

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

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

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

17 In 2014, Plaintiff petitioned the King County Superior Court under Washington  
18 statute RCW 9.41.047 for restoration of his firearm rights. Plaintiff supplied the court  
19 with medical and psychological examinations and supportive declarations. His petition  
20 was granted. *Id.* ¶ 3.9. Plaintiff then attempted to purchase a firearm and received a  
21 denial from the National Instant Criminal Background Check System ("NICS"). NICS  
22 informed him that the denial was based on 18 U.S.C. § 922(g)(4). *Id.* ¶ 3.10. Plaintiff  
23 subsequently received a phone call from the ATF, notifying him that the ATF legal  
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27 <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

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

3 |         In *United States v. Vongxay*, 594 F.3d 1111 (9th Cir. 2010), the Ninth Circuit  
4 | expressly rejected the defendant’s argument that the “presumptively legal” language in  
5 | *Heller* was not binding, stating that the language was “integral” to the holding. *Id.* at  
6 | 1115. Citing the Supreme Court’s commentary regarding the longstanding prohibitions  
7 | on the possession of firearms, the court specifically stated that felons, by virtue of being  
8 | included among those that have long been prohibited from possessing firearms, are  
9 | “categorically different from the individuals who have a fundamental right to bear arms.”  
10 | *Id.* The court then rejected the defendant’s as-applied challenge to the statute based on  
11 | *Heller* and its holding in *United States v. Younger*, 398 F.3d 1179 (9th Cir. 2005)<sup>2</sup>.  
12 | *Id.* at 1116 (stating that its holding is “buttressed by the fact that *Younger* upheld the very  
13 | type of gun possession restriction that the Supreme Court deemed ‘presumptively  
14 | lawful’”). Referring to its decision in *Younger*, the court also noted that it declined to  
15 | make a distinction between violent and non-violent felons and held that section  
16 | 922(g)(1), which prohibits all felons from possessing firearms, was constitutional. *Id.*  
17 | The holding in *Vongxay* continued to be upheld in several decisions involving as-applied  
18 | challenges to section 922(g)(1), including the decision in *United States v. Phillips*, 827  
19 | F.3d 1171 (9th Cir. 2016). In *Phillips*, the Ninth Circuit rejected the defendant’s  
20 | argument that his conviction for a non-violent felony could not constitutionally serve as a  
21 | basis for depriving him of his right to possess a firearm, noting that it was “hard pressed”  
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24 |         <sup>2</sup> The circuit court noted that it held that 18 U.S.C. § 922(g)(1) does not violate the  
25 | Second Amendment rights of a convicted felon in its decision in *United States v. Younger*, 398  
26 | F.3d 1179 (9th Cir. 2005). However, the holding upon which *Younger* was based was partially  
27 | 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  
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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

1 at 1; 114 Cong. Rec. 13,219 (statement of Sen. Tydings); 114 Cong. Rec. 21,829  
2 (statement of Rep. Bingham). The Supreme Court has recognized that the Government’s  
3 interest in suicide prevention is “unquestionably important and legitimate”. *Washington*  
4 *v. Glucksberg*, 521 U.S. 702, 735 (1997). Thus, in analyzing the “fit” between section  
5 922(g)(4) and regulation of firearm possession, the issue for this Court to analyze, is  
6 whether prohibiting those who have been committed to a mental institution from bearing  
7 arms is substantially related to these stated objectives. Defendants provide ample  
8 evidence to support this connection.

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

14 Second, Defendants provide reference to numerous studies that indicate that those  
15 with a history of mental illness bear a significant additional risk of gun violence than  
16 those in the general population, both against others as well as against themselves. *See*  
17 *e.g.* Seena Fazel & Martin Grann, *The Population Impact of Severe Mental Illness on*  
18 *Violent Crime*, 163 *Am. J. Psychiatry* 1397, 1401 (Aug. 2006); Joseph R. Simpson, *Bad*  
19 *Risk? An Overview of Laws Prohibiting Possession of Firearms by Individuals With a*  
20 *History of Treatment for Mental Illness*, 35 *J. Am. Acad. Psychiatric Law* 330, 338  
21 (2007); Richard A. Friedman, *Violence and Mental Illness – How Strong Is the Link?*,  
22 355 *New Eng. J. Med.* 2064, 2065 (Nov. 2006); Richard Van Dorn et al., *Mental*  
23 *Disorder and Violence: Is There a Relationship Beyond Substance Use?*, 47 *Soc.*  
24 *Psychiatry & Psychiatric Epidemiology* 487 (Mar. 2012); Bryan L. Tanney, *Psychiatric*  
25 *Diagnoses and Suicidal Acts*, in Ronald W. Maris et al., *Comprehensive Textbook of*  
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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  
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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.

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8 Dated this 8th day of February, 2018.

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11  
12 The Honorable Richard A. Jones  
13 United States District Judge  
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