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# Implications of Indefinitely Stripping the Right to Bear Arms — Perpetrating Stigmas about Mental Illness and how the Sixth Circuit got it Right

Matthew Starner

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## Part I: Introduction

In the United States, 40 percent of adults either own a gun themselves or live with someone who does.<sup>1</sup> Based on a study conducted by the University of Washington Institute for Health Metrics and Evaluation in 2016, the United States ranks second in total number and twentieth in per capita gun related deaths among other countries.<sup>2</sup> While 95 to 97 percent of homicides attributed to gun violence are not committed by individuals who suffer from mental illness, suicides carried out by firearms are usually associated with mental illness.<sup>3</sup> Nevertheless, gun violence in the United States would decrease by 4 percent if all mental illnesses were cured.<sup>4</sup> 18 U.S.C. § 922(g)(4) (“§ 922(g)”), which is incorporated in the Gun Control Act, prevents individuals who have previously been involuntarily institutionalized to obtain a firearm. The provision does not expressly state how long a person may be banned from possessing a gun after one is released from involuntary commitment. This ambiguous issue in § 922(g)(4) has caused a circuit split among the federal courts across the country.

This note will defend the approach taken by the Sixth Circuit in *Tyler v. Hillsdale Cty. Sheriff's Dep't*. In *Tyler*, the Sixth Circuit reviewed an action brought by the plaintiff, a prospective gun purchaser, who was involuntarily hospitalized for a month due to a traumatic

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<sup>1</sup> *How Many People in the U.S. Own Guns?*, WAMU 88.5 AMERICAN UNIVERSITY RADIO (Sep. 18, 2020), <https://wamu.org/story/20/09/18/how-many-people-in-the-u-s-own-guns/> (last visited Mar. 2, 2021).

<sup>2</sup> *Id.*

<sup>3</sup> *Gun Deaths, Violence and Mental Health*, MENTAL HEALTH AMERICA, <https://www.mhanational.org/gun-deaths-violence-and-mental-health> (last visited Mar. 2, 2021).

<sup>4</sup> *Id.*

divorce twenty-eight years ago.<sup>5</sup> Since § 922(g)(4) prevented the plaintiff from obtaining a firearm due to this past involuntary commitment, the plaintiff argued that the provision violated his Second Amendment rights.<sup>6</sup> The plaintiff noted that he had been “three decades removed from [his] brief depressive episode” and he had a current “clean bill of mental health.”<sup>7</sup> The court in *Tyler* held that the government produced minimal historical evidence supporting a lifelong firearm ban on individuals who are involuntarily institutionalized.<sup>8</sup> The court resisted to “rubber stamp the legislature’s power to permanently exclude individuals from a fundamental right based on past involuntary commitment.”<sup>9</sup> Additionally, *Tyler* noted the distinction between ‘*prior* involuntary commitment’ and ‘*current* mental illness.’<sup>10</sup> Thus, the court concluded that the plaintiff had a viable Second Amendment claim because there was no evidence that the plaintiff was a *continued* risk to society.<sup>11</sup>

Part II of this note provides a lay of the land regarding the limits of the Second Amendment, as well as the background of the relevant circuit split at issue. Specifically, in *District of Columbia v. Heller*, “for the first time, the [United States] Supreme Court held that the Second Amendment protected the fundamental right of law-abiding, responsible citizens to own firearms” with the caveat that this right was not unlimited regarding felons and the mentally ill.<sup>12</sup> Additionally, this part will cover the various circuits’ views of whether § 922(g)(4) imposes a lifetime ban on firearm possession after an individual is involuntarily institutionalized. The Third and Ninth Circuits hold that involuntary institutionalization prompts a lifetime ban on firearm possession, while the Sixth

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<sup>5</sup> *Tyler v. Hillsdale Cty. Sheriff’s Dep’t*, 837 F.3d 678, 681 (6th Cir. 2016).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 687.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 687–88.

<sup>11</sup> *Tyler v. Hillsdale Cty. Sheriff’s Dep’t*, 837 F.3d 678, 699 (6th Cir. 2016).

<sup>12</sup> *District of Columbia v. Heller*, 554 U.S. 570, 595, 635 (2008).

Circuit holds that it does not. This note will not analyze caselaw or societal ramifications regarding any other provision within § 922(g), including but not limited to firearm restrictions on individuals who have been convicted of a felony, domestic violence misdemeanor, or have been an unlawful user of or addicted to any controlled substance.

Next, Part III of this note argues that § 922(g)(4) should be applied to individuals on a *case-by-case basis* to determine if a permanent firearm ban is appropriate. In other words, involuntary institutionalization does not *necessarily* trigger a lifelong ban on firearm possession. This section argues that the Sixth Circuit correctly concluded that permanent disarmament after involuntary institutionalization *potentially* violates the Second Amendment for two reasons. First, this part explains how the incorrect assumption of “once ill, always ill” tarnishes the validity of the holdings of the Third and Ninth Circuits. Second, this part will introduce scientific literature to support this note’s claim that the Sixth Circuit’s approach should govern the issue. Lastly, Part IV specifically outlines how *Beers v. Attorney General United States* and *Mai v. United States* are incorrectly decided by evaluating the facts of those cases with the previously outlined problematic social stereotypes and scientific studies on mental illness.

## **Part II: Background**

### **The Scope of the Second Amendment**

The Second Amendment states, “[a] well-regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.”<sup>13</sup> In *District of Columbia v. Heller*, the United States Supreme Court struck down a Washington D.C. law that effectively banned handguns.<sup>14</sup> For the first time, the Court held that the Second Amendment

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<sup>13</sup> U.S. CONST. amend. II.

<sup>14</sup> *District of Columbia v. Heller*, 554 U.S. 570, 574–75 (2008). The Washington D.C. law made it illegal to carry an unregistered firearm, prohibited handgun registration, and required handguns to be kept unloaded and disassembled in the home. *Id.*

protects an enforceable individual right of gun ownership for self-defense.<sup>15</sup> The Court relied upon a heavily textualist and historically rooted analysis.<sup>16</sup> But, *Heller* found that like most constitutional rights, the Second Amendment right is not unlimited.<sup>17</sup> The Court recognized potential limitations on the Second Amendment, including the longstanding prohibitions on who can possess a gun.<sup>18</sup> Nevertheless, the Court left this topic for a different day and did “not undertake an exhaustive historical analysis today of the full scope of the Second Amendment.”<sup>19</sup>

### § 922(g)

§ 922(g) of the Gun Control Act prohibits various people from owning firearms, such as convicted felons, habitual drug users, domestic violence misdemeanants, and individuals who have “been adjudicated as mental defective or who has been committed to a mental institution.”<sup>20</sup> “Committed to a mental institution” has been defined as a “formal commitment of a person to a mental institution by a court, board, commission, or other lawful authority.”<sup>21</sup> Persons who are at a mental facility voluntarily or for observatory purposes are not covered under this statute.<sup>22</sup> “Federal law provides two potential avenues for relief from § 922(g)(4).”<sup>23</sup>

First, the Gun Control Act includes a relief-from-disabilities program, which permits barred individuals to apply “to the Attorney General for relief from the disabilities imposed by Federal laws.”<sup>24</sup> The Bureau of Alcohol, Tobacco, Firearms and Explosives (the “ATF”) has the

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<sup>15</sup> *Id.* at 577–626.

<sup>16</sup> *Id.* Justice Scalia, writing for the majority’s opinion, noted that the framers of the Bill of Rights specifically intended this to be a protection against the state from taking arms. *Id.* at 624–25. In order to ensure that militias and the United States could be a free and secured state, Justice Scalia found that was only accomplished by protecting individual rights to guns. *Id.*

<sup>17</sup> *District of Columbia v. Heller*, 554 U.S. 570, 626 (2008).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> 18 U.S.C. § 922(g)(4) (2015).

<sup>21</sup> 27 C.F.R. § 478.11 (2020).

<sup>22</sup> *Id.* To comply with due process, individuals are involuntarily committed to mental institutions when he or she is mentally ill and dangerous. *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992).

<sup>23</sup> *Mai v. United States*, 952 F.3d 1106, 1111 (9th Cir. 2020).

<sup>24</sup> 18 U.S.C. § 925(c) (2015).

authority to administer this program.<sup>25</sup> According to § 925(c), the ATF director has the discretion to grant relief if “the applicant will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest.”<sup>26</sup> If an individual’s applicant for relief is denied, federal courts have jurisdiction to hear the case.<sup>27</sup> But, Congress defunded the relief-from-disabilities program in 1992, thereby making § 925 lose its legal significance.<sup>28</sup> By Congress stripping the funding of the program, federal courts also lost their jurisdiction to review § 925(c) claims.<sup>29</sup>

Nonetheless, in 2008, Congress raised the possibility of certain barred individuals to have their gun possession right restored.<sup>30</sup> Due to the weak national instant criminal background check system (the “National Instant Criminal Background Check System” or “NICS”), Congress passed the NICS Improvement Amendments Act of 2007, which supplied federal grants to incentivize states to provide current and accurate data to firearm databases.<sup>31</sup> States receive the grants if they create qualifying programs which permit:

a State court, board, commission, or other lawful authority [to] grant relief . . . if the circumstances regarding the disabilities . . . and the person’s record and reputation, are such that the person will not be likely to act in a manner dangerous to public safety and that the granting of relief would not be contrary to the public interest.<sup>32</sup>

The state qualifying program also allows an individual whose application was denied to seek relief in a state court.<sup>33</sup> As of September 2015, the Bureau of Justice Statistics stated twenty-nine states

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<sup>25</sup> 27 C.F.R. § 478.144(b)(2020).

<sup>26</sup> 18 U.S.C. § 925(c) (2015).

<sup>27</sup> *See id.*

<sup>28</sup> *See* S. Rep. No. 102-353, at 19 (1992).

<sup>29</sup> *United States v. Bean*, 537 U.S. 71, 78 (2002).

<sup>30</sup> *Tyler v. Hillsdale Cty. Sheriff’s Dep’t*, 837 F.3d 678, 682 (6th Cir. 2016).

<sup>31</sup> *Id.*; Pub. L. No. 110-180, § 103 (2008).

<sup>32</sup> Pub. L. No. 110-180, § 105(a)(2) (2008).

<sup>33</sup> *Id.* § 105(a)(3).

have enacted these qualifying programs.<sup>34</sup>

### **The Sixth Circuit’s View of § 922(g)(4)**

Courts have relied on conflicting justifications and historical significances when applying § 922(g)(4).<sup>35</sup> In *Dickerson v. New Banner Inst., Inc.*, the United States Supreme Court found that § 922(g)(4) was enacted to prevent presumptively risky individuals from obtaining firearms.<sup>36</sup> While the Court in *Heller* mentioned ‘firearm bans’ for mentally ill individuals, the court in *Tyler* found that § 922(g)(4) “does not use the phrase ‘mentally ill,’ nor does it attempt to prohibit all currently mentally ill persons from firearm possession. Rather, the statute uses prior judicial adjudications—the incompetency and involuntary commitment—as proxies for mental illness.”<sup>37</sup>

*Tyler* highlights that when Congress passed the NICS Improvements Amendment Act, it acknowledged that mental illness is not necessarily a permanent condition.<sup>38</sup> Specifically, the NICS “would . . . allow States to establish procedures that permit a person disqualified on the basis of legal mental illness to prove to the state that he or she no longer poses a danger to society.”<sup>39</sup> Thus, the *Tyler* court does not resolve the present issue of § 922(g)(4) by solely relying on *Heller*’s ‘precautionary language.’<sup>40</sup> *Tyler* rejects the proposition that Congress may declare if someone is once mentally ill, then that individual is always mentally ill.<sup>41</sup> The court in *Tyler* requires “some sort of showing” to be made for someone who was involuntarily institutionalized to be permanently restricted of his or her Second Amendment right.<sup>42</sup> At the time the case was filed,

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<sup>34</sup> *Tyler*, 837 F.3d at 683 n.2.

<sup>35</sup> See *infra* Part II C & D.

<sup>36</sup> *Dickerson v. New Banner Inst., Inc.*, 460 U.S. 103, 112 n.6 (1983).

<sup>37</sup> *Tyler*, 837 F.3d at 687.

<sup>38</sup> *Id.* at 688. (citing 153 Cong. Rec. 28,948 (2007)).

<sup>39</sup> *Id.*

<sup>40</sup> *Id.* at 688.

<sup>41</sup> *Id.* (The court noting that “Heller’s presumption of lawfulness should not be used to enshrine a permanent stigma on anyone who has ever been committed to a mental institution for whatever reason.”) *Id.*

<sup>42</sup> *Tyler v. Hillsdale Cty. Sheriff’s Dep’t*, 837 F.3d 678, 688 (6th Cir. 2016).

the plaintiff in *Tyler* was only subject to a brief depressive episode approximately thirty years ago, which triggered the involuntary institutionalization at issue, and did not have any interfering mental health problems ever again.<sup>43</sup> Hence, the court concluded that the plaintiff had a viable claim under the Second Amendment.<sup>44</sup>

Courts rely on the two-step framework to resolve Second Amendment challenges.<sup>45</sup> First, the government must conclusively demonstrate the statute burdens individuals who are historically understood to be unprotected.<sup>46</sup> The *Tyler* court stated that historical evidence cited by the government “does not directly support the proposition that persons who were once committed due to mental illness are forever ineligible to regain their Second Amendment rights.”<sup>47</sup> *Tyler* acknowledged that mental health is a convoluted area, and recognized that mental illness is not necessarily immutable.<sup>48</sup> Hence, the court analyzed § 922(g)(4) to reflect those realities.<sup>49</sup> In sum, *Tyler* held that individuals who have been involuntarily institutionalized are not unprotected by the Second Amendment.<sup>50</sup> Second, courts must analyze the “strength of the government’s justifications for restricting or regulating the exercise of Second Amendment rights.”<sup>51</sup> The court in *Tyler* held that the government provided two legitimate and compelling interests for § 922(g)(4): (i) protecting people in the community from crime and (ii) preventing suicide.<sup>52</sup>

The court in *Tyler* noted that § 922(g)(4) essentially imposes a permanent ban on firearms

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<sup>43</sup> *Id.*

<sup>44</sup> *Id.* at 693.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> Catherine Dowie, *Note: Constitutional Law – Impact of Involuntary Commitments and Mental Illness on Second Amendment Rights – Tyler v. Hillsdale Cty. Sheriff’s Dep’t*, 837 F.3d 678 (6th Cir. 2016), 13 J. HEALTH & BIOMED. L. 275, 286 (2018). “Regardless of individual opinions on the Second Amendment generally, the blanket denial of any right or privilege based on something as individualized as a person’s health without an individualized evaluation is troubling.” *Id.* at 288.

<sup>49</sup> *Id.* at 286.

<sup>50</sup> *Tyler v. Hillsdale Cty. Sheriff’s Dep’t*, 837 F.3d 678, 690 (6th Cir. 2016).

<sup>51</sup> *Id.*

<sup>52</sup> *Id.* at 693.



as to people similarly situated to the plaintiff.<sup>53</sup> Additionally, since the plaintiff could not receive relief from the defunded relief-from-disabilities program of §925(c) and Michigan did not create a parallel qualifying relief program based on the NICS Amendment, the plaintiff would have no opportunity to restore his Second Amendment right.<sup>54</sup> While the Brady Center to Prevent Gun Violence conducted studies illustrating that individuals with past suicide attempts are more likely to commit suicide again than members of the general public, the court found that this statistic did “not fully justify the need to permanently disarm anyone who has been involuntarily committed for *whatever reason*.”<sup>55</sup> While the States United to Prevent Gun Violence found a 53 percent reduction in violent crime perpetrated by individuals who were involuntarily committed and prevented from buying guns, the court highlighted that this “data does not meaningfully compare previously committed individuals’ propensity for violence with that of the general population.”<sup>56</sup> The court found that the inflexible ban is unjustified because there is no evidence that people who were previously involuntarily institutionalized pose a greater threat of violence than ordinary members of the public.<sup>57</sup>

### **The Third & Ninth Circuits’ View of § 922(g)(4)**

In *Beers v. Attorney General United States*, the plaintiff was involuntarily committed to a psychiatric hospital in 2005 due to notifying his mother that he was suicidal and that he placed a gun in his mouth.<sup>58</sup> The plaintiff’s institutionalization was extended because the Pennsylvania Bucks County Court of Common Pleas ruled that the plaintiff was “severely mentally disabled and in need of treatment.”<sup>59</sup> Since 2006, the plaintiff did not have any mental health treatment and in

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<sup>53</sup> *Id.* at 694.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.* at 695. (emphasis added).

<sup>56</sup> *Tyler v. Hillsdale Cty. Sheriff’s Dep’t*, 837 F.3d 678, 696 (6th Cir. 2016).

<sup>57</sup> *Id.* at 698.

<sup>58</sup> *Beers v. Attorney General United States*, 927 F.3d 150, 152 (3rd Cir. 2019).

<sup>59</sup> *Id.*

2013, his treating physician determined he was able “to safely handle firearms again without risk of harm to himself or others.” When the plaintiff tried to purchase a gun in 2006, the plaintiff’s firearm application was denied due to his prior involuntary commitment.<sup>60</sup> Similar to the Sixth Circuit, the Third Circuit relies on a two-step framework for resolving Second Amendment disputes.

First, the government must conclusively demonstrate that the statute burdens individuals who are historically understood to be unprotected.<sup>61</sup> *Beers* held that traditionally, persons who were classified as dangerous to the general public fell outside the scope of the Second Amendment.<sup>62</sup> Second, the court assesses whether the plaintiff pled “sufficient facts to distinguish his circumstances from those of members in this historically-barred class.”<sup>63</sup> *Beers* notes the lack of historical evidence for the claim that neither the passage of time nor proof of rehabilitation can restore once forfeited Second Amendment rights.<sup>64</sup> Since § 922(g)(4) was enacted to restrict individuals who posed a danger to themselves and others from obtaining firearms, the court found that the plaintiff could not distinguish his circumstances.<sup>65</sup> The plaintiff was committed to an institution because he was suicidal and a Pennsylvania state court extended his stay because he was a danger to himself or the public.<sup>66</sup> Despite the possibility that the plaintiff could be rehabilitated, the court concluded that § 922(g)(4) did not burden his Second Amendment right because individuals who are mentally ill pose a danger if they possess a gun.<sup>67</sup>

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<sup>60</sup> *Id.*

<sup>61</sup> *See id.* at 154.

<sup>62</sup> *Id.* at 157. The Address and Reasons of Dissent of the Minority of the Convention of the State of Pennsylvania to Their Constituents noted that individuals were restricted from accessing arms if they were a “real danger of public injury.” *Id.* at 158.

<sup>63</sup> *Beers v. Attorney General United States*, 927 F.3d 150, 158 (3rd Cir. 2019).

<sup>64</sup> *Id.* (citing *Binderup v. Attorney General*, 836 F.3d, 336, 350 (3rd Cir. 2016)).

<sup>65</sup> *Id.* at 158–59.

<sup>66</sup> *Id.* at 159.

<sup>67</sup> *Id.*

In *Mai v. United States*, a Washington state court committed the plaintiff to receive mental health treatment in 1999 after he threatened himself and others.<sup>68</sup> The court in *Mai* found that the plaintiff was dangerous and mentally ill.<sup>69</sup> The plaintiff was committed at 17 years old and was there for approximately nine months.<sup>70</sup> After the plaintiff was released in 2000, the plaintiff obtained his GED, bachelor's, and master's degree, and became a father of two children.<sup>71</sup> The plaintiff claimed he did not suffer from a mental disease anymore based on his current "socially-responsible, well-balanced and accomplished life."<sup>72</sup> The plaintiff argued that the continued application of the firearm ban was no longer justified.<sup>73</sup>

Similar to the Third and Sixth Circuits, the Ninth Circuit utilizes the two-pronged test to solve these Second Amendment cases. First, the government must conclusively demonstrate the statute burdens individuals who are historically understood to be unprotected.<sup>74</sup> *Mai* recognized that historical evidence supports "that society did not entrust the mentally ill with the responsibility of bearing arms."<sup>75</sup> Second, § 922(g)(4)'s objective "must be 'significant, substantial, or important,' and there must be a 'reasonable fit' between the challenged law and that objective."<sup>76</sup> Congress reasoned that guns "undoubtedly exacerbate acts of violence to others" and "also greatly increase the risk of death by suicide."<sup>77</sup> Similar to *Beers*, *Mai* stated that the two interests of the ban were to reduce crime and suicide rates.<sup>78</sup>

The court in *Mai* highlighted that the Second Amendment permits bans on groups of

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<sup>68</sup> *Mai v. United States*, 952 F.3d 1106, 1110 (9th Cir. 2020).

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> *Id.* at 1117.

<sup>74</sup> *Mai v. United States*, 952 F.3d 1106, 1114 (9th Cir. 2020).

<sup>75</sup> *Id.*

<sup>76</sup> *Id.* at 1115.

<sup>77</sup> *Id.*

<sup>78</sup> *See id.*

individuals “who presently pose an increased risk of violence.”<sup>79</sup> The government cited data that suggests while an individual who has been voluntarily committed has a decreased risk for suicide as more time lapses, there is no evidence that illustrates that the risk vanishes completely.<sup>80</sup> The court found nothing in the record that showed that the plaintiff’s suicide risk was non-existent or similar to a person who does not have an involuntary institutionalization past record.<sup>81</sup> The government also cited statistics that showed individuals who were previously involuntarily institutionalized up to *eight-and-a-half years ago* having a “suicide risk thirty-nine times that expected.”<sup>82</sup> Despite the plaintiff claiming his situation was different because he was released from his facility approximately twenty years ago, the court agreed with the government that the clear increased risk of suicide justified Congress’s judgement.<sup>83</sup> The court in *Mai* pointed out that it did not need scientific precision; instead, it only required evidence that ‘fairly supports’ Congress’s reasonable conclusions.<sup>84</sup> The court held that § 922(g)(4) was reasonably fit to prevent gun violence because the government’s interest in fighting crime is compelling and the government’s cited evidence suggests the “increased risk is not tiny.”<sup>85</sup>

### **Part III: Mental Illness – Stereotypes v. Science**

#### **The Debilitating Stigma of “Once Ill, Always Ill”**

Whether it is children on the playground or adults in the workplace, negative attitudes regarding people with mental illness persist and dwell in our society. These types of stigmas are frequently used to discredit persons who have mental disabilities by viewing them as

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<sup>79</sup> *Id.* at 1116.

<sup>80</sup> *Mai v. United States*, 952 F.3d 1106, 1118 (9th Cir. 2020).

<sup>81</sup> *Id.* at 1119.

<sup>82</sup> *Id.* at 1117 (citing E. Clare Harris & Brian Barraclough, *Suicide as an Outcome for Mental Disorders: A Meta-Analysis*, 170 BRIT. J. PSYCHIATRY 205 (1997)).

<sup>83</sup> *Id.* at 1117.

<sup>84</sup> *Id.* at 1118.

<sup>85</sup> *Id.* at 1120–21.

psychologically weak, even causing self-stigmatization and a sense of shame among these individuals.<sup>86</sup> Unfortunately, the misconception that these individuals are “ticking time bombs, ready to explode into violence” has been entrenched in our society ever since the deinstitutionalization movement began in the 1960s.<sup>87</sup> Some other common misconceptions include that persons suffering from mental illness are individually responsible for their condition, lack general self-control, and are more dangerous than people who do not have mental illnesses.<sup>88</sup> Media coverage regarding the interrelationship between gun violence and mental illness further increases the justification of these false beliefs, particularly rhetoric that classifies every mass shooter as “mentally unstable or “mentally ill.”<sup>89</sup> By quickly justifying mental illness as the single culprit to these tragedies, erroneous public views about mental illness exacerbates.<sup>90</sup>

The stigma ‘once ill, always ill’ has negative consequences in the mental health context and should be challenged in the Third and Ninth Circuits.<sup>91</sup> In *Beers*, the court relied on ‘history’ because it purportedly showed that individuals who are mentally ill pose a danger to themselves and others if they possess a gun.<sup>92</sup> While it may be true that psychiatric diagnosis and one’s mental health history can predict gun crime before it occurs for certain individuals, research shows that

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<sup>86</sup> Peter Byrne, *Stigma of mental illness and ways of diminishing it*, 6 ADVANCES IN PSYCHIATRIC TREATMENT 65, 65 (2000).

<sup>87</sup> James L. Knoll and George D. Annas, *Mass Shootings and Mental Illness*, GUN VIOLENCE AND MENTAL ILLNESS 91 (2016). In the 1960s, the deinstitutionalization movement in the United States transferred mentally ill patients out of state-run ‘insane asylums’ to ‘federally funded community mental health centers.’ Kimberly Amadeo, *Deinstitutionalization, Its Causes, Effects, Pros and Cons*, The Balance (Sep. 24, 2020), <https://www.thebalance.com/deinstitutionalization-3306067#:~:text=Deinstitutionalization%20is%20a%20government%20policy,while%20also%20cutting%20government%20budgets> (last visited Mar. 2, 2021). As a result, “[b]etween 1955 and 1994, roughly 487,000 mentally ill patients were discharged from state hospitals,” leaving 72,000 patients remaining in these state-run facilities. *Id.*

<sup>88</sup> James L. Knoll and George D. Annas, *Mass Shootings and Mental Illness*, GUN VIOLENCE AND MENTAL ILLNESS 94 (2016).

<sup>89</sup> *Id.* at 95.

<sup>90</sup> *Id.*

<sup>91</sup> Mike Slade and Eleanor Longden, *Empirical Evidence about Recovery and Mental Health*, 15 BMC PSYCHIATRY 285, 285 (2015).

<sup>92</sup> *Beers v. Attorney General United States*, 927 F.3d 150, 159 (3rd Cir. 2019).

oversimplified generalizations regarding the overlap between mental illness and gun violence are inaccurate.<sup>93</sup> Psychiatrist and former President of the American Psychiatric Association, Paul Appelbaum, states “the percentages of crimes that involve guns are lower than the national average for persons without a diagnosis of mental illness.”<sup>94</sup> While there are plenty of predicative factors that cause gun violence, studies have shown that other risk factors are more indicative than mental illness alone.<sup>95</sup>

Mental illness is not in and of itself predicative of gun violence.<sup>96</sup> Due to legislation that allows individuals in certain states to carry firearms in bars and nightclubs, it has shown that violent crime is seven times more likely by individuals who abuse alcohol and drugs who do not suffer from mental illness.<sup>97</sup> Additionally, “a history of childhood abuse and binge drinking are all predicative risk factors for serious violence.”<sup>98</sup> Studies have shown that the availability of guns have also contributed to gun violence.<sup>99</sup> Based on these statistics, if courts in the Third and Ninth Circuit ban firearms for life for individuals who have been involuntarily committed, then why are courts inconsistent by not imposing a lifetime firearm restriction on individuals who abuse alcohol, use drugs, or have a history of childhood abuse? To impose a limitation on one group but not others simply reinforces the negative societal attitudes towards mental illness. Thus, § 922(g)(4)’s firearm ban should be governed by a case-by-case basis based on the individual’s mental health

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<sup>93</sup> Jonathan M. Metzl, *Gun Violence, Stigma, and Mental Illness: Clinic Implications*, PSYCHIATRIC TIMES (Mar. 25, 2015), <https://www.psychiatristimes.com/view/gun-violence-stigma-and-mental-illness-clinical-implications> (last visited Mar. 2, 2021).

<sup>94</sup> *Id.* By the same token, the National Center for Health Statistics estimated that “fewer than 5 [percent] of the 120,000 gun-related killings in the US between 2001 and 2010 were perpetrated by people with mental illness.” *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> Jonathan M. Metzl, *Gun Violence, Stigma, and Mental Illness: Clinic Implications*, PSYCHIATRIC TIMES (Mar. 25, 2015), <https://www.psychiatristimes.com/view/gun-violence-stigma-and-mental-illness-clinical-implications> (last visited Mar. 2, 2021).

<sup>99</sup> *Id.* Studies have shown that “homicide [is] more common in areas in which household firearms ownership is higher.” *Id.* Additionally, the probability of interpersonal disputes being resolved by deadly shootings sharply increased by 200 percent after the Florida legislature passed “stand your ground” legislation in 2005. *Id.*

situation, instead of following a strict one-size fits all approach that perpetuates stigma.

While the Third and Ninth Circuits have been guilty themselves of perpetuating these incorrect stereotypes, their rulings have done more harm than good for the mental health community. In *Mai*, the court highlights the fact that the increased risk of suicide among individuals who were previously involuntarily institutionalized as long as eight-and-a-half years ago reasonably justifies a lifelong ban on firearm possession.<sup>100</sup> Nevertheless, science simply does not support that justification. Similar to how mental illness may be *a* cause of gun violence and usually is not *the* cause, there is no singular cause of suicide.<sup>101</sup> Estimates show that north of 50 percent of individuals who commit suicide with a gun “did not have a known mental illness diagnosis at the time of their death.”<sup>102</sup> Most individuals with mental illnesses will never be violent, as they are more likely of being victims of violent crimes rather than being the perpetrator.<sup>103</sup> Thus, mental illness is a weak indicator of future gun violence, whether involving suicides or homicides.<sup>104</sup>

The court in *Mai* fails to consider the harsh repercussions for advancing negative attitudes towards individuals who suffered from mental illness. The court plops all these individuals into a bucket of inferiors by prohibiting them indefinite access to their Second Amendment rights. In advancing the stigma of ‘all mentally ill individuals are incapable of living their lives to the same

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<sup>100</sup> *Mai v. United States*, 952 F.3d 1106, 1117 (9th Cir. 2020) (citing E. Clare Harris & Brian Barraclough, *Suicide as an Outcome for Mental Disorders: A Meta-Analysis*, 170 BRIT. J. PSYCHIATRY 205 (1997)).

<sup>101</sup> *Mental Illness and Gun Violence*, THE EDUCATIONAL FUND TO STOP GUN VIOLENCE (July 2020), <https://efsgv.org/learn/learn-more-about-gun-violence/mental-illness-and-gun-violence/> (last visited Mar. 2, 2021).

<sup>102</sup> *Id.* Additionally, there is a weak correlation between mental illness and suicide thoughts and behavior. *Id.*

<sup>103</sup> *Guns, Suicide, and Mental Illness: A Roundtable Discussion*, COALITION TO STOP GUN VIOLENCE (Jan. 22, 2019), <https://csgv.medium.com/guns-suicide-and-mental-illness-a-roundtable-discussion-d5960311a09b> (last visited Mar. 2, 2021).

<sup>104</sup> *Id.*

capacity as everyone else,’ the court actually deters these individuals from seeking care.<sup>105</sup> Public stigma regarding mental illness being fueled by Hollywood entertainment and especially being obeyed by our federal judiciary have caused individuals with mental diseases to endorse the stigma themselves.<sup>106</sup> In effect, these individuals, particularly older African-American adults, begin to develop negative perceptions on mental health services and refuse to seek continued necessary mental health treatment.<sup>107</sup> In turn, individuals with untreated mental illness could be susceptible to an increased risk of violence.<sup>108</sup> Additionally, stigma and discrimination decrease successful recovery rates for these individuals by increasing psychiatric symptoms, disrupting their social relationships, and reducing their probability of continuing treatment.<sup>109</sup>

Incorrect stigmas have resulted in societal discrimination against individuals with mental disabilities, which impacts their daily lives.<sup>110</sup> Some of the psychological effects include lowered family esteem, intense shame, decreased self-worth, hopelessness, and anger.<sup>111</sup> When a stigmatizer relies on negative stereotypes against persons with mental disabilities, the stigmatizer creates “social distance” between themselves and the other individual, often at the detriment of the individual who suffers from the illness.<sup>112</sup> Additionally, a Royal College of Psychiatrists’ survey found that 70 percent of respondents viewed individuals with schizophrenia as ‘violent’ and

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<sup>105</sup> Kyaian O. Conner, Valire Carr Copeland, et al., *Mental Health Treatment Seeking Among Older Adults with Depression: The Impact of Stigma and Race*, 18 AM J GERIATRIC PSYCHIATRY, 531, 531 (2010).

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

<sup>108</sup> Jonathan M. Metz, *Gun Violence, Stigma, and Mental Illness: Clinic Implications*, PSYCHIATRIC TIMES (Mar. 25, 2015), <https://www.psychiatristimes.com/view/gun-violence-stigma-and-mental-illness-clinical-implications> (last visited Mar. 2, 2021).

<sup>109</sup> Stigma, Prejudice, and Discrimination Against People with Mental Illness, AMERICAN PSYCHIATRIC ASSOCIATION (Aug. 2020), <https://www.psychiatry.org/patients-families/stigma-and-discrimination> (last visited Mar. 2, 2021); *see infra* Part III on Recovery of Mental Illness and Treatment of Mental Illness for a thorough discussion of mental health treatment options.

<sup>110</sup> Peter Byrne, *Stigma of mental illness and ways of diminishing it*, 6 ADVANCES IN PSYCHIATRIC TREATMENT, 65, 66 (2000).

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*



‘unpredictable’ individuals.<sup>113</sup> Since often times popular public opinion in our country and worldwide accepted societal views influence our country’s judicial resolutions, it seems unsurprising that the Third and Ninth Circuits hold that patients who have been involuntarily institutionalized are banned from obtaining firearms forever. While it may seem unsurprising, it does not mean that it aligns with statistics and science.

### **The (Weak) Interplay of Mental Illness & Gun Violence**

Threatening stereotypes about individuals with mental illness that influence the caselaw arising out of the Third and Ninth Circuits must be repudiated by looking at the correlations between mental illness and violence in the United States. Since the majority of Americans believe that mental illness and violence are mutually reinforcing, it is unsurprising that the Third and Ninth Circuits support lifelong bans on firearms for individuals with mental illnesses.<sup>114</sup> Fortunately, the Sixth Circuit has acknowledged that that perception does not necessarily translate into reality, and provides a more comprehensive formula to the ban. The National Alliance on Mental Illness states that educating people regarding the misconception of mental illness can reduce the lingering power of its stigma.<sup>115</sup> In 2016, the Substance Abuse and Mental Health Service Administration found an anemic nexus between mental illness and violent behavior.<sup>116</sup> Specifically, out of the approximately 18.3 percent of Americans who suffer from mental illness, approximately *4 percent* of “community violence is attributed to psychopathology per se.”<sup>117</sup> Out of the 320 million individuals who live in this country, roughly *twenty-three* individuals are killed every year by

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<sup>113</sup> *Id.*

<sup>114</sup> *Mental Illness and Violence*, HARVARD HEALTH PUBLISHING: HARVARD MEDICAL SCHOOL (Jan. 2011), [https://www.health.harvard.edu/newsletter\\_article/mental-illness-and-violence](https://www.health.harvard.edu/newsletter_article/mental-illness-and-violence) (last visited Mar. 2, 2021).

<sup>115</sup> Stigma, Prejudice, and Discrimination Against People with Mental Illness, AMERICAN PSYCHIATRIC ASSOCIATION (Aug. 2020), <https://www.psychiatry.org/patients-families/stigma-and-discrimination> (last visited Mar. 2, 2021).

<sup>116</sup> Substance Abuse and Mental Health Services Administration, *Civil Commitment and the Mental Health Care Continuum: Historical Trends and Principles for Law and Practice*, 1, 18 (2019).

<sup>117</sup> *Id.*

persons with psychotic illnesses.<sup>118</sup>

Our courts must impose a firearm ban that accurately reflects the current statistics regarding the nonexistent relationship between mental illness and gun violence in this country. Instead of relying on the ‘mental health’ aspect of gun violence, researchers have found that the ‘social’ aspect is far more responsible, particularly regarding mass shootings.<sup>119</sup> Due to its significant media coverage on television and social media, the majority of these perpetrators have acknowledged being influenced by past mass shooters.<sup>120</sup> In fact, most mass killers do not have any history of psychiatric treatment for mental illness.<sup>121</sup> Instead, most of them commit these egregious acts due to feeling aggrieved and maintaining “nurtured fantasies of violent revenge.”<sup>122</sup>

Moreover, thanks to the NICS Improvement Act of 2008, “mental health record submissions to the NICS increased tenfold” between 2007 and 2013.<sup>123</sup> Despite this background check system preventing individuals from purchasing a firearm based on a history of prior commitment, the FBI reported an increase of mass shooting events in this same time period.<sup>124</sup> Also, there is no statistical relationship between serious mental illness and gun violence—individuals who have serious mental illnesses attribute to 4 percent of all gun violence, which accurately reflects their share of the general population.<sup>125</sup> In other words, [a]n American with a

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<sup>118</sup> James L. Knoll and George D. Annas, *Mass Shootings and Mental Illness*, GUN VIOLENCE AND MENTAL ILLNESS 90–91 (2016). To put this statistic in perspective, “[a] person is about 15 times more likely to be struck by lightning in a given year than to be killed by a stranger with a diagnosis of schizophrenia or chronic psychosis.” *Id.* at 91. Furthermore, an individual is fifteen times more likely to be hit by lightning than killed by a person who suffers from chronic psychosis. *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> James L. Knoll and George D. Annas, *Mass Shootings and Mental Illness*, GUN VIOLENCE AND MENTAL ILLNESS 91 (2016).

<sup>123</sup> *Id.* at 96.

<sup>124</sup> *Id.*

<sup>125</sup> Mental Illness and Violence: ABCT’s Board of Directors addresses the tragedy of mass shootings, ASSOCIATION FOR BEHAVIORAL AND COGNITIVE THERAPIES, [https://www.abct.org/Information/?fa=Gun\\_Violence](https://www.abct.org/Information/?fa=Gun_Violence) (last visited Mar. 2, 2021).

serious mental illness [is] no more likely to use a gun to hurt someone than the person next door.”<sup>126</sup> Due to the weak correlation between gun violence and mental illness, courts should impose bans on firearms on an individualized basis for persons who have been previously institutionalized. The standardized approach taken by the Third and Ninth Circuits simply perpetuates needless stigmas while ignoring the realities of statistical trends.

### **Recovery of Mental Illness**

The lifelong ban on firearms and its accompanied stigma on mental illness hinders an individual’s recovery process. “Subjective beliefs and emotions about an illness can impact how individuals make sense of and cope with their illness.”<sup>127</sup> Mental illness representation has a significant impact on recovery because it influences how individuals reclaim a positive sense of value and identity in their lives.<sup>128</sup> Stereotypes regarding mental illness and their effects cause these persons to have lower self-esteem and feel worthless in society.<sup>129</sup> Strained social interactions and fearing rejection are other impacts due to prevailing stereotypes about mental illness.<sup>130</sup> For example, individuals with mental illnesses who internalize stigmas can have smaller social networks, poor life gratification, and decreased employment opportunities.<sup>131</sup> Stigma reinforcing the belief that one can never overcome one’s mental illness also causes reluctance among these individuals to seek treatment.<sup>132</sup> As the Third and Ninth Circuits seemingly endorse

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<sup>126</sup> *Id.*

<sup>127</sup> Randolph C.H. Chan and Winnie W.S. Mak, *Common sense model of mental illness: Understanding the impact of cognitive and emotional representations of mental illness on recovery through the mediation of self-stigma*, 24 *PSYCHIATRY RESEARCH*, 16, 16 (2016).

<sup>128</sup> *Id.* at 17.

<sup>129</sup> Bruce G. Link, Elmer L. Struening, et al., *Stigma as a Barrier to Recovery: The Consequences of Stigma for the Self-Esteem of People With Mental Illnesses*, *PSYCHIATRY ONLINE* (Dec. 2001), <https://ps.psychiatryonline.org/doi/full/10.1176/appi.ps.52.12.1621> (last visited Mar. 2, 2021).

<sup>130</sup> *Id.*

<sup>131</sup> *Id.*

<sup>132</sup> *Mental health: Overcoming the stigma of mental illness*, Mayo Clinic (May 2017), <https://www.mayoclinic.org/diseases-conditions/mental-illness/in-depth/mental-health/art-20046477> (last visited Mar. 2, 2021).

that persons with mental disabilities are not as capable as individuals who do not suffer from mental illnesses to responsibly possess a firearm and exercise their Second Amendment rights, people with mental disabilities are required to be governed by judicially-accepted stigmas that cause unintended consequences.

Courts should follow a case-by-case standard to § 922(g)(4)'s firearm ban in order to allow individuals to successfully recover from their mental illness. Instead of following a stringent one-size fits all approach, the Third Circuit disregards popularized stereotypes, which in effect, permits people with mental illness to have reasonable chances to recover from their conditions. Everyone's mental health journey to recovery is unique because "recovery is a process, a way of life, an attitude . . . a series of small beginnings with very small steps."<sup>133</sup> Qualitative studies have shown that employment is an essential component of recovery.<sup>134</sup> Employment provides persons with mental disabilities structure and a meaningful social value by reintegrating within the community and regaining a sense of normalcy.<sup>135</sup> Other pivotal aspects of recovery include safe and secured housing, and obtaining an increased sense of autonomy, agency, and social connectedness.<sup>136</sup> 'Positive mental health' therapies have also been proposed to improve individuals' chances of recovery from mental illness.<sup>137</sup> Evidence shows that maintaining positive mental health over a ten-year period has an important effect on recovery for persons with mental illnesses, specifically individuals who suffer from depression, anxiety, and panic disorders.<sup>138</sup>

### **Treatment of Mental Illness**

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<sup>133</sup> Robert E Drake and Rob Whitley, *Recovery and Severe Mental Illness: Description and Analysis*, 59 THE CANADIAN J. OF PSYCHIATRY, 236, 237 (2014).

<sup>134</sup> *Id.* at 238.

<sup>135</sup> *Id.*

<sup>136</sup> *Id.* at 238–39.

<sup>137</sup> Matthew Iasiello, Joseph van Agteren, Corey L.M Keyes, and Eimear Muir Cochrane, *Positive Mental Health as a Predictor of Recovery from Mental Illness*, 251 J. OF AFFECTIVE DISORDERS, 227, 227 (2019).

<sup>138</sup> *Id.*

If an individual has been consistently seeking treatment for their mental illness, one could legitimately ask what a lifelong firearm ban would protect against. Considering that individuals can be treated for their mental illness, the Third and Ninth Circuit's proposed lifelong ban is counterproductive. Whether or not a person is receiving treatment for their mental illness should impact how long they should be banned from purchasing a gun. If courts adopt this note's case-by-case approach to evaluate whether to restore an individual's Second Amendment right, then courts would be able to consider the individual's treatment status as part of the overall calculation. Due to advancements in science and medicine, there are plenty of treatment options available which significantly improve people's mental illness symptoms.<sup>139</sup>

Some of these options include medications such as antidepressants and anti-anxiety, mood-stabilizing, and antipsychotic medications.<sup>140</sup> Psychotherapy, brain-stimulation, substance misuse treatments, case management, support groups, alternative medicine, and self-help plans are also viable treatment options.<sup>141</sup> While forty-five million Americans live with a mental illness, thirteen million live with a serious mental illness.<sup>142</sup> Out of the thirteen million Americans who live with a serious mental condition, about two-thirds receive treatment for it.<sup>143</sup> 4 percent of all gun violence is attributed to individuals who suffer from a serious mental illness, yet that number drops even smaller for people who are in treatment.<sup>144</sup> Hence, courts need to recognize that mental illness treatments drastically limit the risk that these individuals impose on society.

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<sup>139</sup> Mayo Clinic Staff, *Mental Illness*, MAYO CLINIC (Jun. 8, 2019), <https://www.mayoclinic.org/diseases-conditions/mental-illness/diagnosis-treatment/drc-20374974> (last visited Mar. 2, 2021).

<sup>140</sup> *Id.*

<sup>141</sup> *Id.*; *Mental Health Treatments*, MENTAL HEALTH AMERICA, <https://www.mhanational.org/mental-health-treatments> (last visited Mar. 2, 2021).

<sup>142</sup> Mental Illness and Violence: ABCT's Board of Directors addresses the tragedy of mass shootings, ASSOCIATION FOR BEHAVIORAL AND COGNITIVE THERAPIES, [https://www.abct.org/Information/?fa=Gun\\_Violence](https://www.abct.org/Information/?fa=Gun_Violence) (last visited Mar. 2, 2021).

<sup>143</sup> *Id.*

<sup>144</sup> *Id.*

## Part IV: The Convergence of Law and Science

### The Sixth Circuit Accurately Reflects the Current Science of Mental Illness

Courts should follow a case-by-case basis approach when evaluating whether an individual who was previously involuntarily institutionalized can obtain a firearm. This approach considers whether or not the individual continues to suffer from the mental illness. Considering that there is minimal evidence of a link between mental illness and violence and there is robust evidence for people to recover from mental illnesses and live normal lives, the fixed lifelong ban on firearms does not comply with the scientific data. The Sixth Circuit closely abides by what the current trends tells us about the intricacies of mental illness. In *Tyler*, the plaintiff's wife left him for another man, depleted his bank account, and served him with divorce papers.<sup>145</sup> The plaintiff was involuntarily institutionalized twenty-eight years ago for one month due to an emotionally devastating divorce.<sup>146</sup> After the plaintiff completed his treatment, he never experienced a depressive episode again.<sup>147</sup> The plaintiff also maintained employment for approximately nineteen years, remarried in 1999, and repaired his relationship with his ex-wife.<sup>148</sup> The plaintiff's doctor reported that he did not show any signs of having a mental illness.<sup>149</sup>

The court in *Tyler* correctly held that the plaintiff had a viable Second Amendment claim against the ban.<sup>150</sup> By abiding by this note's proposed individualized approach to the firearm ban, the plaintiff in *Tyler* should be able to obtain a gun because he no longer suffered from depression. Roughly between 20 to 30 percent of individuals who experience an episode of depression have

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<sup>145</sup> *Tyler*, 837 F.3d at 683.

<sup>146</sup> *Id.*

<sup>147</sup> *Id.*

<sup>148</sup> *Id.*

<sup>149</sup> *Id.* at 684.

<sup>150</sup> *Id.* at 699.

symptoms that do not entirely go away.<sup>151</sup> While there are 19 million Americans who live with depression today, about 80 percent of them claim that treatment helps their condition and makes them feel better.<sup>152</sup> A lifelong firearm ban would be inappropriate for the plaintiff in *Tyler*. Considering that the plaintiff was involuntarily institutionalized close to thirty years ago and recovered from his depressive episode by maintaining stable employment and social relationships, he should be allowed to purchase a firearm just like any other eligible person in this country. The court in *Tyler* convincingly highlighted that “there is no indication of the *continued* risk presented by people who were involuntarily committed many years ago and who have no history of intervening mental illness, criminal activity, or substance.”<sup>153</sup> A uniform lifelong ban on firearms would unfairly punish individuals like the plaintiff in *Tyler*, who no longer suffers from his past mental illness (i.e. depression).

Additionally, 17.3 million Americans reported having a ‘major’ depressive episode in 2017, and 67 percent of them reported received treatment for their condition.<sup>154</sup> If the court in *Tyler* followed the Third and Ninth Circuits’ view that § 922(g)(4) imposes a strict lifelong ban on firearms, then theoretically, 17.3 million Americans could be subject to the lifelong ban. While not all 17.3 million Americans have been involuntarily institutionalized based on their major depressive episodes, the Third and Ninth Circuits’ line of reasoning suggests that if they were, then they would never be able to obtain a gun again. For the Third and Ninth Circuits, the dividing line for limiting firearm access indefinitely seems to be whether an individual has been involuntarily institutionalized for one’s mental illness; however, that line becomes convoluted due to the fact

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<sup>151</sup> Jennifer Casarella, *Depression Recovery: An Overview*, WEBMD (Sep. 27, 2020), <https://www.webmd.com/depression/recovery-overview> (last visited Mar. 2, 2021).

<sup>152</sup> *Id.*

<sup>153</sup> *Tyler*, 837 F.3d at 699.

<sup>154</sup> Camille Renzoni, *Depression Facts and Statistics*, THE RECOVERY VILLAGE (July 6, 2020), <https://www.therecoveryvillage.com/mental-health/depression/related/depression-statistics/> (last visited Mar. 2, 2021).

that many individuals who suffer from mental illness (such as depression) are not receiving treatment from mental health facilities, yet they are able to purchase firearms.

In *Keyes v. Lynch*, a Pennsylvania district court followed a similar individualized standard that *Tyler* used. One of the plaintiffs, a state correctional officer, was involuntarily committed at fifteen-years-old because he was cutting himself due to being devastated by his parents' divorce.<sup>155</sup> The plaintiff was in treatment for about a week, and has never since been involuntarily committed.<sup>156</sup> Since then, he served in the U.S. Army for four years, received honorable discharge, and was not recommended to be subject to further psychological evaluation after returning home from Afghanistan.<sup>157</sup> The court in *Keyes* correctly held that the lifelong ban violated the plaintiff's Second Amendment right because he was "no more dangerous than a typical law-abiding citizen at this point in his life" and he was not a "continuing threat" to himself or the public.<sup>158</sup> Pursuant to this note's proposed case-by-case approach to the firearm ban, the plaintiff in *Keyes* should rightfully be able to obtain a firearm. Courts have justified prohibiting gun possession under § 922(g)(4) for 'persons who are perceived to be dangerous and individuals who are likely to commit violent offenses.'<sup>159</sup> The plaintiff in *Keyes* should not be considered to be part of these two groups.

While the plaintiff was committed to a mental institution *once* in his life due to witnessing his parents go through a divorce, the government provided "no evidence that [the defendant] has ever been violent or acted in an unstable or dangerous manner toward himself or others since his commitment."<sup>160</sup> In short, the *Keyes* court concluded that the evidence weighed in favor of the plaintiff posing no continuing threat to society.<sup>161</sup> Further proof that the plaintiff rehabilitated

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<sup>155</sup> *Keyes v. Lynch*, 195 F. Supp. 3d 702, 706 (M.D. Pa. 2016).

<sup>156</sup> *Id.* at 707.

<sup>157</sup> *Id.*

<sup>158</sup> *Id.* at 722.

<sup>159</sup> *Id.* at 718.

<sup>160</sup> *Id.* at 720.

<sup>161</sup> *Keyes v. Lynch*, 195 F. Supp. 3d 702, 720 (M.D. Pa. 2016).



from his mental illness can be illustrated through the fact that he possessed and used guns ‘without incident’ while serving in the military and working at a state correctional facility.<sup>162</sup> If an individual like the plaintiff in *Keyes* can safely use dangerous firearms in the workplace after being involuntarily institutionalized when he was a child, then what is the significant danger for this individual to purchase a firearm for personal use? Additionally, the plaintiff received a court ordered evaluation by a psychologist who concluded that the plaintiff’s “current mental state and stability appear[ed] to be intact[,]” and most importantly, that he did “not appear to pose a threat to himself or others with regard to possession of a firearm.”<sup>163</sup> This note’s individualized approach to the firearm ban would be able to take into account the psychologist’s evaluation of the plaintiff’s medical condition and the plaintiff’s work history of safely using guns. By juxtaposition, a standardized lifelong ban on firearms would unduly punish individuals like the plaintiff in *Keyes*, who no longer suffers from his past mental illness caused by his parents’ divorce in his childhood.

While this note agrees with the decisions of *Tyler* and *Keyes*, this note disagrees with the outcomes of *Beers* and *Mai*. In *Beers*, the plaintiff was involuntarily committed to a hospital after telling his mother that he was suicidal and placed a gun in his mouth.<sup>164</sup> The plaintiff had no mental treatment since that event and his doctor stated that he was capable “to safely handle firearms again without risk of harm to himself or others.”<sup>165</sup> Since the plaintiff was rehabilitated, the court in *Beers* incorrectly held that the ban applied to him without burdening his Second Amendment rights.<sup>166</sup> The court held that the plaintiff could not “distinguish his circumstances by arguing that he is no longer a danger to himself or to others” because doing so would disregard the

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<sup>162</sup> *Id.* The government presented no evidence that the plaintiff in *Keyes* acted in a dangerous manner while using “fully automatic rifles, machine guns, grenade launchers, and incendiary grenades while serving in the 82<sup>nd</sup> Airborne of the United States Army” after he was involuntarily institutionalized. *Id.*

<sup>163</sup> *Id.* at 721.

<sup>164</sup> *Beers*, 927 F.3d at 152.

<sup>165</sup> *Id.*

<sup>166</sup> *See id.* at 159.

court in *Binderup v. Attorney General* 836 F.3d 336 (3d Cir. 2016).<sup>167</sup> The *Binderup* court held that “neither passage of time nor evidence of rehabilitation can restore Second Amendment rights that were forfeited.”<sup>168</sup> But, the precedent set forth in *Binderup* and upheld in *Beers* perpetuates negative attitudes about mental illness that does not accurately reflect the current statistics regarding the relationship between gun violence and mental illness. Since the plaintiff did not demonstrate to the court’s satisfaction that he was never a danger to himself or to others, the court in *Beers* held that he should be restricted access to a firearm indefinitely.<sup>169</sup> While certainly the plaintiff should not have been able to purchase a gun while he was enduring his mental illness before he institutionalized, the plaintiff currently no longer suffers from the condition.<sup>170</sup> Therefore, to restrict someone for a *possibility* of experiencing another suicidal episode in their lifetime based on a previous suicide attempt unfairly punishes them compared to individuals who are able to purchase guns and have not been involuntarily institutionalized but may have a suicidal episode in the future.

In *Mai*, the plaintiff was involuntarily institutionalized at seventeen years old over a span of nine months because a Washington state court found him mentally ill and dangerous.<sup>171</sup> Currently, the plaintiff claims to live a “socially responsible, well-balanced, and accomplished life.”<sup>172</sup> Despite the plaintiff earning his GED, bachelor’s, and master’s degree, as well as being employed and a father of two children, the court in *Mai* incorrectly held that the ban withstood Second Amendment scrutiny.<sup>173</sup> The court found that Congress enacted § 922(g)(4) to “keep guns out of the hands of those who have demonstrated that they may not be trusted to possess a firearm

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<sup>167</sup> *Id.*

<sup>168</sup> *Id.*

<sup>169</sup> *Id.*

<sup>170</sup> *Beers v. Attorney General United States*, 927 F.3d 150, 152 (3rd Cir. 2019).

<sup>171</sup> *Mai*, 952 F.3d at 1110.

<sup>172</sup> *Id.*

<sup>173</sup> *Id.* at 1110, 1121.

without becoming a threat to society.”<sup>174</sup> Additionally, the court highlighted that while § 922(g)(4) takes effect based on a *past* event, § 922(g)(4) targets a *present* danger.<sup>175</sup> This present danger is the risk to society imposed by individuals who have been previously committed to a mental health facility.<sup>176</sup> Since the plaintiff in *Mai* was institutionalized when he was a minor, the present danger he now imposes to society has subsided—based on his significant educational and work achievements, as well as a Washington state court holding that his involuntary commitment successfully allowed for him to manage his condition and that the symptoms were not reasonably likely to recur.<sup>177</sup> Thus, based on this note’s proposed case-by-case approach to § 922(g)(4), the plaintiff in *Mai* should have his Second Amendment rights reinstated.

### **Part V: Conclusion**

This note put forth the position that the Sixth Circuit is correct in holding that the lifelong firearms ban for individuals who were previously involuntarily committed does not substantially relate to the stated government justifications of crime and suicide prevention. Involuntary institutionalization should not *automatically* trigger a lifetime prohibition on gun possession. But, when an individual *continues* to suffer from a mental illness, the ban would be appropriate. This note supported its argument by addressing recent scientific literature and data that suggests that mental illness is not always a fixed, stagnant condition in one’s life forever. Courts should follow this note’s comprehensive, individualized approach to evaluate when a person is able to purchase a firearm again after involuntary commitment. This case-by-case standard allows judges to consider doctors’ evaluations and court determinations, as well as the individual’s work history with firearms, general employment status, and personal life. Notwithstanding one’s position on

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<sup>174</sup> *Id.* at 1116.

<sup>175</sup> *Id.*

<sup>176</sup> *Id.*

<sup>177</sup> *Mai v. United States*, 952 F.3d 1106, 1110 (9th Cir. 2020).

this circuit split, the Supreme Court needs to resolve this dispute. The present issue affects more people in this country than we realize, considering that one in five Americans experience a mental illness in their lifetime. Due to our country's vigorous (or lack thereof) conversation about guns and mental illness, the issue is overly ripe for the Supreme Court's review.