following institutional policy if that policy conflicts with federal law. This case clarified that an inmate's placement on death row does not override these rights. Finally, if prison officials are aware of an inmate's mental illness and are aware that placing mentally ill inmates in prolonged solitary confinement is a violation of the Eighth Amendment, then qualified immunity does not apply.

It is essential for psychiatrists practicing in carceral environments to be familiar with the laws governing solitary confinement for patients with mental illness. Clinicians have a professional ethical responsibility to advocate for patients whose rights are being violated. This includes identifying instances where confinement conditions may infringe on a patient's rights and bringing these instances to the attention of correctional officials.

Firearm Regulations and Substance Use

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Gun Restrictions on Individuals with Mental Illness or Generalized Traditions of Disarming "Dangerous" Individuals Do Not Apply to Nonviolent, Occasional Substance Users Who Are Not Intoxicated

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Key words: gun regulation; nonviolent; substance use; Second Amendment; mental illness

In *United States v. Connelly,* 117 F.4th 269 (5th Cir. 2024), the United States appealed the ruling of the U.S. District Court for the Western District of Texas that 18 U.S.C. § 922(g)(3) and § 922(d)(3) (2024) were facial violations of the Second Amendment and that § 922(g)(3) was unconstitutional as applied to Paola Connelly. Ms. Connelly challenged the law after she was charged with violating laws aimed at curbing firearms by users of controlled substances. The Fifth Circuit Court of Appeals affirmed Ms. Connelly's as-applied challenge and reversed her facial challenges.

Facts of the Case

On December 28, 2021, El Paso police officers came to Paola Connelly's home in response to a "shots fired" call. Dispatch notified responding officers about a verbal altercation between her husband, John Connelly, and their neighbor. The neighbor reported Mr. Connelly arrived at his door with a machete and demanded that the neighbor "apologize for a perceived slight"; the neighbor indicated Mr. Connelly then left before returning with a shotgun.

When officers arrived, they heard several shots and saw Mr. Connelly at the neighbor's door. Officers subsequently arrested Mr. Connelly after he dropped the shotgun and attempted to flee. Officers went to the Connelly's home and spoke with Ms. Connelly before conducting a sweep of the home. Ms. Connelly informed officers her husband and their neighbor used crack and powdered cocaine together and she occasionally used marijuana to help reduce her anxiety and insomnia. Officers discovered drug paraphernalia and unsecured firearms and ammunition in the home.

The grand jury indicted Ms. Connelly on two charges: violating § 922(g)(3) by possessing firearms and ammunition as an unlawful user of a controlled substance and violating § 922(d)(3) by providing firearms and ammunition to an unlawful user of a controlled substance. The record is unclear as to what Ms. Connelly allegedly did to be charged under § 922(d)(3).

Ms. Connelly moved to dismiss her indictment, stating that *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022), showed that § 922(g)(3) and § 922(d)(3) were unconstitutional under its historical analysis. The district court denied this motion. After the Fifth Circuit issued its ruling in *United States v. Rahimi*, 61 F.4th 443 (5th Cir. 2023) (*Rahimi 2023)*, which was eventually reversed by *United States v. Rahimi*, 602 U.S. 680 (2024) (*Rahimi 2024*), Ms. Connelly filed a motion to reconsider her motion to dismiss. The district court, applying *Rahimi 2023* as *Rahimi 2024* had not been decided by this time, found that § 922(g)(3) and § 922(d)(3) facially violated the Second Amendment and that § 922(g)(3)

was unconstitutional as applied to Ms. Connelly. The United States appealed.

Ruling and Reasoning

The three-judge panel of the Fifth Circuit affirmed Ms. Connelly's as-applied challenge by applying *Bruen* and *Rahimi 2024* but reversed her facial challenges. In *Bruen*, the U.S. Supreme Court delineated a new test for courts to use to assess whether disputed laws violate the Second Amendment. Under this test, when the Second Amendment's plain text covers a person's conduct, e.g., possession of firearms, the U.S. Constitution protects it. Thus, to validate the restriction of that conduct, the government must demonstrate that the regulation is consistent with the country's historical tradition of firearm regulation by finding "historical analogs" supporting the challenged law's constitutionality.

Rahimi 2024 provided guidance on why and how the challenged regulation burdens the right. If laws enacted at the country's founding regulated firearm use to address particular problems, that will be a strong indicator that current laws imposing similar restrictions for similar reasons fall within a permissible category of regulations (the "why"). Even when a law regulates firearm use for a permissible reason, that law may not be compatible with the right if it does so to an extent beyond what was done at the country's founding (the "how").

Prior to conducting its analysis, the Fifth Circuit considered whether the Second Amendment applied to Ms. Connelly. It indicated Ms. Connelly, regardless of her marijuana use, had a presumptive right to possess firearms. The United States offered three "buckets of historical analogs" to support the § 922(g)(3)'s constitutionality as applied to Ms. Connelly: laws disarming "the mentally ill," laws disarming "dangerous" individuals, and intoxication laws. The Fifth Circuit rejected each of these analogs.

The Fifth Circuit stated historical laws regarding the disarming of the "mentally ill" do not address a problem comparable with § 922(g)(3) in that those laws do not justify depriving those of sound mind of their Second Amendment rights. It stated there was no historical justification to disarm individuals of sound mind (including those adjudicated mentally ill but who have been reevaluated and no longer under "an impairing influence"); thus, there was no historical justification to disarm sober individuals who were not acutely intoxicated. The Fifth Circuit indicated the United States could have succeeded if it were able to demonstrate that Ms. Connelly's substance use rendered her continuously or permanently impaired similar to a severe mental illness.

The Fifth Circuit found that historical laws regarding disarming "dangerous" individuals do not address a problem similar to § 922(g)(3). Historically, individuals who were disarmed under the auspices of being dangerous were political or religious dissidents, and these laws were passed during wartime or periods of "social upheaval." The Fifth Circuit indicated marijuana users were not a class of political or religious dissidents; it also stated the United States failed to show how Ms. Connelly's marijuana use predisposed her to armed conflict or that she had a history of substance-related violence.

The Fifth Circuit indicated historical laws regarding intoxication may address a problem comparable with § 922(g)(3) but do not impose a comparable burden in doing so. It pointed out that historical laws were intended to prevent intoxicated individuals from carrying weapons, but it opined that § 922(g)(3) went much further in banning all possession of firearms for an undefined set of users, even while users are not intoxicated. The Fifth Circuit stated there is a substantial difference between an acutely intoxicated individual and an "unlawful user" under § 922(g)(3). It indicated the statutory term unlawful user included regular marijuana users, had a vague temporal link between use and gun possession, and did not specify how recently an individual must have used substances to be prohibited from possessing firearms. The Fifth Circuit noted there was no evidence that Ms. Connelly was intoxicated at the time of her arrest; it also stated it did not know how much she used when she used or when she last used. By regulating Ms. Connelly based on her occasional use, the Fifth Circuit indicated § 922(g)(3) imposed a greater burden on her Second Amendment right than historical laws supported.

The Fifth Circuit noted that the United States demonstrated that historical laws supported circumstances where § 922(g)(3) was valid, such as preventing an acutely intoxicated individual from carrying weapons. It stated § 922(d)(3) was an extension of § 922(g)(3) in at least one respect, i.e., if one can be indicted for being acutely intoxicated when arrested for possessing a firearm without violating the Second Amendment, then one could be similarly indicted for providing an acutely intoxicated individual with a firearm. The Fifth Circuit found that the historical

evidence that supported § 922(g)(3)'s facial constitutionality supported § 922(d)(3)'s facial constitutionality as well; thus, Ms. Connelly's facial challenges to § 922(g)(3) and § 922(d)(3) failed.

Discussion

This case has implications for mental health clinicians and experts because questions about gun rights for persons with behavioral health conditions are often raised by patients and courts alike. The relevant provisions here, § 922(g)(3) and § 922(d)(3), are part of the Gun Control Act of 1968 (GCA), which bars nine categories of individuals from possessing firearms or ammunition. In 18 U.S.C. § 922(g)(4) (2024), which is also part of the GCA, the law prohibits any person who has been "adjudicated as a mental defective" or "committed to a mental institution" from possessing firearms or ammunition under federal law. The Fifth Circuit mentioned § 922(g)(4) in its analysis. It stated there were no clear set of laws concerning mental illness and firearms during the time of the country's founding, with the federal ban on gun possession by those adjudicated mentally ill being enacted no sooner than 1968, the same year as § 922(g)(4). The Fifth Circuit pointed out scholars suggested that the tradition was implicit at the country's founding because justices of the peace could "lock up" the mentally ill who were "dangerous" to be allowed to go overseas. It mentioned common law heritage had recognized that mental illness was not a permanent condition, and there was no historical justification to disarm citizens adjudicated mentally ill but who have been "reevaluated and deemed healthy."

The Fifth Circuit did not clarify § 922(g)(4) or its constitutionality. The Fifth Circuit examined the history and tradition behind disarming the mentally ill as part of its analysis of the government's attempt to analogize these laws as supporting § 922(g)(3)'s application to Ms. Connelly. But the Fifth Circuit's discussion could give rise to cases challenging § 922(g)(4)'s constitutionality post *Bruen* and *Rahimi 2024*.

Of note, in a letter addressed from Solicitor General Elizabeth Prelogar to Senate Minority Leader Mitch McConnell, dated November 15, 2024, the Department of Justice decided not to file a petition for a writ of *certiorari* to the U.S. Supreme Court in this case (available at www.justice.gov/oip/media/1379361/dl?inline, accessed March 6, 2025). The DOJ stated it did not agree with the Fifth Circuit's affirmation of the district court's dismissal based on Ms. Connelly's as-applied challenge. But the DOJ stated, based on factual developments since its filing of the appeal to the Fifth Circuit, it would no longer be able to prove beyond a reasonable doubt that Ms. Connelly violated § 922(g)(3). The DOJ conceded it would dismiss the § 922(g)(3) charge even if the Fifth Circuit's Second Amendment holding were reversed.

Procedural Protections in Civil Commitment Proceedings

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Procedural Requirements for Notice, Dispositioning, and Sufficient Evidence to Support Recommitment and Involuntary Medication in Civil Commitment Proceedings

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Key words: civil commitment; involuntary medication; notice

In *Matter of Commitment of M.A.C.*, 8 N.W.3d 365 (Wis. 2024), the Supreme Court of Wisconsin held that, under Wis Stat. § 51.20(10)(a) (2023), notice of a civil recommitment and involuntary medication hearing must be given to the subject individual and not just to the individual's counsel, that the circuit court may not enter default judgment in recommitment proceedings, and that the county did not provide sufficient evidence for the court to order involuntary medication for the committed person.

Facts of the Case

M.A.C. was placed under a mental health commitment with an order for involuntary medication in Waukesha County in 2020. Under this commitment, M.A.C. was being treated as an outpatient and taking three medications, one of which was an injection. The commitment was extended twice between 2020 and 2022. During 2022, M.A.C. was homeless and missed multiple psychiatric appointments, including for administration of her injectable medication.