

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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Duy T. Mai,  
Appellant,

v.

United States, et al.,  
Appellees.

No. 18-36071

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Excerpts of Record – Volume I of I

Appeal from the United States District Court  
for the Western District of Washington

Vitaliy Kertchen  
Attorney for Appellant  
917 S 10th St  
Tacoma, WA 98405  
253-905-8415  
vitaliy@kertchenlaw.com

## Table of Contents

<u>Document</u>	<u>Page</u>	<u>Trial Court</u>
Notice of Civil Appeal	1	ECF No. 21
Order Denying FRCP 60/15 Motion	2-6	ECF No. 20
First Amended Complaint	7-55	ECF No. 17-1
Judgment in a Civil Case	56	ECF No. 13
Order Granting Motion to Dismiss	57-69	ECF No. 12
Complaint	70-75	ECF No. 1
Docket	76-79	

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

Duy T. Mai

Plaintiff(s),

v.

United States, et al

Defendant(s).

NOTICE OF CIVIL APPEAL

Case No 2:17-cv-00561

District Court Judge  
Richard A. Jones

Notice is hereby given that Duy T. Mai  
(Name of Appellant)

appeals to the United States Court of Appeals for the Ninth Circuit from  
order granting motion to dismiss and order denying FRCP 60 and 15 motion  
(Name of Order/Judgment)

entered in this action on 02/08/2018  
(Date of Order)

Dated: 12/21/2018

Vitaliy Kertchen WSBA #45183  
917 S 10th St  
Tacoma, WA 98405  
253-905-8415  
vitaliy@kertchenlaw.com

Name, Address and Phone Number of Counsel for  
Appellant or Appellant/*Pro Se*

/s/ Vitaliy Kertchen

Signature of Counsel for Appellant or  
Appellant/*Pro Se*

HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

DUY T. MAI,

Plaintiff,

v.

UNITED STATES OF AMERICA, et al.,

Defendants.

CASE NO. C17-0561 RAJ

ORDER

This matter comes before the Court on Plaintiff's Motion for Relief from Judgment and Leave to Amend Complaint. Dkt. # 17. Defendants oppose the Motion. Dkt. # 18. For the reasons that follow, the Court **DENIES** Plaintiff's Motion. Dkt. # 17.

**I. BACKGROUND**

Plaintiff Dui Mai brought this action against Defendants United States of America; the Department of Justice ("DOJ"); the Bureau of Alcohol, Tobacco, Firearms, and Explosives ("ATF"); the Federal Bureau of Investigation ("FBI"); Jefferson B. Sessions III, as Attorney General; Andrew McCabe, as Acting Director of the FBI; and Thomas E. Brandon, as Acting Director of the ATF, for alleged violations of his Second and Fifth Amendment rights. Dkt. # 1 ¶¶ 1.1-1.8, 4.1, 4.2. On June 19, 2017, Defendants filed a Motion to Dismiss Plaintiff's Complaint pursuant to Federal Rule of Civil Procedure



12(b)(6). The Court granted Defendants' Motion and judgment was entered in favor of Defendants. Dkt. ## 12, 13. Plaintiff filed a Motion to Amend his Complaint, and subsequently withdrew it. Dkt. ## 14, 16. Plaintiff then filed this Motion for Relief from the Court's judgment against him and for leave to amend his Complaint. Dkt. # 17.

## II. LEGAL STANDARD

Federal Rule of Civil Procedure 60(b) allows a party to seek relief from an order under a "limited set of circumstances, including fraud, mistake, and newly discovered evidence." *Harvest v. Castro*, 531 F.3d 737, 744 (9th Cir. 2008); Fed. R. Civ. P. 60(b). Rule 60(b)(6) allows a court to relieve a party from a final judgment or order for "any other reason justifying relief from the operation of the judgment." Fed. R. Civ. P. 60(b). "Rule 60(b)(6) has been used sparingly as an equitable remedy to prevent manifest injustice. The rule is to be utilized only where extraordinary circumstances prevented a party from taking timely action to prevent or correct an erroneous judgment." *United States v. Alpine Land & Reservoir Co.*, 984 F.2d 1047, 1049 (9th Cir. 1993). Relief may be granted "to accomplish justice" but only under "extraordinary circumstances. *Id.* Plaintiff requests that the Court relieve him from the judgment against him in order to allow him to file an amended complaint pursuant to Rule 60(b)(6).

Amendment to pleadings is governed by Federal Rule of Civil Procedure 15(a). Rule 15(a) "provides that a party's right to amend as a matter of course terminates 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier." Fed. R. Civ. P. 15(a)(1)(B). "In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires." Fed. R. Civ. P. 15(a)(2). "In exercising this discretion, a court must be guided by the underlying purpose of Rule 15 to facilitate a decision on the merits, rather than on the pleadings or technicalities." *Roth v. Garcia Marquez*, 942 F.2d 617, 628 (9th Cir. 1991); *United States v. Webb*, 655 F.2d 977, 979 (9th Cir. 1981). Further, the policy of favoring

1 amendments to pleadings should be applied with “extreme liberality.” *DCD Programs,*  
2 *Ltd. v. Leighton*, 833 F.2d 183, 186 (9th Cir. 1987).

3       Against this extremely liberal standard, the Court may deny leave to amend after  
4 considering “the presence of any of four factors: bad faith, undue delay, prejudice to the  
5 opposing party, and/or futility.” *Owens v. Kaiser Foundation Health Plan, Inc.*, 244 F.3d  
6 708, 712 (9th Cir. 2001). But “[n]ot all of the factors merit equal weight ... it is the  
7 consideration of prejudice to the opposing party that carries the greatest weight.”  
8 *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003). “Absent  
9 prejudice, or a strong showing of any of the remaining [ ] factors, there exists a  
10 presumption under Rule 15(a) in favor of granting leave to amend.” *Id.* The party  
11 opposing amendment bears the heavy burden of overcoming this presumption. *DCD*  
12 *Programs, Ltd. v. Leighton*, 833 F.2d 183, 187 (9th Cir. 1987).

### 13       **III. DISCUSSION**

14       The Court entered an Order granting Defendants’ motion to dismiss on February  
15 8, 2018. Dkt. # 12. Plaintiff filed a motion to amend his complaint several days later, on  
16 February 12, 2018. Dkt. # 14. Defendants opposed the motion to amend and Plaintiff  
17 subsequently withdrew the motion. Plaintiff then filed this Motion on March 1, 2018.  
18 Motions for reconsideration must be filed within fourteen (14) days of the order on which  
19 the motion is based. LCR 7(h)(2). The deadline for filing a motion for reconsideration of  
20 the Court’s previous Order was February 22, 2018. This Motion was not filed until  
21 March 1, 2018, and is therefore untimely.

22       Plaintiff makes no argument addressing the standard for relief from judgment as  
23 set out in Rule 60(b)(6), instead focusing his argument on the standard for a motion to  
24 amend a complaint. Plaintiff does not argue that extraordinary circumstances prevented  
25 him from timely filing a motion for reconsideration and provides no explanation for his  
26 failure to do so. While Plaintiff argues that he was injured when the Court dismissed his  
27 claims, he makes no argument that this “injury” prevented him from taking action to seek

1 reconsideration. Plaintiff also makes no argument that relief from judgment is necessary  
2 to prevent “manifest injustice.” As Plaintiff fails to meet the standard for relief under  
3 Rule 60(b), his Motion is **DENIED**.

4 Even if Plaintiff’s Motion for Relief was granted, amendment of his Complaint  
5 would be futile. The Ninth Circuit uses a two-step inquiry for addressing Second  
6 Amendment challenges to regulations. *Jackson v. City & Cty. of S.F.*, 746 F.3d 953, 960  
7 (9th Cir. 2014). This two-step inquiry, “(1) asks whether the challenged law burdens  
8 conduct protected by the Second Amendment” based on a historical understanding of the  
9 scope of the Second Amendment, “and (2) if so, directs courts to apply an appropriate  
10 level of scrutiny.” *Id.* (citing *United States v. Chovan*, 735 F.3d 1127, 1136 (9th Cir.  
11 2013)). The Court’s Order dismissing Plaintiff’s claims states that the challenged statute,  
12 “18 U.S.C. § 922(g)(4), which is a prohibition on the possession of firearms by the  
13 mentally ill, is a ‘presumptively lawful regulatory measure.’” Dkt. # 12 at 6. The Order  
14 then states that even if Plaintiff could show that the challenged law burdens conduct  
15 protected by the Second Amendment, his claim fails under the second prong of the  
16 inquiry; analysis under immediate scrutiny. Dkt. # 12 at 10.

17 Plaintiff seeks to add factual allegations and exhibits to his Complaint to support  
18 his as-applied constitutional challenge to the statute. Specifically, Plaintiff seeks to add  
19 copies of declarations and medical evidence, his petition to the King County Superior  
20 Court for restoration of his firearm rights, and the King County Superior Court’s order  
21 granting his petition. However, pursuant to the standard for motions to dismiss, this does  
22 not constitute new factual evidence, but rather, evidence supporting facts that the Court  
23 already assumed to be true in ruling on Defendants’ motion to dismiss. The Court  
24 considered the standards for restoration of firearm rights under Washington law, the fact  
25 that Plaintiff submitted medical and psychological examinations and declarations in  
26 support of his petition to the King County Superior Court, and the fact that Plaintiff’s  
27 petition was granted after review of that evidence, in coming to a decision. The proposed

1 amendments would not add factual allegations that would have any impact on the Court's  
2 analysis. Therefore, amendment of Plaintiff's Complaint would be futile.

3 **IV. CONCLUSION**

4 For the foregoing reasons, the Court **DENIES** Plaintiff's Motion for Relief from  
5 Judgment and for Leave to Amend Complaint. Dkt. # 17.

6  
7 Dated this 21st day of December, 2018.

8  
9 

10  
11 The Honorable Richard A. Jones  
12 United States District Judge  
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**United States District Court  
Western District of Washington**

**No. 2:17-cv-00561-RAJ**

Duy T. Mai, Plaintiff,

vs.

United States; and

Department of Justice; and

Bureau of Alcohol, Tobacco, Firearms, and  
Explosives; and

Federal Bureau of Investigation; and

Jefferson B. Sessions III, as Attorney  
General; and

~~James B. Comey~~ Christopher A. Wray, as  
Director of the Federal Bureau of  
Investigation; and

Thomas E. Brandon, as Acting Director of the  
Bureau of Alcohol, Tobacco, Firearms, and  
Explosives

**First Amended Complaint**

1  
2 Plaintiff Duy T. Mai brings this action against the United States and other named  
3 defendants and makes the following allegations and complaints:

917 S 10th St  
Tacoma, WA 98405  
253-905-8415  
vitaliy@kertchenlaw.com  
www.kertchenlaw.com

I. PARTIES

1. Plaintiff Duy T. Mai is an individual residing in Seattle, King County, Washington.
2. Defendant Department of Justice (DOJ) is a United States agency charged with enforcing the laws of the United States.
3. Defendant Jefferson B. Sessions III is the Attorney General of the United States, and the head of the Department of Justice.
4. Defendant Bureau of Alcohol, Tobacco, Firearms, and Explosives (BATFE) is an agency of the DOJ responsible for enforcing United States laws pertaining to firearms.
5. Defendant Thomas E. Brandon is the Acting Director and head of the BATFE.
6. Defendant Federal Bureau of Investigation (FBI) is an agency of the DOJ responsible for conducting background checks for firearm sales through its National Instant Criminal Background Check System (NICS).
7. Defendant ~~James B. Comey~~ Christopher A. Wray is the Director and head of the FBI.
8. Defendant United States is the United States of America.

II. JURISDICTION AND VENUE

1. This Court has jurisdiction under 28 U.S.C. § 1331 (federal question) and § 1346 (United States as defendant). One of the defendants is the United States of America and the plaintiff resides within the Western District of Washington. This Court has venue under 28 U.S.C. § 1391(e)(1).

917 S 10th St  
Tacoma, WA 98405  
253-905-8415  
vitaliy@kertchenlaw.com  
www.kertchenlaw.com

III. FACTS

1. In October 1999, when he was a seventeen-year-old juvenile, Mr. Mai was involuntarily committed for mental health treatment by the King County Superior Court under cause number 99-6-01555-4. That court later transferred venue of the proceedings to Snohomish County under cause number 00-6-00072-6. As a result, Mr. Mai lost his firearm rights under RCW 9A.040(2)(a)(iii) and 18 U.S.C. § 922(g)(4).
2. Mr. Mai's commitment expired by August 8, 2000. He has never been committed since.
3. Since that time, Mr. Mai has enjoyed a fruitful and fulfilling life. In 2001, he enrolled in Evergreen Community College where he completed his GED and earned college credit that enabled him to transfer to a university. In 2002, he transferred to the University of Washington and graduated with a bachelor's of science in microbiology and a cumulative 3.7 GPA. After graduating, Mr. Mai enrolled in a master's program at the University of Southern California (USC) and graduated with a master's degree in microbiology in 2009.
4. He moved back to Seattle, where he began a job at Benaroya Research Institute, studying viruses. As part of his job, he has successfully passed an FBI background check and is allowed to have unescorted access and use of a JL Shepherd Mark II Cesium – 137 irradiator.
5. In April 2016, Mr. Mai briefly worked as a contractor for Seattle Genetics doing cancer research.

917 S 10th St  
Tacoma, WA 98405  
253-905-8415  
vitaliy@kertchenlaw.com  
www.kertchenlaw.com

- 1           6. In October 2016, he began working for Fred Hutchinson Cancer Research Center as  
2           an immune monitoring specialist and remains employed there presently.
- 3           7. While living in Los Angeles and attending USC, Mr. Mai met Michelle Ross and the  
4           two had a pair of twins. Although Mr. Mai and Ms. Ross are no longer together  
5           romantically, Mr. Mai continues to be active father in his children's lives.
- 6           8. In all, Mr. Mai has completely recovered from the condition that lead to the  
7           involuntary commitment seventeen years ago. He no longer uses any medication to  
8           control his condition; in fact, he no longer has any condition to control in the first  
9           instance. By all accounts, he lives a socially-responsible, well-balanced, and  
10          accomplished life.
- 11          9. In 2014, Mr. Mai petitioned the King County Superior Court under RCW 9.41.047  
12          for restoration of his firearm rights, supplying the court with medical and  
13          psychological examinations and supportive declarations from over ten people. ~~The~~  
14          ~~court granted his petition.~~ The petition is attached as Exhibit A.
- 15          10. As part of the restoration of firearm rights procedure under Washington state law, the  
16          superior court must find that: 1) the petitioner is no longer required to participate in  
17          court-ordered inpatient or outpatient treatment; 2) the petitioner has successfully  
18          managed the condition related to the commitment; 3) the petitioner no longer presents  
19          a substantial danger to himself or herself, or the public; and 4) the symptoms related  
20          to the commitment are not reasonably likely to recur. RCW 9.41.047(c)(i)-(iv).
- 21          11. The Court made these findings and restored Mr. Mai's Washington state firearm  
22          rights on December 5, 2014. The order is attached as Exhibit B.

917 S 10th St  
Tacoma, WA 98405  
253-905-8415  
vitaliy@kertchenlaw.com  
www.kertchenlaw.com



1       12. In support of his petition to the King County Superior Court, Mr. Mai submitted  
2       evaluations from three doctors/licensed psychologists. All of the evaluators concluded  
3       that Mr. Mai posed no risk to himself or others. Dr. Cecchet concluded that “Mr. Mai  
4       . . . does not present with any observable psychopathology.” These evaluations are  
5       attached as Exhibit C.

6       13. Mr. Mai also submitted at least fourteen declarations from close friends and family  
7       members, attesting to his health and character.

8       14. After having his Washington state firearm rights restored, Mr. Mai attempted to  
9       purchase a firearm and received a denial from NICS. After requesting to know the  
10      reason for the denial, NICS informed him that the denial was based on 18 U.S.C. §  
11      922(g)(4), involuntary commitment.

12      15. Subsequently, Mr. Mai received a phone call from someone at BATFE, informing  
13      Mr. Mai that the BATFE legal department has determined that his state restoration  
14      order is not sufficient to overcome the federal prohibition in 18 U.S.C. § 922(g)(4).

15      16. 18 U.S.C. § 925(c) provides for a “relief from disability” program to be administered  
16      through the Attorney General. However, due to lack of funding, this program has not  
17      functioned since 1992.

18      17. In the NICS Improvement Amendments Act of 2007 (NIAA), Congress provided that  
19      involuntary commitment firearm restorations from certain states would remove the  
20      (g)(4) federal prohibition. To qualify, the restoration requirements under state law  
21      must match certain criteria included in the NIAA. Washington state does not qualify.

22      18. Therefore, Mr. Mai has no statutory relief available to him.

917 S 10th St  
Tacoma, WA 98405  
253-905-8415  
vitaliy@kertchenlaw.com  
www.kertchenlaw.com

1 19. As a direct consequence of each of the defendants' actions, together and separately,  
2 Mr. Mai has suffered a lifetime prohibition on firearm possession under federal law  
3 for an involuntary commitment he suffered seventeen years ago as a juvenile, despite  
4 no longer being mentally ill.

5  
6 IV. CAUSES OF ACTION

- 7 1. Each of the defendants, together and separately, has violated Mr. Mai's constitutional  
8 rights by denying him the ability to keep, bear, and purchase firearms as guaranteed  
9 to him by the Second Amendment. As a direct and proximate result, Mr. Mai has  
10 suffered and continues to suffer from an unlawful deprivation of his fundamental  
11 constitutional right to keep and bear arms.
- 12 2. Each of the defendants, together and separately, has violated Mr. Mai's Fifth  
13 Amendment rights by denying him the ability to keep, bear, and purchase firearms  
14 without due process of law. As a direct and proximate result, Mr. Mai has suffered  
15 and continues to suffer from an unlawful deprivation of his fundamental  
16 constitutional right to keep and bear arms.

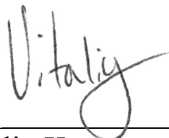
17  
18 V. REQUESTED RELIEF

- 19 1. That the Court enter a declaratory judgment, ruling that 18 U.S.C. § 922(g)(4), its  
20 derivative regulations, and all related laws, policies, and procedures violate Mr. Mai's  
21 right to keep and bear arms as secured by the Second Amendment.

917 S 10th St  
Tacoma, WA 98405  
253-905-8415  
vitaliy@kertchenlaw.com  
www.kertchenlaw.com

2. That the Court enter a declaratory judgment, ruling that 18 U.S.C. § 922(g)(4), its derivative regulations, and all related laws, policies, and procedures violate Mr. Mai's right to due process under the Fifth Amendment.
3. That the Court enter a permanent injunction prohibiting defendants, their officers, agents, servants, employees, and all persons in concert with them from enforcing 18 U.S.C. § 922(g)(4) and all its derivative regulations, and all related laws, policies, and procedures that would impede or criminalize Mr. Mai's exercise of his Second Amendment rights.
4. That the Court award Mr. Mai his attorney's fees and costs.
5. Any other legal or equitable relief as the Court sees fit.

Respectfully submitted,



Vitaliy Kertchen WSBA#45183  
Attorney for Mr. Mai  
Date: ~~4/11/17~~ 2/12/18

917 S 10th St  
Tacoma, WA 98405  
253-905-8415  
vitaliy@kertchenlaw.com  
www.kertchenlaw.com

# EXHIBIT A

COPY RECEIVED

JUL 31 2014

CRIMINAL DIVISION  
KING COUNTY PROSECUTOR'S OFFICE

SUPERIOR COURT OF WASHINGTON  
KING COUNTY

DUY TRAN MAI,  
Petitioner,  
v.  
STATE OF WASHINGTON,  
Respondent.

No.

PETITION FOR ORDER RESTORING  
RIGHT TO POSSESS FIREARMS  
PURSUANT TO RCW 9.41.040(4) AND  
RCW 9.41.047(3)

**Relief Requested**

Duy Mai respectfully petitions this Court for an Order Restoring the Right to Possess Firearms pursuant to RCW 9.41.040(4), RCW 9.41.047(3), and LCR 40(b)(16).

**Statement of Facts**

The basic procedural history relevant to this Petition is as follows:

On or about 10/21/1999 a Petition for Initial Detention was filed in this court. See In re the Commitment of Dui Mai Tran; King County Superior Court Cause No. 99-6-01555-4. Later, on or about 2/9/2000, this court entered an Order for Change of Venue to Snohomish County. Then on or about 2/11/200 the Snohomish County Superior Court entered Amended Findings of Fact; Conclusions of Law, and Order for An Additional 180 days of Less Restrictive Alternative Treatment. See In re the Detention of Duy Mai, Snohomish County Superior Court Cause No. 00-6-00072-6. Ultimately, these proceedings caused Mr. Mai to lose his right to possess a

*Petition for Order Restoring  
Right to Possess Firearms—Page 1  
RCW 9.41.040; 9.41.047, LCR 40(b)(16)*

*Filed on  
8.5.14*

PLATT & BUESCHER  
Attorneys at Law  
P.O. Box 727  
Coupeville, WA 98239  
Phone: (360) 678-6777

1 firearm. See Amended Findings of Fact; Conclusions of Law; and Order for an Additional 180  
2 days of Less Restrictive Alternative Treatment at 5, ¶5.3 attached as "Appendix A." By August  
3 14, 2000 the Snohomish County Superior Court entered a Notice of Disposition of Civil  
4 Commitment Proceeding. See attached as "Appendix B." The Notice of Disposition provides  
5 "The period of commitment has expired on August 8, 2000 and no additional commitment will  
6 be sought under this cause." *Id.*  
7  
8

9  
10 Additional procedural history is contained in the docket sheets attached hereto as  
11 "Appendix C."  
12

### 13 Statement of Issues

14 Issue: Whether Mr. Mai's right to possess a firearm must be restored pursuant to RCW  
15 9.41.040 and 9.41.047.  
16

17 Short Answer: Mr. Mai's right to possess a firearm should be restored because he meets  
18 all criteria under the applicable statutes.  
19

### 20 Evidence Relied Upon

- 21 1. Declaration of Petitioner (below).
- 22 2. Amended Findings of Fact; Conclusions of Law; and Order for an Additional 180 days of
- 23 Less Restrictive Alternative Treatment attached as "Appendix A."
- 24 3. Notice of Disposition of Civil Commitment Proceeding. See attached as "Appendix B."
- 25 4. Declaration of Nancy Connolly, M.D.
- 26 5. Declaration of Stacy Cecchet, Ph.D.
- 27 6. Declaration of Brendon Scholtz, Ph.D.
- 28 7. Letter prepared by Benaroya Research Institute. See attached.
- 29 8. Declaration of Michelle Ross
- 30 9. Declaration of Elisha Willburn
- 31 10. Declaration of Richard Notturmo
- 32 11. Declaration of Diana Sorus
- 33 12. Declaration of Heather Marie Knapp
- 34 13. Declaration of Tina DeWeese
- 35 14. Declaration of Krista Garrett
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- 1 15. Declaration of Allison Evans
- 2 16. Declaration of Jessica A. Martin
- 3 17. Declaration of Kaegan Faltys-Burr
- 4 18. Declaration of Scarlett Mai
- 5 19. Declaration of Trevar Telford
- 6 20. Declaration of Micah Dumas
- 7 21. Declaration of Rebecca J. Pearce
- 8 22. Etc./Other Declarations filed herein

13 **Authority**

14 RCW 9.41.040(4) provides in pertinent part:

16 (4)(a)...if a person is prohibited from possession of a firearm under subsection (1) or (2)  
17 of this section and has not previously been convicted or found not guilty by reason of  
18 insanity of a sex offense prohibiting firearm ownership under subsection (1) or (2) of this  
19 section and/or any felony defined under any law as a class A felony or with a maximum  
20 sentence of at least twenty years, or both, the individual may petition a court of record to  
21 have his or her right to possess a firearm restored:

23 (i) Under RCW 9.41.047; and/or

25 (ii)(A) If the conviction or finding of not guilty by reason of insanity was for a felony  
26 offense, after five or more consecutive years in the community without being convicted  
27 or found not guilty by reason of insanity or currently charged with any felony, gross  
28 misdemeanor, or misdemeanor crimes, if the individual has no prior felony convictions  
29 that prohibit the possession of a firearm counted as part of the offender score under RCW  
30 9.94A.525; or

32 (B) If the conviction or finding of not guilty by reason of insanity was for a nonfelony  
33 offense, after three or more consecutive years in the community without being convicted  
34 or found not guilty by reason of insanity or currently charged with any felony, gross  
35 misdemeanor, or misdemeanor crimes, if the individual has no prior felony convictions  
36 that prohibit the possession of a firearm counted as part of the offender score under RCW  
37 9.94A.525 and the individual has completed all conditions of the sentence.

39 (b) An individual may petition a court of record to have his or her right to possess a  
40 firearm restored under (a) of this subsection (4) only at:

42 (i) The court of record that ordered the petitioner's prohibition on possession of a firearm;  
43 or

45 *Petition for Order Restoring*  
46 *Right to Possess Firearms—Page 3*  
47 *RCW 9.41.040; 9.41.047, LCR 40(b)(16)*

PLATT & BUESCHER  
Attorneys at Law  
P.O. Box 727  
Coupeville, WA 98239  
Phone: (360) 678-6777



(ii) The superior court in the county in which the petitioner resides.

Wash. Rev. Code Ann. § 9.41.040. RCW 9.41.047 provides in pertinent part:

(3)(a) A person who is prohibited from possessing a firearm, by reason of having been involuntarily committed for mental health treatment under RCW 71.05.240, 71.05.320, 71.34.740, 71.34.750, chapter 10.77 RCW, or equivalent statutes of another jurisdiction may, upon discharge, petition the superior court to have his or her right to possess a firearm restored.

(b) The petition must be brought in the superior court that ordered the involuntary commitment or the superior court of the county in which the petitioner resides.

(c) Except as provided in (d) of this subsection, the court shall restore the petitioner's right to possess a firearm if the petitioner proves by a preponderance of the evidence that:

(i) The petitioner is no longer required to participate in court-ordered inpatient or outpatient treatment;

(ii) The petitioner has successfully managed the condition related to the commitment;

(iii) The petitioner no longer presents a substantial danger to himself or herself, or the public; and

(iv) The symptoms related to the commitment are not reasonably likely to recur.

Wash. Rev. Code Ann. § 9.41.047. LCR 40(b)(16) provides in part:

If the conviction resulting in loss of the right occurred in a court of limited jurisdiction or the Superior Court of another county, the petitioner must file an original cause of action in King County Superior Court and the motion shall be noted without oral argument before the Chief Criminal Judge or the Chief Maleng Regional Justice Center Judge pursuant to LCR 7.

WA R KING SUPER CT LCR 40(b)(16).

Respectfully submitted this 29th day of July, 2014.

  
Brent Thompson, WSBA# 44778  
Attorney for Petitioner

*Petition for Order Restoring  
Right to Possess Firearms—Page 4  
RCW 9.41.040; 9.41.047, LCR 40(b)(16)*

**PLATT & BUESCHER**  
*Attorneys at Law*  
P.O. Box 727  
Coupeville, WA 98239  
Phone: (360) 678-6777



### Declaration of Petitioner

My right to possess a firearm should be restored for the following reasons:

#### **A. General Requirements For Restoration Of Right To Possess Firearms—9.41.040(4)**

I have never been convicted of or found not guilty by reason of insanity of any sex offense, felony, or nonfelony offense. I am not currently charged with any felony, gross misdemeanor, or misdemeanor crime. This Petition is brought in the superior court of the county in which I reside.

#### **B. No Requirement To Participate in Court-Ordered Inpatient or Outpatient Treatment—RCW 9.41.047(c)(i)**

My period of commitment expired by August 8, 2000. No additional commitment was sought after that time. See attached "Appendix B." I am not subject to any court order that requires me to participate in inpatient or outpatient treatment. I am fully rehabilitated, stable, productive, law abiding, and do not require any treatment.

#### **C. Successful Management of the Condition Related to the Commitment—RCW 9.41.047(c)(ii)**

I have successfully managed the condition related to the commitment that occurred nearly fifteen years ago. About two months after my commitment ended, I began working full-time at K-Mart in Everett. I worked there as a porter for about six months. During my time at K-Mart I developed relationships of trust and respect with my supervisors. I also developed friendships with co-workers. My time at K-Mart also caused me to develop a good work ethic.

Later in 2001, I enrolled at Everett Community College. During my time in community college I developed a thriving social life. I also studied hard. I completed my GED and obtained college credit that enabled me to transfer to a university. I also developed an interest in science during my time at Everett Community College. Ultimately, I successfully managed my condition during my time in community college.

In 2002, I transferred to the University of Washington (UW). My major at UW was initially in bioengineering, but later I switched my major to microbiology. My change in major was inspired by my desire to help impoverished and disease stricken peoples plagued by AIDS. I also devoted time to studying salmon and became involved in a salmon conservation laboratory. I tracked the genetic adaptations of farmed salmon that had been released into the

1 wild and compared them with wild salmon. Eventually, I also began an internship at James  
2 Mullins' Lab where I researched the HIV virus. There, my main project was tracking genetic  
3 changes associated with the HIV virus from first infection through the development of AIDS.  
4

5 At UW my social life thrived. I also dedicated myself to volunteering for good causes  
6 aimed at protecting the environment. I became a member of People for Puget Sound and  
7 devoted time to removing non-native weeds to protect the natural habitat of salmon. I also  
8 became a member of Amnesty International and would write to representatives about  
9 humanitarian issues. Ultimately, I successfully managed my condition during my time at UW  
10 and graduated with a B.S. in microbiology and cumulative GPA of 3.7.  
11

12 I enrolled in a Master's program at the University of Southern California (USC) after  
13 completing my studies at UW. At USC my studies shifted toward cancer. My research helped to  
14 determine the cause of certain kinds of cancer and also helped improve cancer treatments. I  
15 continued to excel academically. At the same time I began tapering off of my anti-depressant  
16 medications. I also developed important, long lasting, and loving relationships during my time at  
17 USC.  
18

19 Living in Los Angeles allowed me to develop relationships with the maternal side of my  
20 family. I was able to get to know my mother's family and also grew close to my grandmother  
21 before she passed away. I also met Michelle Ross while living in Los Angeles. Michelle and I  
22 now have four-year-old twins together. Although we are not currently in a romantic relationship  
23 together, Michelle and I remain friends and have maintained a copasetic relationship of trust. I  
24 have filed a declaration prepared by Michelle wherein she describes our good relationship and  
25 my role as a father.  
26

27 In 2009, I completed my studies at USC and graduated with a Master's degree in  
28 microbiology. I also successfully discontinued my anti-depressant medications without issue.  
29 Ultimately, I successfully managed my condition during my time at USC.  
30

31 Eventually, I moved back to Seattle where I became employed at Benaroya Research  
32 Institute. There my work concentrates on virology—the study of viruses. At present, I am still  
33 employed at Benaroya Research Institute and remain dedicated to my employer. I have also  
34 successfully completed annual Radiation Safety Training Safety Training courses for my  
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1 employment five times. I have also successfully passed an FBI background check that allows me  
 2 to have unescorted access and use of JL Shepherd Mark II Cesium – 137 irradiator. See  
 3 Attached. I remain very careful, professional, and continue to be in good standing at Benaroya.  
 4 I am trusted at my work and have never had any safety issues.  
 5

6  
 7 Overall, I have successfully managed the condition related to my commitment. In fact, I  
 8 believe that I am fully rehabilitated and no longer have a condition. I no longer need medication  
 9 and am a completely stable, productive, law abiding, and am a responsible member of society. I  
 10 have filed additional declarations from witnesses who agree. Experts also agree that I have  
 11 successfully managed my condition as explained below.  
 12

13  
 14 **D. No Danger to Self or Public and Symptoms Related to the Commitment Are Not**  
 15 **Reasonably Likely To Recur—RCW 9.41.047(c)(iii)-(iv)**  
 16

17 Experts agree that I am not a danger to myself or the public and that the symptoms  
 18 related to my commitment are not reasonably likely to recur:  
 19

20 (1) Nancy Connolly, M.D., in her declaration filed herein, writes:  
 21

22 Mr. Mai has been under my care since 2010 and during this time he has never  
 23 demonstrated evidence of clinical depression. In office depression screening has  
 24 consistently been negative and he has consistently demonstrated healthy lifestyle and  
 25 behaviors. I do not believe that he represents a significant suicide risk nor do I  
 26 believe that he is at risk for harming others.  
 27

28 See Sealed.  
 29

30 (2) Stacy Cecchet, Ph.D, in her declaration filed herein, writes:  
 31

32 Based on the review of the information provided in the clinical interview, it is the  
 33 opinion of the undersigned that Mr. Mai is of low risk for future violence and  
 34 nonviolent criminal behavior and does not present with any observable  
 35 psychopathology.  
 36

37 See Sealed.  
 38

39 (3) Brendon Scholtz, Ph.D., in his declaration filed herein, writes:  
 40  
 41  
 42  
 43  
 44

1 The results of the measures administered and interpreted by Dr. Cecchet are  
2 summarized in her reported dated 5/2/2014. In short they place Mr. Mai's risk of  
3 violent and non-violent recidivism at or below the baseline of his normative group.  
4 In addition Mr. Mai does not appear to be currently experiencing any significant  
5 psychological distress and he does not appear to have any overt symptoms of a major  
6 disorder of thought or mood.

7 See Sealed.  
8  
9

10 I pose no danger to myself or the public. The symptoms related to my commitment are not  
11 reasonably likely to recur. I meet all criteria for restoration of firearm rights under RCW  
12 9.41.040(4) and 9.41.047(3). I therefore respectfully request that this court grant my petition and  
13 restore my right to possess a firearm.  
14  
15

16  
17 I declare under penalty of perjury under the laws of the state of Washington that the foregoing is  
18 true and correct to the best of my knowledge.  
19

20 Signed at Seattle, (City) WA (State) on 7/29/14 (Date).  
21

22  
23 Duy Mai  
24 Duy Mai  
25 Petitioner  
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**Appendix A**

Snohomish County Superior Court Cause No. 00-6-00072-6

Amended Findings of Fact; Conclusions of Law; and Order for an Additional 180 days of Less  
Restrictive Alternative Treatment

*Petition for Order Restoring  
Right to Possess Firearms—Page 9  
RCW 9.41.040; 9.41.047, LCR 40(b)(16)*

**PLATT & BUESCHER**  
*Attorneys at Law*  
P.O. Box 727  
Coupeville, WA 98239  
Phone: (360) 678-6777

FILED

00 FEB 11 PM 4:57

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
COUNTY CLERK  
IN AND FOR THE COUNTY OF SNOHOMISH

IN RE THE DETENTION OF

DUY MAI,  
Respondent.

Cause No. 00-6-00072-6

AMENDED

FINDINGS OF FACT; CONCLUSIONS  
OF LAW; AND ORDER FOR AN ADDITIONAL  
180 DAYS OF ( ) INPATIENT or (XX) LESS  
RESTRICTIVE ALTERNATIVE TREATMENT.  
(RCW 71.05.280) ORDER COMMENCING  
10/28/99 (Amended)

[Clerk's Action Required]

1.1 THIS MATTER having come before the undersigned judge of the above-entitled court on the Petition for 180 days of additional involuntary treatment, Respondent having been represented by John K. [Signature], and Petitioner having been represented by Dennis K. [Signature], Deputy Prosecuting Attorney.

1.2 (X) Stipulation. The parties having agreed and stipulated to the facts set forth in the Petition for 90/180 days of Additional Inpatient/Less Restrictive Alternative Treatment under RCW 71.05.280; or

1.3 ( ) Trial. After a ( ) jury trial or ( ) bench trial and testimony and evidence having been presented on the same, the Court enters the following

**I. FINDINGS OF FACT**

There is clear, cogent and convincing evidence, pursuant to Chapter 71.05 RCW, that:

2.1 The Court has jurisdiction over the person and subject matter of this cause and that all notices and statements of rights relative to this petition and proceeding have been given and afforded to the respondent.

2.2 The respondent continues to suffer from a mental disorder.

2.3 As a result of a mental disorder, and after a period 90 (14/90/180) days of

14

( ) inpatient involuntary treatment or (X) less restrictive alternative treatment pursuant to an Order of this Court dated Feb 10, 2007, the Respondent continues to present:

- ☒ a likelihood of serious harm to others;  
☐ a likelihood of serious harm to him/herself;  
☐ is gravely disabled;  
☐ a likelihood of substantial damage to the property of others.

2.4 Evidence of this condition includes the following:

*Respondent stipulated to facts in petition*

2.5 These findings of fact are based upon the factual allegations and mental health professional opinions contained in the Petition for 90 (90-180) Days of Additional Involuntary ( ) Inpatient or (X) Less Restrictive Alternative Treatment filed by the County designated mental health professional for Snohomish County in this matter and the accompanying Co-Affidavits of Petitioners and the pleadings filed with the Court, and the

(X) stipulation and agreement of the parties to the factual allegations contained therein; or

( ) testimony and evidence received by the Court at a trial on the Petition.

2.6 Having considered Respondent's condition and the treatment options available, the Court finds that less restrictive alternative treatment ( ☒ ) is or ( ) is not in the best interest of the Respondent.

2.7 The Respondent has been offered voluntary treatment and has ( ) declined treatment or ( ~~X~~ ) has not volunteered for treatment in good faith.

Based upon the foregoing Findings of Fact shown by clear, cogent and convincing evidence, the court renders the following:

## II. CONCLUSIONS OF LAW

3.1 This court has jurisdiction over the person and subject matter of this cause.

3.2 As a result of a mental disorder, the Respondent continues to present within the meaning of RCW 71.05:

- ( ☒ ) a likelihood of serious harm to others;
- ( ) a likelihood of serious harm to her/himself;
- ( ) a likelihood of substantial damage to the property of others; and/or
- ( ) respondent is gravely disabled;

3.3 Less restrictive alternative treatment to involuntary detention and treatment ( ☒ ) is or ( ) is not in the best interest of the Respondent.

3.4 Respondent ( ) has declined treatment on a voluntary basis or ( ~~X~~ ) has not in good faith volunteered for such treatment.

## III. ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, IT IS HEREBY ORDERED that: (check appropriate item)

### ( ) 90-180 DAYS ADDITIONAL INPATIENT TREATMENT

4.1 INPATIENT PLACEMENT: Respondent is hereby remanded to the custody of Western State Hospital, or other certified facility as deemed appropriate by the Washington State Department of Social & Health Services, for a period not to exceed 180 days from the date of this Order for inpatient mental health treatment under RCW 71.05.



02/10/00 THU 08:38 FAX 425 388 7218

SNOH CO MNTL HLH

002

4.2 CHANGE OF VENUE: Venue and jurisdiction over this matter are hereby transferred to the Superior Court of \_\_\_\_\_ County, Washington. The Clerk shall forward copies of all pleadings and correspondence and related documents of this matter to the Clerk of the Superior Court of \_\_\_\_\_ County, Washington.

4.3 ESCAPE AND RECAPTURE: In the event of the Respondent's unauthorized absence from the required inpatient treatment facility, any peace officer shall apprehend, detain and return the Respondent or place Respondent in such facility designated by the Washington State Department of Social & Health Services as is consistent with this order.

4.4 FIREARM POSSESSION PROHIBITED: Respondent is prohibited from possessing in any manner, a firearm as defined in RCW 9.41.010, unless and until a hearing is held and such right is restored under RCW 9.41.04(6)(c).

or

**(XX) 90-180 DAYS ADDITIONAL LESS RESTRICTIVE ALTERNATIVE TREATMENT**

5.1 Respondent shall be required to comply with the following terms and conditions of less restrictive alternative treatment for a period not to exceed 90 days:

- a. Participate in and follow the treatment recommendations of his/her case manager at COMPASS HEALTH, and keep all appointments with the case manager.
- b. Reside at residence approved by his/her case manager.
- c. Take medications as prescribed and cooperate with lab work, where required.
- d. Refrain from use or abuse of non-prescription drugs and alcohol.
- e. Refrain from threats or acts of harm to self, others, and property.
- f. Refrain from possessing, in any manner, a firearm as defined in RCW 9.41.010, unless and until a hearing is held and such right is restored under RCW 9.41.04(6)(c).
- g. Maintain his/her own health and safety within the community.
- h. Not own or possess any bombs, bomb making materials, explosive devices, nor any plans, printed or otherwise, which describe the methods and/or materials necessary to build explosive devices or bombs.
- i. Refrain from eliciting any violent stimuli, specifically over the internet.
- j. Actively involve self with the development and implementation of treatment plan.
- k. To remain at Stevens Hospital until testing is completed, and discharged by Physician.

90-180 Days Additional Involuntary Treatment Findings,  
Conclusion & Order - 4


Rev 05-97

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1 Clerk shall forward copies of all pleadings and correspondence and related documents of this  
2 matter to the Clerk of such Superior Court.

3 5.3 FIREARM POSSESSION PROHIBITED: Respondent is prohibited from possessing,  
4 in any manner, a firearm as defined in RCW 9.41.010, unless and until a hearing is held and  
5 such right is restored under RCW 9.41.04(6)(c).

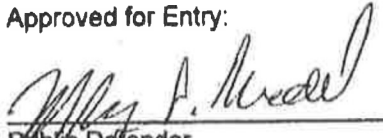
6 DONE IN OPEN COURT this 9<sup>th</sup> day of February, 2000.

7  
8   
9 JUDGE/COURT COMMISSIONER

10  
11 Presented by:

12   
13 Deputy Prosecuting Attorney  
14 WSBA # 27522  
15 Attorneys for Petitioner

Approved for Entry:

16   
17 Public Defender  
18 WSBA # \_\_\_\_\_  
19 Attorneys for Respondent

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**Appendix B**

Snohomish County Superior Court Cause No. 00-6-00072-6

Notice of Disposition of Civil Commitment Proceeding

*Petition for Order Restoring  
Right to Possess Firearms—Page 10  
RCW 9.41.040; 9.41.047, LCR 40(b)(16)*

**PLATT & BUESCHER**  
*Attorneys at Law*  
P.O. Box 727  
Coupeville, WA 98239  
Phone: (360) 678-6777

FILED

00 AUG 14 PM 12:10

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF SNOHOMISH

SNOHOMISH COUNTY, WASH.

No. 00-6-00072-6

IN RE THE DETENTION OF:

DUY TRAN MAI,  
RESPONDENT.

NOTICE OF DISPOSITION OF  
CIVIL COMMITMENT  
PROCEEDING

**CLERK'S ACTION REQUIRED**

**NOTICE TO THE CLERK OF THE COURT FOR SNOHOMISH COUNTY:**


This is to notify you that this case is now closed and no further proceedings will be filed under this cause number. This case file should be closed and any trial date stricken because:

☐ The respondent has been unconditionally released/discharged from the facility on \_\_\_\_\_ (DATE).

☒ The period of commitment has expired on August 8, 2000, and no additional commitment will be sought under this cause.

☐ The respondent has been transferred to a certified facility outside of Snohomish County and the current period of commitment has expired.

DATED this 11<sup>th</sup> day of August, 2000.

  
☐ Certified Evaluation and Treatment Facility Staff  
☒ County Designated Mental Health Professional

NOT OF DISP OF CIVIL COMMIT PROC - 1  
S:\MH-ITA\COURT\Dispositions\Notice of  
Disposition.doc

SNOHOMISH COUNTY MENTAL HEALTH  
2722 COLBY AVE., SUITE 104  
EVERETT, WASHINGTON 98201  
(425)388-7215/FAX: (206)388-7216

1  
6

**Appendix C**

Docket Sheets Re:

- (1) King County Superior Court Cause No. 99-6-01555-4
- (2) Snohomish County Superior Court Cause No. 00-6-00072-6

*Petition for Order Restoring  
Right to Possess Firearms—Page 11  
RCW 9.41.040; 9.41.047, LCR 40(b)(16)*

**PLATT & BUESCHER**  
*Attorneys at Law*  
P.O. Box 727  
Coupeville, WA 98239  
Phone: (360) 678-6777



03-23-01

KING COUNTY SUPERIOR COURT

PAGE 1

CASE#: 99-6-01555-4 SEA MENTL  
 TITLE: DUY MAI TRAN  
 FILED: 10/21/1999  
 CAUSE: MIJ MENTAL ILLNESS-JUVENILE  
 RESOLUTION: CDTC DATE: 10/28/1999 COURT DECISION TO COMMIT  
 COMPLETION: JODF DATE: 10/28/1999 JUDGMENT/ORDER/DECREE FILED  
 CASE STATUS: CMPL DATE: 10/28/1999 COMPLETED/RE-COMPLETED  
 CONSOLIDATED:  
 NOTE1: \*\*CHANGE OF VENUE TO SNOHOMISH COUNTY\*\*  
 NOTE2:

-----PARTIES-----  
 CONN LAST NAME, FIRST MI TITLE LITIGANT DATE  
 RSP01 TRAN, DUY M

-----ATTORNEYS-----  
 CONN LAST NAME, FIRST MI TITLE LITIGANTS DATE  
 ATP01 CORGAN, LLOYD PATRICK  
 ATRO1 LOUIS, MARY FRANCES  
 ATP02 WILCOX, KATHARINE BILIMORIA

-----APPEARANCE DOCKET-----  
 SUB# DATE CD/CONN DESCRIPTION SECONDARY  
 1 10/21/1999 PTINDT PETITION FOR INITIAL DETENTION  
 2 10/21/1999 NTHG NOTICE OF HEARING 10-25-1999HM  
 ACTION PET FOR 14 DAY INVOL TREATMENT  
 3 10/25/1999 PTIT14 PET FOR INVOL TREATMENT 14 DAY  
 4 10/25/1999 WV WAIVER  
 5 10/25/1999 ORCNT ORDER OF CONTINUANCE 10-28-1999HM  
 ACTION 14 DAY CONT  
 6 10/25/1999 HCNTPA CONTINUED: PLAINTIFF ATTY REQUESTED  
 COM02 COMMISSIONER LEONID PONOMARCHUK  
 - 10/25/1999 AUDIO AUDIO LOG 335/2369  
 7 10/28/1999 FNFCL FINDINGS OF FACT&CONCLUSIONS OF LAW  
 8 10/28/1999 ORDRSP ORDER DETAINING RESPONDENT AGREED  
 9 10/28/1999 180HRG 180 DAY HEARING  
 COM02 COMMISSIONER LEONID PONOMARCHUK  
 - 10/28/1999 AUDIO AUDIO LOG 342/2492  
 10 12/07/1999 PTRV PETITION/MOTION FOR REVOCATION  
 11 12/07/1999 NTHG NOTICE OF HEARING 12-13-1999HM  
 ACTION 180 DAY REVOCATION  
 12 12/13/1999 MTHRG MOTION HEARING  
 PRO00 JUDGE PRO TEM KATHARINE HERSHEY  
 - 12/13/1999 AUDIO AUDIO LOG 386/1313  
 13 12/13/1999 ORDSM ORDER OF DISMISSAL  
 14 02/09/2000 ORCHV ORDER FOR CHANGE OF VENUE TO  
 SNOHOMISH COUNTY  
 15 02/28/2000 RTRCM RETURN RECEIPT - CERTIFIED MAIL  
 \*\*\*\*\*  
 !!!DO NOT DOCKET UNDER THIS LINE!!  
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-----END COPY CASE-----

SNOHOMISH SUPERIOR COURT 05-12-01 06:30 PAGE 1

CASE#: 00-6-00072-6 JUDGMENT#  
 TITLE: DUY MAI AKA  
 FILED: 02/09/2000  
 CAUSE: MID MENTAL ILLNESS-JUVENILE DV: N

RESOLUTION: CD1C DATE: 02/11/2000 COURT DECISION TO COMMIT  
 COMPLETION: UNCL DATE: 08/14/2000 UNCONTESTED COMPLETION  
 CASE STATUS: CMPL DATE: 08/14/2000 COMPLETED/RE-COMPLETED  
 ARCHIVED:  
 CONSOLIDIT:  
 NOTE1:  
 NOTE2:CLOSED

## PARTIES

CONN.	LAST NAME, FIRST MI	TITLE	LITIGANTS	DATE
INC01	MAI, DUY			
AKA	TRAN, DUI MAI			

## APPEARANCE DOCKET

SUB#	DATE	CODE/ CONN	DESCRIPTION/NAME	SECONDARY
1	02/09/2000	PTRV	PETITION/MOTION FOR REVOCATION OF LRA	
-	02/09/2000	CUSATH	CUSTODY AUTHORIZATION	
-	02/09/2000	NTSRIP	NOTC/STMT, RHTS, FOR INVOL PATIENT	
2	02/11/2000	NTSRIP	NOTC/STMT, RHTS, FOR INVOL PATIENT	
3	02/11/2000	OAPDPS	OR, OATH & APPR JDGE PRO TEM & STIP	
		PRO	JUDGE PRO TEM	
			PAUL HANSEN	
-	02/11/2000	EXWACT	EX-PARTE ACTION WITH ORDER	
4	02/11/2000	ORDTLRA	OR OF DETENTION/LESS RESTRICT ALT	
-	02/11/2000	FNFC	FINDINGS OF FACT&CONCLUSIONS OF LAW	
		PRO	JUDGE PRO TEM	
			PAUL HANSEN	
-	02/11/2000	EXWACT	EX-PARTE ACTION WITH ORDER	
5	02/24/2000	RCDCHV	RECORD ON CHANGE OF VENUE	
			FROM KING COUNTY	
6	08/14/2000	NT	NOTICE OF DISPOSITION	

\*\*\*\*\*

=====END=====

## EXHIBIT B



**FILED**  
KING COUNTY, WASHINGTON

DEC 08 2014

SUPERIOR COURT CLERK

SUPERIOR COURT OF WASHINGTON  
KING COUNTY

DUY TRAN MAI,  
(DOB: 10/3/1978)  
Petitioner,

v.

STATE OF WASHINGTON,  
Respondent.

No. 14-2-21620-3 SEA

ORDER RESTORING RIGHT  
TO POSSESS FIREARMS  
PURSUANT TO RCW 9.41.040(4)  
AND RCW 9.41.047(3)

Clerk's Action Required

THIS MATTER having come on for hearing before the above entitled court on a Petition for Order Restoring Right to Possess Firearms Pursuant to RCW 9.41.040(4), RCW 9.41.047(3), and LCR 40(b)(16) and the court having reviewed the petition, declarations, and sworn testimony of expert witnesses, and having heard any objections thereto, and being otherwise fully advised:

THE COURT HEREBY FINDS:

1. Mr. Mai is no longer required to participate in court-ordered inpatient or outpatient treatment;
2. Mr. Mai has successfully managed the condition related to the commitment;
3. Mr. Mai no longer presents a substantial danger to himself, or the public; and
4. The symptoms related to the commitment are not reasonably likely to recur.

ORDER RESTORING RIGHT  
TO POSSESS FIREARMS—Page 1

PLATT & BUESCHER  
Attorneys at Law  
P.O. Box 727  
Coupeville, WA 98239  
Phone: (360) 678-6777

1 THE COURT HEREBY ORDERS that Mr. Mai's right to possess firearms is fully  
2 restored pursuant RCW 9.41.047(3). The clerk of the court shall, forthwith, provide certified  
3 copies of this Order to the Washington State Patrol-Identification Section, King County Sheriff,  
4 and Seattle Police Department. The Washington State Patrol shall transmit a copy of this Order  
5 to the Federal Bureau of Investigation.  
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10 DONE IN OPEN COURT this 5 day of March, 2014.

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12  
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15 JUDGE

16 Presented by:

17 Approved for entry:

18  
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21 Brent Thompson, WSBA #44778  
22 Attorney for Petitioner

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45 Anne Mizuta, WSBA # 31589  
46 Attorney for State of Washington  
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ORDER RESTORING RIGHT  
TO POSSESS FIREARMS—Page 2

PLATT & BUESCHER  
Attorneys at Law  
P.O. Box 727  
Coupeville, WA 98239  
Phone: (360) 678-6777

# EXHIBIT C

SEALED

COPY RECEIVED

JUL 31 2014

CRIMINAL DIVISION  
KING COUNTY PROSECUTOR'S OFFICE

**Superior Court of Washington  
County of King**

DUY MAI,

Petitioner,

v.

STATE OF WASHINGTON,

Respondent.

**No.**

**Sealed Medical and Health  
Information (Cover Sheet)  
(SMHI)**

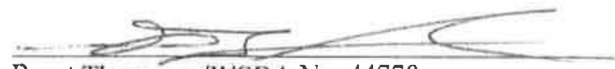
**Clerk's Action Required:  
Information Shall be Sealed  
Automatically under GR 33(b)(2)**

**Sealed Medical and Health Information**

(Write "Sealed" at least one inch from the top of the first page of each document.)

Attached are records or correspondences that contain health information that relates to the past, present, or future physical or mental health condition of an individual and/or past, present, or future payments for health care.

Submitted by:

  
Brent Thompson/WSBA No. 44778  
Signature

Filed on  
08.05.14

/2014 13:30

(FAX)10018

P.001/001

5/22/2014 17:05

(FAX)10018

P.001/001

SEALED

SUPERIOR COURT OF WASHINGTON  
KING COUNTY

DUY MAL,

Petitioner,

No.

Declaration of:

Dr. Nancy Connolly (Name)

v.

STATE OF WASHINGTON,  
Respondent.

This declaration is made by:

Name:

Nancy Connolly MD

Age:

Relationship to the parties in this action:

Primary Care

Address:

19116 33rd Ave W  
Lynnwood WA 98036

Phone:

425-712-7900

I declare,

(See Attached).

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Signed at VM Lynnwood (city) WA (state) on 05-23-2014 (date).

Signature of Declarant

Declaration—Page 1

PLATT & BUESCHER  
Attorneys at Law  
P.O. Box 727  
Coupeville, WA 98239  
Phone: (360) 678-6777

2014 13:00

(FAX)10018

P.001/001

**TEAM  
MEDICINE™****Medical Center**(MAI, DUY TRAN 6303223)  
(Author: Connolly MD, Nancy, 20 May 2014)**SEALED****DUY TRAN MAI  
2725 NE 137TH ST  
SEATTLE WA 98125-3515**

05/20/2014

Date of Birth: 06/12/1982

To Whom it May Concern:

Mr. Mai has been under my care since 2010 and during this time he has never demonstrated evidence of clinical depression. In office depression screening has consistently been negative and he has consistently demonstrated healthy lifestyle and behaviors. I do not believe that he represents a significant suicide risk nor do I believe that he is at risk for harming others.

For further questions or concerns, and with his permission, please feel free to contact our office.

Sincerely,

  
Nancy Connolly MD

Virginia Mason Medical Center  
19116 33rd Avenue West, Lynnwood, WA 98036  
(425) 712-7900

**Signature Line**

(Electronically Signed on 05/20/14 10:58 AM)  
Connolly MD, Nancy

SUPERIOR COURT OF WASHINGTON  
ISLAND COUNTY

DUY TRAN MAI,

Petitioner,

and

STATE OF WASHINGTON,

Respondent.

No.

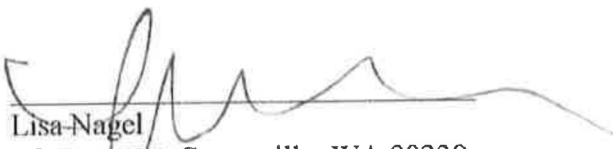
DECLARATION REGARDING FACSIMILE  
TRANSMISSION PURSUANT TO GR 17

The undersigned has examined the preceding DECLARATION OF DR. NANCY CONNOLLY and has determined that it consists of 3 pages, including this page, but not including exhibits, and that it is complete and legible.

This declaration is made pursuant to GR 17.

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

Signed at Coupeville, WA on July 29, 2014



Lisa Nagel

PO Box 727, Coupeville, WA 98239

Fax: 360-678-0323, Phone: 360-678-6777



SEALED

COPY RECEIVED

JUL 31 2014

CRIMINAL DIVISION  
KING COUNTY PROSECUTOR'S OFFICE

**Superior Court of Washington  
County of King**

DUY MAI,

Petitioner,

v.

STATE OF WASHINGTON,

Respondent.

No.

**Sealed Medical and Health  
Information (Cover Sheet)  
(SMHI)**

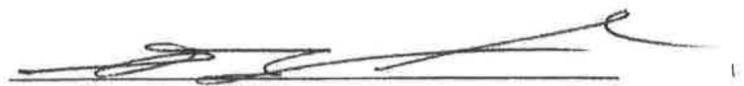
**Clerk's Action Required:  
Information Shall be Sealed  
Automatically under GR 33(b)(2)**

**Sealed Medical and Health Information**

(Write "Sealed" at least one inch from the top of the first page of each document.)

Attached are records or correspondences that contain health information that relates to the past, present, or future physical or mental health condition of an individual and/or past, present, or future payments for health care.

Submitted by:



Brent Thompson/WSBA No. 44778  
Signature

Filed on  
08.05.14



SEALED

SUPERIOR COURT OF WASHINGTON  
KING COUNTYDUY MAI,  
Petitioner,

No.

v.

## Declaration of:

Dr. Brendon Scholtz (Name)STATE OF WASHINGTON,  
Respondent.


This declaration is made by:

Name: BRENDON P. SCHOLTZ, Ph.D.Age: 44Relationship to the parties in this action: Licensed Clinical PsychologistAddress: 2600 SW BARTON STREET # A24  
SEATTLE WA 98126Phone: 914-255-1955

I declare,

(See Attached).

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Signed at SEATTLE (city) WA (state) on 6/15/14 (date).  
Signature of Declarant

Declaration—Page 1

PLATT & BUESCHER  
Attorneys at Law  
P.O. Box 727  
Coupeville, WA 98239  
Phone: (360) 678-6777

\*\* CONFIDENTIAL MATERIAL \*\*

SEALED

## FORENSIC CONSULTATION / REVIEW

## IDENTIFYING DATA

**Name:** MAI, Duy  
**Date of Birth:** [REDACTED] (31-y/o)  
**Location:** PsychLaw, Seattle, WA  
**Date of Referral:** 5/19/2014  
**Date of Interview(s):** 6/04/82014  
**Date of Report:** 6/11/2014

## REASON FOR REFERRAL

A forensic consultation and review regarding a prior forensic psychological risk assessment completed by S. Cecchet, Ph.D. was requested by the client Mr. Duy Mai and is being provided to his attorney Brent Thompson of Platt & Buescher Attorneys at Law. As a comprehensive forensic psychological evaluation and risk assessment is a costly and time consuming process, I consulted with Mr. Mai, discussed with him his goals and available options and suggested that it most parsimonious for the undersigned to conduct and interview, review records, psychological reports and all available clinical materials and provide an opinion of the prior assessment as well as its conclusions. The information below is not intended to be a comprehensive assessment or a diagnostic evaluation but instead a review and opinion as to the substance and veracity of the previous evaluation performed by Dr. S. Cecchet, Ph.D. on 5/2/2014.

## NOTIFICATION OF THE PURPOSE AND LIMITATIONS OF THE EVALUATION

Mr. Duy Mai was interviewed at the PsychLaw offices in Seattle, Washington on 6/04/2014 for a total of approximately 1.25 hours. Prior to beginning the interview Mr. Mai was informed in simple language that this evaluation was being conducted at his request for the purpose of forming an opinion as to the veracity of the substance and recommendations of a prior forensic risk assessment completed by S. Cecchet, Ph.D. Mr. Mai was informed that there was a possibility, that this written review could be determined to be discoverable and therefore disclosed in a court proceeding. In addition, Mr. Mai was informed that participation in the evaluation was entirely voluntary and that he could choose to discontinue the evaluation at any time without repercussion. Mr. Mai was asked to reiterate in his own words the purpose, scope, potential impact and voluntariness of this interview. Mr. Mai's responses indicated that he had an adequate understanding of the information and he reported that he was willing to continue.

## PROCEDURES

Specific procedures used to arrive at clinical opinions include the following:

**Review of the following records:** At the time of the interview with Mr. Mai, all of the records reviewed had been provided by S. Cecchet, Ph.D. and are detailed in her report dated 5/2/2014.

**\*\* CONFIDENTIAL MATERIAL \*\***

This included the records she had relied upon, as well as her final report and her psychological test data and protocols. In addition, Mr. Mai was asked to review the report by S. Cecchet, Ph.D. and inform the undersigned of any inaccuracies, discrepancies or concerns that he identified in the report.

**Clinical Interviews:**

- Face to face interview conducted with Mr. Mai at PsychLaw offices in Seattle, WA on 6/4/2014, approximately 1.25 hours.
- Telephone conversation with Mr. Mai on 6/6/2014 approximately 10 minutes.

**Tests Reviewed:**

- HCR-20
- VRAG
- MMPI-2
- BDI-II

**RELEVANT BACKGROUND INFORMATION**

**Reasons for Referral.** Mr. Mai was civilly committed as a juvenile, both voluntarily and involuntarily, for psychiatric evaluation and treatment in 1999-2000. As a result he lost his right to possess a firearm. Mr. Mai is now interested in petitioning the court to expunge his record and or restore his possession rights under RCW 9A.047.

Mr. Mai telephoned the undersigned two days after our interview and stated that he had been able to read and review the final report submitted by S. Cecchet, Ph.D. Mr. Mai indicated that with one exception, he did not identify any inaccurate or misrepresented information. The exception was the presentation of Mr. Mai having obtained "top level security clearance." Mr. Mai clarified that he was subjected to and passed a background check including fingerprinting, prior to being allowed to collaborate on projects with the Army but he did not believe that had been granted a formal level of security clearance by the United States Army or Department of Defense.

**ASSESSMENT RESULTS**

Results of the measures administered and interpreted by Dr. Cecchet are summarized in her report dated 5/2/2014. In short they place Mr. Mai's risk of violent and non-violent recidivism at or below the baseline of his normative group. In addition Mr. Mai does not appear to be currently experiencing any significant psychological distress and he does not appear to have any overt symptoms of a major disorder of thought or mood.

**OPINION**

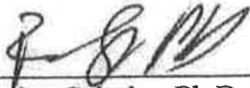
The results as they are articulated in the report dated 5/2/2014 and arrived at by Dr. Cecchet appear to be an accurate and clinically sound representation of the available facts and information. In addition, Dr. Cecchet's procedures, interview, record review, test administration, interpretation and assignment of risk level appear to reflect appropriate clinical acumen and



**\*\* CONFIDENTIAL MATERIAL \*\***

should be considered a valid and reliable forensic risk assessment. The undersigned agrees with the conclusions drawn by Dr. Cecchet with regards to the information presented in the Diagnostic Formulation and Summary sections of the Forensic Psychological Evaluation – Risk Assessment dated 5/2/2014.

Thank you for your referral. Please contact me if I can be of further assistance.



---

Brendon Scholtz, Ph.D.  
Licensed Clinical Psychologist  
914.255.1955

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COPY RECEIVED

JUL 31 2014

CRIMINAL DIVISION  
KING COUNTY PROSECUTOR'S OFFICE

**Superior Court of Washington  
County of King**

DUY MAI,

Petitioner,

v.

STATE OF WASHINGTON,

Respondent.

No.

**Sealed Medical and Health  
Information (Cover Sheet)  
(SMHI)**

**Clerk's Action Required:  
Information Shall be Sealed  
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Attached are records or correspondences that contain health information that relates to the past, present, or future physical or mental health condition of an individual and/or past, present, or future payments for health care.

Submitted by:



Brent Thompson/WSBA No. 44778  
Signature

Filed on  
08.05.14

SEALED

SUPERIOR COURT OF WASHINGTON  
KING COUNTYDUY MAI,  
Petitioner,

No.

Declaration of:

v.

Dr. Stacy Cecchet (Name)STATE OF WASHINGTON,  
Respondent.

This declaration is made by:

Name: Stacy Cecchet, Ph.D.Age: 30 YearsRelationship to the parties in this action: Forensic PsychologisAddress: Snohomish Psychology Associates1721 Hewitt Ave, Ste 416, Everett WA 98201Phone: 425-681-5003

I declare,

(See Attached).

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Signed at Everett (city) WA (state) on 8/4/14 (date).Signature of Declarant Stacy Cecchet, PhD

Declaration—Page 1

PLATT & BUESCHER  
Attorneys at Law  
P.O. Box 727  
Coupeville, WA 98239  
Phone: (360) 678-6777

SEALED

Confidential Forensic Evaluation

## FORENSIC PSYCHOLOGICAL EVALUATION – RISK ASSESSMENT

Snohomish Psychology Associates  
Stacy Cecchet, Ph.D.  
Everett, WA

---

Name: Mai, Duy  
Date Of Birth (Age): [REDACTED]  
Evaluation Date(s): 03/05/2014, 03/10/2014, 04/14/2014  
Date Of Report: 05/02/2014  
Psychologist: Stacy Cecchet, Ph.D.

---

### Reason For Referral:

Mr. Mai is a 31 year-old, single, Vietnamese male referred by his attorney, Mr. Brent Thompson, J.D., for psychological testing and a risk assessment. A risk assessment was requested to provide information to the court regarding future dangerousness, mental illness, the identification of risk as well as protective factors for future aggression, and other information relevant to the question of whether Mr. Mai should be considered for the restoration of his right to possess a firearm.

### Description of Risk Assessment:

A risk assessment involves a systematic review of past aggressive behavior, looking specifically at the antecedents of the behavior, as well as the degree of harm and context in which the behavior occurred. This review is combined with assessment tools designed specifically for evaluation of future risk for aggression. In considering this assessment, it is important to note that mental health professionals often over predict aggression. Whether a person will behave aggressively is a function of a variety of factors that include history, personal disposition, and situational variables that cannot all be known in advance. In addition, it is important to consider that due to unknown future events and their impact on dynamic risk and protective factors, statements concerning an individual's potential for future aggression may become less valid with the passage of time. Despite these limitations, it is possible to consider the available current and historical clinical data to identify and form an opinion regarding risk of future violence and make recommendations regarding ways in which risk may be mitigated.

Please note that the historical information compiled in risk assessments often comes from a variety of sources and its presentation here is not intended to represent it as a "finding of fact." Histories often contain inaccurate and sometimes contradictory information. The information in this report serves to inform the reader of the information that was reported to the evaluator and to indicate this evaluator's understanding of the relevant history. Presentation of any specific statement in this report does not necessarily mean that the statement is true, only that it was observed by, or reported to, this evaluator.



## Confidential Forensic Evaluation

**Notification Of The Purpose And Limitations Of The Evaluation:**

Prior to the interview, Mr. Mai was informed in simple language that this was a voluntary evaluation requested by his attorney to provide an opinion regarding Mr. Mai's current risk in the context of owning a firearm and that the standard doctor-patient relationship did not exist and information contained in the evaluation was not confidential. Mr. Mai was informed that a report would be prepared and submitted to his attorney for presentation in court. Mr. Mai's responses indicated he had an understanding of the information supplied to him and that he was willing to continue.

**Procedures:**

Specific procedures used to arrive at clinical conclusions include the following:

**Review of the following records:**

- Review of Mr. Mai's Medical & Behavioral Health Files
- Review of the following psychiatric evaluations:
  - Stevens Hospital: Richard McClelland, M.D., 10/18/1999
  - Fairfax Hospital: Tom Newlyn, M.D., 10/21/1999, 10/28/1999, 12/07/1999, 12/13/1999, 02/29/2000, 04/05/2000
  - Stevens Hospital: Rebecca Sutherland, D.O., 02/03/2000
  - Stevens Hospital: Anne Marie Arvidson, M.D., 02/04/2000, 02/29/2000
  - Stevens Hospital: Thomas O'Brien, M.D., 02/17/2000
- Review of Mr. Mai's Criminal History Report

**Clinical Interviews:**

- Mai, Duy on 03/05/2014, 03/10/2014, and 04/14/2014

**Psychological Testing:**

- Historical Clinical Risk Management- 20 (HCR-20)
- Violence Risk Assessment Guide (VRAG)
- Minnesota Multiphasic Personality Inventory- II (MMPI-2)
- Beck Depression Inventory (BDI)

**Relevant Background Information:****Presenting Situation And Problems.**

Mr. Mai reported that he suffered from depression as a teen and was involuntarily hospitalized three times between October 1999 and April 2000. As such, Mr. Mai lost his right to possess a firearm (RCW 9A.04.07). Mr. Mai stated that his motivation to petition to have his rights restored stems from a desire to gain closure with his past. Mr. Mai stated that he would like to put the past behind him and that he is very embarrassed about his prior hospitalizations. Mr. Mai described his desire to own a firearm as congruent with recreational activities such as fishing, bushcraft, and wilderness survival, but not a necessity. Mr. Mai stated that if his rights were restored he would likely wait several years to purchase a firearm as financial responsibility is important to him and he said that his current priorities are re-roofing his home and making sure that his children are provided for.



## Confidential Forensic Evaluation

Personal Medical History.

Mr. Mai reported an unremarkable medical history.

Psychiatric History.

Mr. Mai does not present with any current mental health symptoms. On 10/18/1999 Mr. Mai threatened himself and others and was detained for treatment. Mr. Mai was initially admitted at Stevens Hospital and was then transferred to Fairfax Hospital where he was hospitalized for 28 days. Mr. Mai was discharged from Fairfax on a 180 day less restrictive order that was revoked 12/06/1999 due to safety concerns. At this time, Mr. Mai was readmitted to Fairfax Hospital for seven. In February 2000 Mr. Mai's less restrictive order was again revoked and he was admitted to Stevens Hospital. Mr. Mai converted to voluntary status and was transferred to Fairfax Hospital for inpatient treatment for 36 days until his discharge on 04/05/2000. Mr. Mai is not currently taking medication and reported that he has been medication free for at least the last three years. Mr. Mai reported that while hospitalized and participating in treatment as a teen he was prescribed a number of medication such as: Prozac (dosage unknown), Paxil 40mg, Zyprexa 2.5mg, Celexa 20mg, Citalopram 20mg, Olanzapine 5mg, and Fluoxetine 20mg. The medications listed were prescribed over several years and were reportedly not taken concurrently. Mr. Mai's uncle reportedly has mental health difficulties related to psychosis and paranoia but is not on medication and is reportedly not receiving mental health services.

Substance Abuse History.

Mr. Mai denied a history of substance abuse.

Social History:Home Life As A Child.

Mr. Mai was born in a Thai refugee camp where he lived there until age 2 years when he and his family moved to Los Angeles, California. Mr. Mai relocated to Everett, Washington with his family at age 11 years. He stated that he and his family are close knit and supportive of one another. Mr. Mai reported that his sister and parents, whose marriage is intact, live close by and that they often get together for family dinners on the weekend.

Academic.

Mr. Mai described having difficulty mastering the English language in early education. As such, his school reportedly wanted Mr. Mai to be held back in first grade, however his parents refused. Mr. Mai stated that he is now fluent in both Vietnamese and English and can speak some conversational Spanish. Mr. Mai reported that, aside from his difficulties at the end of high school related to his depression, he was always quite a good student. Mr. Mai received his GED in December 2000 from Everett Community College, a Bachelor of Science in Microbiology from the University of Washington in 2006, and a Masters Degree in Microbiology from the University of Southern California in 2010.

## Confidential Forensic Evaluation

Marital.

Mr. Mai is not married but resides with his long-term girlfriend.

Military.

Mr. Mai denied any military history.

Vocational.

Mr. Mai currently works as a Lab Tech 2 at Benaroya Research. Mr. Mai conducts research on virology. Specifically, Mr. Mai stated that he conducts research on T-Cell cultures, Rhinovirus, Influenza, Yellow Fever, Type 1 Diabetes, and Allergies. Mr. Mai regularly engages in cross-lab collaboration, and most recently while working with the United States Army, he was able to attain top-level security clearance.

Legal.

Mr. Mai has no criminal history.

**Current Behavioral Observations And Mental Status:**

Mr. Mai arrived on time for the evaluation. He was groomed and dressed appropriately. There were no noted difficulties with ambulation on the day of this examination. No motor difficulties were noted, and no physical factors were observed that would have limited his ability to manipulate testing stimuli. Mr. Mai was alert and oriented. Rapport was easily established and Mr. Mai appeared to have no difficulty with attention and concentration during the testing process. Mr. Mai was polite and cooperative throughout the interview did not demonstrate any observable difficulties with impulsivity, attention and concentration, or completing tasks. Mood was euthymic. Affect was broad and appropriate to speech content. Speech was goal-oriented, fluent and meaningful. Speech was well articulated and coherent.

**Assessment Results:**

HCR-20. The HCR-20 is an actuarial rating scale of risk factors for violent behavior. It consists of 20 items organized around 10 historical variables, 5 clinical variables and 5 risk assessment variables. Each item is scored as a zero, one, or two for a maximum score of 40. This measure can be used in different settings and incorporates the impact of the environment or situational variables on an individual's behavior. This means that individuals with the same score can demonstrate very different risk factors. Mr. Mai's score of a 6 on this assessment is significantly below the base rate for individuals with a psychiatric history.

VRAG. The Violence Risk Assessment Guide is an actuarial risk assessment based mainly on static historical information unlikely to change over time. The VRAG is a 12-item assessment with consisting of items organized around historical and clinical variables. Each item is scored on scale ranging from -5 to +12, for a total score that can range from -24 to +32. Mr. Mai's score of -8 is significantly below the base rate for his normative group.

## Confidential Forensic Evaluation

**MMPI-2.** The Minnesota Multiphasic Personality Inventory-2 is a self-report measure used to assess the presence of psychopathology as well as interpersonal functioning and current levels of emotional and psychological distress. Mr. Mai's responses to the measure indicate that he responded in a generally open and honest manner. Mr. Mai did not endorse any behaviors or symptoms congruent with psychopathology and denied symptoms of excessive sadness, frequent worry, significant physiological concerns, paranoia, or psychosis. Mr. Mai endorsed a well adjusted, outgoing, friendly, and sociable personality profile.

**BDI.** The Beck Depression Inventory-2 is an evidence-based depression inventory. Results from the BDI indicate a self-reported level of depression in the minimal range.

**History & Risk Factors of Aggression:**

Mr. Mai has a minimal history of aggression or violence. The following static and dynamic factors are associated with higher risk for aggression. A plus (+) beside a factor indicates that it is present in Mr. Mai's life; a minus (-) indicates an absence. An asterisk (\*) indicates that the factor may respond to treatment/intervention.

<b>Risk Factor</b>	<b>Present/Absent</b>	<b>Interventions</b>
Male	+	
Below Average IQ	-	
Low SES	-	
Unemployed	-	
Divorced	-	
Fire setting, cruelty to animals	-	
History of Child abuse	-	
Delinquency, truancy, or School failure	++	Participated/completed treatment
Substance Abuse	-	
Prior arrests for Violence	-	
Military History/Dishonorable Discharge	-	
Attention Deficit Disorder	-	
Access to weapons	-	
Violence is ego-syntonic	-	
Angry/Lack of empathy for others	-	
Impulsivity	-	
Fails to accept responsibility	-	
Mental Illness	++	Participation in treatment was completed and reported to be successful

**Protective Factors:**

While there is not a large body of quantitative research on the relative impact of protective factors in mediating the risk of future violence and there exists no solid understanding of the interplay between risk and protective factors, there is general agreement that protective factors are an important consideration in formulating an opinion of the risk of future violence. In Mr. Mai's case, he presents with a substantial



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Snohomish Psychology Associates LLC

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## Confidential Forensic Evaluation

number of protective factors. Mr. Mai reported that he has learned effective coping skills for negative mood, has strong support from family and friends, engages in healthy and appropriate extracurricular activities (i.e., wilderness activities, volunteer work), demonstrates good problem-solving skills and the ability to utilize appropriate resources, is intelligent, and is quite insightful, particularly in regard to his prior hospitalizations and mental health difficulties as a teen.

**Diagnostic Formulation DSM-IV:**

Axis I: History of 296.26 Major Depressive Disorder, In Full Remission

Axis II: V70.09 No Diagnosis

Axis III: Defer To Medical Provider

Axis IV: Current Petition To Reinstate Rights To Possess A Firearm

Axis V: Current GAF 80

**Summary**

Mr. Mai is a 31 year-old (DOB 06/12/1982) Vietnamese male referred by his attorney for an evaluation to assess Mr. Mai's potential risk to himself and others. Mr. Mai has a history of Major Depressive Disorder as a teen, which is now in full remission. Mr. Mai was involuntarily hospitalized due to his depression and verbalized threats to himself and others at the age of 17 years and as such lost his right to possess a firearm. Mr. Mai's scores on the two actuarial risk assessments used in the course of this evaluation (VRAG & HCR-20) were significantly below the base rate. In addition, Mr. Mai's responding on a measure of psychopathology (MMPI-2) appears to be open and honest and indicates that he is sociable and friendly individual. Mr. Mai's responding on a self-report inventory of depression (BDI-II) endorses only minimal feelings of sadness and depression. While Mr. Mai experienced a difficult time in his life from his late teens through his early twenties, he has demonstrated considerable resilience through his advanced education, job stability/achievement, and family and peer support. Mr. Mai also reported a significant number of protective factors in his life such as insight regarding his mental health difficulties as a youth, healthy coping skills, volunteer work, family oriented values, and vocational stability. Based on the review of the information provided in the clinical interview, it is the opinion of the undersigned that Mr. Mai is of low risk for future violence and nonviolent criminal behavior and does not present with any observable psychopathology.

Respectfully submitted,

  
Stacy Cecchet, Ph.D.

Licensed Psychologist #PY60073218

Snohomish Psychology Associates

5/12/2014

SUPERIOR COURT OF WASHINGTON  
ISLAND COUNTY

DUY TRAN MAI,

Petitioner,

and

STATE OF WASHINGTON,

Respondent.

No.

DECLARATION REGARDING FACSIMILE  
TRANSMISSION PURSUANT TO GR 17

The undersigned has examined the preceding DECLARATION OF STACY CECCHET and has determined that it consists of 8 pages, including this page, but not including exhibits, and that it is complete and legible.

This declaration is made pursuant to GR 17.

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

Signed at Coupeville, WA on July 29, 2014



Lisa Nage  
PO Box 727, Coupeville, WA 98239  
Fax: 360-678-0323, Phone: 360-678-6777

# United States District Court

WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

DUY T. MAI,

Plaintiff,

v.

UNITED STATES OF AMERICA, *et al.*,

Defendants.

## JUDGMENT IN A CIVIL CASE

CASE NUMBER: C17-561RAJ

\_\_\_\_ **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

**X** **Decision by Court.** This action came to consideration before the Court. The issues have been considered and a decision has been rendered.

### THE COURT HAS ORDERED THAT

For the reasons set forth in the Court's order of February 8, 2018, Judgment is entered in favor of Defendants United States of America; the Department of Justice; the Bureau of Alcohol, Tobacco, Firearms and Explosives; the Federal Bureau of Investigation; Jefferson B. Sessions III, as Attorney General; Andrew McCabe, as Acting Director of the Federal Bureau of Investigation;<sup>1</sup> and Thomas E. Brandon, as Acting Director of the Bureau of Alcohol, Tobacco, Firearms and Explosives, against Plaintiff Duy T. Mai.

DATED this 8th day of February, 2018.

WILLIAM M. McCOOL,  
Clerk of the Court

By: /s/ Victoria Ericksen  
Deputy Clerk

<sup>1</sup> Pursuant to Rule 25(d)(1) of the Federal Rules of Civil Procedure, Mr. McCabe is substituted for Mr. Comey.



HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

DUY T. MAI,

Plaintiff,

v.

UNITED STATES OF AMERICA, et al.,

Defendants.

CASE NO. C17-0561 RAJ

ORDER

**I. INTRODUCTION**

This matter comes before the Court on Defendants' Motion to Dismiss. Dkt. # 4. Plaintiff DUY T. MAI opposes the Motion. Dkt. # 6. For the reasons that follow, the Court **GRANTS** Defendants' Motion.

**II. BACKGROUND**

The following is taken from Plaintiff's Complaint, which is assumed to be true for the purposes of this motion to dismiss. *Sanders v. Brown*, 504 F.3d 903, 910 (9th Cir. 2007).

Plaintiff brings this action against Defendants United States of America; the Department of Justice ("DOJ"); the Bureau of Alcohol, Tobacco, Firearms, and Explosives ("ATF"); the Federal Bureau of Investigation ("FBI"); Jefferson B. Sessions

III, as Attorney General; Andrew McCabe, as Acting Director of the FBI; and Thomas E. Brandon, as Acting Director of the ATF, for alleged violations of his Second and Fifth Amendment rights. Dkt. # 1 ¶¶ 1.1-1.8, 4.1, 4.2.

In October of 1999, when Plaintiff was seventeen (17) years old, he was involuntarily committed for mental health treatment by the King County Superior Court. Plaintiff's commitment expired by August 8, 2000<sup>1</sup>, and he has not been committed since. *Id.* ¶ 3.1. In 2001, Plaintiff enrolled in Evergreen Community College where he completed his GED and earned college credit that enabled him to transfer to the University of Washington. *Id.* ¶ 3.3. Plaintiff graduated from the University of Washington with a bachelor's of science degree in microbiology. After graduating, Plaintiff enrolled in a master's program at the University of Southern California. *Id.* He graduated with a master's degree in microbiology in 2009. Plaintiff then began working at Benaroya Research Institute. As part of his job, he successfully passed an FBI background check. *Id.* ¶ 3.4. In October of 2016, Plaintiff began working for Fred Hutchinson Cancer Research Center as an immune monitoring specialist and is currently employed there. *Id.* ¶ 3.6.

In 2014, Plaintiff petitioned the King County Superior Court under Washington statute RCW 9A.047 for restoration of his firearm rights. Plaintiff supplied the court with medical and psychological examinations and supportive declarations. His petition was granted. *Id.* ¶ 3.9. Plaintiff then attempted to purchase a firearm and received a denial from the National Instant Criminal Background Check System ("NICS"). NICS informed him that the denial was based on 18 U.S.C. § 922(g)(4). *Id.* ¶ 3.10. Plaintiff subsequently received a phone call from the ATF, notifying him that the ATF legal

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<sup>1</sup> Plaintiff does not provide further explanation as to what this "expiration" entails. Therefore, the Court presumes that Plaintiff was released from his commitment on that date.

1 department determined that his state restoration order was not sufficient to overcome the  
2 federal prohibition in 18 U.S.C. § 922(g)(4). *Id.* ¶ 3.11.

3 On April 11, 2017, Plaintiff filed a complaint alleging that Defendants violated his  
4 Second Amendment and Fifth Amendment rights by denying him the ability to “keep,  
5 bear and purchase” firearms. *Id.* ¶¶ 4.1, 4.2.

### 6 **III. LEGAL STANDARD**

#### 7 **A. FRCP 12(b)(6)**

8 Fed. R. Civ. P. 12(b)(6) permits a court to dismiss a complaint for failure to state a  
9 claim. The rule requires the court to assume the truth of the complaint’s factual  
10 allegations and credit all reasonable inferences arising from those allegations. *Sanders v.*  
11 *Brown*, 504 F.3d 903, 910 (9th Cir. 2007). A court “need not accept as true conclusory  
12 allegations that are contradicted by documents referred to in the complaint.” *Manzarek v.*  
13 *St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008). The plaintiff must  
14 point to factual allegations that “state a claim to relief that is plausible on its face.” *Bell*  
15 *Atl. Corp. v. Twombly*, 550 U.S. 544, 568 (2007). If the plaintiff succeeds, the complaint  
16 avoids dismissal if there is “any set of facts consistent with the allegations in the  
17 complaint” that would entitle the plaintiff to relief. *Id.* at 563; *Ashcroft v. Iqbal*, 556 U.S.  
18 662, 679 (2009).

19 A court typically cannot consider evidence beyond the four corners of the  
20 complaint, although it may rely on a document to which the complaint refers if the  
21 document is central to the party’s claims and its authenticity is not in question. *Marder v.*  
22 *Lopez*, 450 F.3d 445, 448 (9th Cir. 2006). A court may also consider evidence subject to  
23 judicial notice. *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003).

### 24 **IV. DISCUSSION**

#### 25 **A. Federal Statutory and Regulatory Background**

26 Under 18 U.S.C. § 922(g)(4), it is unlawful for any person “who has been  
27 adjudicated as a mental defective or who has been committed to a mental institution” to

1 purchase a firearm. 18 U.S.C. § 922(g)(4); 17 C.F.R. § 478.11. 18 U.S.C. § 925(c)  
 2 provides for a “relief-from-disability” program to be administered through the Attorney  
 3 General. This program was defunded in 1992. Dkt. # 1. ¶ 3.12. In 2008, Congress  
 4 passed the NICS Improvements Amendments Act (“NIAA”). Pub. L. No. 110-180,  
 5 122 Stat. 2559. The NIAA authorizes federal grants to states to assist them in  
 6 determining which individuals are eligible to purchase and possess firearms and to aid  
 7 them in supplying accurate information to federal databases. *Id.* To be eligible for these  
 8 grants, a state must certify to the Attorney General that it has implemented a relief-from-  
 9 disabilities program under which an individual who, pursuant to state law, has been  
 10 adjudicated “mentally defective” or has been “committed to a mental institution” may  
 11 apply for “relief from the disabilities imposed” by 18 U.S.C. § 922(g)(4). Pub. L. No.  
 12 110-180, §§ 103-105, 121 Stat. 2559, 2568-69 (2008).

13 A qualifying state program shall grant relief if “the circumstances regarding the  
 14 disabilities . . . and the person’s record and reputation, are such that the person will not be  
 15 likely to act in a manner dangerous to public safety and that the granting of the relief  
 16 would not be contrary to the public interest.” *Id.* The NIAA requires that a state court or  
 17 other lawful authority reviewing a petition for relief from a firearms disability imposed  
 18 by 18 U.S.C. § 922(g)(4) consider three factors when determining whether to grant or  
 19 deny the requested relief: (1) the circumstances regarding the firearms disability imposed  
 20 by 18 U.S.C. § 922(g)(4); (2) the petitioner’s “record”; and (3) the petitioner’s  
 21 “reputation”. *Id.* § 105(a)(2). The NIAA also requires that when a state court or other  
 22 lawful authority grants a petitioner relief from a firearms disability, the court must find  
 23 that the petitioner “will not be likely to act in a manner dangerous to public safety,” and  
 24 that “the granting of the relief would not be contrary to the public interest.”  
 25 *Id.* § 105(a)(2).

26 Washington State’s restoration statute pre-dates the NIAA. RCW 9.41.047. This  
 27 statute does not comply with the NIAA because the provisions for restoration of rights

1 after involuntary commitment do not meet the requirements of the federal statute.  
2 Dkt. # 4 at 5. Plaintiff argues that because he is unable to obtain restoration of his right  
3 to possess firearms through the state of Washington's program, he has no relief available  
4 to him and he is subject to a lifetime prohibition on firearm possession in violation of his  
5 Second and Fifth Amendment rights.

6 **B. Second Amendment Claim**

7 *a. Conduct Protected by the Second Amendment*

8 The Second Amendment confers "an individual right to keep and bear arms."  
9 *District of Columbia v. Heller*, 554 U.S. 570, 575 (2008). In *Heller*, the Supreme Court  
10 considered whether the District of Columbia's regulations barring the possession of  
11 handguns both inside and outside the home, and requiring that other firearms be kept  
12 "unloaded and disassembled or bound by a trigger lock or similar device," violated the  
13 plaintiff's Second Amendment Rights. *Id.* at 628-29. After undergoing a historical  
14 analysis of the original meaning of the amendment, the Supreme Court concluded that the  
15 right of self-defense was central to the Second Amendment right to keep and bear arms  
16 and found that prohibiting the possession of handguns was unconstitutional. *Id.* The  
17 Supreme Court also found that the District of Columbia's requirement that other firearms  
18 in the home be "rendered and kept inoperable at all times" made it impossible for citizens  
19 to use firearms for self-defense, and thus, was also unconstitutional. *Id.* at 630. In  
20 undertaking its analysis regarding the impact of the District of Columbia's regulations on  
21 the plaintiff's Second Amendment rights, the Supreme Court noted that "the right secured  
22 by the Second Amendment is not unlimited," and that "nothing in our opinion should be  
23 taken to cast doubt on longstanding prohibitions on the possession of firearms by felons  
24 and the mentally ill . . . ." *Id.* at 626-27. In a footnote, the *Heller* Court referred to these  
25 "longstanding prohibitions" as "presumptively lawful regulatory measures." *Id.* at 626  
26 n.26.

1       The Ninth Circuit has interpreted the *Heller* decision to suggest a two-step inquiry  
 2 for addressing Second Amendment challenges to regulations. *Jackson v. City & Cty. of*  
 3 *S.F.*, 746 F.3d 953, 960 (9th Cir. 2014). This two-step inquiry, “(1) asks whether the  
 4 challenged law burdens conduct protected by the Second Amendment” based on a  
 5 historical understanding of the scope of the Second Amendment, “and (2) if so, directs  
 6 courts to apply an appropriate level of scrutiny.” *Id.* (citing *United States v. Chovan*, 735  
 7 F.3d 1127, 1136 (9th Cir. 2013)). “To determine whether a challenged law falls outside  
 8 the historical scope of the Second Amendment, we ask whether the regulation is one of  
 9 the ‘presumptively lawful regulatory measures’ identified in *Heller*, or whether the record  
 10 includes persuasive historical evidence establishing that the regulation at issue imposes  
 11 prohibitions that fall outside the historical scope of the Second Amendment.” *Id.*  
 12 (quoting *Heller*, 554 U.S. at 627 n. 26); *see also Chovan*, 735 F.3d at 1137. 18 U.S.C. §  
 13 922(g)(4), which is a prohibition on the possession of firearms by the mentally ill, is a  
 14 “presumptively lawful regulatory measure.” Thus, analysis of the constitutionality of the  
 15 regulation need not proceed to the second step of the inquiry.

16       Plaintiff argues that the language in *Heller* only established a presumption that  
 17 such bans are lawful, and as such, it left open the possibility of an as-applied  
 18 constitutional challenge to 18 U.S.C. § 922(g)(4). Specifically, Plaintiff argues that the  
 19 statute is unconstitutional as applied to him because he has had no mental health issues  
 20 since he was involuntarily committed at the age of 17. Plaintiff further argues that an  
 21 involuntary commitment does not equate to mental illness such that it provides a basis for  
 22 a permanent limitation on his right to bear arms. The Ninth Circuit has yet to rule on a  
 23 Second Amendment challenge to 18 U.S.C. § 922(g)(4) in a published opinion, but it has  
 24 rejected as-applied challenges to 18 U.S.C. § 922(g)(1), which prohibits felons from  
 25 possessing firearms, also one of the enumerated “presumptively legal regulatory  
 26 measures” in *Heller*. *Heller*, 554 U.S. at 626-27. While the historical reasons for  
 27 prohibiting felons from possessing firearms differ slightly from those relevant to the



mentally ill, these cases provide insight as to how the Ninth Circuit views the regulatory measures listed as “presumptively lawful” with regards to as-applied challenges.

In *United States v. Vongxay*, 594 F.3d 1111 (9th Cir. 2010), the Ninth Circuit expressly rejected the defendant’s argument that the “presumptively legal” language in *Heller* was not binding, stating that the language was “integral” to the holding. *Id.* at 1115. Citing the Supreme Court’s commentary regarding the longstanding prohibitions on the possession of firearms, the court specifically stated that felons, by virtue of being included among those that have long been prohibited from possessing firearms, are “categorically different from the individuals who have a fundamental right to bear arms.” *Id.* The court then rejected the defendant’s as-applied challenge to the statute based on *Heller* and its holding in *United States v. Younger*, 398 F.3d 1179 (9th Cir. 2005)<sup>2</sup>. *Id.* at 1116 (stating that its holding is “buttressed by the fact that *Younger* upheld the very type of gun possession restriction that the Supreme Court deemed ‘presumptively lawful’”). Referring to its decision in *Younger*, the court also noted that it declined to make a distinction between violent and non-violent felons and held that section 922(g)(1), which prohibits all felons from possessing firearms, was constitutional. *Id.* The holding in *Vongxay* continued to be upheld in several decisions involving as-applied challenges to section 922(g)(1), including the decision in *United States v. Phillips*, 827 F.3d 1171 (9th Cir. 2016). In *Phillips*, the Ninth Circuit rejected the defendant’s argument that his conviction for a non-violent felony could not constitutionally serve as a basis for depriving him of his right to possess a firearm, noting that it was “hard pressed”

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<sup>2</sup> The circuit court noted that it held that 18 U.S.C. § 922(g)(1) does not violate the Second Amendment rights of a convicted felon in its decision in *United States v. Younger*, 398 F.3d 1179 (9th Cir. 2005). However, the holding upon which *Younger* was based was partially invalidated by the decision in *Heller*. Citing to *In re Osborne*, 76 F.3d 306 (9th Cir. 1996), the court concluded that, because only a court *en banc* has the authority to overrule a decision of a previous panel, and the doctrine of *stare decisis* concerns the holdings of previous cases, not the rationales, *Younger* still controls. *Vongxay*, 594 F.3d at 1116.

1 to conclude that a felony “cannot serve as the basis of a felon firearm ban, simply  
 2 because its *actus reus* may appear innocuous.” *Phillips*, 827 F. 3d at 1176; *see also*  
 3 *United States v. Chovan*, 735 F.3d 1127, (9th Cir. 2013); *Van Der Hule v. Holder*, 759  
 4 F.3d 1043, 1050–51 (9th Cir. 2014).

5 Further, the Ninth Circuit has ruled on a Second Amendment challenge to  
 6 18 U.S.C. § 922(g)(4) in one unpublished opinion. While the decision is not  
 7 precedential, it is instructive regarding this circuit’s approach to as-applied challenges to  
 8 the statute. In *Petramala v. U.S. Dep’t of Justice*, the Ninth Circuit affirmed a district  
 9 court’s finding that the language in *Heller* was appropriate as applied to restrict the  
 10 plaintiff’s right to possess firearms. *See Petramala v. U.S. Dep’t of Justice*, 481 F. App’x  
 11 395, 396 (9th Cir. 2012); *see also Petramala v. U.S. Dep’t of Justice*, No. CV 10-2002-  
 12 PHX-FJM, 2011 WL 3880826, at \*2 (D. Ariz. Sept. 2, 2011), *aff’d*, 481 F. App’x 395  
 13 (9th Cir. 2012). The plaintiff argued that section 922(g)(4) unconstitutionally deprived  
 14 him of his right to possess firearms because he was not a danger to himself or others and  
 15 should not be classified as mentally defective. *Id.* Citing to the “longstanding  
 16 prohibition” language in *Heller*, the Ninth Circuit found that the district court properly  
 17 dismissed the plaintiff’s Second Amendment claim because his status as mentally  
 18 defective, as defined by 18 U.S.C. § 922(g)(4) and 27 C.F.R. § 478.11, allowed for  
 19 constitutionally permissible limits on his right to bear arms. *Id.*

20 Case law clearly indicates that the Ninth Circuit does not, as Plaintiff argues,  
 21 consider the language in *Heller* as merely “precautionary”. Dkt. # 6 at 6. Ninth Circuit  
 22 case law also indicates that Plaintiff’s arguments that section 922(g)(4) are  
 23 unconstitutional as applied to him also do not pass muster. Like the plaintiffs in *Phillips*  
 24 and *Petramala*, the crux of Plaintiff’s argument is that section 922(g)(4)  
 25 unconstitutionally deprives him of his right to keep and bear arms because he no longer  
 26 suffers from his “condition” and is presumably not a danger to the public. When  
 27 considering arguments regarding as-applied challenges to prohibitions included in *Heller*

1 as “presumptively legal”, the Ninth Circuit has consistently rejected arguments that the  
2 constitutionality of a prohibition on possession turns on whether there is evidence that the  
3 specific plaintiff is violent or non-violent. Thus, Plaintiff’s argument that the Court  
4 should find that his involuntary commitment and alleged past mental health issues do not  
5 provide a constitutional basis for a prohibition on his right to bear arms is unpersuasive.

6 Plaintiff also fails to plead sufficient facts to distinguish himself from those  
7 historically barred from Second Amendment protections: the mentally ill. Plaintiff does  
8 not dispute that he meets the definition of someone “committed to a mental institution”  
9 under 18 U.S.C. § 922(g)(4). The term “committed to a mental institution” in 18 U.S.C.  
10 § 922(g)(4) is defined by regulation as:

11 A formal commitment of a person to a mental institution by a court, board,  
12 commission, or other lawful authority. The term includes a commitment to  
13 a mental institution involuntarily. The term includes commitment for  
14 mental defectiveness or mental illness. It also includes commitments for  
other reasons, such as for drug use.

15 17 C.F.R. § 478.11. While Plaintiff provides very few details regarding his  
16 commitment for mental health treatment, he does allege that he was involuntarily  
17 committed by the King County Superior Court in October of 1999. Dkt. # 1 ¶ 3.1. While  
18 Plaintiff does not specifically allege that he had a mental illness, he alleges that he had a  
19 “condition” that led to the involuntary commitment, and that he at some point used  
20 medication to control his condition. *Id.* ¶¶ 3.1, 3.8. Plaintiff does not provide the exact  
21 date in October that he was committed, but he alleges that his commitment expired by  
22 August 8, 2000. Thus, based on the facts alleged, Plaintiff was presumably committed  
23 for close to a year. Although Plaintiff contends that he no longer has a “condition”, he  
24 fails to allege facts sufficient to support that contention. In making that contention,  
25 Plaintiff assumes that living a “socially-responsible, well-balanced, and accomplished  
26 life” is an indication that he does not suffer from a mental illness or mental defect. That  
27

1 assumption is a gross generalization that mischaracterizes what it means to live with a  
 2 mental illness and implies that the mentally ill cannot have a productive and fulfilling  
 3 life. *Id.* ¶¶ 3.3, 3.8. Plaintiff also alleges that he submitted medical and psychological  
 4 examinations to the King County Superior Court when he petitioned for restoration of his  
 5 firearm rights under RCW 9.41.047 and that the court granted his petition. *Id.* ¶ 3.9.  
 6 Again, Plaintiff fails to allege facts showing how the court’s grant of his petition  
 7 distinguishes him from the mentally ill. Washington State’s restoration statute,  
 8 RCW 9.41.047, requires a finding that the applicant “no longer presents a substantial  
 9 danger to himself or herself, or the public,” not a finding that the petitioner no longer  
 10 suffers from the condition related to the commitment. Therefore, Plaintiff fails to state a  
 11 claim that 18 U.S.C. § 922(g)(4) violates the Second Amendment as it applies to him.

12 *b. Appropriate Level of Scrutiny*

13 Even if Plaintiff could show that challenged law burdens conduct protected by the  
 14 Second Amendment, Plaintiff’s claim fails under the second step of the two-pronged  
 15 analysis established by the Ninth Circuit. “The level of scrutiny in the Second  
 16 Amendment context should depend on the nature of the conduct being regulated and the  
 17 degree to which the challenged law burdens the right.” *Chovan*, 735 F.3d at 1138. The  
 18 parties agree that the appropriate level of scrutiny for a regulation when Second  
 19 Amendment rights are at issue is intermediate scrutiny. To pass intermediate scrutiny,  
 20 Defendants must show: “(1) the government’s stated objective to be significant,  
 21 substantial, or important; and (2) a reasonable fit between the challenged regulation and  
 22 the asserted objective.” *Id.* at 1139. Plaintiff concedes that regulation of firearm  
 23 possession is a significant interest. However, Plaintiff argues that 18 U.S.C. § 922(g)(4)  
 24 does not pass the second element of the intermediate scrutiny standard.

25 According to both case law and the legislative history of the statute at issue, the  
 26 asserted objective of regulation of firearm possession includes preventing firearm  
 27 violence to promote public safety as well as suicide prevention. S. Rep. No. 89-1966

at 1; 114 Cong. Rec. 13,219 (statement of Sen. Tydings); 114 Cong. Rec. 21,829 (statement of Rep. Bingham). The Supreme Court has recognized that the Government’s interest in suicide prevention is “unquestionably important and legitimate”. *Washington v. Glucksberg*, 521 U.S. 702, 735 (1997). Thus, in analyzing the “fit” between section 922(g)(4) and regulation of firearm possession, the issue for this Court to analyze, is whether prohibiting those who have been committed to a mental institution from bearing arms is substantially related to these stated objectives. Defendants provide ample evidence to support this connection.

First, Defendants argue that Congress relied on a history of involuntary commitment or adjudicated mental illness as the basis for preventative firearm prohibition when it enacted section 922(g)(4). *See* 114 Cong. Rec. 14,773 (1968) (Sen. Long) (stating that mentally ill individuals, “by their actions, have demonstrated that they are dangerous, or that they may become dangerous”).

Second, Defendants provide reference to numerous studies that indicate that those with a history of mental illness bear a significant additional risk of gun violence than those in the general population, both against others as well as against themselves. *See e.g.* Seena Fazel & Martin Grann, *The Population Impact of Severe Mental Illness on Violent Crime*, 163 Am. J. Psychiatry 1397, 1401 (Aug. 2006); Joseph R. Simpson, *Bad Risk? An Overview of Laws Prohibiting Possession of Firearms by Individuals With a History of Treatment for Mental Illness*, 35 J. Am. Acad. Psychiatric Law 330, 338 (2007); Richard A. Friedman, *Violence and Mental Illness – How Strong Is the Link?*, 355 New Eng. J. Med. 2064, 2065 (Nov. 2006); Richard Van Dorn et al., *Mental Disorder and Violence: Is There a Relationship Beyond Substance Use?*, 47 Soc. Psychiatry & Psychiatric Epidemiology 487 (Mar. 2012); Bryan L. Tanney, *Psychiatric Diagnoses and Suicidal Acts*, in Ronald W. Maris et al., *Comprehensive Textbook of*

1 *Suicidology* 339 (2000); Matthew Miller & David Hemenway, *Guns and Suicide in the*  
 2 *United States*, 359 New English J. Med. 989, 989-90 (Sept. 2008).

3 To pass the substantial relationship inquiry, Defendants need only show that the  
 4 “fit” between the asserted interest and the challenged law is reasonable, and that the  
 5 regulation at issue is substantially related to the Government’s interest in promoting  
 6 public safety and preventing suicide. *See Chovan*, 735 F.3d at 1142; *see also United*  
 7 *States v. Chapman*, 666 F.3d 220, 231 (4th Cir. 2012). Defendants have more than  
 8 satisfied this element of the analysis.<sup>3</sup> Plaintiff fails to show that 18 U.S.C. § 922(g)(4)  
 9 does not pass constitutional muster under intermediate scrutiny. Therefore, Defendants’  
 10 motion to dismiss Plaintiff’s Second Amendment claim is **GRANTED**.

### 11 **C. Fifth Amendment Claim**

12 Defendants argue that Plaintiff fails to state a claim for violation of his due process  
 13 rights because he does not allege any defect in his involuntary commitment proceeding.  
 14 Defendants further argue that if Plaintiff is claiming that the statute at issue, and not the  
 15 process under which he was deprived of his rights, deprived him of his right to bear and  
 16 keep arms without due process, such claims should be analyzed under the Second  
 17 Amendment. “[T]he right to keep and to bear arms for self-defense . . . is more  
 18 appropriately analyzed under the Second Amendment.” *Nordyke v. King*, 644 F.3d 776,  
 19 794 (9th Cir. 2011), on reh’g en banc, 681 F.3d 1041 (9th Cir. 2012); *see also Albright v.*  
 20 *Oliver*, 510 U.S. 266, 273, 114 S.Ct. 807, 127 L.Ed.2d 114 (1994) (“Where a particular  
 21 Amendment provides an explicit textual source of constitutional protection against a  
 22 particular sort of government behavior, that Amendment, not the more generalized notion  
 23 \_\_\_\_\_

24 <sup>3</sup> Although Plaintiff makes an as-applied challenge to section 922(g)(4), he makes no  
 25 argument as to whether the application of the statute to him is substantially related to the  
 26 Government’s stated interest. In the absence of any evidence that someone with Plaintiff’s  
 27 condition or in similar circumstances does not bear an additional risk of gun violence or suicide,  
 the Court concludes that the application of section 922(g)(4) to Plaintiff is substantially related to  
 the Government’s interest. *See Chovan*, 735 F.3d at 1142.



1 of substantive due process, must be the guide for analyzing these claims.”). The Court  
2 agrees. Further, Plaintiff does not offer any argument to the contrary. Defendants’  
3 motion to dismiss Plaintiff’s Fifth Amendment claim is **GRANTED**.

4 **V. CONCLUSION**

5 For the foregoing reasons, the Court **GRANTS** Defendants’ Motion to Dismiss.  
6 Dkt. # 4.

7  
8 Dated this 8th day of February, 2018.

9  
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11

12 The Honorable Richard A. Jones  
13 United States District Judge  
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<b>United States District Court Western District of Washington</b>	<b>No.</b>
Duy T. Mai, Plaintiff,  vs.  United States; and  Department of Justice; and  Bureau of Alcohol, Tobacco, Firearms, and Explosives; and  Federal Bureau of Investigation; and  Jefferson B. Sessions III, as Attorney General; and  James B. Comey, as Director of the Federal Bureau of Investigation; and  Thomas E. Brandon, as Acting Director of the Bureau of Alcohol, Tobacco, Firearms, and Explosives	<b>Complaint</b>

1  
2 Plaintiff Duy T. Mai brings this action against the United States and other named  
3 defendants and makes the following allegations and complaints:  
4

711 Court A, Suite 104  
Tacoma, WA 98402  
253-905-8415  
vitaliy@kertchenlaw.com  
www.kertchenlaw.com

I. PARTIES

1. Plaintiff Duy T. Mai is an individual residing in Seattle, King County, Washington.
2. Defendant Department of Justice (DOJ) is a United States agency charged with enforcing the laws of the United States.
3. Defendant Jefferson B. Sessions III is the Attorney General of the United States, and the head of the Department of Justice.
4. Defendant Bureau of Alcohol, Tobacco, Firearms, and Explosives (BATFE) is an agency of the DOJ responsible for enforcing United States laws pertaining to firearms.
5. Defendant Thomas E. Brandon is the Acting Director and head of the BATFE.
6. Defendant Federal Bureau of Investigation (FBI) is an agency of the DOJ responsible for conducting background checks for firearm sales through its National Instant Criminal Background Check System (NICS).
7. Defendant James B. Comey is the Director and head of the FBI.
8. Defendant United States is the United States of America.

II. JURISDICTION AND VENUE

1. This Court has jurisdiction under 28 U.S.C. § 1331 (federal question) and § 1346 (United States as defendant). One of the defendants is the United States of America and the plaintiff resides within the Western District of Washington. This Court has venue under 28 U.S.C. § 1391(e)(1).

711 Court A, Suite 104  
Tacoma, WA 98402  
253-905-8415  
vitaliy@kertchenlaw.com  
www.kertchenlaw.com

III. FACTS

1. In October 1999, when he was a seventeen-year-old juvenile, Mr. Mai was involuntarily committed for mental health treatment by the King County Superior Court under cause number 99-6-01555-4. That court later transferred venue of the proceedings to Snohomish County under cause number 00-6-00072-6. As a result, Mr. Mai lost his firearm rights under RCW 9.41.040(2)(a)(iii) and 18 U.S.C. § 922(g)(4).
2. Mr. Mai's commitment expired by August 8, 2000. He has never been committed since.
3. Since that time, Mr. Mai has enjoyed a fruitful and fulfilling life. In 2001, he enrolled in Evergreen Community College where he completed his GED and earned college credit that enabled him to transfer to a university. In 2002, he transferred to the University of Washington and graduated with a bachelor's of science in microbiology and a cumulative 3.7 GPA. After graduating, Mr. Mai enrolled in a master's program at the University of Southern California (USC) and graduated with a master's degree in microbiology in 2009.
4. He moved back to Seattle, where he began a job at Benaroya Research Institute, studying viruses. As part of his job, he has successfully passed an FBI background check and is allowed to have unescorted access and use of a JL Shepherd Mark II Cesium – 137 irradiator.
5. In April 2016, Mr. Mai briefly worked as a contractor for Seattle Genetics doing cancer research.

711 Court A, Suite 104  
Tacoma, WA 98402  
253-905-8415  
vitaliy@kertchenlaw.com  
www.kertchenlaw.com

6. In October 2016, he began working for Fred Hutchinson Cancer Research Center as an immune monitoring specialist and remains employed there presently.
7. While living in Los Angeles and attending USC, Mr. Mai met Michelle Ross and the two had a pair of twins. Although Mr. Mai and Ms. Ross are no longer together romantically, Mr. Mai continues to be active father in his children's lives.
8. In all, Mr. Mai has completely recovered from the condition that lead to the involuntary commitment seventeen years ago. He no longer uses any medication to control his condition; in fact, he no longer has any condition to control in the first instance. By all accounts, he lives a socially-responsible, well-balanced, and accomplished life.
9. In 2014, Mr. Mai petitioned the King County Superior Court under RCW 9.41.047 for restoration of his firearm rights, supplying the court with medical and psychological examinations and supportive declarations from over ten people. The court granted his petition.
10. After having his Washington state firearm rights restored, Mr. Mai attempted to purchase a firearm and received a denial from NICS. After requesting to know the reason for the denial, NICS informed him that the denial was based on 18 U.S.C. § 922(g)(4), involuntary commitment.
11. Subsequently, Mr. Mai received a phone call from someone at BATFE, informing Mr. Mai that the BATFE legal department has determined that his state restoration order is not sufficient to overcome the federal prohibition in 18 U.S.C. § 922(g)(4).

711 Court A, Suite 104  
Tacoma, WA 98402  
253-905-8415  
vitaliy@kertchenlaw.com  
www.kertchenlaw.com

1 12. 18 U.S.C. § 925(c) provides for a “relief from disability” program to be administered  
2 through the Attorney General. However, due to lack of funding, this program has not  
3 functioned since 1992.

4 13. In the NICS Improvement Amendments Act of 2007 (NIAA), Congress provided that  
5 involuntary commitment firearm restorations from certain states would remove the  
6 (g)(4) federal prohibition. To qualify, the restoration requirements under state law  
7 must match certain criteria included in the NIAA. Washington state does not qualify.

8 14. Therefore, Mr. Mai has no statutory relief available to him.

9 15. As a direct consequence of each of the defendants’ actions, together and separately,  
10 Mr. Mai has suffered a lifetime prohibition on firearm possession under federal law  
11 for an involuntary commitment he suffered seventeen years ago as a juvenile, despite  
12 no longer being mentally ill.

13  
14 IV. CAUSES OF ACTION

15 1. Each of the defendants, together and separately, has violated Mr. Mai’s constitutional  
16 rights by denying him the ability to keep, bear, and purchase firearms as guaranteed  
17 to him by the Second Amendment. As a direct and proximate result, Mr. Mai has  
18 suffered and continues to suffer from an unlawful deprivation of his fundamental  
19 constitutional right to keep and bear arms.

20 2. Each of the defendants, together and separately, has violated Mr. Mai’s Fifth  
21 Amendment rights by denying him the ability to keep, bear, and purchase firearms  
22 without due process of law. As a direct and proximate result, Mr. Mai has suffered

711 Court A, Suite 104  
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253-905-8415  
vitaliy@kertchenlaw.com  
www.kertchenlaw.com

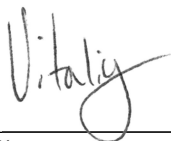


1 and continues to suffer from an unlawful deprivation of his fundamental  
2 constitutional right to keep and bear arms.

3  
4 V. REQUESTED RELIEF

- 5 1. That the Court enter a declaratory judgment, ruling that 18 U.S.C. § 922(g)(4), its  
6 derivative regulations, and all related laws, policies, and procedures violate Mr. Mai's  
7 right to keep and bear arms as secured by the Second Amendment.
- 8 2. That the Court enter a declaratory judgment, ruling that 18 U.S.C. § 922(g)(4), its  
9 derivative regulations, and all related laws, policies, and procedures violate Mr. Mai's  
10 right to due process under the Fifth Amendment.
- 11 3. That the Court enter a permanent injunction prohibiting defendants, their officers,  
12 agents, servants, employees, and all persons in concert with them from enforcing 18  
13 U.S.C. § 922(g)(4) and all its derivative regulations, and all related laws, policies, and  
14 procedures that would impede or criminalize Mr. Mai's exercise of his Second  
15 Amendment rights.
- 16 4. That the Court award Mr. Mai his attorney's fees and costs.
- 17 5. Any other legal or equitable relief as the Court sees fit.

18 Respectfully submitted,

19  
20   
21  
22

23 Vitaliy Kertchen WSBA#45183  
24 Attorney for Mr. Mai  
25 Date: 4/11/17

711 Court A, Suite 104  
Tacoma, WA 98402  
253-905-8415  
vitaliy@kertchenlaw.com  
www.kertchenlaw.com

**U.S. District Court**  
**United States District Court for the Western District of Washington (Seattle)**  
**CIVIL DOCKET FOR CASE #: 2:17-cv-00561-RAJ**

Mai v. United States et al  
Assigned to: Judge Richard A. Jones  
Cause: 28:1331 Fed. Question

Date Filed: 04/11/2017  
Date Terminated: 02/08/2018  
Jury Demand: None  
Nature of Suit: 440 Civil Rights: Other  
Jurisdiction: Federal Question

**Plaintiff**

**Duy T Mai**

represented by **Vitaliy Kertchen**  
KERTCHEN LAW PLLC  
711 COURT A  
SUITE 104  
TACOMA, WA 98402  
253-905-8415  
Email: vitaliy@kertchenlaw.com  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

V.

**Defendant**

**United States**

represented by **Jessica Andrade**  
US ATTORNEY'S OFFICE (SEA)  
700 STEWART ST  
STE 5220  
SEATTLE, WA 98101-1271  
206-553-8786  
Email: jessica.andrade@foster.com  
*TERMINATED: 09/29/2017*

**Sarah K Morehead**  
US ATTORNEY'S OFFICE (SEA)  
700 STEWART ST  
STE 5220  
SEATTLE, WA 98101-1271  
206-553-7970  
Fax: 206-553-4073  
Email: sarah.morehead@usdoj.gov  
*ATTORNEY TO BE NOTICED*

**Defendant**

**Department of Justice**

represented by **Jessica Andrade**  
(See above for address)  
*TERMINATED: 09/29/2017*

**Sarah K Morehead**

(See above for address)  
*ATTORNEY TO BE NOTICED*

**Defendant**

**Bureau of Alcohol, Tobacco, Firearms  
 and Explosives**

represented by **Jessica Andrade**  
 (See above for address)  
*TERMINATED: 09/29/2017*

**Sarah K Morehead**  
 (See above for address)  
*ATTORNEY TO BE NOTICED*

**Defendant**

**Federal Bureau of Investigation**

represented by **Jessica Andrade**  
 (See above for address)  
*TERMINATED: 09/29/2017*

**Sarah K Morehead**  
 (See above for address)  
*ATTORNEY TO BE NOTICED*

**Defendant**

**Jefferson Beauregard Sessions, III**  
*as Attorney General*

represented by **Jessica Andrade**  
 (See above for address)  
*TERMINATED: 09/29/2017*

**Sarah K Morehead**  
 (See above for address)  
*ATTORNEY TO BE NOTICED*

**Defendant**

**James B. Comey**  
*as Director of the Federal Bureau of  
 Investigation*

represented by **Jessica Andrade**  
 (See above for address)  
*TERMINATED: 09/29/2017*

**Sarah K Morehead**  
 (See above for address)  
*ATTORNEY TO BE NOTICED*

**Defendant**

**Thomas E. Brandon**  
*as Acting Director of the Bureau of Alcohol,  
 Tobacco, Firearms and Explosives*

represented by **Jessica Andrade**  
 (See above for address)  
*TERMINATED: 09/29/2017*

**Sarah K Morehead**  
 (See above for address)  
*ATTORNEY TO BE NOTICED*

Date Filed	#	Docket Text
04/11/2017	<u>1</u>	COMPLAINT against defendant(s) Thomas E. Brandon, Bureau of Alcohol, Tobacco, Firearms, and Explosives, James B. Comey, Department of Justice, Federal Bureau of

		Investigation, Jefferson B. Sessions, United States (Receipt # 0981-4837160), filed by Duy T Mai. (Attachments: # <u>1</u> Civil Cover Sheet, # <u>2</u> Summons, # <u>3</u> Summons, # <u>4</u> Summons, # <u>5</u> Summons, # <u>6</u> Summons, # <u>7</u> Summons, # <u>8</u> Summons, # <u>9</u> Summons)(Kertchen, Vitaliy) (Entered: 04/11/2017)
04/12/2017		Judge Richard A Jones added. (ST) (Entered: 04/12/2017)
04/12/2017		Summons Issued as to defendant(s) Thomas E. Brandon, Bureau of Alcohol, Tobacco, Firearms and Explosives, James B. Comey, Department of Justice, Federal Bureau of Investigation, Jefferson B. Sessions, United States. Due to the volume of summons(es) requested, original summons(es) sent to counsel via U.S. Postal Service. (ST) (Entered: 04/12/2017)
04/12/2017		<b>NOTICE TO FILER:</b> When opening a new case, the filer is responsible for entering party text exactly as it appears on the complaint. For example, <u>as Attorney General</u> should have been entered as party text for <u>Jefferson B. Sessions</u> . In addition, parties must be entered in the order they appear on the case caption. In addition to creating a docket that is a true reflection of the complaint caption, it also helps to eliminate dropping parties. The docket is now properly ordered. Thank you. (ST) (Entered: 04/12/2017)
04/12/2017	<u>2</u>	STANDING ORDER for Civil Cases Assigned to Judge Richard A. Jones. (VE) (Entered: 04/12/2017)
06/19/2017	<u>3</u>	NOTICE of Appearance by attorney Jessica M. Andrade on behalf of Defendant United States. (Andrade, Jessica) (Entered: 06/19/2017)
06/19/2017	<u>4</u>	MOTION to Dismiss , filed by Defendant United States. (Attachments: # <u>1</u> Proposed Order) Noting Date 7/14/2017, (Andrade, Jessica) (Entered: 06/19/2017)
06/22/2017	<u>5</u>	NOTICE of Unavailability of counsel Jessica M. Andrade for Defendants Thomas E. Brandon, Bureau of Alcohol, Tobacco, Firearms and Explosives, James B. Comey, Department of Justice, Federal Bureau of Investigation, Jefferson B. Sessions, United States from 6/26/2017 - 7/4/2017. (Andrade, Jessica) (Entered: 06/22/2017)
07/10/2017	<u>6</u>	RESPONSE, by Plaintiff Duy T Mai, to <u>4</u> MOTION to Dismiss . (Kertchen, Vitaliy) (Entered: 07/10/2017)
07/10/2017	<u>7</u>	AFFIDAVIT of Mailing of Summons and Complaint to various on 4/18/2017, filed by Plaintiff Duy T Mai. (Kertchen, Vitaliy) (Entered: 07/10/2017)
07/14/2017	<u>8</u>	REPLY, filed by Defendants Thomas E. Brandon, Bureau of Alcohol, Tobacco, Firearms and Explosives, James B. Comey, Department of Justice, Federal Bureau of Investigation, Jefferson B. Sessions, United States, TO RESPONSE to <u>4</u> MOTION to Dismiss (Andrade, Jessica) (Entered: 07/14/2017)
09/14/2017		The Court acknowledges the requirements of FRCP 16(b), but finds good cause to defer entry of an initial case scheduling order pending its ruling on Defendants' <u>4</u> MOTION to Dismiss. (VE) (Entered: 09/14/2017)
09/18/2017	<u>9</u>	NOTICE of Appearance by attorney Jessica M. Andrade on behalf of Defendants Thomas E. Brandon, Bureau of Alcohol, Tobacco, Firearms and Explosives, James B. Comey, Department of Justice, Federal Bureau of Investigation, Jefferson B. Sessions, United States. (Andrade, Jessica) (Entered: 09/18/2017)
09/29/2017	<u>10</u>	NOTICE of Appearance by attorney Sarah K Morehead on behalf of Defendants Thomas E. Brandon, Bureau of Alcohol, Tobacco, Firearms and Explosives, James B. Comey, Department of Justice, Federal Bureau of Investigation, Jefferson B. Sessions, United States. (Morehead, Sarah) (Entered: 09/29/2017)

09/29/2017	<u>11</u>	NOTICE OF WITHDRAWAL OF COUNSEL: Attorney Jessica M. Andrade for Defendants Thomas E. Brandon, Bureau of Alcohol, Tobacco, Firearms and Explosives, James B. Comey, Department of Justice, Federal Bureau of Investigation, Jefferson B. Sessions, United States. (Andrade, Jessica) (Entered: 09/29/2017)
02/08/2018	<u>12</u>	ORDER granting Defendants' <u>4</u> Motion to Dismiss signed by Judge Richard A Jones. (TH) (Entered: 02/08/2018)
02/08/2018	<u>13</u>	JUDGMENT BY COURT in favor of Defendants against Plaintiff Duy T Mai. (VE) (Entered: 02/08/2018)
02/12/2018	<u>14</u>	MOTION to Amend <i>Complaint</i> , filed by Plaintiff Duy T Mai. (Attachments: # <u>1</u> Exhibit Proposed Amended Complaint, # <u>2</u> Proposed Order) Noting Date 3/2/2018, (Kertchen, Vitaliy) (Entered: 02/12/2018)
02/26/2018	<u>15</u>	RESPONSE, by Defendants Thomas E. Brandon, Bureau of Alcohol, Tobacco, Firearms and Explosives, James B. Comey, Department of Justice, Federal Bureau of Investigation, Jefferson B. Sessions, United States, to <u>14</u> MOTION to Amend <i>Complaint</i> . (Morehead, Sarah) (Entered: 02/26/2018)
03/01/2018	<u>16</u>	NOTICE to Withdraw Pending Motion re <u>14</u> MOTION to Amend <i>Complaint</i> ; by Plaintiff Duy T Mai. (Kertchen, Vitaliy) (Entered: 03/01/2018)
03/01/2018	<u>17</u>	MOTION for Relief <i>from Judgment and Leave to Amend</i> , filed by Plaintiff Duy T Mai. (Attachments: # <u>1</u> Exhibit First Amended Complaint, # <u>2</u> Proposed Order) Noting Date 3/16/2018, (Kertchen, Vitaliy) (Entered: 03/01/2018)
03/12/2018	<u>18</u>	RESPONSE, by Defendants Thomas E. Brandon, Bureau of Alcohol, Tobacco, Firearms and Explosives, James B. Comey, Department of Justice, Federal Bureau of Investigation, Jefferson B. Sessions, United States, to <u>17</u> MOTION for Relief <i>from Judgment and Leave to Amend</i> . (Morehead, Sarah) (Entered: 03/12/2018)
03/12/2018	<u>19</u>	REPLY, filed by Plaintiff Duy T Mai, TO RESPONSE to <u>17</u> MOTION for Relief <i>from Judgment and Leave to Amend</i> (Kertchen, Vitaliy) (Entered: 03/12/2018)
12/21/2018	<u>20</u>	ORDER denying <u>17</u> Motion for Relief from Judgment and Leave to Amend Complaint, signed by Judge Richard A. Jones.(LW) (Entered: 12/21/2018)
12/21/2018	<u>21</u>	NOTICE OF APPEAL to Ninth Circuit (18-36071) by Plaintiff Duy T Mai. Filing Fee \$505, Receipt number 0981-5591654. (Kertchen, Vitaliy) Modified on 12/28/2018 (ADD CCA#SG). (Entered: 12/21/2018)
12/28/2018	<u>22</u>	TIME SCHEDULE ORDER (18-36071) as to <u>21</u> Notice of Appeal filed by Duy T Mai : (SG) (Entered: 12/28/2018)

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Billable Pages:	4	Cost:	0.40

9th Circuit Case Number(s)

18-36071

**NOTE:** To secure your input, you should print the filled-in form to PDF (File > Print > *PDF Printer/Creator*).

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### CERTIFICATE OF SERVICE

#### When All Case Participants are Registered for the Appellate CM/ECF System

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on (date) .

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Signature (use "s/" format)

/s/ Vitaliy Kertchen

\*\*\*\*\*

### CERTIFICATE OF SERVICE

#### When Not All Case Participants are Registered for the Appellate CM/ECF System

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on (date) .

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within 3 calendar days to the following non-CM/ECF participants:

Signature (use "s/" format)