitutional defense must be resolved at trial.

Note: As of the date of this 2025 update, this case has received direct negative treatment.

Key Issue(s): Pre-Trial Constitutional Challenge

United States v. Liapis, 216 Fed. App'x 776 (10th Cir. 2007)

Facts/Procedural History: Defendant pled guilty to multiple charges, including drug offenses and illegal possession of a firearm under 18 U.S.C. § 922(g)(9), after his motions to suppress and to dismiss the firearm counts were denied. Defendant reserved the right to appeal the denial of his motions.

Issue: Defendant argued that battery under Utah law did not require the prosecution to prove as an element that a domestic relationship existed between the defendant and the victim and therefore could not support a conviction under § 922(g)(9).

Holding: The Tenth Circuit affirmed the district court’s denial of Defendant’s motion to dismiss. Relying on *United States v. Heckenliable*, 446 F.3d 1048 (10th Cir. 2006), the Tenth Circuit held that the domestic relationship element must be charged and proven as part of the federal § 922(g)(9) offense but not as an element of the underlying misdemeanor conviction.

Key Issue(s): Relationship Requirement

United States v. Heckenliable, 446 F.3d 1048 (10th Cir. 2006)

Facts/Procedural History: Defendant pled guilty to possession of a firearm after having been previously convicted of a misdemeanor crime of domestic violence in violation of 18 U.S.C. § 922(g)(9). The predicate conviction was for simple assault under Utah law, which did not include a domestic relationship element. Defendant filed a motion in limine to dismiss, arguing that the absence of a domestic relationship element in the predicate offense rendered his guilty plea constitutionally invalid because he was misinformed about the required elements of § 922(g)(9). The district court denied the motion and sentenced Defendant to fifty-seven months’ imprisonment. Defendant appealed.

Issue: Defendant argued that the underlying misdemeanor must include a domestic relationship as an element in order to satisfy § 921(a)(33)(A) for a conviction under § 922(g)(9).

Holding: The Tenth Circuit affirmed. Reviewing the statutory language and joining every other circuit to have considered the question, the Tenth Circuit held that the domestic relationship was not required to be an element of the predicate misdemeanor offense; rather, it was an element that must be proven by the Government during prosecution under § 922(g)(9).

Note: As of the date of this 2025 update, this case has received direct negative treatment.

Key Issue(s): Relationship Requirement

Salt Lake City v. Newman, 113 P.3d 1007 (Utah Ct. App. 2005)

Facts/Procedural History: Defendant, an active-duty military member, was charged under a Salt Lake City ordinance with domestic-violence battery. Defendant filed a motion to dismiss, arguing that the city ordinance conflicted with Utah’s state assault statute. He also sought an exception to Utah’s procedural rule that permits criminal appeals only after conviction and sentencing, arguing that a conviction would result in his immediate discharge under 18 U.S.C. § 922(g)(9) before he could appeal. The justice court denied both the motion and the exception, and the district court likewise denied his petition for extraordinary relief. Defendant appealed.

Issue: Defendant argued that (1) the district court abused its discretion in denying his petition for extraordinary relief because the risk of losing his military career warranted an exception; and (2) the city ordinance conflicted with state law because it imposed a stricter standard than the state assault statute.

Holding: The appellate court affirmed. The appellate court held that while the consequences of a domestic-violence conviction under § 922(g)(9) could be extraordinary, the standard of review for granting an exception is abuse of discretion, and the district court did not abuse its discretion in denying the petition for extraordinary relief. The appellate court also held that the Salt Lake City ordinance did not conflict with state law because it shared a common purpose and subject matter with the state assault statute, and municipalities may enact ordinances with additional requirements so long as they did not forbid what the state statute permitted.

Key Issue(s): Appeals Procedure

Woods v. City of Denver, 122 P.3d 1050 (Colo. App. 2005)

Facts/Procedural History: Plaintiff, a police officer, was convicted of third-degree assault involving his former live-in companion. The Bureau of Alcohol, Tobacco, and Firearms (BATF) advised the Denver police department that Plaintiff's conviction was for a misdemeanor crime of domestic violence as defined in § 922(g)(9). The BATF expressed the opinion that Plaintiff and the victim had been similarly situated to spouses prior to the assault. As a result, the City of Denver disqualified Plaintiff from further employment as a police officer. Plaintiff appealed the determination, and a hearing officer ordered Plaintiff reinstated with backpay and benefits. The City of Denver appealed to the Civil Service Commission of Denver (Commission). The Commission reversed the hearing officer's decision. Plaintiff then filed an action in state court and the trial court affirmed the Commission's decision. Plaintiff appealed.

Issue: On appeal, Plaintiff argued, among other things, that the Commission erroneously concluded that he and the victim were similarly situated to spouses because they were no longer living together at the time of the assault.

Holding: The appellate court affirmed the Commission's ruling, holding that once an intimate relationship exists that is similarly situated to a spousal relationship, a subsequent violent offense between the parties qualified as domestic violence under § 922(g)(9), regardless of whether the relationship had formally ended. The appellate court found that interpreting the statute otherwise would frustrate the purpose of the statute and lead to absurd results. The appellate court further held that the Commission properly exercised its jurisdiction to review the policy implications of applying the federal definition and did not abuse its discretion in disqualifying Defendant from possessing a firearm and serving as a police officer.

Key Issue(s): Relationship Requirement

***King v. Wyoming Div. of Crim. Invest.*, 89 P.3d 341 (Wy. 2004)**

Facts/Procedural History: Petitioner’s application for a concealed firearm permit was denied by the Division of Criminal Investigation (DCI) because he had a prior conviction for breach of peace involving assault and threats against his estranged wife. Petitioner challenged the denial, arguing that the Wyoming “breach of peace” statute did not satisfy the federal definition of a misdemeanor crime of domestic violence under 18 U.S.C. § 922(g)(9) because the statute referred to “violent actions,” which he claimed did not necessarily amount to “physical force” as required by federal law. He further asserted that the underlying conviction did not contain a relationship element. The district court affirmed the agency’s decision, and Petitioner appealed.

Issue: On appeal, Petitioner argued, among other things, that the phrase “violent actions” in the Wyoming statute did not meet the federal requirement for “physical force” and that the federal prohibition should not apply because the Wyoming statute did not contain a domestic relationship element.

Holding: The Wyoming Supreme Court affirmed the denial. The Wyoming Supreme Court found that “violent actions” and “physical force” are functionally equivalent under the federal statute and that the record confirmed that Petitioner pled guilty to conduct involving actual violent acts. The Wyoming Supreme Court further rejected Petitioner’s argument that the underlying offense must contain a domestic relationship element, joining other circuits in concluding that the relationship need only exist in fact.

Note: As of the date of this 2025 update, this case has received direct negative treatment.

Key Issues: Physical Force Requirement; Relationship Requirement

***United States v. Rogers*, No. 03-4153, 2004 U.S. App. LEXIS 11712 (10th Cir. 2004)**

Facts/Procedural History: Defendant was indicted for possession of a firearm while subject to a domestic protection order and following a misdemeanor domestic violence conviction, in violation of 18 U.S.C. §§ 922(g)(8) and 922(g)(9). A magistrate judge detained Defendant under the Bail Reform Act, finding he posed a serious risk to the safety of others. Defendant objected, arguing that these charges did not qualify as “crimes of violence” under 18 U.S.C. § 3142(f)(1). The district court overruled Defendant’s objection, agreeing with the magistrate’s finding that he presented a danger to the community. Defendant appealed.

Issue: Defendant argued that firearm possession under §§ 922(g)(8) and 922(g)(9) did not inherently pose a substantial risk that physical force would be used, and therefore it did not meet the definition of a “crime of violence” for pretrial detention purposes.

Holding: The Tenth Circuit affirmed the detention order. The Tenth Circuit held that violations of §§ 922(g)(8) and 922(g)(9) were “crimes of violence” under the Bail Reform Act because they necessarily involved a substantial risk that physical force may be used. The Tenth Circuit emphasized that possession of a firearm by individuals with a history of domestic violence or subject to a protection order created an inherent, substantial risk of further violence. The risk arose from the nature of the offense and occurred “in the course of committing” the illegal possession.

Key Issue(s): Pretrial Detention

Woods v. Denver, 62 Fed. App’x 286 (10th Cir. 2003)

Facts/Procedural History: Plaintiff, a Denver police officer, was convicted of third-degree assault involving his former live-in companion. The Bureau of Alcohol, Tobacco, and Firearms (BATF) advised the Denver police department that Plaintiff’s conviction was for a misdemeanor crime of domestic violence as defined in § 922(g)(9). The BATF expressed the opinion that Plaintiff and the victim had been similarly situated to spouses prior to the assault. As a result, the City of Denver disqualified Plaintiff from further employment as a police officer. Plaintiff appealed the determination, and a hearing officer ordered Plaintiff reinstated with backpay and benefits. The City of Denver appealed to the Civil Service Commission of Denver (Commission). The Commission reversed the hearing officer’s decision. Plaintiff then filed suit against the City of Denver in federal district court, seeking declaratory relief that his conviction did not trigger § 922(g)(9). The district court granted summary judgment for the City of Denver on Defendant’s constitutional and due process claims and declined to exercise supplemental jurisdiction over his state claims. However, the district court ruled that it could issue declaratory relief under federal law to construe the “similarly situated to a spouse” language in § 921(a)(33)(A)(ii) and held that the phrase applied only if the relationship existed at the time of the offense. The City of Denver appealed the declaratory ruling.

Issue: The City of Denver argued that the federal court lacked jurisdiction to issue the declaratory ruling in the absence of any remaining federal claim.

Holding: The Tenth Circuit held that the district court lacked jurisdiction to construe the federal statute because construction of a federal statute, by itself, did not create a federal cause of action or support federal question jurisdiction. The Declaratory Judgment Act did not expand jurisdiction without an independent statutory basis. Because all other claims were dismissed, the district court’s interpretation had to be vacated.

Key Issues: Relationship Requirement; Jurisdiction; Declaratory Relief

***State v. Garcia*, 63 P.3d 1164 (N.M. Ct. App. 2002)**

Facts/Procedural History: Defendant was convicted on three counts of domestic violence in magistrate court. Defendant represented that, after entering judgment and sentence, the magistrate judge informed him of the punitive provisions of 18 U.S.C. § 922(g)(9), including the prohibition against purchasing, owning, or possessing a firearm. Defendant appealed to the trial court, challenging the constitutionality of the federal consequences of his conviction under § 922(g)(9). The trial court entered an order of dismissal and held that because the magistrate’s comment about the statutory consequence of Defendant’s convictions was not part of the judgment or sentence, the constitutionality of the statute could not be raised on appeal.

Issue: On appeal, Defendant argued that § 922(g)(9) was facially unconstitutional and unconstitutional as applied to him.

Holding: The appellate court affirmed the decision of the trial court, holding that Defendant did not have the right of appeal on his constitutional challenge. The appellate court found that, because the alleged error related only to the magistrate judge’s oral statements and not to any final decision, those statements could not be grounds for reversal. Additionally, the appellate court concluded that the trial court could not grant declaratory or constitutional relief unrelated to the underlying judgment because doing so would amount to issuing an impermissible advisory opinion that would have no practical effect on the litigation.

Key Issue(s): State Court Challenge to Constitutionality

***United States v. Blosser*, 235 F. Supp. 2d 1178 (D. Kan. 2002)**

Facts/Procedural History: Defendant, having been previously convicted of a crime of domestic violence for simple battery against his biological daughter, answered “no” to a question asking whether he had been convicted of a crime of domestic violence on an application to purchase a firearm. Defendant was convicted of an 18 U.S.C. § 922(g)(9) violation following a bench trial. He was also charged with violating 18 U.S.C. § 922(a)(6), due to his statement on his firearm application that he had not been convicted of a crime of domestic violence. Following the entry of stipulated facts and testimony of the Defendant, the district court took the violation of § 922(a)(6) under advisement.

Issue: Defendant argued that he did not knowingly make a false statement on the firearm application because he believed he had only been convicted of simple battery—not a crime of domestic violence—and that because he had appealed the decision, the conviction no longer existed.

Holding: The district court found Defendant guilty of violating § 922(a)(6). The district court found that the “knowingly” standard could be satisfied by either: “(1) A showing that defendant actually knew the statement was false, or (2) by proof that defendant made the statement with a deliberate disregard for whether it was true or false with a conscious purpose to avoid learning the truth.” The

district court determined that Defendant had knowingly lied on the form under the second of those two prongs because he failed to read the full information on the application that would have caused him to realize that his conviction met the definition of a crime of domestic violence.

Key Issues: Knowledge Requirement; False or Fictitious Statement

Ward v. Tomsick, 30 P.3d 824 (Colo. App. 2001)

Facts/Procedural History: Plaintiff, a Denver police officer, was convicted of third-degree assault involving his former live-in companion. The Bureau of Alcohol, Tobacco, and Firearms (BATF) advised the Denver police department that Plaintiff's conviction was for a misdemeanor crime of domestic violence as defined in § 922(g)(9). The BATF expressed the opinion that Plaintiff and the victim had been similarly situated to spouses prior to the assault. As a result, the City of Denver disqualified Plaintiff from further employment as a police officer. Plaintiff appealed the determination, and a hearing officer ordered Plaintiff reinstated with backpay and benefits. The City of Denver appealed to the Civil Service Commission of Denver (Commission). The Commission reversed the hearing officer's decision. Plaintiff then filed an action in state court, and the district court upheld the Commission's determination. Plaintiff appealed.

Issue: Plaintiff argued that his assault did not qualify as a misdemeanor crime of domestic violence under 18 U.S.C. § 922(g)(9) because it did not necessarily contain the element of use or attempted use of physical force since it could be violated in a nonviolent manner. Plaintiff also argued he had not knowingly and intelligently waived his right to a jury trial as required under the federal law.

Holding: The appellate court affirmed the decision of the trial court. The appellate court held that although the assault statute could be violated in a non-violent fashion, the summons and complaint indicated that Plaintiff had been charged with an assault that included the use of force and that the trial court had found that he committed the act. The appellate court noted, based on federal case law, that a review of the charging instrument and other relevant facts was permissible to determine the nature of the predicate offense. The appellate court also found that Plaintiff and his counsel had not filed the necessary jury demand and did not object at any point to the fact that the case was tried to the trial court, thus waiving Defendant's right to a jury trial.

Key Issues: Physical Force requirement; Waiver of Right to Jury Trial

***United States v. Boyd*, No. 99-3227, 2000 U.S. App. LEXIS 8238 (10th Cir. 2000)**

Facts/Procedural History: Defendant was convicted of violating 18 U.S.C. § 922(g)(9) due to an earlier conviction for a misdemeanor crime of domestic violence. Defendant appealed the § 922(g)(9) conviction.

Issue: On appeal, Defendant argued that § 922(g)(9) was unconstitutional because it violated the fair notice requirement of the Due Process Clause of the Fifth Amendment and constituted an impermissible exercise of federal congressional power under the Commerce Clause.

Holding: The Tenth Circuit affirmed the conviction. The Tenth circuit rejected Defendant's fair notice argument, finding that Defendant "may not argue that his ignorance of the law renders his conviction a violation of due process." The Tenth Circuit also noted that the narrow exception to this rule was not implicated, because § 922(g)(9) was not a highly technical statute that has the potential to ensnare individuals engaged in apparently innocent conduct. The Tenth Circuit also rejected Defendant's Commerce Clause argument, relying on its own precedent in *United States v. Bolton*, 68 F. 3d 396 (10th Cir. 1995), which previously addressed and rejected the same argument.

Key Issues: Due Process (Notice); Commerce Clause

***United States v. Willbern*, No. 99-10161-01-JTM, 2000 U.S. Dist. LEXIS 6462 (D. Kan. April 12, 2000)**

Facts/Procedural History: In 1993, Defendant was convicted of third-degree battery of his girlfriend. Then, in 1999, he was found in possession of a shotgun and was indicted for violating 18 U.S.C. § 922(g)(9). Defendant filed a motion to dismiss.

Issue: Defendant argued that § 922(g)(9) was unconstitutional as an act unsupported under the Commerce Clause, a violation of the Second Amendment, a violation of substantive and procedural due process, and illegal under the Tenth Amendment.

Holding: The district court denied the motion to dismiss. The district court rejected the Commerce Clause challenge because the statute contained the requisite jurisdictional element. The district court also determined that Defendant's Second Amendment argument failed because the Tenth Circuit had consistently held that the Second Amendment does not guarantee a right to keep a firearm that does not have a reasonable relationship to a militia. Additionally, the district court observed that every other circuit that had examined a similar Second Amendment challenge had upheld § 922(g)(9). The district court also rejected Defendant's due process challenge because Defendant had sufficient notice of the statute's prohibition (an officer visited his father's pawn shop and warned Defendant that he could not legally possess a firearm) and, even absent notice,

application of the statute would be constitutional under the general principle that ignorance of the law provides no excuse for its violation. Finally, the district court rejected Defendant's Tenth Amendment argument, finding that § 922(g)(9) was constitutionally enacted under the Commerce Clause.

Key Issue(s): Commerce Clause; Second Amendment; Due Process (Notice); Tenth Amendment

***United States v. Boyd*, 52 F. Supp. 2d 1233 (D. Kan. 1999)**

Facts/Procedural History: Defendant was convicted of two violations of 18 U.S.C. § 922(g)(9). Count one charged that the Defendant knowingly and intentionally received and possessed a pistol in May 1998, after he was convicted in March 1995 of a misdemeanor crime of domestic violence. Count two charged that the Defendant knowingly and intentionally received and possessed another pistol in August 1998, after having been convicted of the same misdemeanor crime of domestic violence. Defendant filed pretrial motions to dismiss the indictment on various constitutional grounds.

Issue: Defendant argued that § 922(g)(9) exceeded Congress's Commerce Clause powers, violated the Ex Post Facto Clause by retroactively punishing a prior conviction, infringed the Second Amendment right to bear arms, and denied equal protection by treating misdemeanor domestic violence offenders differently.

Holding: The district court denied Defendant's motions. The district court held that the interstate commerce element in § 922(g) satisfied the Commerce Clause based on Tenth Circuit precedent in *United States v. Farnsworth*, 92 F. 3d 1001 (10th Cir. 1996). The district court also rejected Defendant's argument that § 922(g)(9) violated the Ex Post Facto Clause, reasoning that the offense under § 922(g)(9) was the later possession of a firearm, not the earlier domestic violence conviction—so the law did not retroactively criminalize past conduct. The district court further rejected Defendant's Second Amendment challenge based on longstanding Supreme Court and Tenth Circuit precedent holding that firearm restrictions for certain disqualified persons, such as felons, do not violate the Second Amendment, which had historically been interpreted to relate to militia service. Finally, the district court rejected Defendant's Equal Protection argument because Defendant failed to show that the classification was not rationally related to the legitimate purpose of keeping firearms out of the hands of those with a history of domestic violence.

Note: As of the date of this 2025 update, this case has received direct negative treatment.

Key Issue(s): Commerce Clause; Ex Post Facto Clause; Second Amendment; Equal Protection

Eleventh Circuit (Alabama, Florida, Georgia)

J.C. v. Dep't of Agric. & Consumer Servs., Div. of Licensing, 389 So. 3d 744 (Fla. Dist. Ct. App. 2024)

Facts/Procedural History: A Florida government agency denied Applicant's request for a concealed-firearm license under Fla. Stat. § 790.06(2)(n) on the grounds that his prior misdemeanor conviction for simple battery was a misdemeanor crime of domestic violence, making him a prohibited person under 18 U.S.C. § 922(g)(9). Applicant appealed. The agency argued that Applicant's relationship with his victim was similar to a spousal relationship, making his conviction for simple battery a predicate offense under § 922(g)(9).

Issue: The Florida court of appeals considered, among other things, whether Applicant's relationship with the victim was comparable to a spousal relationship.

Holding: The Florida court of appeals reversed the agency's decision and ordered it to issue the concealed firearm license. The Florida court of appeals held that the agency failed to provide sufficient evidence demonstrating that Applicant's relationship with the victim of his battery crime was similar to a spousal relationship because Applicant's and victim's relationship was brief and there was no evidence of shared property, financial ties, or public presentation as a married couple to demonstrate a relationship comparable to a spousal relationship. The Florida court of appeals also found several other factors that weighed against Applicant's battery conviction qualifying as a misdemeanor crime of domestic violence, including that his sentence of 9 months' probation was less than the lawful sentence for domestic battery in Florida, his agreement to complete a batterer's intervention program was not required by statute for the crime of battery and could therefore not convert the charge into one of domestic violence, and there was no judicial finding that Applicant committed a crime of domestic violence as defined by Florida law.

Key Issue(s): Relationship Requirement

***United States v. Jones*, No. 1:23-CR-52-SEG-JKL, 2023 WL 8530058 (N.D. Ga. Oct. 20, 2023)**

Facts/Procedural History: Defendant was indicted for illegally possessing a firearm under 18 U.S.C. § 922(g)(9) following two prior convictions for misdemeanor crimes of domestic violence. Defendant moved to dismiss.

Issue: Defendant argued that § 922(g)(9), as applied to misdemeanor domestic violence offenders, violated the Second Amendment under the framework set forth in *Bruen*.

Holding: The district court denied the motion, relying on *United States v. White*, 593 F.3d 1199, 1205 (11th Cir. 2010) in which the Eleventh Circuit upheld § 922(g)(9) by extending the reasoning of *Heller* to include domestic misdemeanants and concluding that restrictions on firearm possession by individuals deemed dangerous were deeply rooted in the nation's history and tradition. The district court further held that *White* remained binding precedent and did not conflict with *Bruen*, and that even if *White* were no longer controlling, § 922(g)(9) would remain constitutional under *Bruen* because the statute aligned with the historical tradition of disarming individuals considered dangerous and criminal.

Key Issue(s): Second Amendment

***United States v. Brown*, 822 F. App'x 878 (11th Cir. 2020)**

Facts/Procedural History: Defendant was found guilty of possessing a firearm after being convicted of a misdemeanor crime of domestic violence, in violation of 18 U.S.C. § 922(g)(9). Defendant appealed.

Issue: On appeal, Defendant argued his misdemeanor domestic violence conviction, which followed a knowing waiver of jury trial, did not satisfy the knowledge requirement under § 922(g)(9).

Holding: The Eleventh Circuit held that the statutory prohibition against possession of firearms by persons convicted of misdemeanor crimes of domestic violence was constitutional under the Second Amendment as applied to Defendant. Because Defendant made a knowing and intelligent waiver of his right to a jury in his original battery case, his conviction for that crime counted as a predicate offense for the crime of possessing a firearm.

Key Issue(s): Knowledge Requirement; Second Amendment; Predicate Offense

***United States v. Johnson*, 981 F.3d 1171 (11th Cir. 2020)**

Facts/Procedural History: Defendant was charged with unlawful possession of a firearm in violation of 18 U.S.C. § 922(g)(9). Defendant filed a motion to dismiss the indictment. Defendant argued that his previous Florida misdemeanor conviction did not qualify as a misdemeanor crime of domestic violence under federal law. The district court denied the motion. Defendant appealed.

Issue: Defendant argued that the knowledge-of-status requirement had not been met and his Florida misdemeanor battery conviction did not qualify as a misdemeanor crime of domestic violence under federal law.

Holding: The Eleventh Circuit concluded that the knowledge requirement was satisfied because Defendant knew (1) he had been convicted of a misdemeanor crime of battery in Florida, (2) that the battery conviction required that Defendant had, at a minimum, recklessly engaged in at least “the slightest offensive touching,” and (3) that he had battered his wife.

Key Issue(s): Knowledge Requirement; Predicate Offense

***United States v. Poliard*, 789 F. App’x 212, 213 (11th Cir. 2020)**

Facts/Procedural History: Defendant was a felon in possession of a firearm, which had traveled in interstate commerce, violating 18 U.S.C. § 922(g)(9). Defendant was convicted and sentenced to 180 months’ imprisonment under the Armed Career Criminal Act (ACCA). Defendant appealed.

Issue: Defendant challenged § 922(g) and the ACCA sentence enhancement as unconstitutional exercises of Congress’s commerce power under the Tenth Amendment.

Holding: The Eleventh Circuit upheld the ACCA enhancement in Defendant’s sentence. The Eleventh Circuit rejected Defendant’s Tenth Amendment argument, affirming § 922(g) was a valid exercise of Congress’s commerce authority and was constitutional, both facially and as applied to Defendant, because Defendant’s firearm had traveled in interstate commerce.

Key Issue(s): Commerce Clause; Tenth Amendment; Sentencing

***United States v. Cadet*, 819 F. App’x 815 (11th Cir. 2020)**

Facts/Procedural History: Defendant was charged with two counts for possession of a firearm after having been convicted of a crime punishable by imprisonment for more than one year and being subject to a protection order, in violation of 18 U.S.C. § 922(g)(9). Defendant pled guilty without a plea agreement. The district court sentenced him to 120 months’ imprisonment for the felon-in-possession count and 31 months’ imprisonment for the prohibited-person count, to be served consecutively. Defendant appealed.

Issue: Defendant argued, among other things, that the indictment was defective and that his separate convictions and consecutive sentences for possession of a firearm by a felon and a prohibited person violated the Double Jeopardy Clause.

Holding: The Eleventh Circuit held, among other things, that the separate convictions and consecutive sentences for the same conduct violated the Double Jeopardy Clause. The court instructed the district court to merge the convictions for sentencing purposes and to impose a single sentence.

Key Issue(s): Double Jeopardy; Sentencing

United States v. Haynes, 798 F. App'x 560, 565 (11th Cir. 2020)

Facts/Procedural History: Defendant was charged with two counts of unlawful firearm possession: (1) possession by a convicted felon; and (2) possession by a person previously convicted of a misdemeanor crime of domestic violence. He was convicted on both counts and sentenced to concurrent terms. Defendant appealed.

Issue: On appeal, Defendant argued, among other things, that separate convictions and sentences for simultaneous possession by a felon and domestic violence misdemeanant violated the Double Jeopardy Clause.

Holding: The Eleventh Circuit found, among other things, that imposing separate convictions, concurrent sentences, and two special assessments for a single instance of firearm possession violated the Double Jeopardy Clause. The case was remanded with instructions to merge the convictions and impose a single sentence.

Key Issue(s): Double Jeopardy

United States v. Finley, 805 F. App'x 823 (11th Cir. 2020)

Facts/Procedural History: Defendant was charged and convicted for possessing cocaine with intent to distribute, possessing a firearm in furtherance of a drug trafficking crime, and being a felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(9). Defendant was sentenced to 210 months' imprisonment. Defendant appealed his 18 U.S.C. § 922(g)(9) conviction.

Issue: Defendant argued, among other things, that his conviction should be vacated because his indictment did not prove he had knowledge of prohibited status.

Holding: The Eleventh Circuit affirmed. The Eleventh Circuit found, among other things, that the record showed Defendant knew that he was not allowed to possess any weapons as a felon.

Key Issue(s): Knowledge Requirement

***United States v. White*, 593 F.3d 1199 (11th Cir. 2010)**

Facts/Procedural History: Police officers stopped Defendant and others sitting in a car. The officers smelled marijuana from within the car and upon a pat-down, found that Defendant had a gun. Defendant—who had a prior domestic violence conviction related to his live-in girlfriend—was indicted for possession of a firearm by a person convicted of a misdemeanor crime of domestic violence, in violation of 18 U.S.C. § 922(g)(9). Defendant filed a motion to suppress the firearm as evidence, arguing a Fourth Amendment violation. The district court held that because the gun was found after the police officers smelled marijuana emanating from the vehicle, the officers had reasonable suspicion to pat Defendant down. Defendant appealed.

Issue: On appeal, Defendant argued that (1) his Fourth Amendment rights were violated when evidence of the gun was not suppressed, and (2) his domestic violence charge was not a predicate offense to § 922(g)(9).

Holding: The Eleventh Circuit concluded that (1) the pat-down did not violate Defendant’s Fourth Amendment rights because it was reasonable under the circumstances, and (2) Defendant’s underlying domestic violence offense was a predicate offense for purposes of § 922(g)(9) because it satisfied the requirement in § 922(g)(9) that the offense was committed against a person with a specified domestic relationship. The Court found, as several other Circuits have, that “live-in girlfriends” satisfied § 922(g)(9)’s domestic relationship requirements.

Key Issue(s): Fourth Amendment; Predicate Offense; Relationship Requirement

***United States v. Pruitt*, 300 F. App’x 853 (11th Cir. 2008)**

Facts/Procedural History: Defendant’s wife called 911, and told the operator that Defendant had a gun and was blocking the driveway of their home with his car. Officers arrived at the scene, searched the home, and found a bag with men’s clothing and a gun. Among other things, Defendant was charged with, and convicted of, possessing a firearm after having been convicted of a misdemeanor crime of domestic violence, in violation of 18 U.S.C. § 922(g)(9). Defendant appealed.

Issue: On appeal, Defendant argued that the Government produced insufficient evidence to convict him of possessing a gun because the Government had not presented testimony that Defendant lived in the home or whether the men’s clothing in the bag belonged to him.

Holding: The Eleventh Circuit found no reversible error and affirmed Defendant’s conviction. Among other things, the Eleventh Circuit held that while the Government’s evidence was not overwhelming, it was sufficient for a reasonable jury to conclude beyond a reasonable doubt that Defendant constructively possessed the gun because Defendant’s wife stated on the 911 call that Defendant had a gun, and a gun was discovered at Defendant’s home in a bag with men’s clothing.

Key Issue(s): Sufficiency of Evidence

***United States v. Griffith*, 455 F.3d 1339 (11th Cir. 2006)**

Facts/Procedural History: Defendant was convicted for possession of a firearm after being previously convicted of a misdemeanor crime of domestic violence, in violation of 18 U.S.C. § 922(g)(9). Defendant filed a motion to dismiss the indictment, arguing that his prior convictions under Georgia law of simple battery for hitting his wife and dragging her across the floor did not qualify as a predicate offense for § 922(g)(9) because the Georgia law did not have a physical force requirement. The district court denied Defendant's motion. Defendant appealed.

Issue: On appeal, Defendant argued that the Georgia statute under which he was convicted did not have a physical force element and did not require the existence of a domestic relationship, and was thus not a predicate offense for § 922(g)(9).

Holding: The Eleventh Circuit affirmed the district court's denial of Defendant's motion. The Eleventh Circuit looked to the elements of the statute, as opposed to Defendant's conduct, in holding that the Georgia simple battery statute, which prohibited physical contact of an insulting or provoking nature, qualified as a predicate offense for § 922(g)(9). The Eleventh Circuit also found that a domestic relationship must have been part of the facts giving rise to the prior offense, but it need not have been an element of that offense to qualify under § 922(g)(9).

Note: As of the date of this 2025 update, this case has received direct negative treatment.

Key Issue(s): Physical Force Requirement; Predicate Offense; Relationship Requirement

***Hiley v. Barrett*, 968 F. Supp. 1564 (N.D. Ga. 1997)**

Facts/Procedural History: Plaintiff, a deputy sheriff, was terminated from his position due to a misdemeanor domestic violence conviction, which under 18 U.S.C § 922(g)(9) prohibited him from possessing a firearm. Plaintiff and the National Association of Government Employees (NAGE) brought suit to challenge the constitutionality of § 922(g)(9). Plaintiffs sought preliminary and permanent injunctive relief enjoining enforcement of § 922(g)(9).

Issue: In seeking an injunction, Plaintiffs argued that enforcement of § 922(g)(9) against any NAGE member unconstitutionally violated the Commerce Clause, the Equal Protection clause, the Ex Post Fact clause, the Bill of Attainder clause, and the Tenth Amendment.

Holding: The district court denied Plaintiffs' request for injunctive relief. The district court held, among other things that: (1) the statute did not exceed Congress' authority under the Commerce Clause because § 922(g)(9) contained a requisite jurisdictional element that required the Government to demonstrate that the firearm was possessed "in or affecting commerce" or received after having "been shipped or transported in interstate or foreign commerce"; (2) the statute did not violate the Equal Protection Clause because it was reasonably related to Congress' purpose of protecting public

safety; (3) the statute did not violate substantive due process because it was rationally related to a legitimate Government purpose; (4) the statute was not an Ex Post Facto law because the activity prohibited by § 922(g)(9) was post-enactment possession of a firearm; (5) the statute was not a bill of attainder because it did not fall within the historical meaning of a “legislative punishment”; and (6) the statute did not violate the Tenth Amendment because Congress did not exceed its powers under the Commerce Clause when it enacted the statute, and thus did not exercise powers reserved to the states.

Key Issue(s): Commerce Clause; Equal Protection; Due Process Clause; Ex Post Fact Clause; Bill of Attainder Clause; Tenth Amendment

District of Columbia Circuit

United States v. Rivera, 24 Fed. App'x 2 (D.C. Cir. 2001)

Facts/Procedural History: Defendant was charged under 18 U.S.C. § 922(g)(9) and subsequently moved to dismiss indictment. The district court denied the motion, and Defendant appealed.

Issue: The D.C. Circuit considered whether § 922(g)(9) violated the Commerce Clause and the Ex Post Facto Clause.

Holding: The D.C. Circuit denied Defendant's motion. The D.C. Circuit summarily rejected the Commerce Clause challenge, citing controlling precedent *Fraternal Order of Police*, 173 F.3d 898 (D.C. Cir. 1999). The D.C. Circuit also rejected the Ex Post Facto Clause challenge because Defendant did not show that § 922(g)(9) applied to events prior to its enactment or that it increased the punishment for prior conduct.

Key Issue(s): Commerce Clause; Ex Post Facto Clause

Fraternal Order of Police v. United States, 173 F.3d 898 (D.C. Cir. 1999)

Facts/Procedural History: Plaintiff challenged 18 U.S.C. § 922(g)(9) and the amendment to § 925(a)(1), which removed a previous exception that allowed domestic violence misdemeanants to possess Government-issued firearms, on a number of grounds, including that these provisions violated Equal Protection under the Fifth Amendment. The district court granted summary judgment in favor of Defendant. Plaintiff appealed and the D.C. Circuit reversed, holding that §§ 922(g)(9) and 925(a)(1) failed rational basis review because they resulted in domestic violence misdemeanants being treated more harshly than domestic violence felons. 152 F.3d 998 (D.C. Cir. 1998). Defendant petitioned for rehearing, and the petition was granted.

Issue: Among other things, the D.C. Circuit considered whether there was any rational basis for treating domestic violence misdemeanants more harshly than felons; whether § 922(g)(9) violated Substantive Due Process under the Fifth and Second Amendments; and whether § 922(g)(9) violated the Tenth Amendment and the Commerce Clause.

Holding: The D.C. Circuit affirmed summary judgment for Defendant. The D.C. Circuit held that §§ 922(g)(9) and 925(a)(1) withstood rational basis review because it was conceivable that Congress believed existing laws and practices adequately addressed the issue of firearms possession by felons. The D.C. Circuit also held that Plaintiff failed to develop either a factual record or a legal argument for whether § 922(g)(9) violated the Substantive Due Process clause of the Fifth Amendment, and that Plaintiff failed to show any relationship between § 922(g)(9) and the

preservation of a well-regulated militia under the Second Amendment. The D.C. Circuit found that Plaintiff's Tenth Amendment challenge failed because § 922(g)(9) did not force state officials into any affirmative action. Finally, the D.C. Circuit denied Plaintiff's Commerce Clause challenge because § 922(g)(9) contained a jurisdictional element requiring the Government to prove that a defendant was in possession of a firearm "in or affecting commerce."

Key Issue(s): Equal Protection; Substantive Due Process; Second Amendment; Fifth Amendment; 10th Amendment; Commerce Clause

Federal Circuit

Puente v. Dep't of Homeland Sec., 187 Fed. App'x 992 (Fed. Cir. 2006)

Facts/Procedural History: Petitioner, an officer with U.S. Customs and Border Protection (CBP), pled *nolo contendere* to a reduced misdemeanor offense after being arrested and indicted for assaulting his wife. He received deferred adjudication and was placed on probation. As a result of these criminal proceedings, he was removed from his position at CBP for both conduct unbecoming of an officer and losing his qualification to carry a firearm under 18 U.S.C. § 922(g)(9). Due to a collective bargaining agreement, the dismissal was subject to a grievance proceeding and was submitted to arbitration. The arbitrator sustained CBP's reasons for Petitioner's removal and Petitioner appealed to the Federal Circuit.

Issue: Petitioner argued that (1) the arbitrator erred as a matter of law by finding that he had been convicted of a misdemeanor crime of assault and (2) that he had successfully completed his deferred adjudication and as a result his pending charges were dismissed and thus the arbitrator erred as a matter of law in sustaining his removal based on those charges.

Holding: The Federal Circuit vacated the arbitrator's decision affirming CBP's penalty of removal with instructions for the arbitrator to remand the case to the CBP to re-determine the appropriate penalty. The Federal Circuit found that the arbitrator relied on sufficient evidence that justified the finding of conduct unbecoming of an officer and sustained that reason for removal. However, the Federal Circuit overruled CBP's second reason for removal, loss of qualification to carry a firearm, finding that the arbitrator erred in holding that a "no contest plea is one in the same as a conviction." Because Petitioner pled no contest as opposed to being convicted of the misdemeanor, the Federal Circuit held that § 922(g)(9) neither applied nor caused Petitioner to lose his qualification.

Key Issue(s): Effect of Deferred Adjudication; Nolo Contendere Plea

White v. Department of Justice, 328 F.3d 1361 (Fed. Cir. 2003)

Facts/Procedural History: Petitioner, a former federal corrections officer, was removed from his position by the Department of Justice based upon his 2000 misdemeanor conviction for simple assault against a woman with whom he had a close personal relationship and his consequent disqualification from carrying firearms under 18 U.S.C. § 922(g)(9). The Merit Systems Protection Board (MSPB) upheld the DOJ's decision, and Petitioner appealed the final decision of the MSPB.

Issue: Petitioner argued that his conviction was not a misdemeanor crime of domestic violence under § 922(g)(9), because he was convicted only of simple assault after the original charge of domestic assault was reduced prior to his guilty plea and because his relationship with the victim of the assault would not, under Virginia law, be considered common law marriage.

Holding: The Federal Circuit affirmed the MSPB's decision. The Federal Circuit found that 18 U.S.C. § 921(a)(33) required only that the "use or attempted use of physical force" was an element of the predicate misdemeanor offense, and that the existence of a domestic relationship need not be an element. Because there was sufficient evidence showing that Petitioner's victim was his long time "paramour," Petitioner's simple assault charge qualified as a misdemeanor crime of domestic violence under § 922(g)(9).

Note: As of the date of this 2025 update, this case has received direct negative treatment.

Key Issues: Predicate Offense; Relationship Requirement; Vagueness

Other

***United States v. Burch*, No. ARMY 20230576, 2024 WL 4559481 (A. Ct. Crim. App. Oct. 21, 2024)**

Facts/Procedural History: Appellant was charged with violating several specifications of the Uniform Code of Military Justice, including Article 128b “domestic violence.” Appellant’s counsel explained that pleading guilty to Article 128b would prohibit Appellant from possessing a firearm under 18 U.S.C. § 922(g)(9). Appellant insisted that he did not want to plead to anything that would jeopardize his right to own or use firearms. Instead, Appellant eventually pled guilty and was convicted in a general court-martial under Article 128, assault consummated by battery, which he believed (based on representations from the Government) would not lead to collateral consequences under § 922(g)(9). After trial, the military judge filled out the Statement of Trial Results (STR), indicating in the affirmative that Appellant had been convicted of a misdemeanor crime of domestic violence under § 922(g)(9). Appellant’s counsel moved to amend the STR, but the military judge stated she lacked jurisdiction to rule on the motion, since she had already signed the Entry of Judgement and because she believe the STR was correctly filled out. Appellant objected.

Issue: The U.S. Army Court of Criminal Appeals determined, among other things, whether Appellant could withdraw his guilty plea based on his misunderstanding of the collateral consequences of his plea under § 922(g)(9).

Holding: The U.S. Army Court of Criminal Appeals nullified the plea agreement and ordered a rehearing. The court found that Appellant’s guilty plea was based on his misunderstanding of a material collateral consequence, because Appellant had made known to the Government on multiple occasions that avoiding the applicability of § 922(g)(9) was a key consideration for Appellant during the plea negotiations and in his decision to plead guilty. The U.S. Army Court of Criminal Appeals further found that the Government not only knew of Appellant’s misunderstanding but induced Appellant into that misunderstanding and did nothing to correct it. Appellant was therefore entitled to withdraw his guilty plea.

Key Issue(s): Collateral Consequences; Knowing and Voluntary Plea

U.S. Supreme Court

Borden v. United States, 141 S. Ct. 1817 (2021)

Facts/Procedural History: Defendant entered a guilty plea in district court to possessing a firearm as a felon, and the sentence was enhanced under the Armed Career Criminal Act (ACCA), based partially on Defendant's previous conviction for reckless aggravated assault. Defendant appealed to the Sixth Circuit. The Sixth Circuit affirmed the decision of the district court. The Supreme Court then granted certiorari.

Issue: Defendant argued that reckless aggravated assault is not a violent felony under ACCA's elements clause because a mental state of recklessness suffices for conviction and only purposeful or knowing conduct can satisfy the clause's demand for the use of force "against the person of another."

Holding: The Supreme Court reversed and remanded the case. The Supreme Court held that a reckless offense cannot be a violent felony. The Supreme Court analyzed the statutory language and concluded that the phrase "against another," when modifying "use of force," demanded that the perpetrator directed his action at, or target, another individual. Because reckless conduct was, by definition, not targeted at a specific person, it could not be a "violent felony" under ACCA.

Key Issue(s): Mens Rea of Recklessness

Voisine v. United States, 136 S. Ct. 2272 (2016)

Facts/Procedural History: Defendant had previously pled guilty to assaulting his girlfriend under Maine's general-purpose assault statute. When he was later arrested for killing a bald eagle and found to own a rifle, he was charged under 18 U.S.C. § 922(g)(9). This case was consolidated with *United States v. Armstrong*, where a man was charged under § 922(g)(9) after he was also convicted under Maine's general-purpose assault statute for attacking his wife and was later found in possession of six guns during a narcotics investigation. 706 F.3d 1 (1st Cir. 2013). Both men argued their prior conviction did not qualify as a predicate misdemeanor crime of violence under § 922(g)(9). In each case, the district court rejected this argument and both Defendants pled guilty. The First Circuit affirmed. Defendants then filed a joint petition for certiorari, and their cases were remanded for further consideration in light of *United States v. Castleman*, 134 S. Ct. 1405 (2014). The First Circuit found reckless domestic assault did qualify as a predicate offense under § 922(g)(9) and upheld the Defendants' convictions. The Defendants again filed a petition for certiorari.

Issue: Defendants argued that their convictions for reckless assault did not qualify as a predicate offenses under § 922(g)(9).

Holding: The Supreme Court affirmed, and the Defendants’ convictions were upheld. The Supreme Court held, based on the statutory text and relevant history, that the First Circuit was correct in holding a reckless domestic assault qualified as a predicate offense under § 922(g)(9).

Key Issue(s): Physical Force Requirement

United States v. Castleman, 134 S. Ct. 1405 (2014)

Facts/Procedural History: Defendant pleaded guilty to having “intentionally or knowingly cause[d] bodily injury to” the mother of his child, in violation of Tenn. Code Ann. § 39-13-111(b), among other things. Later, Defendant was indicted on two counts of violating 18 U.S.C. § 922(g)(9) after law enforcement discovered he was selling firearms on the black market. The district court granted Defendant’s motion to dismiss the charges, holding that Defendant’s misdemeanor domestic assault conviction under Tennessee law did not constitute a misdemeanor crime of domestic violence as required to satisfy § 922(g)(9) because it did not include the use of physical force as an element. The Sixth Circuit affirmed the dismissal on different grounds, holding that § 922(g)(9) required violent force, which was not required under § 39-13-111(b). The Supreme Court granted certiorari.

Issue: Defendant argued that his prior conviction for “intentionally or knowingly caus[ing] bodily injury to” the mother of his child did not qualify as a misdemeanor crime of domestic violence for purposes of § 922(g)(9) because it did not involve the use or attempted use of physical force.

Holding: The Supreme Court reversed and remanded, finding that Defendant’s conviction under § 39-13-111(b) qualified as a misdemeanor crime of domestic violence subject to § 922(g)(9). The Supreme Court reasoned that § 922(g)(9) intended to capture the many domestic violence convictions that stem from generally applicable assault or battery charges, and that the physical force requirement under § 922(g)(9) was satisfied by the degree of force supporting a common-law battery conviction, including lower levels of force not considered to be violent. The Supreme Court held that Defendant’s conviction under § 39-13-111(b) required the use of physical force because Defendant pleaded guilty to “intentionally or knowingly caus[ing] bodily injury,” which under Tennessee law, required the application of force in the common-law sense.

Key Issue(s): Physical Force Requirement

Johnson v. United States, 130 S. Ct. 1265 (2010)

Facts/Procedural History: Petitioner pled guilty to possession of ammunition by a convicted felon in violation of 18 U.S.C. § 922(g)(1). The Government sought sentencing under the Armed Career Criminal Act (ACCA), which authorized an enhanced penalty for a person who violates § 922(g) and who had three previous convictions for “a violent felony,” defined as an offense that “has as an element the use ... of physical force against the person of another.” The district court concluded that

Petitioner's past felony offense of simple battery under Florida law had as an element "the use ... of physical force against the person of another," and thus constituted a "violent felony" under the ACCA. The district court therefore enhanced Petitioner's sentence. The Eleventh Circuit affirmed, and the Supreme Court granted certiorari.

Issue: Defendant argued that his conviction for simple battery, which was ordinarily a first-degree misdemeanor, was not a "violent felony" under the ACCA.

Holding: The Supreme Court reversed and remanded the judgment. The Supreme Court concluded that the term "force" contemplated strength or energy, violence, and pressure directed against a person, which was not satisfied by the mere "touching" required for Defendant's simple battery conviction. The Supreme Court acknowledged that, although at common law "force" was a legal term of art satisfied by even the slightest touching, it was clear that, in the context of a statutory definition of "violent felony," "physical force" meant violent force.

Note: As of the date of this 2025 update, this case has received direct negative treatment.

Key Issue(s): Predicate Offense

United States v. Hayes, 129 S. Ct. 1079 (2009)

Facts/Procedural History: Defendant was indicted under 18 U.S.C. § 922(g)(9) for possessing a firearm after a misdemeanor battery conviction involving his then-wife. Defendant argued that because the state battery statute did not require a domestic relationship as an element, the conviction could not serve as a predicate under § 922(g)(9). The district court rejected the argument; the Fourth Circuit reversed, and the Supreme Court granted certiorari.

Issue: The Supreme Court considered whether a predicate misdemeanor crime of domestic violence under § 922(g)(9) must include a domestic relationship as a statutory element.

Holding: The Supreme Court reversed, holding that a misdemeanor conviction need not include a domestic relationship as a statutory element. The relationship may be established as a factual matter in a federal firearms prosecution so long as the offense meets the criteria of 18 U.S.C. § 921(a)(33)(A).

Key Issue(s): Predicate Offense; Relationship Requirement; Congressional Intent

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