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APPENDIX C
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

(DATE STAMP)

FILED NOV 3 2017

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U.S. COURT OF APPEALS

BARRY MICHAELS,

Plaintiff-Appellant,

v.

JEFFERSON B. SESSIONS III, Attorney
General; THOMAS E. BRANDON, Deputy
Director, Head of the Bureau of ATF,

Defendants-Appellees.

No. 17-15279

D.C. No. 2:16-cv-00578-JAD-PAL

Jefferson B. Sessions III has been substituted for his predecessor Loretta E. Lynch, as United States Attorney General under Fed. R. App. P. 43(c2).

MEMORANDUM**

Appeal from the United States District Court for the
District of Nevada
Jennifer A. Dorsey, District Judge, Presiding

Submitted October 23, 2017***

Before: LEAVY, WATFORD, and FRIEDLAND,
Circuit Judges

Barry Michaels appeals from the district court's judgment dismissing his action challenging the constitutionality of 18 U.S.C. 922(g)(1) under the Second Amendment. We have jurisdiction under 28 U.S.C. 1291. We review de novo a dismissal under Federal Rule of Civil Procedure 12(b)(6). *Skilstaf, Inc. v. CVS Caremark Corp.*, 669 F.3d 1005, 1014 (9th Cir. 2012). We affirm.

The district court properly dismissed Michaels's as-applied challenge to 922(g)(1). *See United States v. Vongxay*, 594 F.3d 1111, 1115 (9th Cir. 2010) (stating that "felons are categorically different from the individuals who have a fundamental right to bear arms," and upholding 922(g)(1) against a Second Amendment challenge); see also *United States v. Phillips*, 827 F.3d 1171, 1174-75 (9th Cir. 2016) (rejecting as foreclosed by precedent the argument

that imposing 922(g)(1) on non-violent felons violates the Second Amendment).

We reject as meritless Michaels's contention that the district court committed reversible error by failing to apply strict scrutiny. *See United States v. Chovan*, 735 F.3d 1127, 1136-38 (9th Cir. 2013) (holding that a statute "does not implicate this core Second Amendment right (if) it regulates firearm possession for individuals with criminal convictions").

We do not consider matters not specifically and distinctly raised and argued in the opening brief. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

AFFIRMED

"This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3

The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P.34(a)(2).