IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

UNITED STATES OF AMERICA, *Plaintiff*,	§	
VS.	§	CASE NO. 1:14-CR-876-1
KEVIN LYNDEL MASSEY, *Defendant*.	§	

MEMORANDUM OPINION AND ORDER

The Court has before it Defendant Massey's Motion to Dismiss the Indictment [Doc. No. 62] and First Supplement to Motion to Dismiss the Indictment [Doc. No. 83]. The Indictment in this case charges Massey in four counts with violations of Title 18, United States Code, Sections 922(g)(1) and 924(a)(2), for being a convicted felon in possession of firearms [Doc. No. 26].[1] As detailed below, Massey's Motion to Dismiss focuses on the alleged unconstitutionality of Section 922(g), which makes it a crime for a person who has previously been convicted of a crime punishable by imprisonment for a term exceeding one year "to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce." 18 U.S.C. § 922(g)(1). For the following reasons, the Court denies Defendant's Motion to Dismiss the Indictment.

1. Second Amendment Argument

First, Massey argues that the Indictment should be dismissed because 18 U.S.C. § 922(g)(1), as applied to him, is an unconstitutional infringement on his Second Amendment right

[1] The facts underlying Massey's charges were described in detail by this Court in its Order on Defendant's Motion to Suppress [Doc. No. 98].

to keep and bear arms in his home.[2] Defendant alleges that the statute is overbroad in its jurisdictional reach and selection of prohibited persons, it is based on the less-than-compelling interests of federalizing crimes already covered by state statutes and prohibiting firearm possession by categories of people who have not been deemed dangerous, and it explicitly denies similarly-situated people fundamental rights in an unequal manner. According to Massey, convicted felons should not be precluded from exercising the right to possess firearms for self-defense, just as convicted felons are not precluded from exercising First Amendment rights, for example, or from the rights afforded by the Fourth Amendment. Defendant primarily relies on *District of Columbia v. Heller*, 554 U.S. 570 (2008), the case in which the Supreme Court struck down the District of Columbia's ban on the possession of handguns.

In *Heller*, the Supreme Court—after conducting an extensive analysis on the language and history of the Second Amendment—held that the Second Amendment protects an individual's right to keep and bear arms for traditionally lawful purposes, including self-defense within the home. As observed by the Court, this right is not without limitations, however. Crucial to the issue in the present case, the *Heller* Court identified and approved of longstanding "exceptions" to the Second Amendment that prohibit certain individuals, including felons and the mentally ill, from exercising the Second Amendment right. *Id.* at 626. Understandably, as the issue was not before it, the Supreme Court declined to expound on all of the justifications for those exceptions to the Second Amendment. Yet, while the Supreme Court refrained from

[2] In arguing that Section 922(g) is an unconstitutional infringement (as applied to Massey) on his right to bear arms inside his home, Massey asserts that what led to the charges against him was the search of his vehicle and "an apartment where Massey was living" without valid arrest or search warrants. While not necessary to decide the immediate issues before it, the Court notes that Massey was not, in fact, in his home, but staying temporarily in a hotel hundreds of miles from his home in Quinlan, Texas. It was outside this hotel—and then pursuant to a lawfully-obtained and executed warrant inside Massey's hotel room—where officers carried out a search and ultimately seized two of the firearms at issue here. [*See* Doc. No. 98 (Order on Motion to Suppress)]. The other firearms he is charged with possessing were found on Massey's person while he was on the banks of the Rio Grande, far from either his home or his hotel room.

undertaking "an exhaustive historical analysis . . . of the full scope of the Second Amendment," it nonetheless unambiguously and immediately clarified that "nothing in [its] opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill . . . ." *Id.* at 626.[3] Notably, the Supreme Court specifically described regulatory measures prohibiting possession of firearms by felons as "presumptively lawful." *Id.* n.26. Thus, contrary to Defendant's argument that the *Heller* Court's discussion was mere "implicit approval" of prohibitions on firearm possession by felons and that it "came nowhere near upholding those prohibitions," this Court, while understanding why some could consider these statements to be dicta, interprets *Heller* to explicitly approve of longstanding felon-in-possession laws. *See United States v. Anderson*, 559 F.3d 348, 352 (5th Cir. 2009) (finding that *Heller* did not affect its 2003 decision that § 922(g)(1) was not violative of the Second Amendment and thus reaffirming its 2003 holding "and the constitutionality of § 922(g)");[4] *McDonald v. City of*

[3] The Supreme Court's statement in full reads as follows: "Although we do not undertake an exhaustive historical analysis today of the full scope of the Second Amendment, nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms." *Heller*, 554 U.S. at 626.

[4] The Fifth Circuit in 2003 (prior to *Heller*) firmly rejected the argument that Section 922(g)(1) violated a felon's individual right to keep and bear arms under the Second Amendment:

> For our purposes, *Emerson* itself explained that the individual right it recognized does not preclude the government from prohibiting the possession of firearms by felons:
>
> > Although, as we have held, the Second Amendment does protect individual rights, that does not mean that those rights may never be made subject to any limited, narrowly tailored specific exceptions or restrictions for particular cases that are reasonable and not inconsistent with the right of Americans generally to individually keep and bear their private arms as historically understood in this country. Indeed, Emerson does not contend, and the district court did not hold, otherwise. *As we have previously noted, it is clear that felons, infants and those of unsound mind may be prohibited from possessing firearms.*
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> *Id.* at 261. Emerson also discusses authority that legislative prohibitions on the ownership of firearms by felons are not considered infringements on the historically understood right to bear arms protected by the Second Amendment. *Id.* at 226 n.21.

Section 922(g)(1) does not violate the Second Amendment.

Chicago, 561 U.S. 742 (2010) (repeating its own assurances in *Heller* that its holding did not "cast doubt on such longstanding regulatory measures as prohibitions on the possession of firearms by felons").

This Court's conclusion is mandated by binding, post-*Heller* precedent. Left without a framework in which to analyze Second Amendment claims after *Heller*, the Fifth Circuit recently established a two-step inquiry to apply to claims such as Massey's. In *National Rifle Association of America, Inc. v. Bureau of Alcohol, Tobacco, Firearms, and Explosives*, 700 F.3d 185 (5th Cir. 2012), the plaintiffs challenged the constitutionality of certain federal laws (18 U.S.C. §§ 922(b)(1), (c)(1)) prohibiting licensed firearms dealers from selling handguns to individuals under the age of 21. The plaintiffs argued that the federal laws were unconstitutional because they infringed on the right of 18-to-20-year-old-adults to keep and bear arms under the Second Amendment and denied those individuals equal protection under the Fifth Amendment. The Court, noting that many of its sister circuits had "filled the analytical vacuum" for evaluating the constitutionality of firearms regulations after *Heller*, adopted a version of a two-step inquiry that had emerged as the prevailing approach in those circuits. *Id.* at 194.

Under this two-step inquiry, courts must first determine whether "the conduct at issue falls within the scope of the Second Amendment right." *Id.* This requires looking to "whether the law harmonizes with the historical traditions associated with the Second Amendment guarantee." *Id.* If the contested law burdens conduct that falls outside the scope of the Second Amendment, the law passes constitutional muster, and courts need not address the second inquiry. *Id.* at 195. On the other hand, if the challenged law burdens conduct that falls within the Second Amendment's scope, courts proceed to the second inquiry and apply an "appropriate

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United States v. Darrington, 351 F.3d 632, 633-34 (5th Cir. 2003) (quoting *United States v. Emerson*, 270 F.3d 203 (5th Cir. 2001) (emphasis added)).

level of means-end scrutiny." What degree of scrutiny applies in this second step "depends on the nature of the conduct being regulated and the degree to which the challenged law burdens the right." *Id.* (quoting *United States v. Chester*, 628 F.3d 673 (4th Cir. 2010)). In line with *Heller*'s reasoning, any regulatory measure that imposes a "substantial burden upon the core right of self-defense" that the Supreme Court identified as being protected by the Second Amendment must have a "strong justification," whereas a law imposing a less substantial burden should be "proportionately easier to justify." *Id.* (quoting *Heller v. District of Columbia*, 670 F.3d 1244 (D.C. Cir. 2011) ("*Heller II*")). As a general guideline, the Fifth Circuit noted that any law threatening the right of a "law-abiding, responsible adult to possess and use a handgun to defend his or her home and family" is one that threatens a right at the core of the Second Amendment, thereby triggering the highest level of scrutiny. *Id.*

Under the first step in the two-step inquiry, and based on the Supreme Court's language in *Heller* and the Fifth Circuit's reasoning in *National Rifle Association*, this Court finds that 18 U.S.C. § 922(g)(1)'s categorical exclusion of felons, including Massey, from the exercise of the Second Amendment right "does not violate the central concern of the Second Amendment," which the *Heller* Court described as protecting "the right of *law-abiding*, responsible citizens to use arms in defense of hearth and home." *See id.* at 206 (quoting *Heller*, 554 U.S. at 635) (emphasis added) ("[A]s with felons . . ., categorically restricting the presumptive Second Amendment rights of [minors] does not violate the central concern of the Second Amendment."). The Second Amendment, at its core, protects "*law-abiding*" citizens. *See Heller*, 554 U.S. at 635 (emphasis added). It is clear that convicted felons are not such citizens and thus fall outside of the Second Amendment's protection. Accordingly, the Court need not consider the second inquiry because Section 922(g)(1) does not burden conduct falling within the scope of the Second Amendment. *See Nat'l Rifle Ass'n*, 700 F.3d at 195 (establishing that the second step of

the inquiry is only necessary if the challenged law burdens conduct falling within the Second Amendment's scope).

The Court acknowledges the Fifth Circuit's admission of its uncertainty as to where exactly the *Heller* Court's "presumptively lawful regulatory measures" (including felon-in-possession laws) fall onto the two-step analysis. *Id.* at 196. Despite such difficulty, however, the Fifth Circuit determined that "for now" a "longstanding, presumptively lawful regulatory measure [including the specifically enumerated prohibition on firearm possession by felons] . . . would likely fall outside the ambit of the Second Amendment; that is, such a measure would likely be upheld at step one of [the] framework." *Id.* (citing *Heller II*, 670 F.3d at 1253: "[A] regulation that is 'longstanding,' which necessarily means it has long been accepted by the public, is not likely to burden a constitutional right; concomitantly the activities covered by a longstanding regulation are presumptively not protected from regulation by the Second Amendment."). This Court—bound by the Fifth Circuit and the Supreme Court—thus concludes that Section 922(g)(1) burdens conduct that falls outside the Second Amendment's scope and passes constitutional muster.

2. Equal Protection Clause Argument

Second, Defendant claims that, on its face, Section 922(g)(1) treats individuals in like circumstances differently "in the enjoyment of their personal and civil rights" and in the "administration of criminal justice." Because the statute—which denies felons the ability to fully exercise the Second Amendment right—relies on diverse state definitions for what constitutes a felony conviction, Massey argues that the statute burdens the right to keep and bear arms in explicitly unequal terms. He urges that this Court adopt a strict scrutiny standard of review in considering his equal protection challenge, claiming that the statute has only been upheld by courts thus far because the statute has been given great deference under the rational basis test.

Here too, however, this Court is bound by precedent from the Fifth Circuit and Supreme Court. As observed in *National Rifle Association*, a law is subject to strict scrutiny review in the face of an equal protection challenge only if (1) there is a fundamental right affected or (2) the law targets a suspect class. *See Nat'l Rifle Ass'n*, 700 F.3d at 211 (quoting *Mass. Bd. of Ret. v. Murgia*, 427 U.S. 307, 312 (1976)). First, this Court has already held—in line with case law from both the Fifth Circuit and the Supreme Court—that Section 922(g)(1) does not impermissibly impinge upon a right protected by the Second Amendment because it regulates conduct that falls outside the scope of the Amendment's guarantee. Thus, Massey is without a fundamental right to assert as being affected by the statute. Second, status as a felon is not a suspect classification. (Nor does that status qualify as a "quasi-suspect classification" deserving of intermediate scrutiny for the equal protection challenge. *See, e.g.*, *Clark v. Jeter*, 486 U.S. 456 (1988)). Thus, Massey's equal protection challenge is subject to rational basis review. *See Nat'l Rifle Ass'n*, 700 F.3d at 211 (applying rational basis review to plaintiffs' equal protection challenge to the law prohibiting minors from purchasing firearms after finding plaintiffs were without a fundamental right under the Second Amendment and did not belong to any suspect class); *United States v. Pruess*, 703 F.3d 242. 247-48 (4th Cir. 2012) (concluding that a felon has "no right—much less a fundamental right—to bear arms" and thus applying rational basis review to an equal protection challenge to Section 922(g)(1)).

The Supreme Court has previously considered an equal protection challenge to a prior version of Section 922(g) prohibiting felons from possessing firearms. In *Lewis v. United States*, the Court found that the felon-in-possession statute survived rational basis review after considering the legislative intent behind the law:

> The legislative history of the gun control laws discloses Congress' worry about the easy availability of firearms, especially to those persons who pose a threat to

> community peace. And Congress focused on the nexus between violent crime and the possession of a firearm by any person with a criminal record. 114 Cong.Rec. 13220 (1968) (remarks of Sen. Tydings); *id.*, at 16298 (remarks of Rep. Pollock). Congress could rationally conclude that any felony conviction, even an allegedly invalid one, is a sufficient basis on which to prohibit the possession of a firearm.

445 U.S. at 66.

This Court finds that the government's interest in maintaining community safety and preventing crime are clearly rational. The Supreme Court has held before that "the Government's regulatory interest in community safety can, in appropriate circumstances, outweigh an individual's liberty interest," and that the "government's interest in preventing crime . . . is both legitimate and compelling." *United States v. Salerno*, 481 U.S. 739, 748, 749 (1987); *see also Schall v. Martin*, 467 U.S. 252, 264 (1984) ("The legitimate and compelling state interest in protecting the community from crime cannot be doubted."). For these reasons, this Court concludes that Section 922(g)(1) withstands rational basis review and is therefore not unconstitutional under the Equal Protection Clause.

3. Commerce Clause Challenge

Massey next argues that Section 922(g) is an unconstitutional exercise of Congress' Commerce Clause power. The statute's interstate commerce nexus requires only that the firearm traveled in commerce "at some point" before a defendant possesses the firearm. *See, e.g.*, *United States v. Rawls*, 85 F.3d 240, 242 (5th Cir. 1996) ("The 'in or affecting commerce' element can be satisfied if the firearm possessed by a convicted felon had previously traveled in interstate commerce."). Thus, if a firearm was manufactured outside the state of possession, that is a sufficient nexus to confer federal jurisdiction. *See, e.g.*, *United States v. Anderson*, 559 F.3d 348, 353 n.7 (5th Cir. 2009) (finding that the government expert's testimony that the rifle had

been manufactured outside the state of possession sufficient to meet the interstate commerce requirement). As Defendant himself acknowledges, courts have read the statute to be a jurisdictional blank check—even a minimal, remote, and distant connection to interstate commerce suffices to invoke Congress' power to act under the Commerce Clause. *See Scarborough v. United States*, 431 U.S. 563, 577 (1977).

Massey asserts, however, that such analysis has taken place in a "virtual vacuum, bereft of analysis of the implications of the fundamental right" under the Second Amendment. While he concedes that federal courts have thus far upheld Section 922(g)(1) as a constitutional exercise of Congress' Commerce power, Massey points to precedent that he argues requires a "substantial" effect on interstate commerce to warrant federal intervention into what is otherwise a local matter. [Doc. No. 62 (citing *United States v. Jones*, 529 U.S. 848 (2000); *United States v. Morrison*, 529 U.S. 598 (2000); *United States v. Lopez*, 514 U.S. 549 (1995))]. According to Massey, the Supreme Court's ruling in *Lopez* (concluding, in striking down Section 922(q), that the proper test for determining Congress' power to regulate activity under the Commerce Clause is whether the regulated activity "substantially affects interstate commerce") offers a "powerful argument" that Section 922(g) is unconstitutional when applied to a case in which the only interstate commerce nexus is the fact that the firearm, at some point, traveled interstate. Based on this, Defendant argues that the mere allegation that the firearms in this case were manufactured outside of the state of possession is insufficient to confer jurisdiction.

In his Supplemental Motion, Massey includes an additional and related argument to his Commerce Clause argument. As Defendant points out, Section 922(g)(1) may be broken into what are essentially three provisions, making three different actions unlawful: (1) "to ship or transport in interstate or foreign commerce," (2) "or possess in or affecting commerce, any firearm or ammunition;" (3) "or to receive any firearm or ammunition which has been shipped or

transported in interstate or foreign commerce." (To be clear, the first two provisions are separated by a semicolon from the third.) The Indictment, in all four counts, charges that Massey "did knowingly possess in and affecting interstate commerce a firearm . . . said firearm having been shipped in interstate commerce." Massey argues that the Indictment fails to match the language of the statute by improperly combining language from the third provision ("having been shipped in interstate commerce") with language from the second provision ("possess in and affecting interstate commerce"), because the "having been shipped in interstate commerce" language applies only to the third provision outlawing "receiving" a firearm, and not to the second provision outlawing possession. According to Massey, the language and phrasing of the second provision under which he was indicted—"possess in or affecting commerce"—requires that a defendant was *directly* involved in commerce or *directly* affecting commerce. Thus, Massey argues that the government cannot merely allege that he possessed a firearm that was, at some prior date, involved in or affecting commerce; rather, he must have possessed the firearm at the time when the involvement or effect upon commerce took place.[5]

While this Court is not unsympathetic to the manner in which Massey dissects the statute, his arguments have already been rejected by the Fifth Circuit and the Supreme Court. Massey's contention that Section 922(g)(1) is an unconstitutional exercise of Congress' Commerce Clause power is clearly foreclosed by precedent in this Circuit. In the face of similar, or even identical, Commerce Clause challenges to Section 922(g), the Fifth Circuit has expressly and repeatedly held that the "constitutionality of § 922(g) is not open to question." *See, e.g.*, *United States v. Daugherty*, 264 F.3d 513 (5th Cir. 2001); *United States v. DeLeon*, 170 F.3d 494, 499 (5th Cir.), *cert. denied*, 528 U.S. 863 (1999); *United States v. Gresham*, 118 F.3d 258, 264 (5th Cir. 1997).

[5] Additionally, Massey cites *Lopez* for the requirement that that commerce be a commercial activity. Thus, he concludes, simply because the firearm was transported in commerce at some previous or subsequent date, does not affect the person who possesses a firearm in a manner totally unrelated to the commercial aspect of its interstate transportation. [Doc. No. 83].

The Fifth Circuit has also held that the Supreme Court's opinion in *United States v. Lopez*, 514 U.S. 549 (1995)—cited by Defendant as support for his argument that the commerce nexus must be "substantial"—has no effect on the validity of Section 922(g)(1). Further, the other two cases cited by Massey—*United States v. Morrison*, 529 U.S. 598 (2000), and *Jones v. United States*, 529 U.S. 848 (2000)—have been previously cited by defendants in cases before the Fifth Circuit and were similarly denied as having an effect on the constitutionality of Section 922(g). *See United States v. Darrington*, 351 F.3d 632, 634 (5th Cir. 2003).

For instance, in *United States v. Gresham*, the Fifth Circuit acknowledged that it was bound by its own precedent in rejecting the defendant's argument that Section 922(g)(1) exceeded Congress' authority to regulate interstate commerce and denied that *Lopez* had any effect on that precedent:

> The constitutionality of § 922(g)(1) is not open to question. In *United States v. Rawls*, 85 F.3d 240 (5th Cir.1996), we held that "neither the holding in *Lopez* nor the reasons given therefor constitutionally invalidate § 922(g)(1)." *Id.* at 242.10 Accordingly, Gresham's constitutional challenge is foreclosed by circuit precedent.

118 F.3d at 264; *see also Daugherty*, 264 F.3d at 518 (rejecting defendant's argument that Congress impermissibly regulated a purely local offense through the enactment of § 922(g)(1) and noting that even after *Lopez*, evidence that the weapon was manufactured outside of the state of possession suffices to maintain a § 922(g)(1) conviction). If the Circuit is bound by its own precedent, a District Court certainly is. Further, this Court is bound by the precedent from the Supreme Court. *See, e.g.*, *Scarborough*, 431 U.S. at 577 (analyzing the predecessor to Section 922(g) and finding that "Congress sought to reach possessions broadly, with little concern for when the nexus with commerce occurred . . . . [T]here is no question that Congress intended no more than a minimal nexus requirement."). Accordingly, Massey's Commerce Clause constitutional challenge is foreclosed.

In this case, the criminal complainant's affidavit states that "Special Agent Ramirez, based on his preliminary examination of these firearms, determined that these firearms were manufactured outside of the State of Texas, and therefore traveled in interstate or foreign commerce prior to being possessed by Massey in Brownsville, Texas." [Doc. No. 4 at 5]. Each count of the indictment similarly alleges that Massey possessed a firearm "in and affecting interstate commerce . . ., said firearm having been shipped in interstate commerce." [Doc. No. 26]. The Court agrees with Defendant that the Indictment may have conflated two distinct phrases of Section 922(g)(1), as explained above. The Court finds, however, that the "having been shipped in interstate commerce" language is, at worst, mere surplusage in the Indictment. Massey is charged with possession, which the government has properly alleged by including the "possess in and affecting interstate commerce" language. General pleading rules for indictments require only that Defendant be given adequate notice of the offense for which he is charged—no specific evidence of interstate commerce need be proffered at this stage. *See United States v. Shelton*, 937 F.2d 140, 142 (5th Cir. 1991) ("An indictment is sufficient if it contains the elements of the offense charged, fairly informs the defendant of the charge he must be prepared to meet, and enables the accused to plead acquittal or conviction in bar of future prosecutions for the same offense.").[6]

The Court notes that it is additionally bound by prior Fifth Circuit precedent with regard to Massey's "grammatical" argument that the Indictment improperly conflates the elements of two distinct provisions of Section 922(g)(1). In *United States v. Shelton*, for instance, the Fifth Circuit faced a similar argument by the defendant:

[6] The Fifth Circuit has also expressly held that an indictment need not allege that the specific offense had a substantial effect on interstate commerce. *See Darrington*, 351 F.3d at 634 (noting that it had already rejected that argument in *Gresham*, 118 F.3d at 264-65).

> Given the language of the statute, Shelton argues that count two of the indictment should have been dismissed because it failed to allege that the firearm that he was charged with receiving had been shipped or transported in interstate or foreign commerce. *By alleging that Shelton received a firearm that had "moved in or affecting commerce," the indictment conflated the elements of two distinct crimes, receipt and possession, thereby failing to state an offense at all.* Shelton's argument depends on the distinction he urges between the phrase "in and affecting" commerce and the phrase "shipped or transported" in interstate or foreign commerce. He asserts that Congress intended these two phrases to apply to different categories of interstate commerce. His argument is that "shipped or transported" is narrower than "in or affecting," and thus illegal receipt encompasses a narrower range of activities than illegal possession does. As a result, Shelton argues, by mixing the elements of the two crimes, the indictment fails to state an offense, contravening the Fifth Amendment's guarantee that a defendant be prosecuted for an "infamous" or serious crime only by grand jury indictment.

937 F.2d at 142 (emphasis added).

The Fifth Circuit rejected Shelton's argument, noting that it would only make sense if one could seriously believe that Congress intended to differentiate the crimes of illegal possession and receipt in terms of different levels of involvement with interstate commerce. *Id.* at 143. This construction, according to the Fifth Circuit, was "so unlikely as to border on the absurd." *Id.* The Court briefly recounted the statute's legislative history in which Congress had combined two prior statutes that, together, made unlawful the shipment, transport, receipt, and possession of firearms. Both prior statutes, like Section 922(g)(1) in its current form, described the nexus with interstate commerce "broadly," and courts likewise construed that nexus broadly. *Id.* (citing *Scarborough v. United States*, 431 U.S. 563, 567-69 (1977) (possession of firearm previously shipped in interstate commerce is, in fact, possession "in commerce or affecting commerce")). The Court concluded that there was no reason to believe, especially considering the legislative history behind Section 922, that Congress intended "to retreat from a broad commerce clause interpretation of these statutes." *Id.* Regardless of whether this Court agrees

with Massey's reading of Section 922(g)(1), it is still obligated to honor the Fifth Circuit's decision in *Shelton* as binding precedent.

Like that in *Shelton*, the indictment against Massey provides enough detail—both in the description of the firearm he is charged with possessing and the law he is charged with breaking—to inform him of the charges against which he must defend himself. It directs him to the statute he is charged with violating, which serves to "reinforce the other references within the indictment . . . and thereby increase its clarity." *Id.* (citations omitted). This Court, bound by precedent from both the Fifth Circuit and the Supreme Court, thus rejects Massey's challenge based on the Commerce Clause, as well as his arguments as to the Indictment's language.

4. Conclusion

For the above-stated reasons, Defendant Massey's Motion to Dismiss the Indictment is hereby denied.

Signed this 5th day of June, 2015.

Andrew S. Hanen
United States District Judge