THE LIFETIME BAN ON THE SECOND AMENDMENT: BALANCING THE RIGHTS OF THE MENTALLY ILL AND THE RIGHT TO BEAR ARMS

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Each year, tens of thousands of people become victims of gun violence. It has now become imperative that the United States implement effective gun control to ensure public safety. The discussion surrounding gun control has primarily focused on mentally ill individuals. Currently, federal law prohibits individuals who have been involuntarily committed to a psychiatric institution from owning a firearm. The law is unclear on how long this ban should last. Some courts, notably the Third and Ninth Circuits, hold that this ban should be for a lifetime. The Sixth Circuit, on the other hand, has found that a lifetime ban on a constitutional right would not be appropriate. This Note argues that the Supreme Court should rectify this split among the circuits and find that a lifetime ban on firearm ownership based on an involuntary commitment is unconstitutional. Limiting gun ownership for individuals based solely on a previous involuntary commitment is arbitrary, and it supports the inaccurate notion that an involuntary commitment is an accurate predictor for future acts of violence. The government should shift its focus away from an individual's mental health status. Instead, it should use evidence-based risk factors for violence as the guiding force behind gun control. This change would allow government officials to take positive steps towards instating effective gun control that addresses the potential risks that arise from mental illnesses while still maintaining the constitutional rights of these individuals.

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I. INTRODUCTION

Imagine that you go to purchase your first firearm. You fill out all the required paperwork and await the results of your background check. You have a steady job, no criminal record, and no history of substance abuse. Overall, you are an average United States citizen. You have no reason to believe that your background check will turn up any issue, but to your surprise, you are denied a firearm. Further investigation reveals that this rejection results from your involuntary commitment to a mental health institution twenty-five years prior. Since your commitment, you have not had any further mental health issues, but despite this, you cannot legally own a firearm. This scenario was the exact situation that seventy-four-year-old Clifford Tyler found himself in when he went to purchase his first firearm.[1]

The Supreme Court's decisions in *District of Columbia v. Heller* and *McDonald v. City of Chicago* affirmed the right of U.S. citizens to own and operate firearms under the Second Amendment, but this right has limitations.[2] These limitations have allowed the United States to implement some forms of gun control.[3] This includes banning certain categories of people from owning firearms.[4] One such category of people are those individuals who have been

1. Paul S. Appelbaum, *Does the Second Amendment Protect the Gun Rights of Persons With Mental Illness?*, 68 L. & PSYCHIATRY 3, 3 (2017).

2. Alan R. Felthous & Jeffrey Swanson, *Prohibition of Persons with Mental Illness from Gun Ownership Under Tyler*, 45 J. AM. ACAD. PSYCHIATRY & L. 478, 478 (2017).

3. *See, e.g.*, 18 U.S.C. § 922(g) (2018).

4. *See id.* § 922(g)(4).

involuntarily committed to a psychiatric institution; however, federal law does not designate how long this ban on firearm ownership is to last.[5]

It has been argued that this ban should last a lifetime, and of the courts that have spoken on this issue, both the Third Circuit and the Ninth Circuit agree that this ban is for life.[6] The Sixth Circuit, while using a similar approach, has come to the opposite conclusion and has found that a lifetime ban is not appropriate, which has created a split among the circuits.[7] The Supreme Court had an opportunity to rectify the split, but the Court instead declined to rule on the issue and dismissed the case presented as moot.[8]

In the United States, there may be no perfect answer to gun control, but there is some importance in maintaining public safety while still operating within the confines of an individual's constitutional rights. The United States has been grappling with gun violence and implementing effective gun control for numerous years.[9] While lawmakers on both sides of the political spectrum continue to argue on the correct approach to this issue, 44,959 people died due to gun violence in the United States in 2021[10], and as of this writing, the tally of mass shootings in the United States in 2022 has surpassed the number of days in the year.[11] Yet, lawmakers remain hesitant and unable to establish effective limitations on the right of gun ownership.

This Note argues that a ban on firearm ownership is appropriate for those who are currently suffering from mental illness, but this ban goes beyond what is reasonable for those who are no longer suffering from mental illness and are still barred from gun ownership as a result of an involuntary commitment years prior. Additionally, this Note argues that it is necessary for the Supreme Court to rectify the split among the Third, Sixth, and Ninth Circuits in order to implement effective and practical gun control regulations.

Part II of this Note reviews the views of mental illness within the United States, the requirements to be involuntarily committed, and the implementation of gun control. Part III focuses on the circuit split within the Third, Ninth, and

5. *See id.*; BUREAU OF ALCOHOL, FOOD, TOBACCO, FIREARMS, & EXPLOSIVES, FEDERAL FIREARMS PROHIBITION UNDER 18 U.S.C. § 922(G)(4) PERSONS ADJUDICATED AS A MENTAL DEFECTIVE OR COMMITTED TO A MENTAL INSTITUTION (2009).

6. Jake Charles, *Litigation Highlight: Ninth Circuit Upholds Lifetime Ban on Firearm Possession for Man Involuntarily Committed to a Mental Institution Twenty Years Ago*, SECOND THOUGHTS (Mar. 13, 2020), https://sites.law.duke.edu/secondthoughts/2020/03/13/litigation-highlight-ninth-circuit-upholds-lifetime-ban-on-firearm-possession-for-man-involuntarily-committed-to-a-mental-institution-twenty-years-ago/ [https://perma.cc/3F8Z-GCJP].

7. *Id.*

8. *See Beers v. Barr*, SCOTUSBLOG, https://www.scotusblog.com/case-files/cases/beers-v-barr/ (last visited July 10, 2022) [https://perma.cc/79VA-PWVV].

9. *See Past Summary Ledgers*, GUN VIOLENCE ARCHIVE, https://www.gunviolencearchive.org/past-tolls (last visited July 10, 2022) [https://perma.cc/9BKC-JYFU].

10. *Id.*

11. GUN VIOLENCE ARCHIVE, https://www.gunviolencearchive.org (last visited July 10, 2022) [https://perma.cc/5EK8-ZK7X]. As of May 27, 2022, there have been 214 mass shootings in the United States and only 145 days in the year. *See* Glenn Thrush, *The F.B.I. Released a Report Showing a Steep Rise in 'Active' Shooters on Monday*, N.Y. TIMES (May, 24, 2022, 10:34 PM), https://www.nytimes.com/2022/05/24/us/shootings-fbi-data.html [https://perma.cc/6A2H-VFC2].

Sixth circuits. It works to develop a unified approach to these cases while still utilizing what has already been decided in the three circuits. Part IV recommends that the Supreme Court find that a lifetime ban on firearm ownership for those who have been involuntarily committed is unconstitutional and that stricter regulations regarding firearm ownership be equally applied to all citizens, regardless of their mental health status.

II. BACKGROUND

The main form of gun control falls under the Gun Control Act.[12] This act describes the specific restrictions regarding mental illness and firearm ownership.[13] Per the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF"), this ban does not apply to everyone who suffers from a mental illness, but only to those who were involuntarily committed to a mental health institution.[14] This Part will provide a discussion into what created this distinction in gun control regulations and how this relates to the United States' tumultuous history surrounding gun violence. This Part will begin with a brief overview of societal views of mental illness within the United States, and it will discuss the stigmas surrounding mental health and how these stigmas affect those who have a mental illness. It will then look to the Second Amendment and the controversies surrounding it. This will include a discussion on the two landmark cases that have brought forth the current interpretation of the amendment. Additionally, it will review the history of gun control and the influence of acts of violence in the creation of these regulations. Finally, this Part will end with a discussion on the current state of gun control within the United States.

A. Mental Health in the United States

The conversation surrounding mental health has been severely lacking in the country, and as a result, the stigmas surrounding mental health have created a harmful attitude towards those with mental illnesses.[15] Unfortunately, this has caused people to go without mental health treatment until it has reached a point in which they must be involuntarily committed.[16]

In the United States, one in five adults suffers from some kind of mental illness.[17] Over fifty million people have a mental illness, and this number continues to increase.[18] Despite this prevalence, many people face stigma,

12. *See* 18 U.S.C. § 922(g) (2018).

13. *See id.*

14. BUREAU OF ALCOHOL, FOOD, TOBACCO, FIREARMS, & EXPLOSIVES, *supra* note 5.

15. Jeffrey W. Swanson, E. Elizabeth McGinty, Seena Fazel & Vickie M. Mays, *Mental Illness and Reduction of Gun Violence and Suicide: Bringing Epidemiologic Research to Policy*, 25 ANNALS OF EPIDEMIOLOGY 366, 367 (2015).

16. *See id.*

17. *Mental Illness*, NAT'L INST. MENTAL HEALTH, https://www.nimh.nih.gov/health/statistics/mental-illness#:~:text=Mental%20illnesses%20are%20common%20in,mild%20to%20moderate%20to%20severe (last visited July 10, 2022) [https://perma.cc/XE8F-CFZ5].

18. *Id.*

discrimination, and neglect,[19] which is often the result of a lack of engagement with mental health care and poor treatment outcomes.[20] For example, people with mental illness are more likely to experience housing and employment discrimination.[21] Additionally, attitudes towards those with mental illness have gotten progressively more negative over time, with people twice as likely today than in the 1950s to believe that people with mental illnesses are inherently more violent.[22]

The United States spends $113 billion on mental health treatment, but these services are still insufficient to meet the needs of all.[23] While there have been calls to increase mental health treatment and increase access to those who need it, there are many barriers that people seeking mental health treatment must still overcome.[24] High cost is one factor that has driven people away from receiving help.[25] One in four Americans have had to choose between receiving treatment for their mental illness and paying for necessities.[26] Many who received outpatient treatment had to pay between $100 and $5,000 out-of-pocket due to insufficient insurance coverage.[27]

Additionally, for those that can afford treatment, there are limited options and long waits.[28] Currently, over 89 million Americans live in mental health professional shortage areas.[29] As a result, many people have had to drive more than an hour roundtrip in order to receive treatment.[30] Further, several states cut funding from their mental health budgets, with the biggest cuts being made to long-term inpatient facilities.[31] For example, Alaska cut over 32% of its budget from 2009 to 2011.[32]

Mental health treatment can be imperative for some individuals.[33] While most people with mental illness are never violent, there are times where

19. *The World Health Report 2001: Mental Disorders Affect One in Four People*, WORLD HEALTH ORG. (Sept. 28, 2001), https://www.who.int/news/item/28-09-2001-the-world-health-report-2001-mental-disorders-affect-one-in-four-people [https://perma.cc/M2YY-3ZKC].

20. Angela M. Parcesepe & Leopoldo J. Cabassa, *Public Stigma of Mental Illness in the United States: A Systematic Literature Review*, 40 ADMIN. & POL'Y MENTAL HEALTH & MENTAL HEALTH SERVS. RSCH. 384, 384 (2012).

21. *Id.*

22. Sadie F. Dingfelder, *Stigma: Alive and Well*, MONITOR ON PSYCH., June 2009, at 56, 57.

23. Sarah Kliff, *Seven Facts About America's Mental Health-Care System*, WASH. POST (Dec. 17, 2012, 12:09 PM), https://www.washingtonpost.com/news/wonk/wp/2012/12/17/seven-facts-about-americas-mental-health-care-system/ [https://perma.cc/FR38-KK9H].

24. Press Release, Cohen Veterans Network & Nat'l Council for Mental Wellbeing, New Study Reveals Lack of Access as Root Cause for Mental Health Crisis in America (Oct. 10, 2018) [hereinafter CVN & NCMW Press Release], https://www.cohenveteransnetwork.org/wp-content/uploads/2018/10/Press-Release-Americas-Mental-Health-2018-FINAL.pdf [https://perma.cc/2FFU-9SCL].

25. *Id.*

26. *Id.*

27. Kliff, *supra* note 23.

28. CVN & NCMW Press Release, *supra* note 24.

29. Kliff, *supra* note 23.

30. CVN & NCMW Press Release, *supra* note 24.

31. Kliff, *supra* note 23.

32. *Id.*

33. *See* Jon S. Vernick, Emma E. McGinty & Lainie Rutkow, *Mental Health Emergency Detentions and Access to Firearms*, 43 J. L., MED. & ETHICS 76, 76–77 (2015).

individuals with serious mental illnesses are more likely to commit an act of violence.[34] This risk is increased during an untreated first episode of psychosis and the period surrounding hospitalization.[35] One study found that individuals who experience their first episode of psychosis were 35% more likely to commit an act of violence than those who were not suffering from mental illness.[36] Additionally, people with mental illness are at a higher risk of committing suicide.[37]

As mentioned previously, there is a high demand for mental health services in America, and this demand is not being met.[38] This forces many people to go without mental health treatment.[39] Furthermore, some people, as a result of their mental illness, are unable to recognize the need to seek treatment.[40] Often, hospitalization is the first step in receiving treatment, but for those who are in critical need of treatment but are unable to seek it for themselves, involuntary commitment becomes necessary to ensure the safety of the individual and others around them.[41] In most states, the involuntary commitment ends once the individual is found to no longer be a danger to himself or others.

Many states base involuntary commitments on a dangerousness criterion rather than a need for treatment.[42] This criterion may seem beneficial in protecting the autonomy of mentally ill individuals; however, it leaves those non-dangerous individuals who are in need of mental health treatment but are refusing treatment with limited access to psychiatric care.[43] As a result, the United States has seen an increase of individuals with mental illness "being marginalized to unsafe and inappropriate settings."[44] Many face homelessness or end up in prison due to committing "survival crimes."[45]

Unfortunately, these people may never receive the mental health treatment that they need.[46] Many advocates for mental health are calling on lawmakers to do more to improve mental health treatment in America.[47] Angela Kimball, the CEO of the National Alliance of Mental Illness, has stated that "[i]n the U.S., it

34. *Id.* at 76.
35. *Id.* at 77.
36. *Id.*
37. *Id.*
38. Megan Testa & Sara G. West, *Civil Commitment in the United States*, 7 PSYCHIATRY 30, 31 (2010).
39. *Id.*
40. *Id.*
41. *Id.*
42. *Id.* at 33.
43. *Id.* at 34.
44. *Id.* at 35.
45. *Id.* ("Many of these mentally ill inmates are nonviolent offenders, a fair number of whom were convicted of survival crimes (e.g., theft of food or trespassing for shelter) related to limitations in social functioning and ability to meet basic needs because of chronic mental illness.").
46. *See also* Vernick, McGinty & Rutkow, *supra* note 33, at 76–77 (discussing research on mental illness in the United States population).
47. Corky Siemaszko, *Trump Made It Easier for the Mentally Ill to Get Guns When He Rolled Back Obama Regulation*, NBC NEWS, https://www.nbcnews.com/news/us-news/president-trump-made-it-easier-mentally-ill-get-guns-when-n1039301 (Aug. 6, 2019, 2:18 PM) [https://perma.cc/SJ4T-8YP8].

is easier to get a gun than it is to get mental health [treatment]" and that "[i]t should be easy—not hard—for people to get the mental health care they need."[48]

B. The Second Amendment

The Second Amendment provides the framework for gun ownership within the United States; however, the meaning of this amendment has been long debated and has come with much controversy.[49] The Second Amendment in its entirety reads, "[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."[50] The phrase "well regulated Militia" had, up until recently, been the center of this debate, with historians and other scholars coming to two separate interpretations.[51] Some argued that the Framers of the Constitution intended this phrase to only include militias formed by the states, while others argued that the Framers intended to protect the gun ownership rights of individuals who could then use their weapons if the militias were called to fight.[52] This debate was finally settled in the Supreme Court's decision in *District of Columbia v. Heller*[53] and later affirmed in *McDonald v. City of Chicago*.[54]

1. District of Columbia v. Heller

In *Heller*, the Supreme Court was tasked with determining whether the District of Columbia's ban on the possession of handguns violated the Second Amendment.[55] The District of Columbia enacted a ban on the registration of handguns, which subsequently resulted in an absolute prohibition on handgun ownership.[56] It also required that any registered firearms kept in the home be disassembled or locked with a trigger lock.[57] Dick Heller filed suit against the District of Columbia to enjoin the District of Columbia from enforcing its prohibitions on the possession of handguns and operable handguns in an individual's home after his application for a registration certificate for a handgun to keep at his home was denied.[58]

In the Court's opinion, Justice Scalia discussed the textual analysis of the Second Amendment's prefatory clause—"[a] well regulated Militia, being necessary to the security of a free State"—and the operative clause—"the right of

48. *Id.*

49. *See* Ron Elving, *Repeal the Second Amendment? That's Not So Simple. Here's What It Would Take*, NPR (Mar. 1, 2018, 5:00 AM), https://www.npr.org/2018/03/01/589397317/repeal-the-second-amendment-thats-not-so-simple-here-s-what-it-would-take [https://perma.cc/5WAH-ED8R].

50. U.S. CONST. amend. II.

51. Elving, *supra* note 49.

52. *Id.*

53. District of Columbia v. Heller, 554 U.S. 570, 595–96 (2008).

54. McDonald v. City of Chicago, 561 U.S. 742, 791 (2010).

55. *Heller*, 554 U.S. at 573.

56. *Id.* at 574–75.

57. *Id.* at 575.

58. *Id.* at 575–76.

the people to keep and bear Arms, shall not be infringed."[59] The operative clause was analyzed first and was held to "guarantee the individual right to possess and carry weapons in case of confrontation."[60] In analyzing the prefatory clause, the Supreme Court expressly rejected the narrow definition of militia and instead held militia to encompass all able-bodied men.[61] With this definition in mind, the prefatory clause was interpreted as "to prevent [the] elimination of the militia,"[62] and the Supreme Court ruled that the Second Amendment "secured an individual right to bear arms for defensive purposes" and found that the District of Columbia's absolute ban on handguns—and that the requirement that a firearm be inoperable in an individual's home—was unconstitutional under the Second Amendment.[63]

2. McDonald v. City of Chicago

This right was later reaffirmed in the Supreme Court's decision in *McDonald v. City of Chicago*.[64] This case, similar to that of *Heller*, was in regard to the constitutionality of a handgun ban.[65] After the Court's decision in *Heller*, four Chicago residents, who had been targets of threats and violence, challenged Chicago's ban on handguns, arguing that the ban left them defenseless against criminals.[66] Additionally, they argued that a ban on handguns violated their Second and Fourteenth Amendment rights.[67] In response, the city of Chicago argued that it enacted its handgun ban to protect residents from loss of property and injury as a result of firearms; however, statistics revealed that the handgun murder rate had actually increased since the implementation of the ban.[68] In *Heller*, the Court explicitly refused to discuss whether the Second Amendment was applicable to the States, which resulted in the Seventh Circuit's upholding of Chicago's ban.[69]

The Supreme Court, in analyzing the plaintiff's claims, looked to whether the right to keep and bear arms under the Second Amendment was "fundamental to [the] scheme of ordered liberty . . . ."[70] Basing its analysis on its decision, in *Heller*, the Supreme Court in reversing the Seventh Circuit's decision, held that self-defense is a fundamental right that falls under the Due Process Clause and the Fourteenth Amendment.[71] This holding, in turn, incorporated the Second Amendment right as recognized in *Heller* against the States.[72]

59. *Id.* at 579–98.
60. *Id.* at 592.
61. *Id.* at 596.
62. *Id.* at 599.
63. *Id.* at 602, 636.
64. McDonald v. City of Chicago, 561 U.S. 742, 750 (2010).
65. *Id.*
66. *Id.* at 750–51.
67. *Id.* at 752.
68. *Id.* at 750–51.
69. *Id.* at 752–53.
70. *Id.* at 767.
71. *Id.* at 791.
72. *Id.*

3. Impact of Heller *and* McDonald

The *Heller* and *McDonald* decisions were impactful in determining the direction courts should take in resolving Second Amendment disputes.[73] These decisions, particularly *Heller*, have served as roadmaps for the courts and have created guidelines that the courts follow in determining the legality of regulations that impact an individual's Second Amendment rights.[74] These guidelines have created a presumption of legality for certain prohibitions on firearm ownership and have helped guide the standard of scrutiny a court is to use in this line of cases.[75]

a. Presumption of Legality

While *Heller* affirmed the fundamental right of self-defense, the *Heller* Court made sure to emphasize that this right was not unlimited, specifically stating that "the right was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose."[76] As such, nothing in *Heller* "should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill."[77] This observation was not intended to be a conclusive statement regarding the Second Amendment but instead was included to serve as a precautionary statement.[78] It is possible for this presumption of legality to be overcome, and the Court in *Heller* made sure to leave room for other courts to explore the depths and limitations of the Second Amendment.[79]

b. Application of Intermediate Scrutiny

These decisions have subsequently resulted in a two-step framework that has been adopted by several circuits in order to resolve Second Amendment challenges.[80] This two-pronged approach was first seen in *United States v. Marzzarella*.[81] The *Marzzarella* case concerned a prohibition on firearms with an obliterated serial number.[82] Marzzarella was convicted for possessing an unmarked firearm, but he challenged his conviction by arguing that this prohibition violated his Second Amendment right to keep and bear arms.[83] In its opinion, the

73. See Jon S. Vernick, Lainie Rutkow, Daniel W. Webster & Stephen P. Teret, *Changing the Constitutional Landscape for Firearms: The US Supreme Court's Recent Second Amendment Decisions*, 101 AM. J. PUB. HEALTH 2021, 2024 (2011).

74. *Id.*

75. *Id.* at 2023–24.

76. District of Columbia v. Heller, 554 U.S. 570, 626 (2008).

77. *Id.*

78. *See id.*

79. *See id.*

80. *See* United States v. Greeno, 679 F.3d 510, 518 (6th Cir. 2012); United States v. Marzzarella, 614 F.3d 85, 89 (3d Cir. 2010); United States v. Chester, 628 F.3d 673, 680 (4th Cir. 2010).

81. *Marzzarella*, 614 F.3d at 89.

82. *Id.* at 88.

83. *Id.*

Marzzarella court explained that the *Heller* opinion suggested this two-step approach to Second Amendment challenges.[84]

In utilizing this framework, the court is to first ask whether the challenged law burdens conduct that falls within the scope of the Second Amendment.[85] If the conduct does not fall within the scope of the Second Amendment, the inquiry is complete.[86] If the conduct does, in fact, fall within the scope of the Second Amendment, the court must then determine the level of scrutiny to be used and examine the strength of the government's justification for regulating the exercise of Second Amendment rights in light of this level of scrutiny.[87] In determining the appropriate level of scrutiny, the court must consider "(1) 'how close the law comes to the core of the Second Amendment right,' and (2) 'the severity of the law's burden on the right.'"[88]

When the constitutionality of a law or regulation is called into question, the courts at both the state and federal level will apply one of the three levels of scrutiny—strict scrutiny, intermediate scrutiny, or rational basis review—to the law in question.[89] Strict scrutiny, the highest level of scrutiny, requires that the government prove that there is a compelling state interest and that the law or regulation be narrowly tailored to achieve its result.[90] Intermediate scrutiny requires that the government prove that there is an important government objective and that the law or regulation is substantially related to achieving the objective.[91] Lastly, rational basis review, the lowest level of scrutiny, only requires that the individual challenging the law prove either that the government has no legitimate interest in the law or policy or that there is no reasonable, rational link between a legitimate governmental interest and the challenged law or regulation.[92]

The court's reasoning in *Heller* explicitly ruled out rational basis review as an appropriate level of scrutiny for cases involving the Second Amendment because using this level of scrutiny would allow for the most burdensome regulations on firearm possession and would essentially render the Second Amendment moot.[93] This leaves intermediate scrutiny and strict scrutiny as the basis for Second Amendment challenges.[94] It has been found that courts have held almost unanimously that intermediate scrutiny is the appropriate level of scrutiny for

84. *Id.* at 89.

85. *Id.*

86. *Id.*

87. *Id.*

88. United States v. Chovan, 735 F.3d 1127, 1138 (9th Cir. 2013) (quoting Ezell v. City of Chicago, 651 F.3d 684, 703 (7th Cir. 2011)).

89. Brett Snider, *Challenging Laws: 3 Levels of Scrutiny Explained*, FINDLAW (Jan. 27, 2014, 9:05 AM), https://blogs.findlaw.com/law_and_life/2014/01/challenging-laws-3-levels-of-scrutiny-explained.html [https://perma.cc/K5YH-LN78].

90. *Id.*

91. *Id.*

92. *Id.*

93. District of Columbia v. Heller, 554 U.S. 570, 628 n.27 (2008) ("If all that was required to overcome the right to keep and bear arms was a rational basis, the Second Amendment would be redundant with the separate constitutional prohibitions on irrational laws, and would have no effect.").

94. Tyler v. Hillsdale Cnty. Sheriff's Dep't, 837 F.3d 678, 692 (6th Cir. 2016).

this line of cases.[95] Intermediate scrutiny is typically preferred as it places a burden on the government to justify its actions while still allowing Congress flexibility in implementing gun control.[96] In applying intermediate scrutiny, the government does not need to prove that there is not a burden on an individual's Second Amendment rights, but instead, it must merely show that there is a reasonable fit between the regulation and an important governmental objective.[97] Strict scrutiny is reserved for when the challenged law implicates a core Second Amendment right and places a substantial burden on that right.[98] According to *Heller*, the core of the Second Amendment is the "right of law-abiding, responsible citizens to use arms in defense of hearth and home."[99]

In *Marzzarella*, the court, in utilizing the two-prong approach, declined to determine whether possession of an unmarked firearm was covered under the Second Amendment.[100] *Heller* explicitly states that "the Second Amendment does not protect those weapons not typically possessed by law-abiding citizens for lawful purposes . . . ,"[101] but the *Marzzarella* court was unsure if an unmarked firearm would fall within this limitation.[102] Additionally, the firearm was kept in Marzzarella's home for the purpose of protection, implicating an interest in using the firearm for self-defense, which, according to *Heller*, falls within the scope of the Second Amendment.[103] In moving to the second prong, the court chose to implement intermediate scrutiny in determining the constitutionality of the challenged law.[104] Under intermediate scrutiny, the court determined that the prohibition did not severely limit the possession of firearms, and as a result, the court upheld Marzzarella's conviction.[105] While *Marzzarella* is just one case from a long line of cases challenging laws and regulations under the Second Amendment, it serves as an example as to how *Heller* and, to a lesser extent, *McDonald* have driven the decisions made by the lower courts in analyzing Second Amendment challenges.[106]

95. *Id.*

96. *Id.*

97. *Id.* at 693 ("Because a perfect fit is not required, the government need not prove that there is 'no burden whatsoever on [the claimant's] . . . right under the Second Amendment.'" (quoting United States v. Chapman, 666 F.3d 220, 228 (4th Cir. 2012))).

98. Mai v. United States, 952 F.3d 1106, 1115 (9th Cir. 2020) (citing United States v. Torres, 911 F.3d 1253, 1262 (9th Cir. 2019)).

99. District of Columbia v. Heller, 554 U.S. 570, 635 (2008).

100. United States v. Marzzarella, 614 F.3d 85, 95 (3d Cir. 2010).

101. *Heller*, 554 U.S. at 625.

102. *Marzzarella*, 614 F.3d at 95.

103. *Id.* at 94.

104. *Id.* at 97.

105. *Id.* at 97–101.

106. *See* discussion *supra* Section II.B.

C. Gun Control in the United States

Even with the *Heller* and *McDonald* decisions on the books, gun ownership rights and the Second Amendment are still highly contested, and the nationwide debates surrounding this topic continue to grow more and more heated.[107] While these landmark decisions recognized an individual's right to gun ownership, the Supreme Court did not find this right to be unlimited.[108] The debate surrounding the Second Amendment in recent years has now instead focused on how far these limitations on gun ownership should go, specifically in regard to individuals with mental illnesses.[109]

1. History of Gun Control

Gun control has been changed and modified many times in the last several decades as the issue has become more and more politicized.[110] Some people believe that gun control is an artifact of the 20th century, but contrary to this belief, gun control has been around since the beginning of America.[111] In colonial America, up until the end of the 1800s, gun control laws were a staple of American legislation.[112] It was typical to find laws that prohibited discharging or even possessing a weapon near certain areas and on certain days.[113] With this, early gun control was actually tougher than the laws implemented in more recent times.[114]

While there were gun control laws throughout early America, the first piece of national gun control legislation was passed in 1934.[115] This legislation was known as the National Firearms Act and was implemented in response to the gang crimes of that era.[116] It imposed a tax on the manufacturing, selling, and transportation of various firearms—including machine guns.[117] The Federal Firearms Act was implemented in 1938 and required gun manufacturers, dealers, and importers to have a federal firearm license.[118] Additionally, this legislation included categories of persons prohibited from possessing a firearm.[119]

107. Justin Wm. Moyer, *'The Culture's Changed': Gun Rights Supporters Mark 10 Years Since Landmark Ruling Toppled D.C. Gun Ban*, WASH. POST (June 26, 2018, 6:02 PM), https://www.washingtonpost.com/local/crime/the-cultures-changed-gun-rights-supporters-mark-10-years-since-landmark-ruling-toppled-dc-gun-ban/2018/06/26/02fdf738-7890-11e8-bda2-f99f3863e603_story.html [https://perma.cc/56DD-9LYD].

108. District of Columbia v. Heller, 554 U.S. 570, 626 (2008).

109. *See* Olivia B. Waxman, *How the Gun Control Act of 1968 Changed America's Approach to Firearms—And What People Get Wrong About That History*, TIME, https://time.com/5429002/gun-control-act-history-1968/ (Oct. 30, 2018, 11:52 AM) [https://perma.cc/ZH7G-LG3V].

110. *Id.*

111. *Id.*

112. *Id.*

113. *Id.*

114. *Id.*

115. Sarah Gray, *Here's a Timeline of the Major Gun Control Laws in America*, TIME, https://time.com/5169210/us-gun-control-laws-history-timeline/ (Apr. 30, 2019, 11:13 AM) [https://perma.cc/PXA2-JGS6].

116. *Id.*

117. *Id.*

118. *Id.*

119. *Id.*

The conversation surrounding gun control picked up in the 1960s.[120] After the assassinations of John F. Kennedy, Martin Luther King Jr., and Robert Kennedy, Congress passed the Gun Control Act of 1968.[121] This law effectively repealed the Federal Firearm Act but incorporated many of its provisions.[122] The bill banned interstate shipments of firearms to private individuals, imposed age restrictions on handguns, required guns to have serial numbers, and prohibited the sale of guns to felons and the mentally ill.[123] Further, it also imposed stricter licensing and record-keeping requirements on the firearm industry.[124]

This law took steps to limit people's access to firearms, but many gun control advocates did not believe that this was enough as it did not include federal licensing for gun owners or a requirement to register firearms.[125] *Time* dismissively referred to this legislation as "better than nothing" and went on to say that "[i]n U.S. folklore, nothing has been more romanticized than guns and the larger-than-life men who wielded them. From the nation's beginnings, in fact and fiction, the gun has been provider and protector."[126]

Moving to the 1980s, gun control took a step backwards.[127] The Firearm Owners Protection Act was passed in 1986, which prohibited a national registry of gun dealer records, limited ATF inspections, and loosened the regulations surrounding the sale and transfer of ammunition; however, the bill also expanded the Gun Control Act to prohibit civilian ownership of machine guns made after 1986.[128] The Gun Control Act was further amended in 1993 with the Brady Handgun Violence Prevention Act, which implemented a background check requirement in the sale of firearms from a licensed dealer, manufacturer, or importer.[129] The next change in gun control came one year later, in 1994, with the assault weapons ban.[130] This ban was in place until its expiration in September of 2004.[131] Multiple attempts have been made to renew this ban, but all have been unsuccessful.[132]

The conversation around gun control and the implementation of further legislation stalled in the 2000s but was quickly reinvigorated following the Virginia Tech shooting in 2007—one of the deadliest shootings in U.S. history.[133] Seung-Hui Cho, a student at Virginia Tech, committed a mass shooting that left thirty-

120. Waxman, *supra* note 109.

121. Gray, *supra* note 114; *see also Key Federal Regulation Acts*, GIFFORDS L. CTR., https://giffords.org/lawcenter/gun-laws/policy-areas/other-laws-policies/key-federal-regulation-acts/ (last visited July 10, 2022) [https://perma.cc/2PW9-ET6M].

122. *Key Federal Regulation Acts*, *supra* note 120.

123. Gray, *supra* note 114.

124. *Id.*

125. Waxman, *supra* note 108.

126. *Id.*

127. *See* Gray, *supra* note 115.

128. *Id.*

129. *Id.*

130. *Id.*

131. *Id.*

132. *Id.*

133. Josh Sanburn, *10 Years After Virginia Tech, It's Easier Than Ever to Buy a Gun*, TIME (Apr. 15, 2017, 2:00 PM), https://time.com/4741270/virginia-tech-10-year-anniversary-guns/ [https://perma.cc/TX8X-G3MQ].

two people dead and seventeen wounded.[134] Cho had been declared mentally ill by a Virginia court two years prior but was still able to clear a background check to purchase the two semiautomatic pistols that he used in the attack.[135] Shortly after the Virginia Tech shooting, George W. Bush signed into law the National Instant Criminal Background Check System ("NICS") Improvement Amendments Act in order to tighten reporting in mental health data for background checks.[136] Several states, however, have since loosened their gun control laws with the belief that citizens having access to guns could actually prevent mass shootings, and other proposals to tighten gun access, such as expanding background checks, have struggled to get off the ground.[137]

2. Current State of Gun Control

While Cho was not the first nor the last person to commit a mass shooting, the incident at Virginia Tech dramatically shifted the conversation surrounding gun control to focus heavily on the mentally ill[138] as some believed that "mental illness pulls the trigger not the gun."[139] For example, during his presidency, Barack Obama signed into law regulations that added people who received Social Security checks for mental illnesses and people who had been deemed unfit to handle their financial affairs to the national background database.[140] These regulations were put into place shortly after the 2012 Sandy Hook shooting, which left twenty-six people dead, in order to block people with severe mental illnesses from purchasing firearms.[141]

Despite this shift in focusing on the mentally ill in regard to gun control, those who are deemed mentally ill are not necessarily barred from obtaining a firearm.[142] Under 18 U.S.C § 922(g)(4), a person "who has been adjudicated as a mental defective or who has been committed to a mental institution" may not legally possess a firearm.[143] This restriction only applies to those individuals who have been involuntarily committed.[144] Individuals who enter voluntary commitment or do not seek treatment for their mental illness are still able to purchase a firearm under federal legislation.[145]

134. *Id.*

135. *Id.*

136. Rick Jervis, *10 Years After Va. Tech Shooting: How Gun Laws Have Changed*, USA TODAY, https://www.usatoday.com/story/news/nation/2017/04/14/va-tech-shooting-gun-laws-debate/100458024/ (Apr. 14, 2017, 12:24 PM) [https://perma.cc/9GF7-PHED].

137. *See* Sanburn, *supra* note 133.

138. Jervis, *supra* note 136.

139. Donald Trump, who was president of the United States at the time, said this in response to mass shootings in Dayton and El Paso. Siemaszko, *supra* note 47.

140. These regulations were actually reversed in 2017 by Donald Trump. *Id.*

141. *Id.*

142. *See* 18 U.S.C. § 922(g)(4) (2018).

143. *Id.*

144. BUREAU OF ALCOHOL, FOOD, TOBACCO, FIREARMS, & EXPLOSIVES, *supra* note 5.

145. *Id.*

Federal law provides two ways for a barred class to obtain relief from this prohibition.[146] First, under 18 U.S.C § 925(c), a person may petition the Attorney General for relief from disabilities imposed by § 922(g).[147] The Attorney General may choose to grant relief if "the circumstances regarding the disability, and the applicant's record and reputation, are such that 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."[148] This option to obtain relief was available starting in 1986,[149] but in 1992, Congress defunded the program citing that the decision-making process surrounding § 925(c) was too subjective and "could have devastating consequences for innocent citizens if the wrong decision is made."[150]

The second way a person may obtain relief from a disability imposed by § 922(g) is through a state program that qualifies under 34 U.S.C. § 40915.[151] A state program will qualify if some lawful authority may grant relief, pursuant to state law and due process, "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 the relief would not be contrary to the public interest."[152] Further, the program must allow for a person whose application is denied to file a petition with the state court for review of the denial.[153] As of 2017, thirty-two states have created qualifying programs.[154] Twelve other states have relief from disabilities programs, but these programs do not meet the federal qualifications.[155]

III. ANALYSIS

This Part will begin by discussing the cases that resulted in the circuit split among the Third, Ninth, and Sixth Circuits. Additionally, it will compare these cases and look into the framework utilized by the circuits to determine if there is an obvious rationale to explain this split. This Part will then turn to the effectiveness of current gun control laws for the mentally ill and look at how these laws work in tandem with potential government interests. With this discussion in hand, it will be applied to the circuit split in order to rectify the split in a way that is consistent with an individual's constitutional rights while still improving the effectiveness of gun control laws.

146. *See* 18 U.S.C. § 925(c) (2018); 34 U.S.C. § 40915(a) (2018).

147. 18 U.S.C. § 925(c) (2018). *See generally* 18 U.S.C. § 922(g)(4) (2018).

148. 18 U.S.C. § 925(c) (2018).

149. Mai v. United States, 952 F.3d 1106, 1111 (9th Cir. 2020) ("Beginning in 1986, that provision extended to persons who had been involuntarily committed to a mental institution.").

150. S. REP. NO. 102-353, at 13 (1992) ("This is a very difficult and subjective task which could have devastating consequences for innocent citizens if the wrong decision is made.").

151. 34 U.S.C. § 40915(a) (2018).

152. *Id.* at § 40915(a)(2).

153. *Id.* at § 40915(a)(3).

154. Liza H. Gold & Donna Vanderpool, *Legal Regulation of Restoration of Firearms Rights After Mental Health Prohibition*, 46 J. AM. ACAD. PSYCHIATRY & L. 298, 300 (2018).

155. *Id.* at 300–01 (These states include California, Connecticut, Georgia, Maine, Minnesota, Mississippi, Ohio, Pennsylvania, Rhode Island, South Dakota, Vermont, and Washington.).

A. Circuit Split

The three cases at hand all involve people who had been involuntarily committed, applied to purchase a firearm, and subsequently were rejected due to their prior involuntary psychiatric commitment.[156] Here, the Third, Sixth, and Ninth Circuits made decisions in regard to whether a lifetime ban on the Second Amendment for people who have been involuntarily committed to a mental institution is constitutional.[157] All three circuits came to different conclusions using similar two-step frameworks commonly found in Second Amendment cases.[158] This Section of the Note will analyze each case separately and look for a possible rationale to explain the differences in reasoning and the overall outcomes of the three cases.

1. Tyler v. Hillsdale County Sheriff's Department

The first case to bring this issue to the Courts of Appeals was *Tyler v. Hillsdale County Sheriff's Department*.[159] This case, which was ultimately decided by the Sixth Circuit, began when seventy-four-year-old Clifford Charles Tyler unsuccessfully attempted to purchase a firearm in 2011.[160] Tyler had been committed to a mental institution twenty-six years prior, in 1986, after his wife served him with divorce papers.[161] The situation left Tyler "emotionally devastated" and resulted in him being unable to sleep and pounding his head repeatedly.[162] Tyler's daughters, fearing for their father's safety, called the police, who transported Tyler to undergo a psychological evaluation.[163] The evaluation found that Tyler was mentally ill and could "be reasonably expected within the near future to intentionally or unintentionally seriously physically injure [himself] or others, and has engaged in an act or acts or made significant threats that are substantially supportive of the expectation."[164] After Tyler's discharge, he received no further mental health treatment, was able to hold a steady job, and eventually remarried.[165]

In February 2011, Tyler attempted to purchase a firearm.[166] Tyler's application was rejected, and he was informed by the Hillsdale Sheriff's Office that

156. Charles, *supra* note 6.

157. *See id.*

158. *See id.*

159. *See* Tyler v. Hillsdale Cnty. Sheriff's Dep't, 837 F.3d 678, 681 (6th Cir. 2016).

160. *Id.* at 684.

161. *Id.* at 683.

162. *Id.* ("The ordeal left Tyler emotionally devastated. He had trouble sleeping and sat at home 'in the middle of the floor . . . pounding his head.'").

163. *Id.*

164. *Id.* ("The probate court found by 'clear and convincing evidence' that Tyler was mentally ill and that because of his illness he could 'be reasonably expected within the near future to intentionally or unintentionally seriously physically injure [himself] or others, and has engaged in an act or acts or made significant threats that are substantially supportive of the expectation.' The court further noted that hospitalization was the only treatment method 'adequate to meet [Tyler's] treatment needs.'") (internal citations omitted).

165. *Id.*

166. *Id.* at 684.

he was ineligible to purchase a firearm after the NICS revealed that he had been previously committed to a mental institution.[167] After receiving his rejection, Tyler appealed this decision with the FBI's NICS section in the hope of restoring his federal firearm rights.[168] He also underwent a substance abuse evaluation and a psychological evaluation.[169] These evaluations found that Tyler did not present any evidence of mental illness and that the mental illness that resulted in his prior involuntary commitment was a brief reactive depressive episode.[170] Furthermore, the evaluations revealed that Tyler did not have any issues with drugs or alcohol, nor did he have any prior legal issues.[171] Despite these findings, Tyler's appeal was rejected as Michigan did not have an ATF-approved relief from disabilities program in place under the NICS Improvement Amendments Act of 2007.[172]

After this rejection, Tyler filed a federal suit against various defendants, arguing that Michigan's lack of relief from disabilities program was unconstitutional because it created a permanent ban on his Second Amendment rights.[173] The district court dismissed Tyler's suit.[174] In reviewing the district court's decision, the Sixth Circuit refused to rely completely on *Heller*'s presumption that prohibitions on firearm ownership for the mentally ill were lawful because the court believed that this would endorse the ability for Congress to declare "once mentally ill, always so."[175] The Sixth Circuit instead utilized the two-step framework used in several other circuits to resolve Second Amendment disputes.[176]

In the first step of the two-prong approach, the court found that those who had been involuntarily committed were not categorically unprotected from the Second Amendment as there was no historical evidence that people in this category were permanently ineligible to regain their Second Amendment rights.[177]

167. *Id.*

168. *Id.*

169. *Id.* at 683.

170. *Id.* at 684 ("She also noted that Tyler's personal physician reported no signs of mental illness. Osentoski concluded that Tyler's response to his divorce was a 'brief reactive depressive episode,' but that, at the time of his evaluation, Tyler did not present any 'evidence of mental illness.' Tyler's substance-abuse evaluation reveals no issues with alcohol or drug abuse, and it notes that Tyler has had no past legal involvement.") (internal citation omitted).

171. *Id.*

172. *Id.* ("NICS Improvement Amendments Act of 2007 'provides states with the ability to pursue an ATF-approved relief of disability for individuals . . . who have been committed to a mental institution' but that '[u]ntil [Michigan] has an ATF approved relief from disabilities program in place [Tyler's] federal firearm rights may not be restored.'").

173. *Id.*

174. *Id.* at 684.

175. *Id.* at 688.

176. *Id.* at 685 ("Like several of our sister circuits, we have adopted a two-step framework to resolve Second Amendment challenges.").

177. *Id.* at 685–86 ("The first step 'asks whether the challenged law burdens conduct that falls within the scope of the Second Amendment right, as historically understood.' If the government establishes that the challenged law regulates activity outside the scope of the Second Amendment as understood at the time of the framing of the Bill of Rights, the activity is unprotected and the law is not subjected to further constitutional scrutiny. If, however, the historical evidence is inconclusive or suggests that the regulated activities—or in our case the regulated individuals—are not categorically unprotected, then we must ascertain the appropriate level of scrutiny

In the second step of the framework, the court made the decision to apply intermediate scrutiny to the case at hand.[178] In rejecting Tyler's request for strict scrutiny, the court reasoned that while a permanent extinguishment of a person's Second Amendment rights is a heavy burden, it is a burden that only affects a narrow class of people who are "not at the core of the Second Amendment."[179]

The Sixth Circuit then held that the government's objective in reducing crime and firearm deaths was both legitimate and compelling;[180] however, it did not find that the permanent restriction against those who had been involuntarily committed was substantially related.[181] The government was able to provide evidence to support a ban on firearms for those who are currently suffering from mental illness and those who had been recently removed from involuntary commitment, but ultimately none of the evidence provided justified a permanent bar against anyone who had been involuntarily committed.[182] In making this determination, the court turned to the relief from disabilities program that was implemented at both the federal level and the state level as this gave a clear indication, according to the court, that Congress did not believe that people who had been previously committed were dangerous enough to permanently remove their Second Amendment Rights.[183]

2. Beers v. Attorney General United States

The next case to discuss the prohibition of firearms for those who had been involuntarily committed was the Third Circuit case *Beers v. Attorney General United States*.[184] Bradley Beers was involuntarily committed to a psychiatric hospital in 2005 under Pennsylvania's Mental Health Procedures Act after he told his mother he was suicidal and put a gun in his mouth.[185] Beers's involuntary commitment was extended twice as psychiatrists concluded that he was still a danger to himself or others.[186] During the court hearing for his extension, Beers was labeled "severely mentally disabled and in need of treatment."[187] Beers was discharged in 2006, and shortly after his release, he attempted to purchase a

and examine the 'strength of the government's justification for restricting or regulating the exercise of Second Amendment rights.'") (internal citations omitted).

178. *Id.* at 686 ("Thus, unless the conduct at issue is categorically unprotected, the government bears the burden of justifying the constitutionality of the law under a heightened form of scrutiny."). *Heller* had rejected rational-basis review for Second Amendment challenges leaving courts to utilize either intermediate scrutiny or strict scrutiny for this line of cases. *Id.*

179. *Id.* at 691 ("Like the other provisions of § 922(g), § 922(g)(4) does not burden the public at large; it burdens only a narrow class of individuals who are not at the core of the Second Amendment—those previously adjudicated mentally defective or previously involuntarily committed.").

180. *Id.* at 693.

181. *Id.* at 697–99.

182. *Id.* at 699.

183. *Id.* at 697 ("It is a clear indication that Congress does not believe that previously committed persons are sufficiently dangerous as a class to permanently deprive all such persons of their Second Amendment right to bear arms.").

184. Beers v. Att'y Gen. U.S., 927 F.3d 150, 152 (3d Cir. 2019).

185. *Id.*

186. *Id.*

187. *Id.*

firearm.[188] Beers was denied a firearm after his background check revealed his involuntary commitment.[189] Beers had not received any further mental health treatment since his involuntary commitment and was deemed by a physician in 2013 to be well enough "to safely handle firearms again without risk of harm to himself or others."[190]

Beers filed a complaint in federal district court asserting that 18 U.S.C. § 922(g)(4), the statute under the Gun Control Act that prohibited those who had been involuntarily committed from purchasing a firearm, was unconstitutional as applied to him.[191] The district court dismissed Beers's complaint after applying the two-prong test from *Marzzarella* and determining that Beers could not distinguish his circumstances from individuals with mental illnesses that fell within the prohibition of firearm possession; thus, § 922(g)(4) did not impose a burden on conduct within the scope of the Second Amendment and was constitutional as applied to Beers.[192] Beers appealed this decision to the Third Circuit.[193]

The Third Circuit, in working through its two-prong test for analyzing Second Amendment challenges, looked to its previously decided Second Amendment cases. Specifically, it noted that in *Binderup v. Attorney General* it had clarified that in the first step of the two-prong test, the challenger "must (1) identify the traditional justifications for excluding from Second Amendment protections the class of which he appears to be a member, and then (2) present facts about himself and his background that distinguish his circumstances from those of persons in the historically barred class."[194] This decision overruled the prior Third Circuit decision in *United States v. Barton*, which allowed a challenger to distinguish himself from a barred class by the passage of time or evidence of rehabilitation.[195] The Third Circuit rationalized this decision to overrule *Barton* by noting that there was no historical support that Second Amendment rights could be restored, that any restoration remedy must be made available by Congress, and that courts are "not 'institutionally equipped' to conduct 'a neutral, wide-ranging investigation' into post-conviction assertions of rehabilitation."[196] This left challengers with only one way to distinguish themselves from a historically barred class—a showing that he is literally not part of the class.[197]

188. *Id.*

189. *Id.*

190. *Id.*

191. *Id.* at 153; 18 U.S.C § 922(g)(4).

192. *Beers*, 927 F.3d at 153.

193. *Id.*

194. *Id.* at 155 (quoting Binderup v. Att'y Gen. U.S., 836 F.3d 336, 346–47 (3d Cir. 2019)) (internal citations omitted).

195. *Id.* at 156.

196. *Id.* ("Three factors supported our conclusion that Barton's emphasis on rehabilitation evidence was misplaced. First, there was no historical support for the proposition that Second Amendment rights could be restored after they were forfeited, and historical context was the guiding principle for our Second Amendment analysis. Second, to the extent such a restoration remedy was available, it was a matter of congressional grace. Third, and most importantly, we held that courts are not 'institutionally equipped' to conduct 'a neutral, wide-ranging investigation' into post-conviction assertions of rehabilitation.").

197. *Id.*

The Third Circuit then turned to Beers's circumstances specifically to determine whether he should be considered distinguished from mentally ill persons who are prohibited from possessing firearms.[198] The court found that Beers's only basis for distinguishing himself from the barred class was the amount of time that had passed since his involuntary commitment and that he was now rehabilitated.[199] The court noted that based on their ruling in *Binderup*, this was no longer a way to distinguish oneself from a historically barred class, and allowing Beers's rehabilitation as a basis to distinguish himself from the barred class at issue would undermine this decision.[200] The court further emphasized that § 922(g)(4) was intended to keep guns from individuals who were a danger to themselves and others, and despite Beers's argument that he was rehabilitated, he had still been involuntarily committed and fell into the class that § 922(g)(4) was designed specifically to prevent from possessing a firearm.[201]

The only way that Beers could have distinguished himself from the barred class was to demonstrate that he was never a danger to himself, which, due to his involuntary commitment, he could not do.[202] As such, the court did not need to proceed to the second step of the two-prong test because the burdened conduct at issue did not fall within the scope of the Second Amendment.[203] Accordingly, the Third Circuit concluded that § 922(g)(4) was constitutional as applied to Beers and affirmed the ruling of the district court.[204] Beers appealed the Third Circuit's decision to the Supreme Court.[205] The Court declined to consider whether § 922(g)(4) was unconstitutional and instead remanded the case to the Third Circuit with instructions to dismiss the case as moot.[206]

3. Mai v. United States

The last case at issue in this circuit split is the Ninth Circuit case *Mai v. United States*.[207] Duy Mai was involuntarily committed at age seventeen in October 1999 after he threatened to harm himself and others.[208] A Washington state court found Mai to be both mentally ill and dangerous.[209] Mai's commitment lasted nine months,[210] and since his release, he had lived a relatively normal and uneventful life.[211]

198. *Id.* at 158.
199. *Id.*
200. *Id.* at 158–59.
201. *Id.*
202. *Id.* at 159.
203. *Id.*
204. *Id.*
205. Beers v. Barr, 140 S. Ct. 2578, 2578 (2020).
206. *Id.*
207. Mai v. United States, 952 F.3d 1106, 1109 (9th Cir. 2020).
208. *Id.* at 1110.
209. *Id.*
210. *Id.*
211. *Id.* ("Since his release from commitment in 2000, Plaintiff has earned a GED, a bachelor's degree, and a master's degree. He is gainfully employed and a father to two children. According to the complaint, he no longer suffers from mental illness, and he lives 'a socially-responsible, well-balanced, and accomplished life.'").

As a result of Mai's involuntary commitment, he was prohibited from possessing a firearm under both federal and Washington law.[212] Fifteen years after being committed, Mai was able to successfully petition for relief from this prohibition under Washington law.[213] Per Washington state code, a court shall restore a petitioner's right to possess a firearm if the petitioner is able to prove that (1) the petitioner is no longer required to participate in court-ordered inpatient or outpatient treatment; (2) the petitioner has successfully managed his condition; (3) the petitioner is no longer a substantial danger to himself or the public; and (4) the symptoms related to the petitioner's commitment are not reasonably likely to recur.[214] The court overseeing Mai's petition found that he met these requirements, and subsequently, Mai was no longer prohibited from possessing a firearm under Washington law.[215] Unfortunately, this relief did not extend to the federal prohibition as Washington's relief from disabilities program did not meet the federal criteria to allow for relief from disabilities imposed by § 922(g).[216]

In 2017, Mai filed an action in federal court alleging that the government violated his Second Amendment and Fifth Amendment rights after he was denied the ability to purchase a firearm due to his prior involuntary commitment under § 922(g)(4).[217] The district court dismissed Mai's complaint for failure to state a claim and held that § 922(g)(4) is constitutional under the Second Amendment and satisfies intermediate scrutiny.[218] The court also rejected Mai's due process claim.[219] Mai sought to amend his complaint, but this was denied by the court.[220] Mai filed an appeal of this decision regarding his Second Amendment claim in the Ninth Circuit.[221]

The Ninth Circuit, in this case, utilized the two-step framework seen in the Sixth Circuit.[222] In this framework, the court specifically asked (1) whether the challenged law burdened conduct protected by the Second Amendment and (2) if so, whether the district court applied the appropriate level of scrutiny.[223] In the Ninth Circuit, a law is not found to burden the Second Amendment "if it either falls within one of the 'presumptively lawful regulatory measures' identified in *Heller* or regulates conduct that historically has fallen outside the scope of the Second Amendment."[224] In performing the two-step analysis, the court assumed

212. *Id.*
213. *Id.*
214. WASH. REV. CODE ANN. § 9.41.047(3)(c) (2020).
215. *Mai*, 952 F.3d at 1110.
216. *Id.*
217. *Id.* at 1112.
218. *Id.*
219. *Id.*
220. *Id.*
221. *Id.*
222. *Id.* at 1113 ("Applying the lessons from *Heller* and *McDonald*, we have adopted a two-step inquiry for assessing whether a law violates the Second Amendment.").
223. *Id.*
224. *Id.* at 1114 (quoting United States v. Torres, 911 F.3d 1253, 1258 (9th Cir. 2019)).

that § 922(g)(4) burdened the Second Amendment but chose not to decide if it burdened the Second Amendment as applied to Mai.[225]

Moving to the next step of the framework, the court set out to determine the appropriate level of scrutiny.[226] In making this determination, the Ninth Circuit relied on *United States v. Torres*, a Ninth Circuit case dealing with Second Amendment.[227] In *Torres*, an illegal alien was found to be in unlawful possession of a firearm,[228] which violated 18 U.S.C. § 922(g)(5).[229] Torres argued that this prohibition violated his Second Amendment rights.[230] In determining the appropriate level of scrutiny, the *Torres* court stated that "there has been 'near unanimity in the post-*Heller* case law that, when considering regulations that fall within the scope of the Second Amendment, intermediate scrutiny is appropriate.'"[231] As such, the *Torres* court applied intermediate scrutiny and found that the government had a valid interest in controlling crime and ensuring public safety and that these interests would be achieved less effectively without § 922(g)(5).[232]

Ultimately, the court in *Mai* decided that intermediate scrutiny was the appropriate level of scrutiny.[233] The court recognized that the burden that § 922(g)(4) placed on Mai was quite substantial, but because the statute only burdened a narrow class of individuals who are not at the core of the Second Amendment rather than the public at large, intermediate scrutiny must be imposed.[234] In applying intermediate scrutiny, the government has two significant interests that support § 922(g)(4)—preventing crime and preventing suicide.[235] Subsequently, Congress determined that people involuntarily committed to a mental institution imposed an increased risk of violence.[236]

Mai argued that the prohibition should not be applied to him due to the passage of time since his commitment and the improvement in his mental health, but the court found that Mai was still at risk for future violence because "nothing in the record suggest[ed] that Plaintiff's level of risk [was] nonexistent or that his level of risk match[ed] the risk associated with a similarly situated person

225. *Id.* at 1115.

226. *Id.*

227. *See id.* at 1115–16; United States v. Torres, 911 F.3d 1253, 1262 (9th Cir. 2019).

228. *Torres*, 911 F.3d at 1255.

229. 18 U.S.C § 922(g)(5) (2018).

230. *Torres*, 911 F.3d at 1257.

231. *Id.* at 1262 (quoting Silvester v. Harris, 843 F.3d 816, 823 (9th Cir. 2016)).

232. *Id.* at 1264.

233. Mai v. United States, 952 F.3d 1106, 1115 (9th Cir. 2020) ("As Plaintiff recognizes, intermediate scrutiny applies here.").

234. *Id.* ("But we agree with the Sixth Circuit that, '[l]ike the other provisions of § 922(g), § 922(g)(4) does not burden the public at large; it burdens only a narrow class of individuals who are not at the core of the Second Amendment—those . . . previously involuntarily committed.' Just as intermediate scrutiny applies to the other lifetime bans in § 922(g), so too does intermediate scrutiny apply to § 922(g)(4)'s prohibition.") (citation omitted).

235. *Id.* at 1116.

236. *Id.* at 1117 ("Similarly, in enacting § 922(g)(4), Congress determined that, like felons and domestic-violence assailants, those who have been involuntarily committed to a mental institution also pose an increased risk of violence.").

who lack[ed] a history of mental illness."[237] As a result, the Ninth Circuit determined that § 922(g)(4) was a reasonable fit for the described governmental interests due to the increased risk of future violence among people who have been involuntarily committed and that, ultimately, § 922(g)(4) did not violate Mai's Second Amendment rights.[238]

B. Comparison of Cases

To fully understand this circuit split, it is important to look at the underlying facts surrounding these cases and the rationale used by the circuit courts.[239] While these cases seem almost identical on the surface, the small differences present throughout the cases can help explain how this split came to be. Additionally, this comparison will be beneficial in creating a new approach to mental illness and the Second Amendment that is able to address the concerns of the courts.

To begin, the circumstances surrounding the Third Circuit case, *Beers v. Attorney General*, were vastly different from the Sixth and Ninth Circuit cases.[240] In *Beers*, Bradley Beers had attempted to purchase a firearm shortly after his release from the psychiatric institution.[241] While he had been deemed by a physician in 2013 to be able to safely handle firearms, only seven years had passed since his commitment.[242] Conversely, Duy Mai and Clifford Tyler attempted to purchase firearms after more than fifteen years since they had been involuntarily committed.[243] Further, while all three men had been deemed dangers to themselves, Beers had gone one step further and actually put a gun in his mouth.[244] Additionally, both the Sixth Circuit and Ninth Circuit noted that Mai and Tyler had been able to successfully reintegrate into society and had been model citizens since their commitment.[245] No such note was made about Beers.[246] While the circumstances surrounding Beers's involuntary commitment may be inconsequential, these factors could explain the Third Circuit's hesitancy in reinstating Beers's Second Amendment rights.[247]

Another factor that could have contributed to the circuit split was the difference in approach that the Third Circuit took in comparison to that of the Sixth and Ninth Circuits.[248] In making its decision, the Third Circuit utilized *Binderup v. Attorney General*, which required challengers of § 922 to distinguish

237. *Id.* at 1119.
238. *Id.* at 1121.
239. *Compare* Beers v. Att'y Gen. U.S., 927 F.3d 150, 152 (3d Cir. 2019), *with* Mai v. United States, 952 F.3d 1106, 1110 (9th Cir. 2020), and Tyler v. Hillsdale Cnty. Sheriff's Dep't, 837 F.3d 678, 681 (6th Cir. 2016).
240. *Compare Beers*, 927 F.3d at 152, *with Mai*, 952 F.3d at 1110, *and Tyler*, 837 F.3d at 681.
241. *Beers*, 927 F.3d at 152.
242. *Id.*
243. *Mai*, 952 F.3d at 1110, 1112; *Tyler*, 837 F.3d at 683–84.
244. *Compare Beers*, 927 F.3d at 152, *with Mai*, 952 F.3d at 1110, *and Tyler*, 837 F.3d at 683.
245. *Mai*, 952 F.3d at 1110; *Tyler*, 837 F.3d at 683–84.
246. *See Beers*, 927 F.3d at 152.
247. *See id.*
248. *See Beers*, 927 F.3d at 158–59; *Mai*, 952 F.3d at 1119–21; *Tyler*, 837 F.3d at 699.

themselves from a barred class.[249] This required that Beers show that he *never* was a danger to himself or others rather than showing that he was *no longer* a danger to himself and others, but due to his involuntary commitment, this was impossible for Beers to prove.[250] As such, he fell into the class that § 922(g)(4) was designed specifically to prevent from possessing a firearm.[251] Unfortunately, by requiring people to distinguish themselves from a barred class, but refusing to take into account rehabilitation, the Third Circuit's decision takes the "once mentally ill, always mentally ill" approach that both the Sixth Circuit and Ninth Circuit actively tried to avoid.[252]

While the reasons described above can help explain the circuit split in the Third Circuit's case, distinguishing the Sixth Circuit and the Ninth Circuit cases from each other proves to be more difficult. The underlying facts in both cases were extremely similar.[253] Both Mai and Tyler were involuntarily committed after being deemed a danger to themselves.[254] After their release, both men went on to live relatively uneventful lives and did not seek further mental health treatment.[255] Furthermore, both men were denied firearms due to their prior involuntary commitments.[256] The courts in both cases even used a similar two-step framework to determine the constitutionality of § 922(g)(4).[257] The only notable difference lies in the outcome of the cases.[258] To explain this difference, it is necessary to turn to the rationale of the two courts when ultimately making their rulings on the cases at hand.[259]

Both circuits ultimately decided that intermediate scrutiny was the appropriate level of review for the *Tyler* and *Mai* cases.[260] Both courts agreed that the government had a compelling interest in reducing crime, violence, and firearm deaths.[261] The circuits differed in whether they believed that prohibiting individuals with a prior involuntary commitment from possessing a firearm was substantially related to achieving that objective.[262] The Ninth Circuit believed that this prohibition achieved this objective due to the increased risk of future violence among people who have been involuntarily committed.[263] The Sixth Circuit, on the other hand, did not believe that this justified a permanent bar against anyone who had been involuntarily committed.[264]

249. *Beers*, 927 F.3d at 158–59.
250. *Id.*
251. *Id.*
252. *See Mai*, 952 F.3d at 1119–21; *Tyler*, 837 F.3d at 699.
253. *Compare Mai*, 952 F.3d at 1110, *with Tyler*, 837 F.3d at 681–83.
254. *Mai*, 952 F.3d at 1110; *Tyler*, 837 F.3d at 683.
255. *Mai*, 952 F.3d at 1110; *Tyler*, 837 F.3d at 683–84.
256. *Mai*, 952 F.3d at 1110, 1112; *Tyler*, 837 F.3d at 683.
257. *Mai*, 952 F.3d at 1113; *Tyler*, 837 F.3d at 685.
258. *Compare* Mai, 952 F.3d at 1121, *with* Tyler, 837 F.3d at 699.
259. *Mai*, 952 F.3d at 1120–21; *Tyler*, 837 F.3d at 699.
260. *Mai*, 952 F.3d at 1115; *Tyler*, 837 F.3d at 692.
261. *Mai*, 952 F.3d at 1116; *Tyler*, 837 F.3d at 693.
262. *Mai*, 952 F.3d at 1121; *Tyler*, 837 F.3d at 699.
263. *Mai*, 952 F.3d at 1121.
264. *Tyler*, 837 F.3d at 699.

The Sixth Circuit based its ruling on the relief from disabilities program that was implemented at both the federal level and the state level.[265] Federal law from 1986 to 1992 allowed a relief-from-disabilities program where individuals prohibited from possessing a firearm under federal law could apply to have the restriction lifted.[266] This federal program was defunded, but after the Virginia Tech shooting, states received federal funding if they implemented relief programs, thus encouraging states to reinstate access to firearms to those that the federal government had previously believed were too dangerous to own a firearm. [267] The existence of these programs can lead one to believe that Congress does not fully believe that an involuntary commitment is always a bar on firearm access and that individuals who had been previously barred are capable of rehabilitation to the point of regaining these rights.[268]

C. Effectiveness of Gun Control for the Mentally Ill

While some courts may subscribe to the idea that instituting a lifetime ban on a mentally ill person's Second Amendment rights is constitutional and beneficial in preventing violent acts, the issue arises in the fact that these regulations are not effective and are not aimed at the right population.[269] Basing firearm access on prior psychological history is not reaching those who may actually be a risk to the public at large.[270] Studies have shown that "[p]sychiatrists using clinical judgment are not much better than chance at predicting which individual patients will do something violent and which will not."[271] Furthermore, studies have shown that dangerous individuals with mental illnesses who do commit acts of violence commit these acts before seeking treatment, which further indicates that using mental health treatment as a predictor for future violent acts still leaves the public largely unprotected from violence.[272]

The people who are committing acts of violence are not the ones that are barred from obtaining a firearm.[273] Currently, individuals with mental illnesses only account for up to approximately 5% of violence within the United States.[274] Additionally, one study found that individuals who have mental illness perpetrated only 1% of yearly gun-related homicides.[275] In fact, people with mental

265. *Id.* at 697.

266. *See id.*; 18 U.S.C. § 925.

267. Tyler v. Hillsdale Cnty. Sheriff's Dep't, 837 F.3d 678, 697 (6th Cir. 2016).

268. *Id.*

269. Richard A. Friedman, *In Gun Debate, a Misguided Focus on Mental Illness*, N.Y. TIMES (Dec. 17, 2012), https://www.nytimes.com/2012/12/18/health/a-misguided-focus-on-mental-illness-in-gun-control-debate.html [https://perma.cc/U8AP-ZTUA].

270. *Id.*

271. *Id.*

272. Swanson, McGinty, Fazel & Mays, *supra* note 15, at 371.

273. *Id.* at 372.

274. Rachel Nuwer, *Is There a Link Between Mass Shootings and Mental Illness?*, BBC (May 10, 2018), https://www.bbc.com/future/article/20180509-is-there-a-link-between-mass-shooting-and-mental-illness [https://perma.cc/BYD2-8PH7].

275. *Id.*

illness are actually more likely to be the victim rather than the perpetrator of a violent crime.[276]

Furthermore, the number of health records submitted to the NICS has increased nearly tenfold since the Virginia Tech shooting, but more than 99% of gun disqualifying mental health records have not resulted in any denials.[277] People with mental illnesses still have access to firearms.[278] A study of people with lifetime mental disorders found that 34.1% had access to a gun, 4.8% carried a gun, and 6.2% stored a gun in an unsafe manner.[279] Even individuals who are barred from purchasing a gun may still be able to do so with state relief-from-disabilities programs that allow individuals who have been restricted from purchasing a firearm a way to lift these restrictions.[280]

IV. RECOMMENDATION

To rectify the split among the circuits, the Supreme Court should rule that a lifetime ban on the Second Amendment for those who have been involuntarily committed is unconstitutional under intermediate scrutiny review. A lifetime ban for this class of people is ineffective, arbitrary, and is driven by inaccurate views on individuals with mental illness.[281] While people suffering from mental illness should be limited in regard to their Second Amendments right, it would be more appropriate to create a limitation that is set regardless of whether the commitment to a mental health institution was voluntary or involuntary.[282]

As the previous sections have shown, the current gun control regulations do not fully capture the complexities of mental illness and leave a large portion of the population that could be a danger to themselves and others able to still purchase a firearm.[283] With the current barriers to accessing mental health treatments, and the dangerousness criterion used to determine who should be involuntarily committed, this leaves a portion of the mentally ill population vulnerable and at risk for succumbing to their mental illness.[284] Further, for those who have been involuntarily committed, it has been found that psychiatric evaluations cannot accurately determine whether a patient will be violent in the future, which in turn, makes this restriction more arbitrary and demonstrates the glaring inefficiencies in the current gun control laws.[285]

276. *Id.*

277. Swanson, McGinty, Fazel & Mays, *supra* note 15, at 372.

278. *Id.* at 370.

279. *Id.*

280. Tyler v. Hillsdale Cnty. Sheriff's Dep't, 837 F.3d 678, 697 (6th Cir. 2016).

281. See Jonathan M. Metzl & Kenneth T. MacLeish, *Mental Illness, Mass Shootings, and the Politics of American Firearms*, 105 AM. J. PUB. HEALTH 240, 240 (2015); *see* Sanburn, *supra* note 133.

282. *See supra* Section III.B.

283. *See supra* Section III.C.; *see also* Swanson, McGinty, Fazel & Mays, *supra* note 15, at 370; David Shortell, *How Do Laws Prevent Mentally Ill People From Buying Guns?*, CNN (Feb. 15, 2018, 9:24 PM), https://www.cnn.com/2018/02/15/politics/mental-health-gun-possession-explainer/index.html [https://perma.cc/T892-WVUF]

284. Testa & West, *supra* note 38, at 31.

285. *See* Metzl & MacLeish, *supra* note 281, at 240.

With acts of gun violence becoming commonplace within the United States, the discussion regarding gun control has turned sharply to focus solely on the mentally ill.[286] The public view that people with mental illness are inherently more dangerous than those without is based on harmful stereotypes,[287] and as it has been seen time and time again when an act of violence has been committed, the focus is not on what steps need to be taken to prevent a similar situation but rather on the mental health status of the perpetrator.[288] For example, after the Sandy Hook shooting, the perpetrator, Adam Lanza, was repeatedly diagnosed with schizophrenia by the media despite never receiving a diagnosis by a trained medical professional during his lifetime.[289]

The issue with this becomes that speculation on mental health status does no more for implementing effective gun control than doing nothing at all.[290] These types of conversations are designed to fit the popular narrative that individuals with mental illnesses are inherently violent.[291] This, in turn, creates a feeling among the general public that implementing effective gun control is impossible,[292] which puts the conversation on gun control on hold while more and more people lose their lives to gun violence.[293]

Some may argue that the government has an important governmental objective in preventing suicides and public harm and is able to do so by keeping firearms away from individuals who have been deemed a danger to themselves or others.[294] While it is true that this is a compelling interest, the means of achieving this interest are flawed.[295] While people suffering from mental illness are more likely to attempt suicide and, in some situations, are more likely to commit an act of violence, preventing only individuals who have been involuntarily committed from owning firearms leaves many individuals who are at risk for committing violence either towards themselves or others able to still purchase them.[296] This leads to commenters questioning why the government has chosen to draw the line here.[297] Why does this prohibition not include individuals who

286. Swanson, McGinty, Fazel & Mays, *supra* note 15, at 367.

287. *Id.*

288. Metzl & MacLeish, *supra* note 281, at 240.

289. *Id.* ("For instance, the US media diagnosed shooter Adam Lanza with schizophrenia in the days following the tragic school shooting at Sandy Hook elementary school in Newtown, Connecticut, in December 2012. 'Was Adam Lanza an undiagnosed schizophrenic?' asked *Psychology Today*. 'Lanza's acts of slaughter . . . strongly suggest undiagnosed schizophrenia' added the *New York Times*.").

290. *Id.* ("Four assumptions frequently arise in the aftermath of mass shootings in the United States: (1) that mental illness causes gun violence, (2) that psychiatric diagnosis can predict gun crime, (3) that shootings represent the deranged acts of mentally ill loners, and (4) that gun control 'won't prevent' another Newtown (Connecticut school mass shooting).").

291. *Id.* at 241.

292. *Id.* at 240.

293. Sanburn, *supra* note 133; *see* GUN VIOLENCE ARCHIVE, *supra* note 9.

294. Tyler v. Hillsdale Cnty. Sheriff's Dep't, 837 F.3d 678, 693 (6th Cir. 2016).

295. *Id.*

296. *See* Vernick, McGinty & Rutkow, *supra* note 33, at 77.

297. *See generally* Swanson, McGinty, Fazel & Mays, *supra* note 15, at 366; Metzl & MacLeish, *supra* note 281, at 240.

have been voluntarily committed? Why not prohibit everyone who has been diagnosed with any form of mental illness from possessing a firearm?

It could be argued that because most states utilize a dangerousness criterion in determining whether involuntary commitment is necessary, this targets the people who are most likely to commit an act of violence either against themselves or others; however, this argument does not consider the fact that this system is not perfect.[298] It would be very easy for individuals to slip through the cracks of the system.[299] A large portion of the homeless population suffer from some kind of mental illness.[300] Who will bring them in to be evaluated for involuntary commitment when they start having suicidal thoughts or put themselves in danger? The United States' mental health system has left many people to suffer in silence,[301] and basing gun control regulations on who is able to obtain treatment, whether it be voluntary or involuntary, is plainly insufficient.[302]

It may further be argued that any type of gun control is a step in the right direction. An issue arises in that these regulations are not effective and are not aimed at the right population.[303] As mentioned previously, the people committing violent crimes are not the ones that these regulations target.[304] Individuals with mental illness make up a small percentage of the people who are actually committing violent crimes and an even smaller portion of the people committing gun-related homicides.[305] By only targeting the mentally ill with gun control legislation, the government is not only putting the public at risk, but also furthering a harmful social stigma against individuals with mental illnesses.[306]

As such, a lifetime ban on the Second Amendment based solely on a prior involuntary commitment should be deemed unconstitutional by the Supreme Court. Judge Bumatay's dissenting opinion in the rejection of Duy Mai's petition for rehearing provides beneficial insight into the failures and issues of § 922(g)(4) in its prohibition of firearm ownership for those who had been previously involuntarily committed.[307] He wrote that denying this class of individuals their Second Amendment rights went against the "text, history, and tradition of the Second Amendment."[308] No matter how long a person spent in commitment, no matter their mental soundness, and no matter their age at the time of their commitment, the government is able to permanently deprive an individual of a constitutional right.[309] Judge Bumatay states that by considering statistics that have no bearing on Mai's circumstances and other's individual

298. CVN & NCMW Press Release, *supra* note 24.
299. Testa & West, *supra* note 38, at 35.
300. *Id.*
301. *See generally* CVN & NCMW Press Release, *supra* note 24.
302. Nuwer, *supra* note 274.
303. *See discussion supra* Section III.C.
304. *Id.*
305. Nuwer, *supra* note 274.
306. Mai v. United States, 974 F.3d 1082, 1084 (9th Cir. 2020) (Bumatay, J., dissenting).
307. *Id.* at 1083–84.
308. *Id.*
309. *Id.*

circumstances, the courts were falling into the mindset of "once mentally ill, always mentally ill."[310]

There is no denying that the government has an important objective in preventing suicide and other acts of gun violence.[311] The issue lies in the way that the government has chosen to go about trying to achieve this object.[312] Instead of working to implement gun control that truly works to impose strict gun regulations that would ultimately keep the public safe, lawmakers instead chose to focus on a small portion of the population, who are often not the ones creating the issue at hand.[313] When a mass shooting is committed, 48% of Americans blame the mental health system rather than easy access to firearms,[314] which, in turn, leaves many Americans to believe that implementing effective gun control is ultimately hopeless.[315] Putting the entire focus of gun regulation solely on the mentally ill serves as a smokescreen to the real issues surrounding gun ownership and puts the public's safety at risk as incidences of mass shootings and other forms of gun violence continue to increase.[316]

Drawing the line at those who have been involuntarily committed is arbitrary and lacks evidence to support the notion that an involuntary commitment is an accurate predictor for future acts of violence.[317] A more appropriate approach to regulating firearms for those who are mentally ill would be to create a set amount of time that must pass after any type of commitment, whether it be voluntary or involuntary. A set time limit after any type of commitment would allow the government to further its objective in preventing gun violence without completely stripping those with mental illness of their constitutional rights.[318] Furthermore, the government should enact new regulations that focus on evidence-based risk factors for violence rather than mental health status.[319] This system would encompass more people who could potentially be at risk for committing an act of violence against themselves or others as it would ban people temporarily from possessing a firearm for violent misdemeanors, driving while intoxicated, and misdemeanors involving a controlled substance.[320]

310. *Id.* at 1084.

311. Tyler v. Hillsdale Cnty. Sheriff's Dep't, 837 F.3d 678, 693 (6th Cir. 2016) (finding that the government's objective in preventing crimes and firearm deaths was legitimate and compelling).

312. *See id.* at 698–99 ("We cannot conclude, based on the current record, that the government has carried its burden to establish a reasonable fit between the important goals of reducing crime and suicides and § 922(g)(4)'s permanent disarmament of all persons with a prior commitment. 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 abuse. Indeed, Congress's evidence seems to focus solely on the risk posed by those presently mentally ill and who have been recently committed. Any prospective inference we may draw from that evidence is undercut by Congress's recognition, in the 2008 NICS Amendments, that a prior involuntary commitment need not be a permanent impediment to gun ownership.").

313. Nuwer, *supra* note 274 (explaining that people with mental illnesses only perpetrate 1% of gun violence).

314. Swanson, McGinty, Fazel & Mays, *supra* note 15, at 374.

315. Metzl & MacLeish, *supra* note 281, at 240.

316. Swanson, McGinty, Fazel & Mays, *supra* note 15, at 371; *see* Thrush, *supra* note 11.

317. Metzl & MacLeish, *supra* note 281, at 243.

318. Swanson, McGinty, Fazel & Mays, *supra* note 15, at 374.

319. *Id.*

320. *Id.*

Additionally, allowing people who satisfy the requirements of their state's relief-from-disabilities program to reinstate their Second Amendment rights even if they had been previously committed involuntarily to a psychiatric institution would consider an individual's rehabilitation and prevent the government from furthering the notion that all mental illnesses are permanent. As a result of implementing these recommendations, the government would be taking positive steps towards instating effective gun control that addresses the potential risks that arise with mental illness while still maintaining the constitutional rights of these individuals. These recommendations would take into account the concerns raised by the Third and Ninth Circuits while still following the approach laid out by the Sixth Circuit, thus rectifying the circuit split.[321]

V. CONCLUSION

There is a circuit split among the Third, Sixth, and Ninth Circuits on whether a lifetime ban on firearm ownership for those who have been involuntarily committed is constitutional.[322] This Note argues that the Supreme Court should act in accordance with the Sixth Circuit and find a lifetime ban on firearm ownership unconstitutional. Additionally, it argues that legislation should be passed to implement stricter gun control laws for all Americans, including individuals who suffer from a mental illness, no matter their commitment status. Furthermore, this Note recommends that legislation be imposed that requires a waiting period between any kind of psychiatric commitment or mental health episode and the purchase of a firearm. The current gun control legislation is ineffective as it places too much importance on the mental health status of individuals and relies too heavily on predictions of future acts of violence rather than working to impose safe limitations on gun handling and ownership for all.[323] Firearm violence is a serious issue in the United States,[324] but the discussion in recent years has focused solely on mental illness, which has slowed the progress in implementing effective gun control.[325]

321. Charles, *supra* note 6.
322. *Id.*
323. *See generally* Metzl & MacLeish, *supra* note 281, at 240.
324. *See* GUN VIOLENCE ARCHIVE, *supra* note 9.
325. *See generally* Metzl & MacLeish, *supra* note 281, at 240.