No. 15-1027

In the
Supreme Court of the United States

BILLY YORK WALKER,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF OF *AMICI CURIAE* CONGRESS OF RACIAL EQUALITY, CALIFORNIA RIFLE AND PISTOL ASSOCIATION, CENTER FOR CONSTITUTIONAL JURISPRUDENCE, GUN OWNERS OF CALIFORNIA, INDEPENDENCE INSTITUTE, AND LAW ENFORCEMENT ALLIANCE OF AMERICA IN SUPPORT OF PETITIONER

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INTEREST OF *AMICI CURIAE*[1]

Congress of Racial Equality

Founded in 1942, the Congress of Racial Equality ("CORE") has been for decades one of the leading civil rights organizations in the country and internationally. Recognized as a tax-exempt 501(c)(4) organization, CORE was the first civil rights organization in this country to have been awarded a special non-governmental organization consultative status ("NGO") at the United Nations. It has a record of finding solutions to the most difficult problems facing minorities, and of leading America down a path of equal opportunity for all of its citizens, including in the criminal justice system.

California Rifle and Pistol Association

The California Rifle and Pistol Association ("CRPA") is a non-profit membership and donor supported organization qualified as tax-exempt under 26 U.S.C. § 501(c)(4) and with its headquarters in Fullerton, California. Founded in 1875, the CRPA seeks to defend the civil and constitutional rights of all law-abiding individuals, including individuals who are unjustly subjected to

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[1]No party's counsel authored this brief in whole or in part. No party or party's counsel, and no person other than *amici*, their members, or their counsel contributed money that was intended to fund preparation or submission of this brief. Counsel of record for all parties received timely notice of intent to file this brief under Rule 37.2(a) and consent was granted by all parties.

permanent bans on the exercise of those rights. CRPA regularly participates as a party or *amicus curiae* in litigation relating to firearms laws, and provides guidance to California gun owners regarding their legal rights and responsibilities.

Center for Constitutional Jurisprudence

The Center for Constitutional Jurisprudence was founded in 1999 as the public interest legal arm of The Claremont Institute, a Section 501(c)(3) public policy think tank devoted to restoring the principles of the American founding to their rightful and preeminent authority in our national life. The Center advances this mission by representing clients or appearing as an *amicus curiae* in cases of constitutional significance, including *McDonald v. City of Chicago.*

Gun Owners of California

Gun Owners of California ("GOC") is a California non-profit organization formed in 1974. GOC supports crime control, not gun control. Its founder, Senator H.L. Richardson, during his tenure in the California legislature was the author of some of the toughest anti-crime legislation and was honored by many law enforcement groups as one of the top leaders in the fight against crime. GOC has previously filed *amicus curiae* briefs in the federal courts, including a brief in this Court supporting respondents in *District of Columbia v. Heller*.

Independence Institute

The Independence Institute is a public policy research organization founded in 1984 on the eternal truths of the Declaration of Independence. It is one of the oldest state-level think tanks, and is based in Denver, Colorado. The Institute has participated in many constitutional cases in federal and state courts including *District of Columbia v. Heller* and *McDonald v. Chicago*. The Institute's *amicus* briefs in *Heller* and *McDonald* (under the name of lead *amicus*, the International Law Enforcement Educators & Trainers Association, ILEETA) were cited in the opinions of Justices Breyer (*Heller*), Alito (*McDonald*), and Stevens (*McDonald*). The Institute's Research Director, David Kopel, is co-author of the law school textbook FIREARMS LAW AND THE SECOND AMENDMENT: REGULATION, RIGHTS, AND POLICY (Aspen 2012).

Law Enforcement Alliance of America, Inc.

Law Enforcement Alliance of America, Inc. ("LEAA") is a non-profit, non-partisan advocacy and public education organization founded in 1992 and made up of thousands of law enforcement professionals, crime victims, and concerned citizens. LEAA represents its members' interests by assisting law enforcement professionals and seeking criminal justice reforms. LEAA has been an *amicus curiae* in numerous federal and state cases, and was on the prevailing side in two United States Supreme Court cases.

INTRODUCTION

The issue in this case is whether Petitioner "has had civil rights restored" for purposes of 18 U.S.C. § 921(a)(20), thereby permitting him to possess a firearm under federal law. All parties agree that because Petitioner's conviction was in federal court, the civil rights at issue are his federal civil rights. The relevant federal civil rights that can be lost as a result of a federal conviction are the right to vote in federal elections and the right to serve on a federal jury. The right to hold federal elective office cannot be lost by such a conviction, because this Court has held that Congress and the states have no power to change or add to the three requirements specified in the Qualifications Clauses of the Constitution. U.S. CONST. art. I, § 2, cl. 2; art. I, § 3, cl. 3.

The Sixth Circuit did not contend that Petitioner's right to serve on a federal jury has not been restored. As demonstrated by the Petition and by the dissent below, Petitioner's right to vote in federal elections has been restored by operation of federal law due to restoration of his state right to vote. Because all of Petitioner's civil rights that were taken away, both state and federal, have been restored, he is entitled to a declaratory ruling that he is not prohibited by 18 U.S.C. § 922(g)(1) from possessing a firearm.

SUMMARY OF ARGUMENT

This brief addresses three issues. First, this case is of great importance because of the sheer numbers of persons with prior federal felony convictions who,

under the Sixth Circuit's reasoning, will be permanently deprived of their right to keep and bear arms even if their federal rights to vote and serve on a federal jury are restored. Direct statistics regarding the number of persons with federal felony convictions who have completed their sentence and now reside in civil society are apparently not available. Nevertheless, a review of the number of federal convictions, the number of individuals who are currently incarcerated or under federal supervision, and other relevant measures and adjustments, leads to the conclusion that the number of citizens potentially affected by this case almost certainly exceeds one million.

Second, although this case does not present a constitutional Second Amendment challenge, the Court's decisions in *District of Columbia v. Heller*, 554 U.S. 570 (2008), and *McDonald v. City of Chicago*, 561 U.S. 742 (2010), place the issue in this case in a new light. An interpretation of 18 U.S.C. § 921(a)(20) that improperly fails to recognize the restoration of federal civil rights deprives over a million citizens of a fundamental, enumerated constitutional right. In construing § 921(a)(20), therefore, the greatest care should be given to avoid an interpretation that trenches on fundamental constitutional rights.

Third, the Sixth Circuit's majority opinion imposes a requirement, with no basis in statute or this Court's precedents, that there must be some affirmative action or token of forgiveness by federal officials before federal civil rights can be restored. That additional requirement is not only incorrect,

but a review of other statutory schemes demonstrates that state legal determinations frequently have direct consequences under federal statutes purely by operation of law. These include state convictions and state restorations of civil rights that directly affect outcomes under federal statutes.

Accordingly, this Court should grant certiorari and reverse the decision below.

ARGUMENT

I. THIS CASE IS EXCEPTIONALLY IMPORTANT BECAUSE THE FAILURE TO RECOGNIZE RESTORATION OF FEDERAL CIVIL RIGHTS AFFECTS A LARGE CLASS OF AMERICAN CITIZENS.

One recent study estimated that 65 million people — one in four adults in the United States — have a criminal record. National Association of Criminal Defense Lawyers, COLLATERAL DAMAGE: AMERICA'S FAILURE TO FORGIVE OR FORGET IN THE WAR ON CRIME 12 n.2 (2014),[2] citing National Employment Law Project, 65 MILLION NEED NOT APPLY: THE CASE FOR REFORMING CRIMINAL BACKGROUND CHECKS FOR EMPLOYMENT 27 n.2 (March 2011).[3]

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[2]Available at http://www.nacdl.org/WorkArea/DownloadAsset.aspx?id=33203&libID=33172.

[3]Available at http://www.nelp.org/page/-/65 Million Need Not Apply.pdf?nocdn=1.

Of course, felons in general, and federal felons in particular, are a subset of this very large number. Direct statistics on the number of individuals who have a past federal felony conviction, but who have served their sentences and are now back in society as free individuals, are apparently lacking. However, reasonable estimates of the general magnitude of that class of individuals can be made.

Another recent study attempted to estimate the growth in the numbers of individuals who have committed a felony but have subsequently been restored to society. *See* Sarah Shannon, Christopher Uggen, Melissa Thompson, Jason Schnittker, & Michael Massoglia, *Growth in the U.S. Ex-Felon and Ex-Prisoner Population, 1948 to 2010* 6-7 (2011).[4] Adjusting for recidivism and death, the study found that there are currently about 15 million "ex-felons"; that is, persons who are not currently incarcerated, and who have been released from prison, from jail, or from probation. *Id.* at 7 (Figure 4 – Growth of Felons and Ex-felons, 1948-2010). That represents a tripling or more from the early to mid-1980s, when the number of ex-felons was about four to five million. *Id.* As the study notes:

> The total number of non-African American ex-felons has grown from 2.5% of the adult population in 1980 to over 6% in 2010. For African-Americans, ex-felons have increased from 7.6% in 1980 to over 25% in 2010.

Id.; *see also id*. at 8 (Figure 5). Thus, the issue

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[4]Paper presented at the Annual Meetings of the Population Association of America, http://paa2011.princeton.edu/papers/111687.

presented in this case is of growing importance.

These figures include individuals convicted either of state or federal felonies. Federal ex-felons are a smaller group by comparison, but still constitute a very large number of people overall. According to the Bureau of Justice Statistics, at the end of 2014, the federal system had a greater correctional population than all but five of the fifty states. Bureau of Justice Statistics, CORRECTIONAL POPULATIONS IN THE UNITED STATES, 2014 at 6 (Dec. 2015) ("BJS Correctional Report").[5]

The annual number of federal felony convictions has been about 70,000 to 80,000 in recent years, and has increased fairly dramatically over recent decades. The most recent year for which information is available from the Bureau of Justice Statistics is 2012. For the twenty year period ending that year, federal felony convictions were:

2012	81,734[6]
2011	83,590
2010	81,484

[5]Available at www.bjs.gov/content/pub/pdf/cpus14.pdf. "Correctional population" means the "estimated number of persons living in the community while supervised on probation or parole and inmates under the jurisdiction of state or federal prisons or held in local jails." *Id.* at 10.

[6]Data for 2005-2012 is from Table 4.2 of each respective year's FEDERAL JUSTICE STATISTICS, Statistical Tables, published by BJS and available at http://www.bjs.gov/index.cfm?ty=pbse&sid=4.

2009	79,620
2008	76,572
2007	72,587
2006	73,804
2005	71,671
2004	67,464[7]
2003	68,490
2002	64,540
2001	60,467
2000	60,059
1999	56,865
1998	51,388
1997	46,878
1996	42,992
1995	37,713
1994	39,624
1993	43,260
Total Convictions (1993-2012)	1,260,802

[7]Data for 1993-2004 is from Table 4.2 of each respective year's COMPENDIUM OF FEDERAL JUSTICE STATISTICS, published by BJS and available at http://www.bjs.gov/index.cfm?ty=pbse&sid=4.

For the years 2013 through 2015, information from the Administrative Office of the United States Courts shows that there have been about 215,000 federal felony convictions in the last three years.[8] Thus, just from 1993 to the present, there have been approximately 1,475,000 federal felony convictions.

As of December 31, 2014, the federal system had 338,000 individuals under correctional supervision, of which 128,400 were on probation or parole, and of which 209,600 were in prison or a local jail. BJS Correctional Report at 17 (Appendix, Table 1). Nearly all of these individuals are felons, since misdemeanor convictions account for only about 10% of all convictions, and misdemeanor sentences tend to be far shorter.

Thus, the number of convicted felons who have completed their sentences and are free from supervision is well in excess of one million just for

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[8]Administrative Office of the United States Courts, U.S. DISTRICT COURTS—CRIMINAL DEFENDANTS DISPOSED OF, BY TYPE OF DISPOSITION AND OFFENSE, Table D-4 (For periods ending June 2013 – June 2015).

June 2012 – June 2013: 84,060 convictions (http://www.uscourts.gov/file/10708/download);

June 2013 – June 2014: 81,408 convictions (http://www.uscourts.gov/file/10709/download);

June 2014 – June 2015: 73,861 convictions (http://www.uscourts.gov/file/18987/download).

These convictions include Class A misdemeanors, which are a small percentage of total convictions. Adding the above numbers, and then reducing the total by 10% to take out misdemeanors, leaves a total of about 215,000 felony convictions for these three years.

those convicted in 1993 and thereafter.[9]

Confirmation of the large number of persons prohibited from purchasing a firearm due to a felony conviction is provided by background check statistics compiled by the Justice Department. Of course, most individuals who have a felony conviction, and have not had their firearms rights restored, will not attempt to purchase a firearm from a federally licensed dealer because they are prohibited by law from doing so. Nevertheless, quite large numbers of persons with a felony in their past attempt to do so, probably out of a belief that they have paid their debt to society, and may have had their rights restored, coupled with a lack of knowledge about the operation of federal firearms laws.

Since the National Instant Criminal Background Check law went into effect in 1994, through the year 2012, there have been 2,431,000 denials of prospective firearms purchases through dealers. Bureau of Justice Statistics, BACKGROUND CHECKS FOR FIREARM TRANSFERS, 2012 – STATISTICAL TABLES 4 (Dec. 2014) (Table 1). For federal background checks conducted by the FBI, a prior felony conviction accounted for nearly half of the total denials (42.5%). *Id*. at 6 (Table 5). It was also the most common reason for denial by states conducting the background checks. *Id.* Uncertainty regarding

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[9]Adjusting for individuals who may have more than one conviction, and those who have died, may reduce the estimate of ex-felons living in society below the one million figure for those convicted after 1992. However, adding in those who were convicted in 1992 and before would probably more than offset that reduction.

what rights have or have not been restored clearly constitutes a "trap for the unwary" for large numbers of individuals with a felony conviction in their past.

Thus, the importance of the issue presented in this case extends far beyond the individual rights of the Petitioner. Nearly all states have one or more methods for restoring the civil rights of persons with prior felony convictions, especially if the conviction, like Petitioner's, was not for a violent offense. Thus, the effect of a state's restoration of an ex-felon's civil rights on that individual's federal rights (and therefore the application of 18 U.S.C. § 921(a)(20) to such persons) is an important issue that should be clarified by this Court.

II. IF THE SIXTH CIRCUIT'S REASONING WERE TO PREVAIL, IT WOULD EFFECTIVELY ELIMINATE FUNDAMENTAL CONSTITUTIONAL RIGHTS OF LARGE NUMBERS OF PERSONS WHO POSE NO RISK OF VIOLENCE.

As noted in the Sixth Circuit's opinions, and in the Petition, this case attempts to resolve the questions left open in the final footnote to *Beecham v. United States*, 511 U.S. 368, 373 n.* (1994). The main question was whether a federal felon can have his rights restored under federal law, citing the very provisions relied upon by Petitioner here. Two things should be noted in that regard.

First, fewer than 4% of federal felonies are violent felonies.[10] The percentage of state felonies that are violent is much higher. For the most recent year that BJS published figures for state felony convictions, 18.2% of all state felony convictions were for violent offenses. Bureau of Justice Statistics, FELONY SENTENCES IN STATE COURTS, 2006 – STATISTICAL TABLES (Dec. 2009). Yet, the rights of state felons are routinely restored, sometimes automatically, whereas those of federal felons (if the Sixth Circuit's approach is allowed to stand) effectively cannot be restored at all.

There are no formal procedures whereby a federal felon may apply to have his civil rights restored generally. As noted above, for the right to vote and the right to serve on a jury, those federal rights are restored by operation of law, and the right to hold public office is never lost. If the restoration of those federal rights is not recognized by the courts for purposes of 18 U.S.C. § 921(a)(20), there is no other practical avenue for relief. Federal law purports to provide a relief-from-disabilities program whereby individuals prohibited from possessing firearms may "appl[y] to the Attorney General for relief from the disabilities imposed by Federal laws." 18 U.S.C. § 925(c). However, that program was defunded in 1992. *See* Treasury, Postal

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[10]*See, e.g.,* Administrative Office of the United States Courts, U.S. DISTRICT COURTS—CRIMINAL DEFENDANTS DISPOSED OF, BY TYPE OF DISPOSITION AND OFFENSE, Table D-4, reporting 73,861 convictions for the period June 2014–June 2015, of which 2,496 were violent offenses (3.3%). Available at http://www.uscourts.gov/file/18987/download.

Service, and General Government Appropriations Act, 1993, Pub.L. No. 102–393, 106 Stat. 1729, 1732. Thus, a presidential pardon is the only available avenue to seek restoration of federal firearms rights, unless restoration of federal rights is recognized as Petitioner urges in this case.

Second, the constitutional landscape has changed since *Beecham*, making it all the more important that certiorari be granted in this case. Although this case presents questions of statutory interpretation, and is not a constitutional challenge, it is now recognized that fundamental constitutional rights are at stake. In 2008, this Court formally recognized the individual Second Amendment right to keep and bear arms. *District of Columbia v. Heller*, 554 U.S. 570 (2008). In *McDonald v. City of Chicago*, 561 U.S. 742 (2010), this Court repeatedly characterized that right as a fundamental constitutional right. The Court noted that its inclusion in the Bill of Rights "is surely powerful evidence that the right was regarded as fundamental in the sense relevant here." *Id*. at 769. "[T]he Framers and ratifiers of the Fourteenth Amendment counted the right to keep and bear arms among those fundamental rights necessary to our system of ordered liberty," and that right is "deeply rooted in this Nation's history and tradition . . . ." *Id*. at 767, 778.

Moreover, Petitioner's case is not based on some tangential aspect of the Second Amendment. The Sixth Circuit's decision completely bans him from possessing firearms, even for the lawful purpose of self-defense in the home, which this Court has held to be at the core of the Second Amendment's

protection. As stated in *McDonald*:

> Self-defense is a basic right, recognized by many legal systems from ancient times to the present day, and in *Heller*, we held that individual self-defense is "the central component" of the Second Amendment right. 554 U.S., at [559], 128 S.Ct., at 2801–2802; *see also id*., at [628], 128 S.Ct., at 2817 (stating that the "inherent right of self-defense has been central to the Second Amendment right"). [The *Heller* court explained] that "the need for defense of self, family, and property is most acute" in the home. . . . [footnotes omitted]

McDonald, 561 U.S. at 767.

It is thus especially important for this Court to grant certiorari, because the statutory questions presented implicate such rights. In discussing two alternative readings of a statute, this Court has stated:

> Any doubt that might be prompted by the arguments for that other reading should, however, be resolved against it under the rule, repeatedly affirmed, that "where a statute is susceptible of two constructions, by one of which grave and doubtful constitutional questions arise and by the other of which such questions are avoided, our duty is to adopt the latter."

Jones v. United States, 526 U.S. 227, 239 (1999) (citations omitted); *see also Edward Bartolo Corp. v. Florida Gulf Coast Building and Construction*

Trades Council, 485 U.S. 568, 575 (1988) ("where an otherwise acceptable construction of a statute would raise serious constitutional problems, the Court will construe the statute to avoid such problems unless such construction is plainly contrary to the intent of Congress").

There is nothing of constitutional dimension in § 922(g)(1)'s prohibition on possession by ex-felons, and no principle that says that federal ex-felons cannot have their federal firearms rights restored just as state ex-felons can have their federal firearms rights restored. *Heller* merely stated that "nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms." *Heller*, 570 U.S. at 626-27. These were characterized as "presumptively lawful regulatory measures." *Id.* at 627 n.26. This is all, of course, dictum, and does not amount to a declaration that all felons, under all circumstances, can never have any Second Amendment rights, any more than it declares that any and all disqualifications based on mental illness, no matter how slight the illness, are automatically valid, or that every restriction on the commercial sale of arms, no matter how draconian, would comport with the Second Amendment.[11]

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[11] Indeed, some Courts of Appeals have recognized that there are circumstances in which a ban on firearms possession by felons could be subject to an as-applied challenge under the

Because individual Second Amendment rights are enumerated, fundamental rights, virtually every court that has considered Second Amendment cases post-*Heller* has concluded that some form of heightened scrutiny must apply. These range from categorically striking down a ban on all carrying of firearms outside the home (*Moore v. Madigan*, 702 F.3d 933, 942 (7th Cir. 2012) to "not quite strict scrutiny" (*Ezell v. City of Chicago*, 651 F.3d 684, 708-09 (7th Cir. 2011), to intermediate scrutiny involving narrow tailoring (*Heller v. District of Columbia*, 801 F.3d 264 (D.C. Cir. 2015) (*Heller III*)). A common theme is that laws must be drafted and interpreted to use less restrictive means, when available, to accomplish a governmental goal and to infringe as little as possible on fundamental rights. As stated in

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Second Amendment. *See United States v. Barton*, 633 F.3d 168, 173 (3d Cir. 2011) ("*Heller*'s statement regarding the presumptive validity of felon gun dispossession statutes does not foreclose Barton's as-applied challenge"); *United States v. Williams*, 616 F.3d 685, 692 (7th Cir. 2010) (recognizing the "possibility that [the § 922(g)(1) ban] could be unconstitutional in the face of an as-applied challenge"); *United States v. Smoot*, 690 F.3d 215, 221 (4th Cir. 2012) (in § 922(g)(1) prosecution, "presumptively lawful measures could yet be unconstitutional if confronted with a proper as-applied challenge." (citing *United States v. Moore*, 666 F.3d 313, 319 (4th Cir.2012)). At least one District Court has sustained an as-applied challenge. *Binderup v. Holder*, No. 13-cv-06750, 2014 WL 4764424 (E.D. Pa. Sep. 25, 2014), *appeal pending* sub nom. *Binderup v. Attorney General of the United States*, No. 14-4549 (3d Cir.). S*ee also Tyler v. Hillsdale County Sheriff's Dep't,* 775 F.3d 308 (6th Cir. 2014), *petition for rehearing* en banc *granted*, No. 13-1876 (April 21, 2015) (reversing the granting of a motion to dismiss in an as-applied challenge to mental illness disqualification imposed by 18 U.S.C. § 922(g)(4)).

Moore, "Illinois has lots of options for protecting its people from being shot without having to eliminate all possibility of armed self-defense in public." Moore, 702 F.3d at 940; *see also Heller III* (striking down four regulatory provisions when less restrictive means were available).

Here, rather than safeguarding Second Amendment rights, the Sixth Circuit has artificially restricted the exercise of those rights by federal ex-felons, even when those rights have clearly been restored by operation of law. Where the fundamental rights of something over a million citizens are at stake, as in this case, it is important for this Court to grant certiorari to review a decision that would eliminate those rights entirely.

III. FEDERAL LEGAL OUTCOMES OFTEN RESULT BY OPERATION OF LAW FROM STATE DETERMINATIONS.

The Sixth Circuit's opinion refused to recognize the restoration of Petitioner's federal right to vote for purposes of § 921(a)(20) because, in its view, some "affirmative government act" by a federal official or "token of forgiveness from the government" was necessary for that right to have been "restored." App. 12. The Sixth Circuit opined:

> Walker's right to vote has not been restored under federal law, because the text of § 921(a)(20) must be read to require that the convicting jurisdiction's civil rights scheme address an individual's conviction in "restoring" that individual's civil rights.

> Otherwise it is but an exercise of sterile logic to say that the federal law "restored" the right to vote.

App. 10. It is not an "exercise of sterile logic," but rather a direct consequence of the applicable federal law; namely, U.S. Const. art. I, § 2, cl. 1, which adopts state law qualifications for voting for eligibility to vote in federal elections.

Furthermore, this proposition is contradicted by the court's own analysis of Petitioner's right to serve on a jury. The Sixth Circuit stated:

> Under 28 U.S.C. § 1865, the statute defining eligibility for federal jury service, a person meeting other statutory requirements can serve on a federal jury "unless he . . . has been convicted in a State or Federal court of record of a crime punishable by imprisonment for more than one year and his civil rights have not been restored." 28 U.S.C. § 1865(b)(5). Assuming that restoration of civil rights in this statutory context refers to the restoration of civil rights in one's state of residence, Walker has had his right to serve on a federal jury restored under federal law.

App. 7.

In other words, the right to serve on a federal jury is restored purely by operation of a federal statute, without any individualized determination by a federal agency or official, after restoration of civil rights by the state of residence. Why there should be a requirement of an individualized determination or act of forgiveness for the right to vote, but not for

the right to serve on a jury, is never explained. The two conflicting standards applied by the Sixth Circuit are simply inconsistent.

Furthermore, when the ability to possess a firearm is restored by § 921(a)(20) relating to a *state* conviction, there is no requirement that there be a particularized determination by a state body or official that the ex-felon's civil rights are restored. Frequently the restoration occurs strictly by operation of law.

That is demonstrated by a recent, comprehensive treatise on the consequences flowing from a criminal conviction which contains an appendix summarizing the loss and restoration of the rights to vote, to serve on a jury, to hold public office, and to possess firearms in all fifty states. Margaret Colgate Love, Jenny Roberts, & Cecelia Klingele, COLLATERAL CONSEQUENCES OF CRIMINAL CONVICTION: LAW, POLICY AND PRACTICE 607-16 (2016 ed.) (Appendix A-2). The provisions vary considerably among states, with the three basic civil rights being restorable by pardon, expungement, administrative process, or by operation of law. Sometimes in a given state, entirely different procedures are used to restore those three rights separately.

However, for more than a quarter of the states, all three rights are restored automatically upon the completion of some event, such as discharge or completion of sentence, or the lapse of time after such an event. These states include Alaska, Arizona, Connecticut, District of Columbia, Idaho, Kansas, Minnesota, Montana, North Carolina, North Dakota, Ohio, Oregon, Rhode Island, and South Dakota. *Id.*

(Appendix A) [12] For the right to vote, 42 states (with some limitations and exceptions) automatically restore voting rights without any particularized determination. *Id.*

It has not been contended that residents of these states, who were convicted of a state felony and had their state civil rights restored solely by operation of law, are ineligible to have their federal firearms rights restored in accordance with § 921(a)(20). Indeed, such an approach would create complete confusion. Individuals whose state civil rights have been restored by operation of law after a state conviction would be ineligible for restoration of firearms rights under § 921(a)(20) because they have not received a "token of forgiveness." Even though § 921(a)(20) purports to restore their firearms rights, they would instead be subject to a federal "felon in possession" charge if the Sixth Circuit's reasoning were to be followed. In short, § 921(a)(20) would be rendered nugatory for most state convictions, just as the Sixth Circuit's reasoning makes that statute a nullity for federal convictions.[13]

Also, many states have different mechanisms within the same state for restoring the three civil rights. A particular state may allow automatic

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[12]Some of these states have minor exceptions or qualifications to the general rule. This listing relates only to the three civil rights at issue, and does not take into account state limitations on, or restoration of, firearms rights.

[13]Any contention that state civil rights restored by operation of law do not suffice to restore firearms rights under § 921(a)(20), and that some affirmative official action is necessary, has now been rejected by this Court's decision in *Caron v. United States*, 524 U.S. 308 (1998). *See* discussion below.

restoration of the right to vote, for example, but require a pardon or other affirmative action for holding public office or serving on a jury. Under the Sixth Circuit's analysis, would an individual with a state law felony conviction be required to have a "token of forgiveness" for all three rights? For two? For only one?

There are many situations in which federal law looks to an individual's status under state law, and then automatically, by operation of law, determines a status or result under federal law. Under the Armed Career Criminal Act, 18 U.S.C. § 924(e)(1), any person "who violates section 922(g) of this title [felon in possession violation] and has three previous convictions" for a violent felony or serious drug offense punishable by more than one year in prison, is subject to a mandatory fifteen year sentence without possibility of suspension of the sentence or probation. The definitions of the predicate crimes in § 924(e)(2) clearly include state offenses as well as federal offenses. Thus, a determination under federal firearms law may turn entirely, and purely by operation of law, on state determinations, as Petitioner argues should be done in his case regarding the right to vote.

With reference to 18 U.S.C. § 922(g) and the ACCA sentence enhancement in § 924(e), this Court has stated:

> Under federal law, a person convicted of a crime punishable by more than one year in prison may not possess any firearm. 18 U.S.C. §922(g)(1). If he has three violent felony convictions and violates the statute, he must

> receive an enhanced sentence. §924(e). A previous conviction is a predicate for neither the substantive offense nor the sentence enhancement if the offender has had his civil rights restored . . . .

Caron v. United States, 524 U.S. 308, 309 (1998).

The Court went on to note:

> Massachusetts restored petitioner's civil rights by operation of law rather than by pardon or the like. This fact makes no difference. Nothing in the text of §921(a)(20) requires a case-by-case decision to restore civil rights to this particular offender. While the term "pardon" connotes a case-by-case determination, "restoration of civil rights" does not. Massachusetts has chosen a broad rule to govern this situation, and federal law gives effect to its rule. All Courts of Appeals to address the point agree. *See Caron,* 77 F.3d [1], at 2 [(1st Cir. 1995)]; *McGrath v. United States,* 60 F.3d 1005, 1008 (C.A.2 1995), cert. denied, 516 U.S. 1121, 116 S.Ct. 929, 133 L.Ed.2d 857 (1996); *United States v. Hall,* 20 F.3d 1066, 1068-1069 (C.A.10 1994); *United States v. Glaser,* 14 F.3d 1213, 1218 (C.A.7 1994); *United States v. Thomas,* 991 F.2d 206, 212-213 (C.A.5), cert. denied, 510 U.S. 1014, 114 S.Ct. 607, 126 L.Ed.2d 572 (1993); *United States v. Dahms,* 938 F.2d 131, 133-134 (C.A.9 1991); *United States v. Essick,* 935 F.2d 28, 30-31 (C.A.4 1991); *United States v. Cassidy,* 899 F.2d 543, 550, and n. 14 (C.A.6 1990).

Id. at 313-14.

Similar examples exist under other federal statutes, where a disqualification is imposed by either federal or state law, and then can be removed by operation of law. Under federal securities laws, an individual is disqualified from serving on a "self-regulatory organization" if he or she has been convicted of various stated offenses or "any other felony within ten years of the date of the filing of an application for membership or participation in, or to become associated with a member of, such self-regulatory organization . . . ." 15 U.S.C. § 78c(a)(39)(F). Note that this can result from a state or federal conviction, that it occurs by operation of law, and that the federal disability resulting from the state conviction is also removed by operation of law after ten years.

Federal labor law provides that individuals who, among other things, have been convicted of an enumerated felony, including both state and federal felonies, cannot serve in certain capacities with labor unions. 29 U.S.C. § 504. However, the statute provides that the disability is removed when specified time periods have passed since conviction or completion of sentence. But, prior to the passage of those time periods, the disability is removed if "his citizenship rights, having been revoked as a result of such conviction, have been fully restored . . . ."[14] For purposes of federal law, therefore, either

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[14]The statute also permits a special proceeding (for both state and federal crimes) in which a federal judge, in accordance with certain guidelines, determines that service by the individual in the specified capacities with the labor union "would not be contrary to the purposes of this chapter."

passage of time or state restoration of civil rights,[15] automatically and by operation of law, results in the removal of the federal disability.

Under ERISA, a wide variety of convicted felons, including state felons, are prohibited from serving in various capacities with employee benefit plans. 29 U.S.C. § 1111. That statute contains provisions virtually identical to 29 U.S.C. § 504, allowing the disability to be removed either by passage of time, or by restoration of state rights, but in either event automatically and by operation of law.

Pursuant to 46 U.S.C. § 70105, dealing with shipping security, individuals convicted of certain crimes are prohibited from entering a "vessel or facility that is designated as a secure area." Some listed crimes permanently prevent such entry, through the mechanism of denial of issuance of a transportation security card. Other listed felonies, including many state felonies, only prohibit issuance of the card if the individual has been convicted of the state felony within seven years prior to application for the card, or has been discharged from incarceration within five years prior to application. Once again, consequences under federal law are determined by actions by the state, and relief from those consequences is provided by the operation of federal law itself.

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[15] 29 U.S.C. § 504 not specify that the rights must be restored by the state. But that conclusion is inescapable because there are no federal procedures for restoration of civil rights generally.

There is no basis for the Sixth Circuit's determination that a "token of forgiveness" or other affirmative action by a federal official is required to restore the federal right to vote after the state right to vote has been restored.

CONCLUSION

The petition for certiorari should be granted, and the decision below should be reversed.

Respectfully submitted,

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