



**U.S. Department of Justice**  
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VIA CM/ECF

June 24, 2019

Ms. Molly C. Dwyer  
Clerk, United States Court of Appeals for the Ninth Circuit  
95 Seventh Street  
San Francisco, CA 94103-1526

RE: *Mai v. United States*, Case No. 18-36071 (9th Cir.)

Dear Ms. Dwyer:

We write to inform the Court that on June 20, 2019, the United States Court of Appeals for the Third Circuit rejected an as-applied Second Amendment challenge to 18 U.S.C. § 922(g)(4), the provision at issue in this case. *See Beers v. Attorney General*, No. 17-3010 (3d Cir. June 20, 2019) (Attached). The plaintiff in *Beers* had been involuntarily committed by court order in 2005 and argued that a lifetime firearm prohibition based on that commitment violated the Second Amendment because “a substantial amount of time has passed since he was institutionalized” and because “he is now rehabilitated.” Slip Op. 17.

The Third Circuit rejected the plaintiff’s arguments, explaining that “[e]ven though he claims to be rehabilitated, Beers cannot distinguish himself from the historically-barred class of mentally ill individuals who were excluded from Second Amendment protection because of the danger they had posed to themselves and others.” Slip Op. 15. This was because “neither passage of time nor evidence of rehabilitation ‘can restore Second Amendment rights that were forfeited.’” Slip Op. 18 (quoting *Binderup v. Attorney General*, 836 F. 3d 336, 350 (3d Cir. 2016)). In so holding, the Third Circuit disagreed with the Sixth Circuit’s conclusion in *Tyler v. Hillsdale County Sheriff’s Department*, 837 F.3d 678, 683 (6<sup>th</sup> Cir. 2016) (en banc), that “there is an absence of historical evidence that mentally ill individuals, who were considered a danger to themselves or to others, were banned from possessing guns.” Slip Op. 19

n.50. The court also observed that “federal courts are ill-equipped to determine whether any particular individual who was previously deemed mentally ill should have his or her firearms rights restored.” Slip Op. 20.

As explained in the government’s brief (Br. 13-15), this Court should similarly reject plaintiff’s reliance on the passage of time and his rehabilitation to support his as-applied challenge to section 922(g)(4). Just as the plaintiff in *Beers*, plaintiff has failed to demonstrate that he falls outside the class of persons that legislatures have historically had the power to bar from possessing firearms.

Sincerely,

s/ Abby C. Wright

Abby C. Wright

Attorney

cc: all counsel (via CM/ECF)

### **CERTIFICATE OF SERVICE**

I hereby certify that on June 24, 2019, 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. Participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

*s/ Abby C. Wright*  
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ABBY C. WRIGHT