of firearms in a mental health crisis does not allow indiscriminate warrantless seizure and retention of those firearms. In *Mora v. City of Gaithersburg*, the particulars of the case led the Fourth Circuit to rule in favor of officers who seized dozens of firearms without a warrant in a mental health crisis. In *Corrigan v. District of Columbia*, however, the facts led the D.C. Circuit to hold that the warrantless search of the plaintiff's home was unconstitutional in the absence of an "imminently dangerous hazard." In *Rodriguez*, the Ninth Circuit specifically opined that the analysis and ruling was "limited to the particular circumstances" of the case (*Rodriguez*, p 1140). Likewise, psychiatrists should critically evaluate each situation before declaring a psychiatric emergency and be cognizant of the legal and clinical ramifications of doing so. Significant public and professional attention is given to mental health, suicide, gun violence, and gun ownership rights. As stakeholders continue this dialogue, psychiatrists can provide invaluable insight to educate the public and guide creation of sound policy while advocating for further necessary research into the intersection of mental health and firearms access.

Firearm Restrictions for Individuals Previously Involuntarily Committed

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Court Upheld Federal Prohibition on Possession of Firearms by Individuals Who Were Previously Involuntarily Committed

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Key words: firearms; Second Amendment; gun violence; civil commitment

In *Mai v. United States*, 952 F.3d 1106 (9th Cir. 2020), the U.S. Court of Appeals for the Ninth Circuit upheld the federal prohibition on possession of firearms by individuals who have been involuntarily committed to a psychiatric facility, even those who were committed years ago and are now psychiatrically stable. The court concluded that, although these individuals pose less risk of violence than when they were involuntarily committed, scientific evidence shows that they remain at elevated risk compared with the general population. The court held that prohibiting firearm possession by these individuals comports with Congress's interest in preventing gun violence and does not violate the individuals' Second Amendment rights.

Facts of the Case

In October 1999, Duy Mai was involuntarily committed for psychiatric treatment by a court in King County, Washington, after he appeared to be a threat to himself and others. He was 17 years old at the time and remained in the hospital for over nine months. After his release, he enrolled in Evergreen Community College, where he earned his GED and ultimately a bachelor's degree in microbiology from the University of Washington. Mr. Mai then enrolled at the University of Southern California, earning a master's degree in microbiology in 2009. He was subsequently employed at various research institutes, which required successfully passing an FBI background check (*Mai v. United States*, No. C17-0561 RAJ (W.D. Wash. Feb. 8, 2018)). He married and had two children.

In 2014, Mr. Mai tried to purchase a firearm, but both state and federal law prohibited him from doing so. He petitioned the King County Superior Court for relief from disability (RFD), or restoration of his right to own firearms. His petition was granted after he underwent medical and psychological examinations, but a federal statute, 18 U.S.C. § 922(g)(4) (2012), still prevented Mr. Mai from purchasing a gun because he had previously been committed to a psychiatric hospital. The federal statute outlined two avenues for such individuals to apply for RFD. The first avenue, in which a federally funded program would investigate a person to determine if they were no longer dangerous, was defunded by Congress and eliminated in 1992. The second avenue was through a state program for RFD that was recognized at the federal level. Thirty states had qualifying RFD programs, but Washington did not. Thus, Mr. Mai had no avenue to overcome the federal prohibition on his firearm possession.

On April 11, 2017, Mr. Mai filed a complaint against several government agencies involved in restricting his firearm possession, arguing that continued application of the federal prohibition many years after he was involuntarily committed violated his Second Amendment and Fifth Amendment rights. The U.S. District Court for the Western District of Washington dismissed Mr. Mai's Fifth Amendment claim and analyzed his Second Amendment claim. The district court found that Mr. Mai's Second Amendment rights were not violated by the federal prohibition on his gun possession. Mr. Mai then appealed the decision to the U.S. Court of Appeals for the Ninth Circuit.

Ruling and Reasoning

Like the district court, the Court of Appeals for the Ninth Circuit considered whether the Second Amendment required that Mr. Mai be permitted to possess firearms. The court ultimately upheld the federal prohibition on the purchase and possession of firearms by individuals whom a state has found to be mentally ill and dangerous during civil commitment proceedings. In reaching its decision, the Ninth Circuit relied on both previous court holdings and scientific evidence to support Congress's interest in preventing gun violence.

The court cited precedents including *District of Columbia v. Heller*, 554 U.S. 570 (2008), and *McDonald v. City of Chicago*, 561 U.S. 742 (2010), in which the U.S. Supreme Court affirmed that prohibitions on possession of firearms by certain classes of individuals, including those with mental illness, are permissible under the Second Amendment. The court also noted that individuals other than those with mental illness also face firearm bans. These groups include domestic violence misdemeanants (*United States v. Chovan*, 735 F.3d 1127 (9th Cir. 2013) and felons (*United States v. Vongxay*, 594 F.3d 1111 (9th Cir. 2010)).

The Ninth Circuit noted that the Third and Sixth Circuit appellate courts encountered similar challenges to firearm prohibitions involving plaintiffs who had been civilly committed and later regained their mental wellbeing. These two courts came to opposite conclusions. In *Beers v. Att'y Gen. United States*, 927 F.3d 150 (3d Cir. 2019), the Third Circuit ruled that 18 U.S.C. § 922(g)(4) did not place a significant burden on Second Amendment rights, and therefore the court affirmed that the firearm prohibition was constitutional. [Note: The *Beers* case has since been vacated.] The Sixth Circuit heard a similar complaint in *Tyler v. Hillsdale County Sheriff's Department*, 837 F.3d 678 (6th Cir. 2016). In that case, the court overturned a lower court's prohibition on firearm possession, concluding that 18 U.S.C. § 922(g)(4) placed a significant burden on Second Amendment rights and that the government had not offered sufficient justification for the necessity of a lifetime ban.

Finally, the Ninth Circuit evaluated the available scientific evidence regarding the relationship between mental illness and gun violence. One cited study, a meta-analysis of suicide risk in individuals released from involuntary commitment, followed subjects for 8.5 years after release from the hospital and found a risk of suicide that was 39 times the expected rate (Harris EC, Barraclough B: Suicide as an outcome for mental disorders: a meta-analysis. Br J Psychiatry 170:205-28, 1997). Although the follow-up period in that study was significantly shorter than the approximately two decades since Mr. Mai's release from civil commitment, the court extrapolated that his risk for suicide would not have returned to zero in the subsequent years. The court stated that scientific evidence provides strong justification for prohibiting previously involuntarily committed individuals from obtaining firearms. Thus, the Ninth Circuit concluded that the ban on Mr. Mai's possession of firearms was a reasonable fit for the government's important interest in reducing gun violence and suicide. The district court's decision was affirmed.

Discussion

Mai v. United States continues the heated societal debate about the relationship between mental illness and gun violence. Public opinion is clear, with 85.4 percent of surveyed Americans supporting a requirement that states report involuntarily committed psychiatric patients to a background check system (Barry C, McGinty EE, Vernick JS, Webster DW: After Newtown—public opinion on gun policy and mental illness. New Eng J Med 368:1077–81, 2013). Furthermore, 89 percent of adults are in favor of preventing individuals with mental illness from purchasing firearms (Igielnik R, Brown A: Key takeaways on Americans' views of guns and gun ownership. Washington, DC: Pew Research Center Fact Tank. June 22, 2017. Available at: https://www.pewresearch.org/fact-tank/2017/06/22/key-takeaways-on-americans-views-of-guns-and-gun-ownership. Accessed August 3,

2020). Despite the strength with which these opinions are held, the scientific evidence supporting them is mixed. There is clearly an increased risk for suicide in individuals with mental illness, particularly when firearms are involved. Data relating to violence against others are not as clear, and show at most a modest increase in violence risk in individuals with mental illness (Swanson *et al.*: Mental illness and reduction of gun violence and suicide: bringing epidemiologic research to policy. Ann Epidemiol 25:366–76, 2015).

Given the limited evidence available about mental illness and violence risk in general, the question raised in *Mai* about long-term violence risk in individuals who have been civilly committed is very difficult to answer. The *Mai* court affirmed firearm restrictions on this group on the basis of the court's interpretation of scientific evidence, but scholars have noted previously that restrictions on the basis of involuntary commitment may not be narrow enough, prohibiting many individuals who do not pose a serious risk of harm from owning firearms (Felthous A, Swanson J: Prohibition of persons with mental illness from gun ownership under *Tyler*. J Am Acad Psychiatry Law 45:478–84, 2017). There is a clearly expressed important governmental interest in reducing gun violence, and certain states already look to mental health providers for assistance in determining individual risk. Many practitioners, however, are unlikely to feel comfortable performing an assessment of what amounts to a capacity assessment to own and possess firearms.

Guidance for mental health professionals who are asked to conduct firearms risk assessments is sparse. An American Psychiatric Association Resource Document on the subject does exist, but it cautions that "no one-size-fits-all rule applies" to the assessments (American Psychiatric Association Official Actions: Resource Document on Mental Health Issues Pertaining to Restoring Access to Firearms. Washington, DC: APA, 2020, p 2. Available at https://www.psychiatry.org/psychiatrists/search-directories-databases/library-and-archive/resource-documents. Accessed August 3, 2020). The document recommends that general psychiatrists refer patients to a forensic psychiatrist for evaluation, reasoning that forensic psychiatrists possess greater expertise in violence risk assessment and will therefore feel more comfortable with such assessments. This is not necessarily the case, as an evidence-based framework to inform forensic evaluations of firearms risk does not currently exist (Gold L, Vanderpool D: Psychiatric evidence and due process in firearms rights restoration. J Am Acad Psychiatry Law 46:309–21, 2018). Should forensic psychiatrists increasingly be called to assess competency to own and possess firearms, incorporating education on this topic within fellowship training programs would be beneficial. The current Accreditation Council for Graduate Medical Education (ACGME) program requirements for forensic psychiatry make no mention of guns or firearms (ACGME Program Requirements for Graduate Medical Education in Forensic Psychiatry, revised June 13, 2020. Available at: https://www.acgme.org/Portals/0/PFAssets/ProgramRequirements/406_ForensicPsychiatry_2020.pdf?ver=2020-06-19-130837-917. Accessed August 3, 2020); these requirements may need revision as more forensic psychiatrists are asked to offer opinions in RFD proceedings.

Reversing Guilty but Mentally Ill in Favor of NGRI

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Demeanor Evidence Outweighed by Unanimous Expert Opinion and a Defendants History of Mental Illness

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The Supreme Court of Indiana in *Payne v. State*, 144 N.E.3d 706 (Ind. 2020), determined that the trier of fact must consider demeanor evidence in the context of all other evidence; ultimately, its probative value is effectively negated in the context of a well-documented history of mental illness and unanimous