IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DANIEL BINDERUP, Plaintiff, v. ERIC H. HOLDER, JR., et al., Defendants.	)	Case. No. 5:13-CV-6750-JKG

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Now comes Plaintiff Daniel Binderup, by and through undersigned counsel, and pursuant to Fed. R. Civ. P. 56, moves this Honorable Court for Summary Judgment. The motion is made upon the brief and exhibits filed in support thereof, the record in this case, and any argument the Court may hear.

Dated: March 10, 2014

Respectfully submitted,

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I hereby certify that on this 10th day of March, 2014, I caused the foregoing documents to be served via e-mail and via electronic case filing, as follows:

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MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Now comes Plaintiff Daniel Binderup, by and through undersigned counsel, and submits his Memorandum of Points and Authorities in Support of his Motion for Summary Judgment.

Dated: March 10, 2014

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MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

INTRODUCTION

By definition, virtually every criminal offense involves regrettable conduct. But not every misdemeanor violation warrants a permanent lifetime prohibition on the exercise of fundamental Second Amendment rights.

Daniel Binderup has not lived a blameless life. Years ago, he conducted an extramarital affair with a 17-year old—old enough to legally consent to sex, yet shy of her 18th birthday. Binderup long ago completed his sentence—consisting of a fine and probation—reconciled with his wife, and resumed his place as an upstanding member of the community. The state court has approved, with the prosecution's blessing, the restoration of Binderup's fundamental Second Amendment rights.

But Binderup remains unable to exercise his rights, owing to Defendants' interpretation of the so-called federal "felon-in-possession" law. That interpretation does not stand up to closer inspection. And were it to apply, it would do so in violation of Binderup's fundamental rights. In either event, Binderup is entitled to declaratory and injunctive relief.

STATEMENT OF FACTS

The parties disagree on the law, but the basic facts stand beyond dispute.

1. *Daniel Binderup's Personal History*

Daniel Binderup, residing in Manheim, Lancaster County, Pennsylvania, presently intends to purchase and possess a handgun and long gun for self-defense within his own home. Binderup Decl., ¶¶ 1, 2. Binderup is over the age of 21, is not under indictment, has never been convicted of a felony or misdemeanor crime of domestic violence, is not a fugitive from justice, is not an unlawful user of

or addicted to any controlled substance, has not been adjudicated a mental defective or committed to a mental institution, has not been discharged from the Armed Forces under dishonorable conditions, has never renounced his citizenship, and has never been the subject of a restraining order relating to an intimate partner. *Id*. ¶ 3.

On July 15, 1998, Binderup was convicted by the Court of Common Pleas of Lancaster County, Pennsylvania, of one count of 18 Pa. C.S.A. § 6301, Corruption of Minors, a first degree misdemeanor. *Id*. ¶ 4; Exh. A; Def. Exh. 2. In Pennsylvania, a first degree misdemeanor is punishable by up to five years' imprisonment. 18 Pa. C.S.A. § 1104(1).[1]

The charge stemmed from a fully consensual romantic affair that Binderup had conducted with a 17-year-old female. Binderup Decl., ¶ 5. No allegations existed that the relationship was anything other than fully consensual, *id*., and under Pennsylvania law, the female in question was old enough to consent to a romantic relationship with Binderup, *see* 18 Pa. C.S.A. § 3122.1. However, as the female was shy of her 18th birthday, the state prosecuted Binderup for allegedly corrupting her morals.

Binderup pled guilty and was sentenced to three years probation, which he successfully completed; and assessed $1,425.70 in costs and $450 in restitution, which he paid. Binderup Decl., ¶ 6; Exh. A. Binderup acknowledges that his behavior was wrong. Binderup Decl., ¶ 7. Fortunately, his wife forgave him, and they remain happily married today, in their 40th year together, having successfully raised two children. *Id.* In 2001, Binderup sold his business, a bakery of 12 years that had employed 8 people. He has since successfully owned and operated his own plumbing business.

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[1]As indicated throughout Defendants' Exhibit 2, at pp. 2 (sentencing order), 3 (plea agreement), 4 (guilty plea), 7 (information), Binderup was charged and convicted under the general "M1"— misdemeanor—provision of 18 Pa. C.S.A. § 6301(a)(1)(i), *not* subdivision (ii) relating to felony non-consensual sex offenses.

Id. Binderup has not been convicted of any further offenses. *Id*.

Binderup's conviction disabled him from possessing firearms, pursuant to 18 Pa. C.S.A. § 6105(a) and, as interpreted by Defendants' predecessors, 18 U.S.C. § 922(g)(1). Accordingly, upon his conviction, Binderup immediately sold his firearms to a licensed dealer, and his handgun carry license was revoked. Binderup Decl., ¶ 6.

On June 1, 2009, the Court of Common Pleas of Lancaster County, Pennsylvania, granted Binderup's petition for removal of disqualification from owning or possessing firearms, pursuant to 18 Pa. C.S.A. § 6105(d). *Id*. ¶ 8; Exh. B, *Binderup* v. *Restoration of Firearm Rights*, Court of Common Pleas, Lancaster County, Pennsylvania Misc. Docket No. MD 314-2009. Referencing the "agreement reached between the Commonwealth and Petitioner [Binderup]," the court ordered and directed that Binderup's firearms disability owing to his Corruption of Minors conviction be "lifted" and that Binderup's "firearms right to possess, use, control, sell, transfer or manufacture under the laws of the Commonwealth of Pennsylvania is hereby granted," although "[t]his relief does not exempt Petitioner from any federal statutes or restrictions." Exh. B.

2. *The Regulatory Scheme*

Title 18, United States Code § 922(g)(1) prohibits the possession of firearms by any person convicted of "a crime punishable by imprisonment for a term exceeding one year." Violation of this provision is a felony criminal offense punishable by fine and imprisonment of up to ten years. See 18 U.S.C. § 924(a)(2).

The term "crime punishable by imprisonment for a term exceeding one year" "does not include . . . (B) any State offense classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of two years or less." 18 U.S.C. § 921(a)(20). Defendants have taken the position that the term "crime punishable by imprisonment for a term exceeding one

year" includes state misdemeanors carrying statutory sentencing ranges exceeding two years, without regard to any mandatory minimum sentence, such as 18 Pa. C.S.A.§ 6301. Without examination, and before the Second Amendment's recognition as an individual right, the Third Circuit accepted this characterization. *United States* v. *Essig*, 10 F.3d 968 (3d Cir. 1993).

Title 18, United States Code § 922(d)(1) prohibits anyone from transferring firearms or ammunition to anyone whom the transferor has reason to know was convicted of "a crime punishable by imprisonment for a term exceeding one year." Violation of this provision is a felony criminal offense punishable by fine and imprisonment of up to ten years. See 18 U.S.C. § 924(a)(2).

All firearms purchasers within the United States who do not possess a Federal Firearms License, meaning, virtually all ordinary civilian consumers of firearms, must complete "Form 4473, Firearms Transaction Record Part I – Over-The-Counter," administered under Defendants' authority, in order to purchase a firearm. 27 C.F.R. § 478.124. Question 11(c) on Form 4473 asks:

> Have you ever been convicted in any court of a felony, or any other crime, for which the judge could have imprisoned you for more than one year, even if you received a shorter sentence including probation?

Firearms Transaction Record Part I–Over the Counter, available at http://www.atf.gov/files/forms/download/atf-f-4473-1.pdf (last visited Nov. 8, 2013).

Defendants instruct firearm dealers not to sell firearms to anyone who answers "yes" to this question. Indeed, Defendants instruct firearm dealers to refrain from even running a background check on anyone who answers yes to this question, and simply to deny the transaction on the basis of that answer. BATF FFL Newsletter, May, 2001, Issue I, at 14, available at http://www.atf.gov/files/publications/newsletters/ffl/ffl-newsletter-2001-05.pdf (last visited Nov. 11, 2013); BATF FFL Newsletter, September 1999, Issue II, at 2, available at http://www.atf.gov/files/publications/newsletters/ffl/ffl-newsletter-1999-09.pdf (last visited Nov. 11, 2013).

3. *Defendants' Thwarting of Plaintiff's Presently Intended Transactions*

Binderup desires and intends to possess firearms for self-defense and for defense of his family. Binderup Decl., ¶ 2. Binderup refrains from obtaining a firearm only because he reasonably fears arrest, prosecution, incarceration and fine, under 18 U.S.C. § 922(g)(1), instigated and directed by Defendants, should he follow through with his plan to obtain a firearm. *Id*. ¶ 9. Binderup refrains from purchasing a firearm from a private party, because doing so would subject him to arrest, prosecution, fine, and incarceration, at Defendants' instigation and direction, for violating 18 U.S.C. § 922(g)(1). *Id*.

Considering Defendants' interpretation of federal law, Binderup is unwilling to state on Form 4473 that he has not, in fact, been convicted of a crime punishable by imprisonment for over one year. *Id*. ¶ 10. But should Binderup answer, on Form 4473, that he has been convicted of a crime punishable by imprisonment for over one year, any federal firearms licensee who follows Defendants' directives would refuse to sell Binderup a firearm on account of the fact that Binderup is prohibited from possessing firearms under 18 U.S.C. § 922(g)(1).[2] Thus, Binderup suffers the on-going harm of being unable to obtain firearms from licensed federal firearms dealers, which Binderup would, in fact, obtain but for Section 922(g)(1)'s enforcement. SUF 18.

On October 5, 2013, Binderup approached a federal firearms licensee, expressed his desire to purchase a firearm, and inquired as to whether it was possible for him to purchase a firearm considering the fact that he had been convicted of a crime that the federal government would assert is punishable by over a year's imprisonment. The dealer confirmed that Binderup could not purchase a firearm. Binderup Decl. ¶ 11.

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[2]All further statutory references are to Title 18 of the United States Code.

SUMMARY OF ARGUMENT

As the Third Circuit instructs, Section 922(g)(1)'s "felon-in-possession" prohibition is not constitutional where its application would be inconsistent with the historical practice of barring firearms to dangerous individuals. Daniel Binderup committed a non-violent misdemeanor offense in the mid-1990s, for which he has been fully rehabilitated. A state court has determined—with the prosecution's consent—that Binderup is safe and trustworthy with firearms. However proper the felon-in-possession might generally be, persisting in barring Binderup's access to firearms on the basis of his long-ago non-violent misdemeanor conviction violates his Second Amendment rights.

And yet, the Court should hesitate to reach the constitutional issue, as grave doubt exists whether Section 922(g)(1)'s terms are in the first instance applicable to misdemeanors of this type. This Court should consider what the Third Circuit has apparently yet not—the fact that a consistent, careful reading of the plain statutory text excludes from the "felon" prohibition state misdemeanors lacking a mandatory minimum sentence exceeding two years. And even if Third Circuit precedent bars that argument, such precedent's current validity would be questionable, as it preceded the Second Amendment right's recognition.

The Government believes that Section 922(g)(1)'s prohibition, read in light of Section 921(a)(20)(B)'s exemption, extends to state misdemeanors punishable by sentences *exceeding* two years. Indeed, courts have apparently assumed as much without examination. Respectfully, this interpretation misreads the plain language of the statutory text. The *exemption* of Section 921(a)(20)(B) does not *include* crimes capable of being punished by more than 2 years; rather, on its face, it *excludes*, from Section 921(g)(1)'s reach of all crimes punishable by over one year in jail, misdemeanors that are punishable by terms of "less than two years"—at least, if the term "punishable" is given a consistent meaning in both sections. The rule of lenity, and the constitutional

avoidance doctrine, compel close scrutiny of the relevant statutory text before proceeding to the serious constitutional problems presented by barring Binderup's exercise of his fundamental rights.

In either event, however, the outcome is the same. Binderup is entitled to relief barring Section 922(g)(1)'s application against him on account of his 1998 misdemeanor.

ARGUMENT

I. SECTION 922(G)(1) DOES NOT BAR BINDERUP FROM POSSESSING FIREARMS.

A. Ambiguous Criminal Statutes Are Afforded the Most Lenient Construction.

"[B]ecause of the seriousness of criminal penalties, and because criminal punishment usually represents the moral condemnation of the community, legislatures and not courts should define criminal activity." *United States* v. *Bass*, 404 U.S. 336, 348, 92 S. Ct. 515, 523, 30 L. Ed. 2d 488, 497 (1971).

> It is an ancient rule of statutory construction that penal statutes should be strictly construed against the government . . . and in favor of the persons on whom penalties are sought to be imposed . . . any reasonable doubt about the meaning is decided in favor of anyone subjected to a criminal statute.

Norman J. Singer, 3 SUTHERLAND ON STATUTORY CONSTRUCTION § 59:3, at 167-75 (7th ed. 2008) ("SUTHERLAND") (collecting cases); see also *id*. at 187-88 (discussing Supreme Court's adoption of the rule of lenity). Courts construe ambiguous criminal statutes narrowly to avoid "making criminal law in Congress's stead." *United States* v. *Santos*, 553 U.S. 507, 514, 128 S. Ct. 2020, 2025, 170 L. Ed. 2d 912, 920 (2008).

> In various ways over the years, we have stated that when choice has to be made between two readings of what conduct Congress has made a crime, it is appropriate, before we choose the harsher alternative, to require that Congress should have spoken in language that is clear and definite.

Bass, 404 U.S. at 347-48, 92 S. Ct. at 522, 30 L. Ed. 2d at 496 (quotation omitted). "[A]mbiguity concerning the ambit of criminal statutes should be resolved in favor of lenity." *Jones* v. *United*

States, 529 U.S. 848, 858, 120 S. Ct. 1904, 1912, 146 L. Ed. 2d 902, 912 (2000) (quotation omitted).

B. Section 922(g)(1) Does Not Apply to Misdemeanors Capable of Being Punished By Less Than Two Years' Imprisonment.

Courts generally refer to Section 922(g)(1) as the "felon in possession" statute, though the statute itself does not use that terminology. See*, e.g.*, *Davis* v. *United States*, __ U.S. __, 131 S. Ct. 2419, 2425-26, 180 L. Ed. 2d 285, 293 (2011) ("possession of a firearm by a convicted felon"); *Sykes* v. *United States*, __ U.S. __, 131 S. Ct. 2267, 2270, 180 L. Ed. 2d 60, 67 (2011). Indeed, Section 922(g)(1)'s statutory scheme is somewhat convoluted.

On its face, the provision apparently bars firearms possession by anyone convicted of "a crime punishable by imprisonment for a term exceeding one year," implicating all crimes regardless of their classification as felonies or misdemeanors. But "the words of § 922(g)(1) do not always mean what they say." *Essig*, 10 F.3d at 971. "[C]rime punishable by imprisonment for a term exceeding one year" "does not include . . . (B) any State offense classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of two years or less." Section 921(a)(20).

Binderup's crime, a violation of 18 Pa. C.S.A. § 6301, is a misdemeanor for which a person might receive a five year sentence of imprisonment. But Binderup could—and did—receive a sentence "of two years or less." Section 921(a)(20)(B). Whether Binderup's crime qualifies for the two-year exclusion turns on the interpretation of "punishable"—a term lending itself to multiple understandings.

"[T]he starting point for interpreting a statute is the language of the statute itself." *Prestol Espinal* v. *AG of the United States*, 653 F.3d 213 (3d Cir. 2011) (citation omitted). In general terms, "punishable" is defined as "deserving of, or liable to, punishment : capable of being punished

by law or right." WEBSTER'S NEW INTERNATIONAL DICTIONARY 1843 (3d ed. 1961). But its meaning is also subject to significant variations, depending on whether used in reference to a person (*e.g.*, "a punishable offender") or an offense (*e.g.*, "a crime punishable by death"). Black's Law Dictionary recognizes this distinction with separate entries for each—the former meaning "subject to a punishment," but the latter defined as "giving rise to a *specified* punishment." BLACK'S LAW DICTIONARY, 1353 (9th ed., 2009) (emphasis added).

The latter interpretation usually supplies the more punitive outcome. If "punishable by a term of imprisonment of two years or less" refers to specific terms, Binderup's offense does not qualify for Section 921(a)(20)(B)'s exclusion—as used in this sense, two years implies a maximum sentence, and Binderup's offense was punishable by a term of five years. But if "punishable" means "capable of being punished," then Binderup's offense comes within the meaning of the exclusion, because it was "capable of being punished by" a sentence "of two years or less," as demonstrated by Binderup's actual sentence. "Two years or less" is included within "five years or less," "ten years or less," and "lifetime or less."Under this view, state misdemeanors come within the "felon in possession" ban only if a mandatory minimum provision requires a sentence exceeding two years.

This approach also has the benefit of not adding words to Congress's statute. Section 921(a)(20)(B) does not provide, "punishable by *only* a term of imprisonment of two years or less," or "punishable by a term of imprisonment of *no more than* two years or less." The section makes perfect sense as written. If a misdemeanor can be punished by two years or less, there is no prohibition. If a misdemeanor *cannot* be punished by two years or less, e.g., because it is extremely serious and warrants a higher mandatory minimum sentence, then "felon" treatment applies. This outcome may not be as harsh a result as the government might prefer, but it seems to be what Congress has provided.

While the rule of lenity should have compelled courts to take the "capable of being punished" approach, it does not appear that anyone advanced the argument—at least not under Section 921(a)(20)(B). Accordingly, in *Essig*, the Third Circuit readily accepted, without examination, that 18 Pa. C.S. § 6301's five year maximum term places it within Section 922(g)(1)'s ambit. "Any potential one year/two year conflict between § 922(g)(1) and § 921(a)(20)(B) has no adverse effect on Essig because his state conviction is punishable by imprisonment for up to five years." *Essig*, 10 F.3d at 971.

But presciently foreshadowing future cases, such as this, the Third Circuit cautioned that the conflict between the two sections could become relevant:

> Essig ignores the statute's peculiar equation of one year with two years when state crimes are involved, and so will we hereafter because it has no effect on this case. It is not logically relevant to any of the arguments made by Essig or on his behalf. It may not be possible, however, to ignore it in all cases.

Id. at 971 n.9. *Essig* considered (and rejected) only arguments not advanced here—that the "sentence actually imposed" controls the term, *id.* at 973, and that "retention of two of the three core civil rights to which § 921(a)(20) refers" suffices for restoration, *id.* at 975; see also *Dutton* v. *Pennsylvania*, 503 Fed. Appx. 125, 127 (3d Cir. 2012) (per curiam); cf. *United States* v. *Schoolcraft*, 879 F.2d 64, 70 (3d Cir. 1989); *United States* v. *Di Pasquale*, 677 F.2d 355 (3d Cir. 1982).

Indeed, the relevant Third Circuit precedent does not speak with one voice on the subject of how the term "punishable" is defined. Section 922(g)(1)'s use of the term "punishable" is given the broader meaning, referencing potentiality, when the Court seeks to determine which crimes are *included* within the prohibition. See, *e.g.*, *United States* v. *Leuschen*, 395 F.3d 155, 158 (3d Cir. 2005) ("the only qualification imposed by § 922(g)(1) is that the predicate conviction carry a

potential sentence of greater than one year of imprisonment") (emphasis added); *United States* v. *Corle*, 222 Fed. Appx. 121, 123 (3d Cir. 2007).

Whatever "punishable" means, it must mean the same thing in Section 922(g)(1) that it means in Section 921(a)(20)(B). It cannot be that "punishable" means "capable of being punished" when looking to include offenses in a criminal prohibition, but refers to specific terms of punishment when defining an exclusion from that same prohibition. And while either definition achieves the same effect if used in Section 922(g)(1), which speaks of a "term *exceeding* one year," (emphasis added), the different definitions yield different results when utilized in Section 921(a)(20)(B)'s context, referring to "a term of imprisonment of two years *or less*" (emphasis added).

At first glance, it would appear that this Court is bound by *Essig*'s utilization of the specific term approach in reading 18 Pa. C.S.A. § 6301 out of Section 921(a)(20)(B)'s exclusion. But the *Essig* court had the foresight to acknowledge that the issue was complicated and subject to future litigation. Moreover, this Court is also bound by *Leuschen*, decided later, and confirming the potentiality-based definition of "punishable by" as used in Section 922(g)(1).

Respectfully, Binderup urges the Court to follow *Leuschen* in defining "punishable by" as referencing potential sentences. This approach finds precedential support, albeit problematic in its own way, in the context of Section 921(a)(20)(B)'s misdemeanor exclusion. A recent D.C. Circuit case, in which the Government successfully advanced the "capable of being punished" approach to Section 921(a)(20)(B) that Binderup here endorses, produced an internally contradictory but nonetheless instructive outcome. *Schrader* v. *Holder*, 704 F.3d 980 (D.C. Cir. 2012).

In 1968, Navy enlistee Jeff Schrader was convicted of common-law misdemeanor assault in Maryland, owing to a scuffle with a gang member who had previously assaulted him. Over forty years later, the Government disarmed Schrader under Section 922(g)(1), arguing that the common

law's lack of statutory sentencing provisions meant that only the Eighth Amendment limited Schrader's potential sentence. Schrader sued, arguing *inter alia* that "punishable" refers to specific statutory terms, and thereby does not extend to common law crimes.

The D.C. Circuit disagreed. After reasoning that because *some* common-law misdemeanor offenses were serious, Congress could not have intended to exclude them from the felon-in-possession ban, the court held that "the common-sense meaning of the term 'punishable,' . . . refers to any punishment capable of being imposed, not necessarily a punishment specified by statute." *Schrader*, 704 F.3d at 986. Inexplicably, the court then held that "because [common law] offenses are also capable of being punished by *more than two years'* imprisonment, they are ineligible for section 921(a)(20)(B)'s misdemeanor exception." *Schrader*, 704 F.3d at 986 (emphasis added). The Fourth Circuit had previously held likewise. *United States* v. *Coleman*, 158 F.3d 199, 203 (4th Cir. 1998) (en banc).

Respectfully, the D.C. Circuit, like the Fourth Circuit before it, misread the statutory text. Where Congress wrote, "two years or less," 18 U.S.C. § 921(a)(20)(B), the court saw the words "more than two years." *Schrader*, 704 F.3d at 986. These are not the same thing. Under the "capable of being punished" approach, *id.*, Schrader should have prevailed—a common-law offense is certainly "capable of being punished," *id.*, by "two years or less," Section 922(a)(20)(B), as demonstrated by Schrader's sentence of no jail time.

In accordance with *Leuschen*, and the Government's successful arguments in *Schrader* and *Coleman*, this Court should hold that "punishable" as used in Section 921(a)(20)(B) means the same thing that it means in Section 922(g)(1): "capable of being punished." Binderup's crime, a

state misdemeanor capable of being punished "by a term of imprisonment of two years of less," *id.*, falls outside the reach of Section 922(g)(1).

C. Courts Must Avoid Constitutional Questions Where Alternative Statutory Interpretations Raising No Constitutional Concerns Are "Fairly Possible."

As shown below, applying the felon-in-possession ban against Binderup raises serious constitutional questions. This is reason alone to construe the ban narrowly in light of the two-year misdemeanor exemption. "[I]t is a well-established principle governing the prudent exercise of this Court's jurisdiction that normally the Court will not decide a constitutional question if there is some other ground upon which to dispose of the case." *Northwest Austin Mun. Util. Dist. No. One* v. *Holder*, 557 U.S. 193, 206, 129 S. Ct. 2504, 2513, 174 L. Ed. 2d 140, 151 (2009) (quotation omitted). "[W]hen a statute is susceptible of two constructions, by one of which grave and doubtful constitutional questions arise and by the other of which such questions are avoided, our duty is to adopt the latter." *Harris* v. *United States*, 536 U.S. 545, 555, 122 S. Ct. 2406, 2413, 153 L. Ed. 2d 524, 536 (2002) (quotation omitted).

"[T]he fact that one among alternative constructions would involve serious constitutional difficulties is reason to reject that interpretation in favor of another." 2A Sutherland § 45.11, at 87 (collecting cases); see *United States* v. *Rehlander*, 666 F.3d 45, 49 (1st Cir. 2012) ("statutes are to be read to avoid serious constitutional doubts").

Accordingly, "[t]he question is not whether" an alternative statutory interpretation "is the most natural interpretation of the [law], but only whether it is a 'fairly possible' one. As we have explained, 'every reasonable construction must be resorted to, in order to save a statute from unconstitutionality.'" *Nat'l Fed'n of Indep. Bus.* v. *Sebelius*, __ U.S. __, 132 S. Ct. 2566, 2594, 183 L. Ed. 2d 450, 483 (2012) (Roberts, C.J.) (quotations omitted); cf. *PDK Labs. Inc.* v. *United*

States DEA, 362 F.3d 786, 799 (D.C. Cir. 2004) (Roberts, J., concurring in part and concurring in the judgment) ("if it is not necessary to decide more, it is necessary not to decide more").

D. Precedent Predating the Second Amendment Right's Recognition Cannot Support Constitutionally Dubious Interpretations of the Felon-In-Possession Ban.

The constitutional avoidance doctrine also informs the courts' understanding of what constitutes precedent. Older precedent can be effectively undermined by new constitutional considerations. Thus, even if *Essig* controlled the question of whether Binderup's offense triggers Section 922(g)(1) prior to the Supreme Court's recent revival of the Second Amendment, this Court should consider what effect these recent, significant decisions have on the vitality of *Essig*, which was decided without their benefit.

"[T]he district court is bound by the decision of the court of appeals *absent intervening Supreme Court precedent* . . . ." *Coca-Cola Bottling Co.* v. *Coca-Cola Co.*, 988 F.2d 386, 411 n.25 (3d Cir. 1993) (emphasis added). "A court need not blindly follow decisions that have been undercut by subsequent cases . . . ." *United States* v. *Burke*, 781 F.2d 1234, 1239 n.2 (7th Cir. 1985) (citations omitted). Indeed, a failure to recognize that intervening Supreme Court precedent rendered obsolete a circuit court decision has supplied grounds for summary reversal. *United States v. Nachtigal*, 507 U.S. 1, 113 S. Ct. 1072, 122 L. Ed. 2d 374 (1993).

Obsolescence can come not only by way of directly controlling new precedent, but also in (admittedly rare) cases where "authority that postdates the original decision, although not directly controlling, nevertheless offers a sound reason for believing that the former panel, in light of fresh developments, would change its collective mind." *United States* v. *Rodriguez*, 527 F.3d 221, 255 (1st Cir. 2008). The announcement of, effectively, a new constitutional right would predictably have this effect. When the Third Circuit decided *Essig*, and concluded without apparent examination that

a corruption of minors misdemeanor conviction triggers Section 921(g)(1), circuit precedent had held that the Second Amendment "was not adopted with individual rights in mind." *United States* v. *Tot*, 131 F.2d 261, 266 (3d Cir. 1942), *rev'd on other grounds*, 319 U.S. 463, 63 S. Ct. 1241, 87 L. Ed. 1519 (1943); see also *United States* v. *Rybar*, 103 F.3d 273, 286 (3d Cir. 1996). The *Essig* court would not have thought of construing Section 922(g)(1) in such manner as to avoid raising difficult Second Amendment questions. Since *Essig*, however, the Supreme Court has corrected the "collective right" error. *District of Columbia* v. *Heller*, 554 U.S. 570, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008).

Directly on-point stands *Rehlander*, supra, 666 F.3d 45, in which a First Circuit panel narrowed its prior construction of a federal firearm prohibition and adopted an alternative statutory construction so as to avoid questions under *Heller*. The Second Amendment "claim is sufficiently powerful that the doctrine of constitutional avoidance requires us to revisit our prior interpretation of section 922(g)(4)." *Id.* at 47. Likewise here, *Essig*'s implicit reading of the two-year misdemeanor exemption as defining a limitation rather than a possibility ("punishable by") sweeps into the "felon-in-possession" ban a wide array of non-violent misdemeanors, committed by people at very low risk of recidivism, who can be expected to present serious Second Amendment claims. Defendants may be comfortable with that outcome, but the Third Circuit is not. See *United States* v. *Barton*, 633 F.3d 168 (3d Cir. 2011) (setting out process for as-applied challenges to Section 922(g)(1)).

The constitutional avoidance doctrine counsels the narrower, yet quite fairly possible reading of Section 922(a)(20)(B). And circuit precedent can be no impediment in this regard.

II. THE SECOND AMENDMENT BARS SECTION 922(G)(1)'S APPLICATION AGAINST BINDERUP ON ACCOUNT OF HIS MISDEMEANOR.

Section 922(g)(1) is generally acknowledged to be constitutional on its face as a presumptively-lawful measure. *Barton*, 633 F.3d at 172. However,

> the Government concede[d] [that] *Heller*'s statement regarding the presumptive validity of felon gun dispossession statutes does not foreclose [an] as-applied challenge. By describing the felon disarmament ban as 'presumptively' lawful, the Supreme Court implied that the presumption may be rebutted.

Id. at 173 (citing *Heller*, 554 U.S. at 626-27 n.26,128 S.Ct. at 2817 n.26,171 L.Ed.2d at 678 n.26).

The Third Circuit is not alone in reaching this determination. Nearly all federal courts to have considered the question agree, as did the Government in *Barton*, that *Heller* recognizes as-applied Section 922(g)(1) challenges. "*Heller* referred to felon disarmament bans only as 'presumptively lawful,' which, by implication, means that there must exist the possibility that the ban could be unconstitutional in the face of an as-applied challenge." *United States* v. *Williams*, 616 F.3d 685, 692 (7th Cir. 2010); *United States* v. *Moore*, 666 F.3d 313, 319 (4th Cir. 2012); *United States* v. *Chester*, 628 F.3d 673, 679 (4th Cir. 2010); *Schrader*, 704 F.3d at 991.

The courts' conclusion that individuals may bring as-applied challenges to Section 922(g)(1) is reinforced when considering that Section 922(g)(1)'s presumptive validity depends on the theory that it reflects longstanding regulatory conduct. Thus, it is highly relevant that the same Congress that enacted Section 922(g)(1) also enacted Section 925(c), providing for as-applied relief. Under this provision, prohibited individuals might petition for relief upon showing that

> 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.

18 U.S.C. § 925(c). Federal district courts can review the denial of relief under this provision. *Id.* Alas, Congress has barred Defendants from expending any funds to process such claims for relief.

See, *e.g.*, *Schrader*, 704 F.3d at 982-83. In *Heller*'s wake, consistent with *Barton* and similar opinions, every claim for relief that would otherwise be presented administratively in the first instance under Section 925(c) is now a federal case. This appears to be an inefficient use of funds, but it is what Congress has effectively decreed.

Barton provides the roadmap for evaluating as-applied challenges to Section 922(g)(1)'s application, and guides the outcome of this case:

> *Heller* does not catalogue the facts we must consider when reviewing a felon's as-applied challenge . . . to evaluate Barton's as-applied challenge, we look to the historical pedigree of 18 U.S.C. § 922(g) to determine whether the traditional justifications underlying the statute support a finding of permanent disability in this case.

Barton, 633 F.3d at 173.

> To raise a successful as-applied challenge, Barton must present facts about himself and his background that distinguish his circumstances from those of persons historically barred from Second Amendment protections. For instance, a felon convicted of a minor, non-violent crime might show that he is no more dangerous than a typical law-abiding citizen. Similarly, a court might find that a felon whose crime of conviction is decades-old poses no continuing threat to society.

Id. at 174. While Mr. Barton's as-applied challenge failed, both *Barton* factors are present here.

A. "Traditional Justifications" Do Not Support "A Finding of Permanent Disability in This Case."

As the Third Circuit recounted, historically, only dangerous people were disarmed, Congress not extending firearms disabilities to non-violent offenders until 1961. *Id.* at 173-74. "For nearly a quarter century, § 922(g)(1) had a narrower basis for a disability, limited to those convicted of a 'crime of violence.' 'Crimes of violence' were commonly understood to include only those offenses ordinarily committed with the aid of firearms." *Id.* at 174 (quoting Kevin Marshall, *Why Can't Martha Stewart Have a Gun?*, 32 HARV. J. L. & PUB. POL'Y 695, 698 & 702 (2009)) (internal quotation marks omitted).

Plainly, Binderup's offense is not violent, nor does it involve firearms. While *some* non-violent offenses might nonetheless justify a firearms disability, at least in this circuit, violence is still the touchstone element of these cases. As the Third Circuit explained, "[c]ourts have held in a number of contexts that offenses relating to drug trafficking and receiving stolen weapons are closely related to violent crime," and those offenses thus support a firearms prohibition. *Barton*, 633 F.3d at 174 (citations omitted). Tradition supports disarmament in such cases:

> Debates from the Pennsylvania, Massachusetts and New Hampshire ratifying conventions, which were considered "highly influential" by the Supreme Court in *Heller*, 554 U.S. at 604, also confirm that the common law right to keep and bear arms did not extend to those who were likely to commit violent offenses.

Id. at 173.

Trafficking in stolen guns and drugs is obviously linked to violence, even if the conduct is not itself violent.[3] But cheating on one's wife with a 17-year-old employee, reprehensible though it may be, is not in any way linked to violence.

No evidence suggests that historically, people convicted of carrying-on consensual if illicit affairs were disarmed.[4] Binderup's crime, like all crimes, involved bad judgment—it did not involve force, or the threat of force, or coercion of any kind. Nothing about it suggests that Binderup's possession of firearms threatened society in any measure.

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[3]As the Third Circuit noted, even the gun rights of drug traffickers may be restored, citing favorably an opinion by North Carolina's Supreme Court reaching just that result. *Barton*, 633 F.3d at 174 (citing *Britt* v. *State*, 363 N.C. 546, 681 S.E.2d 320 (N.C. 2009)).

[4]Defendants argue that at common law, sex with girls under the age of ten (!) was felonious, and punishable by execution without the benefit of clergy. This sort of argument by analogy is absurd, not least because at common law, it was only a misdemeanor to have sex with girls aged 10-12, and not a crime beyond that. See discussion in Plaintiff's opposition to Defendants' motion.

B. Plaintiff Has Presented Sufficient "Facts About Himself" Demonstrating Rehabilitation.

Binderup's nearly two decades of continuing peaceful conduct confirms his possession of firearms would pose no threat today. He has no criminal convictions aside from this one misdemeanor, has sustained a healthy and stable family environment, and is a productive member of society and entrepreneur. "[H]e is no more dangerous than a typical law-abiding citizen," and "poses no continuing threat to society." *Barton*, 633 F.3d at 174. Even if there existed useful, *relevant* data regarding the recidivism rate for Binderup's offense (Defendants' data does not measure up, see Plaintiff's opposition to Defendants' motion), the *Barton* inquiry is personal—and here, satisfied.

Moreover, in our legal system, primary concern with an individual's threat to the public peace is entrusted to state authorities—and the same authorities that convicted and punished Plaintiff have determined that he should have his gun rights restored. See Exh. B.

CONCLUSION

Plaintiff's misdemeanor conviction, punishable by two years imprisonment or less, does not qualify him for a federal firearms prohibition. Moreover, the prohibition is not constitutionally applicable to Plaintiff, as his offense does not traditionally justify disarmament, and Plaintiff's particular circumstances warrant relief in any event. Plaintiff's motion for summary judgment should be granted.

Dated: March 10, 2014

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of March, 2014, I caused the foregoing documents to be served via e-mail and via electronic case filing, as follows:

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/s/ Alan Gura
Alan Gura

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DANIEL BINDERUP,	)	Case. No. 5:13-CV-6750-JKG
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
ERIC H. HOLDER, JR., et al.,	)	
	)	
Defendants.	)	

DECLARATION OF DANIEL BINDERUP

I, Daniel Binderup, am competent to state and declare the following based on my personal knowledge:

1. I reside in Manheim, Lancaster County, Pennsylvania.

2. I presently intend to purchase and possess a handgun and long gun to defend myself and my family within my own home.

3. I am over the age of 21, am not under indictment, have never been convicted of a felony or misdemeanor crime of domestic violence, am not a fugitive from justice, am not an unlawful user of or addicted to any controlled substance, have never been adjudicated a mental defective or committed to a mental institution, have never been discharged from the Armed Forces under dishonorable conditions, have never renounced my citizenship, and have never been the subject of a restraining order relating to an intimate partner.

4. On July 15, 1998, I was convicted by the Court of Common Pleas of Lancaster County, Pennsylvania, of one count of 18 Pa. C.S.A. § 6301, Corruption of Minors, a first degree misdemeanor. Exhibit A is a true and correct copy of the docket in that case.

5. The charge stemmed from a fully consensual romantic affair that I had conducted with a 17-year-old female employed at my bakery business. No allegations existed that the relationship was anything other than fully consensual.

6. I pled guilty and was sentenced to three years probation, which I successfully completed; and assessed $1,425.70 in costs and $450 in restitution, which I paid. I immediately sold my firearms to a licensed dealer, and my handgun carry license was revoked.

7. I acknowledge that my behavior was wrong. Fortunately, my wife forgave me, and we remain happily married today, in our 40th year together, having successfully raised two children. In 2001, I sold my business, a bakery of 12 years that had employed 8 people. I have since successfully owned and operated my own plumbing business. I have not been convicted of any further offenses.

8. On June 1, 2009, the Court of Common Pleas of Lancaster County, Pennsylvania, granted my petition for removal of disqualification from owning or possessing firearms, pursuant to 18 Pa. C.S.A. § 6105(d). Exhibit B is a true and correct copy of the order in that case.

9. I refrain from obtaining a firearm only because I fear arrest, prosecution, incarceration and fine, under 18 U.S.C. § 922(g)(1), instigated and directed by Defendants, should I follow through with my plan to obtain a firearm. I refrain from purchasing a firearm from a private party, because doing so would subject me to arrest, prosecution, fine, and incarceration, at Defendants' instigation and direction, for violating 18 U.S.C. § 922(g)(1).

10. Considering the government's interpretation of federal law, I am unwilling to state on Form 4473 that I have not, in fact, been convicted of a crime punishable by imprisonment for over one year. But should I answer, on Form 4473, that I have been convicted of a crime punishable by imprisonment for over one year, any federal firearms licensee who follows the government's directives would refuse to sell me a firearm.

11. On October 5, 2013, I approached a federal firearms licensee, expressed my desire to purchase a firearm, and inquired as to whether it was possible for me to purchase a firearm considering the fact that I had been convicted of a crime that the federal government would assert is punishable by over a year's imprisonment. The dealer confirmed that I could not purchase a firearm.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 1, 2014.

Daniel Binderup

COURT OF COMMON PLEAS OF LANCASTER COUNTY

DOCKET

Docket Number: CP-36-CR-0004127-1997

CRIMINAL DOCKET

Court Case

Commonwealth of Pennsylvania
v.
Daniel Richard Binderup

CASE INFORMATION

Judge Assigned: Allison, Paul K.
Date Filed: 01/01/1997 Initiation Date: 10/01/1997
OTN: F1252322
Lower Court Docket No: CR00195-97
Initial Issuing Authority:
Final Issuing Authority:
Arresting Agency: Manheim Twp Police Dept
Arresting Officer: Affiant
Case Local Number Type(s) / Case Local Number(s)

Case Local Number Type(s)	Case Local Number(s)
Criminal ID#	CR00195-97
Legacy Docket Number	84475
Legacy Docket Number	4127CR1997

STATUS INFORMATION

Case Status	Status Date	Processing Status	Arrest Date	Complaint Date
Closed	01/01/1997	Migrated Case	10/01/1997	09/30/1997

DEFENDANT INFORMATION

Date Of Birth: [redacted] City/State/Zip: Manheim, PA 17545

CASE PARTICIPANTS

Participant Type	Name
Defendant	Binderup, Daniel Richard

BAIL INFORMATION

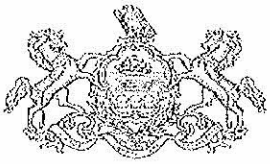
Binderup, Daniel Richard

Nebbia Status: None

Bail Action	Date	Bail Type	Percentage	Amount	Bail Posting Status	Posting Date
Set	10/01/1997	Monetary		$10,000.00		

COURT OF COMMON PLEAS OF LANCASTER COUNTY

DOCKET



Docket Number: CP-36-CR-0004127-1997

CRIMINAL DOCKET

Court Case

Commonwealth of Pennsylvania
v.
Daniel Richard Binderup

CHARGES

Seq.	Orig Seq.	Grade	Statute	Statute Description	Offense Date	OTN
1	1		**18 § 6301 §§A**	Corruption Of Minors	06/30/1996	F1252322

DISPOSITION SENTENCING/PENALTIES

Disposition
Case Event
Sequence/Description
Sentencing Judge
Sentence/Diversion Program Type
Sentence Conditions
Linked Offense - Sentence

Disposition Date
Offense Disposition
Sentence Date
Incarceration/Diversionary Period
Link Type

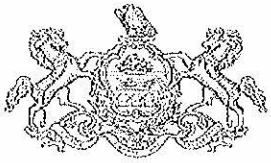
Final Disposition
Section
Credit For Time Served
Start Date
Linked Docket Number

Migrated Disposition

Migrated Dispositional Event	11/25/1997	Final Disposition
1 / Corruption Of Minors	Guilty Plea	18§6301§§A
Allison, Paul K.	11/25/1997	
Probation	Max of 3.00 Years	07/15/1998

COURT OF COMMON PLEAS OF LANCASTER COUNTY

DOCKET



Docket Number: CP-36-CR-0004127-1997

CRIMINAL DOCKET

Court Case

Commonwealth of Pennsylvania
v.
Daniel Richard Binderup

COMMONWEALTH INFORMATION

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(717) 761-4031 (Fax)
Address:
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Lemoyne PA 17043

ATTORNEY INFORMATION

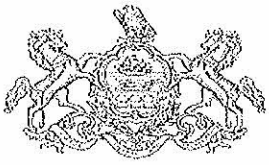
Name:
Supreme Court No:
Rep. Status:
Phone Number(s):

ENTRIES

Sequence Number	CP Filed Date	Document Date	
1	01/01/1997		
Original Papers Received from Lower Court			
			Unknown Filer
1	11/25/1997		
Migrated Disposition			
Migrated Automatic Registry Entry (Disposition) Text			
			Migrated, Filer
2	11/25/1997		
Migrated Sentence			
Migrated Sentence			
			Migrated, Filer
1	12/11/1997		
CRIMINAL COMPLAINT			
CRIMINAL COMPLAINT			
1	01/08/1998		
INFORMATION FILED			
INFORMATION FILED			
1	01/14/1998		
WAIVER OF ARRAIGNMENT			
WAIVER OF ARRAIGNMENT			
1	07/15/1998		
GUILTY PLEA & PLEA AGREEMENT ACCPTD			
GUILTY PLEA & PLEA AGREEMENT ACCPTD BY CT			
			Allison, Paul K.

COURT OF COMMON PLEAS OF LANCASTER COUNTY

DOCKET



Docket Number: CP-36-CR-0004127-1997

CRIMINAL DOCKET

Court Case

Commonwealth of Pennsylvania
v.
Daniel Richard Binderup

CASE FINANCIAL INFORMATION

Last Payment Date: Total of Last Payment: $0.00

Binderup, Daniel Richard Defendant	Assessment	Payments	Adjustments	Non Monetary Payments	Total
Costs/Fees					
Conversion State (Lancaster)	$96.14	$0.00	-$96.14	$0.00	$0.00
Conversion County - 6411AB1211 (Lancaster)	$360.52	$0.00	-$360.52	$0.00	$0.00
Conversion Local (Lancaster)	$24.04	$0.00	-$24.04	$0.00	$0.00
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OSP (Lan/State) (Act 35 of 1991)-6557AAB1126	$12.50	$0.00	-$12.50	$0.00	$0.00
Adult Probation Admin Fee - 6594AAB1126 (Lan)	$10.00	$0.00	-$10.00	$0.00	$0.00
OSP (Lan/State) (Act 35 of 1991)-6557AAB1126	$12.50	$0.00	-$12.50	$0.00	$0.00
OSP (Lan/State) (Act 35 of 1991)-6557AAB1126	$12.50	$0.00	-$12.50	$0.00	$0.00
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Adult Probation Admin Fee - 6594AAB1126 (Lan)	$10.00	$0.00	-$10.00	$0.00	$0.00
OSP (Lan/State) (Act 35 of 1991)-6557AAB1126	$12.50	$0.00	-$12.50	$0.00	$0.00
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Adult Probation Admin Fee - 6594AAB1126 (Lan)	$10.00	$0.00	-$10.00	$0.00	$0.00
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CASE FINANCIAL INFORMATION

Binderup, Daniel Richard Defendant	Assessment	Payments	Adjustments	Non Monetary Payments	Total
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OSP (Lan/State) (Act 35 of 1991)-6557AAB1126	$12.50	$0.00	-$12.50	$0.00	$0.00
Adult Probation Admin Fee - 6594AAB1126 (Lan)	$10.00	$0.00	-$10.00	$0.00	$0.00
OSP (Lan/State) (Act 35 of 1991)-6557AAB1126	$12.50	$0.00	-$12.50	$0.00	$0.00
OSP (Lan/State) (Act 35 of 1991)-6557AAB1126	$12.50	$0.00	-$12.50	$0.00	$0.00
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CASE FINANCIAL INFORMATION

Binderup, Daniel Richard Defendant	Assessment	Payments	Adjustments	Non Monetary Payments	Total
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Adult Probation Admin Fee - 6594AAB1126 (Lan)	$10.00	$0.00	-$10.00	$0.00	$0.00
OSP (Lan/State) (Act 35 of 1991)- 6557AAB1126	$12.50	$0.00	-$12.50	$0.00	$0.00
OSP (Lan/State) (Act 35 of 1991)- 6557AAB1126	$12.50	$0.00	-$12.50	$0.00	$0.00
OSP (Lan/State) (Act 35 of 1991)- 6557AAB1126	$12.50	$0.00	-$12.50	$0.00	$0.00
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OSP (Lan/State) (Act 35 of 1991)- 6557AAB1126	$12.50	$0.00	-$12.50	$0.00	$0.00
OSP (Lan/State) (Act 35 of 1991)- 6557AAB1126	$12.50	$0.00	-$12.50	$0.00	$0.00
OSP (Lan/State) (Act 35 of 1991)- 6557AAB1126	$12.50	$0.00	-$12.50	$0.00	$0.00
Adult Probation Admin Fee - 6594AAB1126 (Lan)	$10.00	$0.00	-$10.00	$0.00	$0.00
OSP (Lan/State) (Act 35 of 1991)- 6557AAB1126	$12.50	$0.00	-$12.50	$0.00	$0.00

CASE FINANCIAL INFORMATION

Binderup, Daniel Richard Defendant	Assessment	Payments	Adjustments	Non Monetary Payments	Total
OSP (Lan/State) (Act 35 of 1991)-6557AAB1126	$12.50	$0.00	-$12.50	$0.00	$0.00
OSP (Lan/State) (Act 35 of 1991)-6557AAB1126	$12.50	$0.00	-$12.50	$0.00	$0.00
OSP (Lan/State) (Act 35 of 1991)-6557AAB1126	$12.50	$0.00	-$12.50	$0.00	$0.00
OSP (Lan/State) (Act 35 of 1991)-6557AAB1126	$12.50	$0.00	-$12.50	$0.00	$0.00
OSP (Lan/State) (Act 35 of 1991)-6557AAB1126	$12.50	$0.00	-$12.50	$0.00	$0.00
OSP (Lan/State) (Act 35 of 1991)-6557AAB1126	$12.50	$0.00	-$12.50	$0.00	$0.00
OSP (Lan/State) (Act 35 of 1991)-6557AAB1126	$12.50	$0.00	-$12.50	$0.00	$0.00
Adult Probation Admin Fee - 6594AAB1126 (Lan)	$10.00	$0.00	-$10.00	$0.00	$0.00
OSP (Lan/State) (Act 35 of 1991)-6557AAB1126	$12.50	$0.00	-$12.50	$0.00	$0.00
OSP (Lan/State) (Act 35 of 1991)-6557AAB1126	$12.50	$0.00	-$12.50	$0.00	$0.00
OSP (Lan/State) (Act 35 of 1991)-6557AAB1126	$12.50	$0.00	-$12.50	$0.00	$0.00
OSP (Lan/State) (Act 35 of 1991)-6557AAB1126	$12.50	$0.00	-$12.50	$0.00	$0.00
OSP (Lan/State) (Act 35 of 1991)-6557AAB1126	$12.50	$0.00	-$12.50	$0.00	$0.00
OSP (Lan/State) (Act 35 of 1991)-6557AAB1126	$12.50	$0.00	-$12.50	$0.00	$0.00
OSP (Lan/State) (Act 35 of 1991)-6557AAB1126	$12.50	$0.00	-$12.50	$0.00	$0.00
OSP (Lan/State) (Act 35 of 1991)-6557AAB1126	$12.50	$0.00	-$12.50	$0.00	$0.00
OSP (Lan/State) (Act 35 of 1991)-6557AAB1126	$12.50	$0.00	-$12.50	$0.00	$0.00
OSP (Lan/State) (Act 35 of 1991)-6557AAB1126	$12.50	$0.00	-$12.50	$0.00	$0.00

CASE FINANCIAL INFORMATION

Binderup, Daniel Richard Defendant	Assessment	Payments	Adjustments	Non Monetary Payments	Total
OSP (Lan/State) (Act 35 of 1991)-6557AAB1126	$12.50	$0.00	-$12.50	$0.00	$0.00
OSP (Lan/State) (Act 35 of 1991)-6557AAB1126	$12.50	$0.00	-$12.50	$0.00	$0.00
OSP (Lan/State) (Act 35 of 1991)-6557AAB1126	$12.50	$0.00	-$12.50	$0.00	$0.00
OSP (Lan/State) (Act 35 of 1991)-6557AAB1126	$12.50	$0.00	-$12.50	$0.00	$0.00
OSP (Lan/State) (Act 35 of 1991)-6557AAB1126	$12.50	$0.00	-$12.50	$0.00	$0.00
OSP (Lan/State) (Act 35 of 1991)-6557AAB1126	$12.50	$0.00	-$12.50	$0.00	$0.00
OSP (Lan/State) (Act 35 of 1991)-6557AAB1126	$12.50	$0.00	-$12.50	$0.00	$0.00
OSP (Lan/State) (Act 35 of 1991)-6557AAB1126	$12.50	$0.00	-$12.50	$0.00	$0.00
Costs/Fees Totals:	$1,425.70	$0.00	-$1,425.70	$0.00	$0.00
Restitution					
Restitution	$450.00	$0.00	-$450.00	$0.00	$0.00
Restitution Totals:	$450.00	$0.00	-$450.00	$0.00	$0.00
Grand Totals:	$1,875.70	$0.00	-$1,875.70	$0.00	$0.00

** - Indicates assessment is subrogated

IN THE COURT OF COMMON PLEAS OF LANCASTER COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

DANIEL BINDERUP

vs.

RESTORATION OF
FIREARM RIGHTS

Misc.
Docket No. MD 314-2009
C.P.J. 7 pg. 112

2009 JUN -1 PM 12:14

ORDER

AND NOW, this 1st day of June, 2009, upon hearing with all parties present and agreement reached between the Commonwealth and Petitioner, the Court hereby ORDERS and DIRECTS as follows:

1. The Court determines that Petitioner is eligible for relief under 18 Pa.C.S. § 6105 (d);

2. The disability imposed under 18 Pa.C.S. § 6105 (b) as a result of a July 15, 1998 conviction for Corruption of Minors is hereby lifted;

3. Petitioner's firearms right to possess, use, control, sell, transfer or manufacture under the laws of the Commonwealth of Pennsylvania is hereby granted; and

4. This relief does not exempt Petitioner from any federal statutes or restrictions.

BY THE COURT:

EDWARD F. KNISELY
JUDGE

I certify this document to be filed in the Lancaster County Office of the Clerk of the Courts

Ryan P. Aument
Clerk of the Courts

cc:
Karl E. Rominger, Esq., 155 South Hanover St., Carlisle, PA 17013
Pennsylvania State Police Commission, 800 Bretz Dr., Harrisburg, PA 17112
Brian Chudzik, Assistant District Attorney

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DANIEL BINDERUP,	)	Case. No. 5:13-CV-6750-JKG
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
ERIC H. HOLDER, JR., et al.,	)	
	)	
Defendants.	)	
	)	

ORDER

NOW, this ___ day of March, 2014, upon consideration of Plaintiff's Motion for Summary Judgment, filed March 10, 2014, upon consideration of the briefs of the parties,

IT IS ORDERED that the motion is granted.

BY THE COURT:

_____
James Knoll Gardner
United States District Judge