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THE FEDERAL LAW ENFORCEMENT -INFORMER-

A MONTHLY LEGAL RESOURCE AND COMMENTARY FOR LAW ENFORCEMENT OFFICERS AND AGENTS

Welcome to this installment of *The Federal Law Enforcement Informer (The Informer).* The Legal Training Division of the Federal Law Enforcement Training Centers' Office of Chief Counsel is dedicated to providing law enforcement officers with quality, useful and timely United States Supreme Court and federal Circuit Courts of Appeals reviews, interesting developments in the law, and legal articles written to clarify or highlight various issues. The views expressed in these articles are the opinions of the author and do not necessarily reflect the views of the Federal Law Enforcement Training Centers. *The Informer* is researched and written by members of the Legal Division. You can join *The Informer* Mailing List, and have *The Informer* delivered directly to you via e-mail by clicking on the link below.

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The Informer – August 2024

Circuit Courts of Appeals

Fourth Circuit

United States v. Price: Does a firearm with an obliterated serial number fall within the ambit of the US Supreme Court's decision New York State Rifle & Pistol Association v. Bruen? Is there a compelling reason for a law-abiding citizen to possess such a firearm as such weapons are primarily used for illicit purposes? More specifically, does 18 USC 922 (k) create an impermissible restriction on the Second Amendment right to keep and bear arms? **Interesting Quote:** (W)*e conclude that firearms with obliterated serial numbers are not in common use for a lawful purpose and they therefore fall outside the scope of the Second Amendment's protection.*

Fifth Circuit

United States v. Medina-Cantu: Does the decision in New York State Rifle & Pistol Association v. Bruen render 18 USC 922 and 924 unconstitutional? More specifically, do the protections of the Second Amendment extend to illegal aliens? **Interesting Quote**: "*the people" in the Second Amendment does not include aliens unlawfully present in the United States*.

Sixth Circuit

Slaybaugh v. Rutherford County: Whether the parents of a murder suspect are entitled to compensation under the Takings Clause of the Fifth Amendment due to extensive damage caused by police as they attempted to arrest the suspect at his parent's house. Thirty-five tear gas canisters were fired into their home causing both internal, external, and structural damage. **Interesting Quote**: *police actions were privileged under the search-and-arrest privilege…provided the actions are lawful and reasonable.*

United States v. Williams: Whether the Second Amendment protections of a felon with a conviction for aggravated robbery are violated by 18 USC 922 (Felon in Possession of a Firearm). Does the Supreme Court's decision in New York State Rifle & Pistol Association v. Bruen render the statue unconstitutional based on *these* circumstances?

Ninth Circuit

United States v. Manney: Whether a defendant's prosecution for violation of 18 USC 922(a)(6) based on *false statements* in connection with the acquisition of a firearm (straw purchase) violate her Second Amendment protections. Further, were her false statements material under the statute? The court conducted an analysis based on the *Bruen* decision. **Interesting Quote**: *the Second Amendment does not protect an individual's false statements,*

FLETC Informer Webinar Schedule: September 2024

September 24, 2024, 2:30 EDT – FLETC OCC Informer Webcast Series "Government Workplace Searches" presented by James Stack, Attorney Advisor/Senior Instructor, Federal Law Enforcement Training Center, Charleston, South Carolina. The class will examine the balance of government worker's reasonable expectations of privacy with the legitimate need to ensure an efficient and effective workplace. Three categories of reasonable intrusions and their bases will be reviewed: Work-Related Purposes, Employee Discipline, and Criminal Evidence.

Link: Click Here

September 25, 2024, 2:30 EDT – FLETC OCC Informer Webcast Series "Legal Aspects of Use of Force" presented by Sam Lochridge and Jonathan Larcomb, Attorney Advisors, Federal Law Enforcement Training Center, Glynco, GA. The class will serve as a refresher for the basic constitutional concepts concerned with the legal aspects of police use of force. This block of instruction will examine uses of deadly force, intermediate force, and other force options, and their legal implications.

Link: Click Here

CASE SUMMARIES

Circuit Courts of Appeals

Fourth Circuit

United States v. Price., No. 22-4609 (4th Cir. 2024)

Randy Price was charged with possession of a firearm with an obliterated serial number and possession of a firearm by a felon. Following the Supreme Court's decision in New York State Rifle & Pistol Association v. Bruen, Price moved to dismiss the indictment, arguing that both statutes were unconstitutional. The United States District Court for the Southern District of West Virginia denied Price's motion to dismiss the felon-in-possession charge but granted it for the obliterated serial number charge. The lower court concluded that the conduct prohibited by the statute was protected by the Second Amendment and that there was no *historical tradition* of firearm regulation consistent with the statute. The Government appealed the dismissal of the obliterated serial number charge.

The United States Court of Appeals for the Fourth Circuit reviewed the case and reversed the lower court's decision. The Fourth Circuit held that the conduct regulated by the statute does not fall within the scope of the Second Amendment because a firearm with a removed, obliterated, or altered serial number is not a weapon in common use for lawful purposes. The court concluded that there is no compelling or historic reason for a law-abiding citizen to possess such a firearm, and such weapons are primarily used for illicit purposes. Therefore, the statute's regulation of these firearms does not fall within the scope of the Second Amendment.

Court's Analysis:

The district court's analysis was flawed as it hinged on the notion that a law-abiding citizen removed the serial number with no ill intent. The lower court apparently did not consider what legitimate motivation it imagined the citizen had for removing the serial number, but "even if we could dream up such a peculiar scenario, our conclusion would not change." Prior Supreme Court

decisions directed the court to analyze not only whether a weapon might have some conceivable lawful use, but also whether such use is *common*. That a citizen *could* use a gun with an obliterated serial number for lawful self-defense isn't evidence that guns with obliterated serial numbers are typically used for self-defense. And here, because (this court) cannot fathom any common-sense reason for a law-abiding citizen to want to use a firearm with an obliterated serial number for self-defense, and there is no evidence before us that they are nonetheless commonly lawfully used, we conclude that firearms with obliterated serial numbers are not in common use for a lawful purpose and they therefore fall outside the ambit of the Second Amendment's protection.

The Supreme Court has made clear that while the Second Amendment protects an individual right to keep and bear arms, certain arms fall outside the scope of that protection. To determine whether a regulated firearm is protected by the Second Amendment, we must first ask whether it is in *common use* for a lawful purpose. Because we conclude that firearms with obliterated serial numbers are not, the protections of the Second Amendment's do not apply. As such, § 922(k)'s regulation of such arms does not violate the Second Amendment.

For the Court's Opinion: United States v. Price, No. 22-4609 (4th Cir. 2024) :: Justia

Fifth Circuit

United States v. Mendina-Cantu., No. 23-40336 (5th Cir. 2024)

Jose Paz Medina-Cantu was charged with possession of a firearm and ammunition as an illegal alien, violating 18 U.S.C. §§ 922 & 924, and illegal reentry into the United States, violating 8 U.S.C. § 1326. He moved to dismiss the firearm possession charge, arguing that the statute was unconstitutional under the Second Amendment, citing the Supreme Court's decision in New York State Rifle & Pistol Ass'n v. Bruen. The district court denied his motion, referencing the Fifth Circuit's earlier decision in United States v. Portillo-Munoz, which held that the Second Amendment does not extend to illegal aliens.

Court's Analysis:

The Fifth Circuit had previously held in *Portillo-Munoz* that § 922(g)(5) is constitutional under the Second Amendment, reasoning that the phrase "the people" in the Second Amendment does not include aliens unlawfully present in the United States. Under the circuit's *rule of orderliness*, a three-judge panel "may not overturn another panel's decision, absent an intervening change in the law, such as by a statutory amendment, or the Supreme Court, or their own (5th Circuit) en banc court." Further, for a Supreme Court decision to change the Circuit's decision, it must "unequivocally' overrule prior precedent." Accordingly, unless we can conclude that *Bruen* "unequivocally" abrogated *Portillo- Munoz*, the defendant's Second Amendment challenge must fail.

The Fifth Circuit previously held in *Portillo-Munoz* that illegal aliens are not "members of the political community" covered by the plain text of the Second Amendment. The majority opinions in *Bruen* did not address this issue, nor did they unequivocally abrogate the holding in *Portillo-Munoz*. Accordingly, "we are bound to follow *Portillo-Munoz* and uphold the constitutionality of § 922(g)(5) under the Second Amendment."

"We agree with the Government and hold that the Supreme Court's decisions in *Bruen* and did not unequivocally abrogate *Portillo-Munoz's* precedent. As such,… we are bound to follow *Portillo-Munoz*.

The lower court's judgment was Affirmed.

For The Court's Opinion**:** **[USA v. Medina-Cantu, No. 23-40336 (5th Cir. 2024) :: Justia]**

Sixth Circuit

Slaybaugh v. Rutherford County., No. 23-5765 (6th Cir. 2024)

Molly and Michael Slaybaugh suffered extensive property damage as police attempted to arrest their son, James Conn, for the murder of Savannah Pucket. During a siege of many hours, thirty-five tear gas canisters were fired into their home causing both internal, external, and structural damage. Canisters were lodged in the dry wall, the flooring was burnt and furniture was destroyed. Estimated damages amounted to $70,000. The home insurer denied coverage

as the loss was caused by "civil authority." Predictably, both the town and county ("civil authority") likewise refused to compensate the owners.

The Slaybaughs filed a lawsuit under 42 U.S.C. § 1983, seeking compensation for the damage under the Takings Clause of the Fifth Amendment and its Tennessee Constitution counterpart. The United States District Court for the Middle District of Tennessee dismissed the Slaybaughs' claims. The court ruled that the police actions did not constitute a taking for public use under the Fifth Amendment because the damage occurred while enforcing criminal laws. The court also dismissed the state-law claim, stating that the Tennessee Constitution offers protections co-extensive with the Fifth Amendment.

Court's Analysis:

The United States Court of Appeals for the Sixth Circuit reviewed the case. The court held that the Slaybaughs did not state a valid takings claim because the police actions were privileged under the search-and-arrest privilege. This privilege allows law enforcement to use *reasonable force* to enter property and make an arrest without being liable for resulting property damage, *provided the actions are lawful and reasonable*. The court found no evidence suggesting the police acted unlawfully or unreasonably. Consequently, the court affirmed the district court's dismissal of both the federal and state constitutional claims.

The search-and-arrest privilege can exempt certain police damage to property from takings liability. The authority to arrest carries with it the privilege to enter land in the possession of another for the purpose of making such an arrest, if the person sought to be arrested is on the land or if the actor reasonably believes him to be there. The police privilege to enter property to effect an arrest includes the privilege to break into that property. And this privilege to enter land ... carries with it the privilege to use force to enter a dwelling if the person sought to be taken into custody is in the dwelling.

Importantly, for an officer's conduct to fall within the scope of the privilege, his entry and any accompanying force must be reasonable. Only police "searches that are consistent with the Fourth Amendment and state law" are privileged, such that they "cannot be said to take any property right from landowners." And an officer must provide an "explanation and demand for admittance" before using force to enter a home and make an arrest, "unless the actor reasonably believes such demand to be impractical or useless." In sum, under the search-and-arrest privilege, law enforcement may forcibly enter a

home to arrest someone, so long as (1) the arrest is lawful and (2) the use of force in carrying out the arrest is reasonable.

Having found that the search-and-arrest privilege can exempt law enforcement from takings liability, the court next considered whether it exempts the police conduct at issue here. Based on the facts in the Slaybaughs' Complaint, (the court) concluded that it does. The Slaybaughs did not allege any facts suggesting that the search and arrest warrants justifying the officers' actions were unlawful, or that police unreasonably executed those warrants when arresting Conn. To the contrary: they concede on appeal that they do not "mean to suggest that what the police did was unlawful." By failing to plead facts suggesting that the search of their house was unlawful, they do not come close to establishing that police exceeded the scope of the search-and-arrest privilege. Because police acted within that privilege when they damaged the house, the Slaybaughs are not entitled to compensation for that damage under the Fifth Amendment.

For the Court's Opinion: Slaybaugh v. Rutherford County, No. 23-5765 (6th Cir. 2024) :: Justia

United States v. Williams., No.23-6115 (6th Cir. 2024)

Memphis police officers stopped Erick Williams for speeding and driving erratically. As they approached, officers smelled the odor of marijuana, saw an open beer can in the center console and ordered Williams out of the car. After a canine alerted them to the presence of narcotics, officers searched the car and found a loaded pistol in the trunk. Williams was arrested, and a record check revealed he'd been convicted of at least one prior felony—aggravated robbery. A federal grand jury indicted Williams for possessing a gun as a felon violating 18 U.S.C. §922(g)(1). The defendant moved to dismiss the indictment, arguing the statute violates the Second Amendment based on the Supreme Court's decision in N.Y. State Rifle & Pistol Ass'n v. Bruen.

Court's Analysis:

History shows that governments may use class-based legislation to disarm people it believes are dangerous, so long as members of that class have an opportunity to show they aren't. Through § 922(g)(1), Congress has decided to enact a class-wide disarmament of felons. That statute is

constitutional as it applies to dangerous individuals. Because Williams's criminal record establishes that he is indeed dangerous, his appeal must fail.

William's criminal record includes two felony counts of aggravated robbery. Robbery is a common-law crime against the person. What's more, "aggravated robbery is robbery... [a]ccomplished with a deadly weapon." He robbed two people at gunpoint, stealing cash, a watch, and clothing. That offense alone is sufficient to conclude that Williams, if armed, presents a danger to the public.

Further, Williams has also been convicted of attempted murder. He's has a previous conviction for possessing a firearm as a felon. In that case, he agreed to stash a pistol that was used to murder a police officer. The government could've pointed to any one of those convictions to demonstrate his dangerousness. Thus, Williams may be constitutionally disarmed through a class-based statute like §922(g)(1)

The court held that § 922(g)(1) is constitutional on its face and as applied to dangerous people. Our nation's historical tradition confirms the assumption that felon-in-possession laws are "presumptively lawful." The history reveals that legislatures may disarm groups of people, like felons, whom the legislature believes to be dangerous—so long as each member of that disarmed group has an opportunity to make an individualized showing that he, individually, is not actually dangerous. A person convicted of a crime is "dangerous," and can thus be disarmed, if he has committed (1) a crime "against the body of another human being," including (but not limited to) murder, rape, assault, and robbery, or (2) a crime that inherently poses a significant threat of danger, including (but not limited to) drug trafficking and burglary. An individual in either of those categories will have a very difficult time, to say the least, of showing he is not dangerous.

Finally, when considering an individual's dangerousness, courts may evaluate a defendant's entire criminal record—not just the specific felony underlying his section 922(g)(1) prosecution. Here, Williams availed himself of his constitutionally required opportunity to show that he is not dangerous—albeit after he violated the law, not before. Because his record demonstrates that he is quite dangerous, we reject the challenge. The

government may, consistent with the Second Amendment, punish him for possessing a firearm.

For the Court's Opinion: [United States v. Williams, No. 23-6115 (6th Cir. 2024) :: Justia]

Ninth Circuit

United States v. Manney., No. 23-716 (9th Cir, 2024)

Gail Manney was convicted for violating 18 U.S.C. § 922(a)(6), which criminalizes making false statements in connection with the acquisition of firearms. On April 21, 2021, Manney visited Hi-Cap Firearms in Reno, Nevada, and selected seven handguns to purchase. She filled out the required ATF Form 4473, certifying she was the actual purchaser. However, after her purchase, a Hi-Cap employee suspected her of being a straw purchaser and contacted the ATF. Upon investigation, ATF Special Agent Joshua Caron found incriminating messages on Manney's phone indicating she was buying the firearms for her son, Razaaq, a convicted felon prohibited from possessing firearms.

The United States District Court for the District of Nevada indicted Manney on May 27, 2021, for making false statements on ATF Form 4473. She was convicted after a jury trial. Manney appealed, arguing that 18 U.S.C. § 922(a)(6) violated her Second Amendment rights and that her false statement was not material under the statute.

The United States Court of Appeals for the Ninth Circuit reviewed the case and rejected Manney's Second Amendment challenge, stating that the Amendment does not protect false statements. The court emphasized that § 922(a)(6) regulates *false statements* made during firearm acquisitions, not the *possession of firearms*. The court also dismissed Manney's argument regarding the *materiality* of her false statement, citing Abramski v. United States, which held that a false statement about the actual purchaser of a firearm is material even if the actual purchaser could legally possess a firearm.

Court's Analysis:

18 U.S.C. § 922(a)(6) makes it a crime "for any person in connection with the acquisition or attempted acquisition of any firearm . . . knowingly to make any false or fictitious oral or written statement . . . with respect to any fact material to the lawfulness of the sale . . . of such firearm."

In New York Rifle and Pistol Ass'n, Inc. v. Bruen, the Supreme Court articulated the proper framework for analyzing Second Amendment challenges. "When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct." The government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation. Only then may a court conclude that the individual's conduct falls outside the Second Amendment's ambit. The Court used this framework to strike down New York's *proper cause* requirement, holding that the regulation burdened conduct the Second Amendment's plain text protects. It then concluded that the government failed to meet its burden to identify an *American tradition* justifying New York's proper-cause requirement.

Manney first argues that § 922(a)(6) regulates a purchaser's possessory interest by imposing information requirements for future transferees. Then, she frames the conduct more broadly by arguing that the statute inhibited her ability to acquire arms by regulating the purchase of firearms. Neither argument is persuasive. The Supreme Court has not held that an individual can invoke the Second Amendment's constitutional protection by describing the conduct in question at such a high level of generality.

Instead, the court found that § 922(a)(6) prohibits making false statements. The statute only relates to firearms insofar as it regulates statements made in connection with firearm acquisitions and information "material to the lawfulness of the sale." *But the regulated conduct is unrelated to the possession of a firearm.* In other words, the statute regulates statements made by the individual purchasing a firearm to ensure that a purchaser is not lying to a firearms dealer about who is buying the firearm. The fact that the information a purchaser provides may trigger a separate statute that may bar the purchase of a firearm does not transform § 922(a)(6) into a statute regulating the possession of firearms. Taking all of this into consideration,

as applied to the facts of her case, § 922(a)(6) did not violate Manney's Second Amendment right. The statute did not prohibit Manney from possessing firearms as evidenced by her ability to purchase a firearm shortly before her interaction with Agent Caron. Nor did it prohibit Manney from transferring those firearms to another individual. All the statute did was prohibit Manney from lying about the actual purchaser of the firearms.

Because the Second Amendment does not protect an individual's false statements, the conduct § 922(a)(6) regulates falls outside the scope of the Second Amendment's plain text, and Manney's conviction is upheld.

For the Court's Opinion: USA V. MANNEY, No. 23-716 (9th Cir. 2024) :: Justia