No. 18-3595

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

RAYMOND HOLLOWAY, JR.,

Plaintiff-Appellee,

v.

WILLIAM P. BARR, Attorney General of the United States, et al.,

Defendants-Appellants.

On Appeal from the United States District Court
for the Middle District of Pennsylvania

REPLY BRIEF FOR APPELLANTS

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INTRODUCTION AND SUMMARY OF ARGUMENT

Plaintiff Raymond Holloway, Jr. was convicted in 2005 for recidivist drunk driving with a blood alcohol level of 0.16 or more—a degree of intoxication equivalent to consuming eight or more alcoholic drinks in one hour. *See* 75 Pa. Cons. Stat. § 3802(c) (driving under the influence at the "highest rate of alcohol"); Gov't Br. 1 & n.1, 6. Under Pennsylvania law, Holloway's offense constitutes a misdemeanor of the first degree, punishable by a maximum prison term of five years, among other penalties. As a result, Holloway is subject to 18 U.S.C. § 922(g)(1)'s prohibition on the possession of firearms by felons and by persons convicted of misdemeanor crimes punishable by a term of imprisonment longer than two years. *See* 18 U.S.C. §§ 921(a)(20)(B), 922(g)(1).

Plaintiff urges, however, that applying section 922(g)(1) to him would be unconstitutional. That argument, accepted by the district court, rests on a misunderstanding of this Court's precedents. Plaintiff forfeited his rights under the Second Amendment by committing a "serious criminal offense" removing him from the scope of Second Amendment protections. *See Binderup v. Attorney General*, 836 F.3d 336, 348 (3d Cir. 2016) (en banc) (Ambro, J.). There can be no question that operating a vehicle at twice the legal blood alcohol content is a serious offense, endangering public safety and evincing a reckless disregard for the lives of others. "[D]runk driving"—let alone drunk driving at twice the legal limit—is a "serious and potentially deadly crime." *Virginia v. Harris*, 558 U.S. 978, 979 (2009) (Roberts, C.J.,

dissenting from denial of cert.); *see also Mitchell v. Wisconsin*, 139 S. Ct. 2525, 2535 (2019) (plurality) ("For decades, we have strained our vocal chords to give adequate expression to the stakes . . . Twice we have referred to the effects of irresponsible [drunk] driving as 'slaughter' comparable to the ravages of war . . . 'carnage' . . . and even 'frightful carnage.'").

Plaintiff cannot distinguish himself from the class of individuals historically barred from the right to keep and bear arms. Plaintiff emphasizes that his DUI is not a violent offense. But the "category of 'unvirtuous citizens'" to which the Second Amendment's protections do not apply is "broader than violent criminals." *See Binderup*, 836 F.3d at 348 (Ambro, J.). This argument also fails to come to grips with the public danger posed by persons convicted of driving at twice the legal blood alcohol limit. Indeed, it is because such persons are disproportionately responsible for the lion's share of alcohol-related driving fatalities that the Pennsylvania legislature has chosen to punish these violations with potential penalties greater than those associated with many traditional felonies, a judgment in which jurisdictions across the country concur. *Binderup* left "[n]o doubt" that "some misdemeanors are serious offenses," but it is unclear which crimes might quality if, as plaintiff urges, repeatedly drunk driving at twice the legal blood alcohol limit does not. 836 F.3d at 351 (Ambro, J., joined by two judges) (quotation marks and ellipsis omitted).

Even if Holloway were entitled to Second Amendment protection, application of section 922(g)(1) to him would satisfy the intermediate scrutiny standard applicable

under this Court's precedent. *See United States v. Marzzarella*, 614 F.3d 85, 98 (3d Cir. 2010). Holloway's insistence that the Court should apply strict scrutiny, or in the alternative abstain from means-end scrutiny altogether, is contrary to that precedent. Depriving individuals convicted of a second DUI at the "highest rate of alcohol" from possessing firearms reasonably advances the government's compelling interest in protecting the public from people who cannot be trusted to use firearms responsibly. Plaintiff is unable to impugn the government's methodologically sound evidence demonstrating that individuals with prior DUI offenses are more likely to commit future violent and firearms-related crime. The evidence justifies the government's predictive judgment about the need to disarm criminals like Holloway.

ARGUMENT

HOLLOWAY'S CONSTITUTIONAL CHALLENGE TO SECTION 922(G)(1) LACKS MERIT.

A. Application of Section 922(g)(1) to Holloway Does Not Burden Conduct Protected by the Second Amendment.

1. The touchstone for evaluating an as-applied Second Amendment challenge to section 922(g)(1) is whether the challenger was convicted of a "serious" crime. *See Binderup v. Attorney General*, 836 F.3d 336, 348 (3d Cir. 2016) (en banc) (Ambro, J.). Conviction of serious crimes—whether "violent or not"— removes an individual from the scope of Second Amendment protections. *Id.* at 349. *Binderup* reaffirmed that prohibitions on the possession of firearms by felons and felon-equivalents "comport with the Second Amendment" because, as the Supreme Court made clear in

Heller, the right to keep and bear arms belongs to "law-abiding, responsible citizens." *Id.* at 343; *District of Columbia v. Heller*, 554 U.S. 570, 635 (2008). Section 922(g)(1) is a "permissible" measure falling within "exceptions" to the right to bear arms, for the Second Amendment incorporates a common-law tradition allowing the "disarm[ament of] unvirtuous citizens (*i.e.*, criminals)." *Heller*, 554 U.S. at 626, 635; *Binderup*, 836 F.3d at 348 (Ambro, J.).

Holloway is subject to section 922(g)(1)'s prohibition on account of his conviction under Pennsylvania law for recidivist driving under the influence at "the highest rate of alcohol." *See* 18 U.S.C. §§ 921(a)(20)(B), 922(g)(1); 75 Pa. Cons. Stat. § 3802(c). That first degree misdemeanor offense is punishable by up to a five-year term of imprisonment, among other penalties. *See* 18 Pa. Cons. Stat § 1104(1); 75 Pa. Cons. Stat. §§ 3803(b)(4); 3804(c)(2). The offense specifically targets drunk driving with a blood alcohol level of 0.16 or higher—twice the legal limit or more—and reflects a degree of intoxication equivalent to consuming eight or more alcoholic drinks in one hour. *See* 75 Pa. Cons. Stat § 3802(c); Gov't Br. 1 & n.1, 6.

As explained in our opening brief, both common sense and precedent demonstrate that Holloway's crime is a serious one. "The carnage caused by drunk drivers is well documented," *South Dakota v. Neville*, 459 U.S. 553, 558 (1983), and the Supreme Court's cases have "repeatedly emphasized" that drunk driving—let alone drunk driving with extremely elevated blood alcohol levels—"is a serious and potentially deadly crime," *Virginia v. Harris*, 558 U.S. 978, 979 (2009) (Roberts, C.J.,

dissenting from denial of cert.); *see also Mitchell v. Wisconsin*, 139 S. Ct. 2525, 2535 (2019) (plurality) (describing the "chilling figures" that make drunk driving a "frightful carnage" and "slaughter comparable to the ravages of war"). The reckless disregard for human life inherent in this conduct is reflected in the Pennsylvania legislature's decision to make Holloway's offense punishable by a mandatory minimum term of confinement, up to five years, and by the three-month prison term actually served by Holloway. *See* 18 Pa Cons. Stat § 1104(1); 75 Pa. Cons. Stat. §§ 3803(b)(4); § 3804(c)(2). Jurisdictions across the country have chosen to punish individuals who repeatedly drive under the influence of egregiously high blood alcohol levels with heightened criminal penalties. *See* Gov't Br. 21-22. By any of these criteria, including those outlined in *Binderup*, Holloway committed a serious offense such that the Second Amendment's protections do not apply to him.

2. Plaintiff principally contends (Br. 4-10) that his crime is not serious within the meaning of this Court's decisions because "a DUI [does not] qualif[y] as a 'violent offense.'" But the Supreme Court in "*Heller* recognized longstanding prohibitions on the possession of firearms by felons, not just violent felons." *Binderup*, 836 F.3d at 348 (Ambro, J.) (quotation marks omitted). "The category of 'unvirtuous citizens'" to which the Second Amendment's protections do not extend is "thus broader than violent criminals" alone. *Id.* at 348; *see also Beers v. Attorney General*, No. 17-3010, 2019 WL 2529248, at *4 (3d Cir. June 20, 2019). ("[T]he seriousness of the purportedly disqualifying offense is our sole focus."). Moreover, while plaintiff was not convicted

of a crime of violence, his conduct posed an extraordinary risk to public safety. As the district court recognized, "[i]n 2016 alone, there were over 10,000 fatalities nationwide stemming from alcohol-related driving accidents," "67 percent" of which arose from accidents where a driver "had a BAC of .15 percent or higher." *Holloway v. Sessions*, 349 F. Supp. 3d 451, 459 (M.D. Pa. 2018).

Plaintiff elsewhere acknowledges (Br. 20), as he must, *Binderup*'s instruction that the government may constitutionally disarm a "person who has committed a serious criminal offense, violent or nonviolent." *Binderup*, 836 F.3d at 348-49 (Ambro, J.) (tracing to our founding era the view that "citizens have a personal right to bear arms unless for *crimes committed*, . . . violent or not") (quotation marks omitted). Indeed, the courts of appeals have consistently rejected as-applied challenges to section 922(g)(1) that have relied on the non-violent nature of the underlying conviction. *See Hatfield v. Barr*, 925 F.3d 950, 951 (7th Cir. 2019) (describing challenge to section 922(g)(1) on basis that mail fraud is a non-violent crime as "inconsistent with the Supreme Court's statements"); *id.* at 952 (describing "decisions from many circuits holding" that section 922(g)(1)'s prohibition is "valid and properly applied to a variety of [non-violent] crimes and offenders"); *e.g.*, *Medina v. Whitaker*, 913 F.3d 152, 159 (D.C. Cir. 2019) ("reject[ing] the argument that non-dangerous felons have a right to bear arms" by plaintiff convicted of making a false statement on a loan application); *United States v. Phillips*, 827 F.3d 1171, 1175 (9th Cir. 2016) (acknowledging misprision of felony "is

not a violent crime" but finding "little question that" it "can constitutionally serve as the basis for a felon ban").

3. Plaintiff also fails to identify any "strong reason" to displace Congress's judgment that his crime of conviction disqualifies him from owning weapons. *Binderup*, 836 F.3d at 351 (Ambro, J., joined by two judges). Plaintiff attempts to moderate the seriousness of his crime by referring to it as a "single DUI conviction." Br. 1, 15.[1] Even a single DUI "involve[s] conduct more dangerous than many felonies." *See Tennessee v. Garner*, 471 U.S. 1, 14 & n.12 (1985). Here, moreover, Holloway was convicted of recidivist drunk driving with a blood alcohol level of 0.16 or more. That is a degree of intoxication reflecting the consumption of eight or more alcoholic drinks in one hour. *See* 75 Pa. Cons. Stat. § 3802(c); Gov't Br. 1 & n.1., 6. And heightened penalties applied because the offense was Holloway's second qualifying DUI offense (within three years). *See* 75 Pa. Cons. Stat. § 3804(c)(2).

Accordingly, there can be little doubt about the "serious and potentially deadly" nature of Holloway's particular drunk driving offense. *Virginia*, 558 U.S. at 979 (Roberts, C.J., dissenting from the denial of cert.). Plaintiff does not dispute that

[1] Plaintiff's 2005 conviction followed DUI arrest charges from 2002, which were dismissed after his successful completion of Pennsylvania's Accelerated Rehabilitative Disposition Program. *See Holloway*, 349 F. Supp. 3d at 454. We mistakenly referred to the 2005 DUI in our opening brief as his second conviction. *See* Gov't Br. 1, 11. In any event, there is no dispute that "Holloway's 2002 DUI arrest . . . constitutes a 'prior offense' for purposes of 'grading'" his 2005 DUI conviction. *Holloway*, 349 F. Supp. 3d at 454 n.3.

"virtually all drivers are substantially impaired at .08 BAC," the legal limit in all fifty states, let alone at a level twice that. Nat'l Highway Traffic Safety Admin., *A Legislative History of .08 Per Se Laws* (Sept. 2001), https://go.usa.gov/xy8Hb. As the district court acknowledged, individuals who drive with blood alcohol levels in excess of 0.15 are disproportionately responsible for the lion's share of alcohol-related driving fatalities each year. *See Holloway*, 349 F. Supp. 3d at 459. And it should be equally beyond dispute that, whatever their blood alcohol level, "[p]ersons who repeatedly drive drunk present a greatly enhanced danger" to society. *Begay v. United States*, 553 U.S. 137, 157 (2008) (Alito, J., dissenting), *abrogated on other grounds by Johnson v. United States*, 135 S. Ct. 2551 (2015).

These precise concerns motivated the Pennsylvania legislature to overhaul its DUI laws to punish Holloway's conduct more severely than the traditional felony crime. *See Binderup*, 836 F.3d at 351 (Ambro, J., joined by two judges) ("[T]he category of serious crimes changes over time as legislative judgments regarding virtue evolve."). By "includ[ing] stiffer penalties for repeat offenders and motorists with excessively high blood alcohol levels," the General Assembly sought to "ma[k]e it clear that driving while under the influence of alcohol . . . is a very serious matter in Pennsylvania." *See* 62 Pa. Legis. J. 981 (Sept. 24, 2003) (remarks of Sen. Williams); 58 Pa. Legis. J. 1445 (July 8, 2003) (remarks of Rep. Harper). Plaintiff cannot avoid the significance of this history by disregarding it.

Plaintiff urges (Br. 22) that his crime is less than serious because of its classification as a first degree misdemeanor (punishable by up to five years' imprisonment), as opposed to a third-degree felony (punishable by up to seven years' imprisonment). *See* 18 Pa. Cons. Stat. §§ 1103-1104; 75 Pa. Cons. Stat. § 3803(b)(4). But plaintiff cannot explain why the legislature's decision to cap punishment at five years—that is, five times the minimum sentence associated with a felony crime—suggests that his crime was not serious. Plaintiff contends (Br. 22) that the General Assembly should have "alter[ed] the law" to label it a felony. This Court has not insisted crimes are not serious unless classified as felonies, and the legislature was not obliged to reclassify its sentencing scheme to anticipate plaintiff's argument. The misdemeanor label is an "important" but not determinative consideration, *see Binderup*, 836 F.3d at 352 (Ambro, J., joined by two judges), and it is best viewed here against the preexisting structure of Pennsylvania's sentencing scheme. *See* Gov't Br. 23-25.[2]

Binderup left "[n]o doubt" that "some misdemeanors . . . are 'serious' offenses." 836 F.3d at 351 (Ambro, J., joined by two judges). If repeatedly driving at twice the legal blood alcohol limit does not qualify as a serious misdemeanor, it is unclear what

[2] Even though one of the *Binderup* plaintiff's qualifying convictions was similarly a Pennsylvania misdemeanor of the first degree, *see Binderup*, 836 F.3d at 340 (Ambro, J.), the plurality did not examine or pass on the uniqueness of the state's sentencing scheme. Pennsylvania is notable in that the legislature has long punished most misdemeanor crimes as the functional equivalent of felonies. *See* Gov't Br. 24 (explaining that a first-degree misdemeanor in Pennsylvania is the equivalent of a class E felony in the federal context).

crimes fall within that category. Indeed, this conduct imperils public safety to such a degree that forty-eight states and the District of Columbia have passed laws singling out driving under the influence of extremely elevated blood alcohol levels. *See* Gov't Br. 21. These laws target and punish more severely individuals who drive drunk with blood alcohol levels ranging from 0.15 to 0.20. *See* ECF No. 61-1, at 8 (¶ 58). They further complement the laws in forty-six states classifying repeated instances of driving drunk as a felony. *Id.* (¶ 57). As plaintiff reluctantly admits in a footnote (Br. 12 n.45), when considering "enhanced penalties for elevated [blood alcohol levels]," thirteen states punish a second DUI offense as the functional equivalent of a felony, *i.e.* by more than one year in prison. *See* Gov't Br. 21 n.5. The cross-jurisdictional consensus is therefore clear when properly accounting for penalties for plaintiff's offense—that is, not just "a second DUI" (Br. 13), but recidivist driving under the influence at twice the legal blood alcohol limit.[3]

Plaintiff invokes Pennsylvania's state firearms disability (Br. 16-18), which prohibits individuals with three or more DUI convictions within a five-year period from transferring or purchasing firearms. *See* 18 Pa. Cons. Stat. § 6105(c)(3). Plaintiff believes the legislature's choice to set the state law threshold at three DUI offenses

[3] Plaintiff appears to disagree with the district court's finding that the record does not indicate expungement of the 2002 charges. *See* Br. 14 n.51. Once again, there is no dispute that "Holloway's 2002 DUI arrest . . . constitutes a 'prior offense' for purposes of 'grading'" his 2005 DUI conviction. *Holloway*, 349 F. Supp. 3d at 454 n.3.

renders his crime less than serious for purposes of the federal prohibition. Plaintiff provides no basis for his position that the state firearm restriction makes Congress's restriction unconstitutional. Moreover, plaintiff misapprehends the true impact of the state law, which extends to those not already within the reach of section 922(g)(1). Section 922(g)(1) *excludes* state misdemeanors punishable by a term of imprisonment of two years or less. *See* 18 U.S.C. § 921(a)(20)(B). By contrast, the Pennsylvania law applies to individuals convicted of misdemeanors punishable by a *maximum* two-year term. *See, e.g.*, 75 Pa. Cons. Stat. §§ 3802(a), 3803(a)(2); 18 Pa. Cons. Stat. § 1104(2) (grading a third offense of driving under "general impairment" as a misdemeanor of the second degree, punishable up to two years). In this respect the state law, enacted after the federal law, is more restrictive than section 922(g)(1). *See* Gun Control Act of 1968, Pub. L. No. 90-618, 82 Stat. 1213; 1995 Pa. Laws 1024 (No. 1995-17 (SS1)).

B. Assuming That Holloway Enjoys Second Amendment Protections, Application of Section 922(g)(1) Permissibly Furthers a Compelling Government Interest.

1. If the Court were to hold that application of section 922(g)(1) to Holloway implicates Second Amendment rights, it would evaluate Holloway's challenge under intermediate scrutiny. *See Binderup*, 836 F.3d at 347 (Ambro, J.); *id.* at 356 (Ambro, J., joined by two judges). Under this standard, the Court will uphold a categorical disqualification if the government carries its burden of showing (1) a "substantial or important interest" served by the law, and (2) that the law "fits reasonably with that

interest." *United States v. Marzzarella*, 614 F.3d 85, 98 (3d Cir. 2010); *see id.* ("The regulation need not be the least restrictive means of serving the interest.").

Plaintiff argues (Br. 42-44) that the Court should apply strict scrutiny to his challenge. That assertion is foreclosed by this Court's precedent, as plaintiff elsewhere correctly recognizes. *See* Br. 3 ("[T]his Court has stated intermediate scrutiny is the appropriate level to apply."). Under "the law of [the] Circuit," the "two-step *Marzzarella* framework controls all Second Amendment challenges, including as-applied challenges to § 922(g)(1)." *Binderup*, 836 F.3d at 356 (Ambro, J., joined by two judges); *id.* at 339 n.1 (Ambro, J.) (clarifying that ten members of the Court "agree that *Marzzarella* controls the Second Amendment analysis"). The Court in *Marzzarella* expressly adopted an "intermediate, rather than strict, scrutiny" standard. 614 F.3d at 97. The same precedent precludes this Court from declining to engage in means-end scrutiny altogether, and simply declaring section 922(g)(1) "per se unconstitutional" as applied to Holloway. Br. 26-28.

2. As explained in our opening brief, *see* Gov't Br. 27-32, application of section 922(g)(1) to Holloway satisfies the standard required by this Court's precedent. Section 922(g)(1) is substantially related to achieving the government's compelling interest in disarming those who have proven not to be law-abiding and responsible, and it is not substantially more extensive than necessary to serve that interest.

Plaintiff questions the strength of the government's evidence on the ground that studies cited in district court are "not directly applicable to Mr. Holloway." Br. 2.

As our opening brief described, *see* Gov't Br. 28-29, the government's expert report includes an extended discussion of an empirical study by Dr. Garen Wintemute demonstrating the propensity of criminals like Holloway to commit future crimes of violence and/or crimes involving firearms. The study concluded that handgun purchasers with prior alcohol-related offenses (78% of which were DUI offenses) were 5.6 times more likely than those with no criminal history to commit violent and/or firearms-related crimes. *See* ECF No. 61-4, at 9 (Webster Report). "[E]ven a single prior conviction for an alcohol-related crime was associated with a 4-fold increased risk." *Id.* at 9-10. And the handgun purchasers with prior alcohol offenses exhibited a "similarly disproportionate risk for being arrested for the most serious crimes," like "murder, rape, robbery, [and] aggravated assault." *Id.* at 9. The disparities were not associated with other risk factors, but "principally explained" by the individuals' "history of dangerous behavior involving alcohol." *Id.* at 10.

Plaintiff's only response is to criticize the Wintemute data in a footnote as "old and from a single state." Br. 45 n.130.[4] To the extent plaintiff suggests that the study, like those criticized in *Binderup*, is "off-point," that argument is unavailing. *Binderup*, 836 F.3d at 354 (Ambro, J., joined by two judges). The plurality in *Binderup* faulted the government's reliance on studies that it found to be without "relevance to each

[4] Plaintiff states that "flawed studies may not be used to strip someone of an enumerated constitutional right," Br. 41, but does not identify any particular errors in the Wintemute study. The district court was unable to "question[] the validity of the study's methodology." *Holloway*, 349 F. Supp. 3d. at 461.

Challenger's situation." *See id.* For example, a study estimated the "likelihood that incarcerated felons will reoffend," though the plaintiffs were "state-law misdemeanants who spent no time in jail." *Id.* By contrast, the Wintemute study analyzed the risk of future violent and firearms-related crime by individuals with prior DUI offenses—*i.e.*, Holloway's profile.

Plaintiff heavily emphasizes (Br. 29) the time that has passed since his 2005 conviction. As plaintiff recognizes (Br. 46-48), *Binderup* made clear that the passage of time does not necessarily bear on the Second Amendment analysis. *See* 836 F.3d at 354 n.7 (Ambro, J.) (joined by two judges). And, insofar as the passage of time is relevant, the Wintemute study observed offenders with prior-alcohol related crimes for over 14 years, *see* ECF No. 4-2. At least one district court has found that a challenger with a 2005 conviction for a second DUI at the "highest rate of alcohol" fell "squarely within Dr. Wintemute's study." *See Williams v. Barr*, No. 17-2641, 2019 WL 1440045, at *9, *13 (E.D. Pa. 2019); *id.* at *12 ("disagree[ing] with" the district court in "*Holloway* and conclud[ing] that the Government has met its burden of intermediate scrutiny"); *see also Hatfield v. Barr*, 925 F.3d 950 (7th Cir. 2019) (rejecting as-applied challenge by felon convicted of mail fraud on basis that section 922(g)(1) law satisfied intermediate scrutiny); *Kanter v. Barr*, 919 F.3d 437 (7th Cir. 2019) (same).

As noted in our opening brief, *see* Gov't Br. 29, the expert report also incorporated studies showing that many individuals with a single conviction for alcohol-impaired driving suffer from alcohol dependency, making them two times as

likely to have explosive anger and carry a firearm outside the house, and three times as likely to threaten someone with a firearm. *See* Webster Report 4-6. And "[a]lcohol dependence is often more pronounced among repeat DUI/DWI offenders." *Id.* at 4. Holloway points to no empirical evidence disputing these conclusions. *See Hatfield*, 925 F.3d at 953 (criticizing challenger's "brief in this court [a]s data-free" and instructing that "plaintiffs . . . bear the burden of production and the risk of non-persuasion").

In any event, expert reports are not necessary in order to conclude that individuals like Holloway "with a record of repeated DUI violations . . . are very likely to have serious alcohol abuse problems and a propensity to engage in irresponsible conduct while under the influence." *Begay*, 553 U.S. at 161 (Alito, J., dissenting). And while plaintiff urges that the government's evidence "fails to account for key characteristics of Holloway," that concern is misplaced. Br. 45-46 (citing *Holloway*, 349 F. Supp. 3d at 462). What matters under this Court's precedent is not whether the record reflects an individualized, formal diagnosis of Holloway's alcohol disorder, as plaintiff argues (Br. 40), but that the government presented "meaningful evidence" linking recidivist drunk driving to alcohol abuse and firearms misuse, thereby justifying its predictive judgment about the need to disarm criminals like Holloway. *See Binderup*, 836 F.3d at 354 (Ambro, J., joined by two judges).

Finally, it is irrelevant (Br. 30-37) that Congress previously permitted individuals to seek relief from the federal firearms prohibition by demonstrating that

they were "not . . . likely to act in a manner dangerous to public safety" under 18 U.S.C. § 925(c). *See* Gov't Br. 5. The government's decision to grant such relief to a particular individual as "a matter of legislative grace" does not "indicate that disarming the class of persons to which that individual belongs fails to promote the responsible use of firearms." *Binderup*, 836 F.3d at 350 (Ambro, J.); *Holloway*, 349 F. Supp. 3d at 462; *see also Marzzarella*, 614 F.3d at 98 ("The regulation need not be the least restrictive means of serving the interest."). Congress since 1992 has barred the use of appropriated funds to process these applications because determining whether applicants were "a danger to public safety" was "a very difficult and subjective task" that required "approximately 40 man-years . . . annually," with "devastating consequences for innocent citizens if the wrong decision is made." S. Rep. No. 102-353, at 19-20 (1992); *see also* 138 Cong. Rec. 24,494 (1992) (statement by Senator Lautenberg) ("Criminals granted relief have later been rearrested for crimes ranging from attempted murder to rape and kidnapping."). Congress ultimately concluded that "too many . . . felons whose gun ownership rights were restored went on to commit violent crimes with firearms." H.R. Rep. No. 104-183, at 15 (1995).

CONCLUSION

For the foregoing reasons, the judgment of the district court should be reversed.

Respectfully submitted,

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COMBINED CERTIFICATIONS

1. Government counsel are not required to be members of the bar of this Court.

2. This brief complies with the type-volume limit of Federal Rule of Appellate Procedure 32(a)(7)(B) because it contains 4,209 words. This brief also complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5)-(6) because it was prepared using Microsoft Word 2016 in Garamond 14-point font, a proportionally spaced typeface.

3. On July 15, 2019 I electronically filed the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the Third Circuit by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system.

4. The text of the electronic version of this document is identical to the text of the hard copies that will be provided.

5. This document was scanned for viruses using Microsoft Forefront Client Security, and no virus was detected.

s/Thais-Lyn Trayer
THAIS-LYN TRAYER