



Written by [Joe Wolverton, II, J.D.](#) on June 9, 2023

## Federal Court: Disarmament for Nonviolent Crimes Violates 2nd Amendment

The right to bear arms not only is an expression of the natural right to defend one's life, liberty, and property, but it is a thread inextricably woven into the fabric of the Anglo-American conception of freedom. Additional protection against infringement by government on that fundamental right is protected by the Second Amendment of the U.S. Constitution.

In recent times, however, concerns have arisen over the constitutionality of disarming individuals based on nonviolent misdemeanor convictions. While the goal of eradicating violence is admirable — albeit illusory — it is essential to ensure that the federal court system respects the rights of individuals.



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A [story published by Reason](#) recounts the story of a recent example of the denial of the right to keep and bear arms based on a nonviolent misdemeanor conviction. Here's the background:

Back in 1995, Bryan Range pleaded guilty to fraudulently obtaining \$2,458 in food stamps by understating his income. He returned the money, paid a \$100 fine and \$288 in court costs, and served three years of probation.

Although Range did not realize it, that Pennsylvania misdemeanor conviction also came with a lifelong penalty: Under federal law, he lost the right to own firearms.

Although Range was not sentenced to jail or prison, his crime was punishable by up to five years in prison, which meant he was no longer allowed to buy or own a firearm.

When he tried to buy a deer-hunting rifle in 1998, he failed the background check.

Range figured that must have been a mistake. His wife bought him a rifle, then bought him another after the first one was destroyed in a house fire. Range later tried again to buy a gun but was again turned away. That prompted him to look closely at the federal prohibition, commonly but misleadingly described as applying to "felons."

After discovering he was a "prohibited person" even though he had not been convicted of a felony, Range sold his hunting rifle to a gun dealer. But for the federal prohibition, he says, he would have kept the rifle and might also have bought a shotgun for home defense.

Earlier this week, however, the Third Circuit Court of Appeals, in the case of *Range v. United States*, held that prohibiting Range from owning firearms was unconstitutional.



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The Second Amendment explicitly protects “the right of the people to keep and bear Arms,” and mandates that that right “shall not be infringed.” This fundamental right is rooted in the understanding that an armed citizenry serves as surest safeguard against tyranny and concomitantly protects an individual’s life and property. That proscription against infringement is not qualified. There is a period after the word “infringed,” not a comma. The very notion of judicial disarmament of an individual because of a conviction for a nonviolent misdemeanor is contrary to the tenor and purpose of the not only the Second Amendment, but of the right of due process, as well.

In its 11-4 opinion, the Third Circuit Court not only upheld the rights of Bryan Range, but the test it applied to his disarmament means numerous similar statutes purporting to infringe on the right to keep and bear arms are liable to be struck down. Judge Thomas Hardiman, writing for the majority, explained its reasoning:

We hold that the Government has not shown that the Nation’s historical tradition of firearms regulation supports depriving Range of his Second Amendment right to possess a firearm. Because the Government has not shown that our Republic has a longstanding history and tradition of depriving people like Range of their firearms, [it] cannot constitutionally strip him of his Second Amendment rights.

When one considers the wide range of minor offenses that are classified as nonviolent misdemeanors, including minor infractions such as petty theft, simple assault, trespassing, vandalism, violating a restraining order, cyberbullying, first-time drug possession, and even resisting arrest, one begins to recognize the many avenues toward confiscation of firearms the government has paved. While these offenses may warrant punishment, it is crucial to distinguish them from serious felonies, which involve violent crimes or pose a substantial risk to society.

Disarming someone based solely on a nonviolent misdemeanor conviction raises serious concerns regarding proportionality and due process. Stripping an individual of his natural rights without a clear and convincing justification unconscionably and unconstitutionally infringes upon his fundamental liberty and disproportionately punishes him for minor offenses.

Beyond the right to keep and bear arms, the Constitution guarantees due process to all individuals, ensuring fair treatment and protection against arbitrary deprivation of life, liberty, or property. Disarming someone based solely on a nonviolent misdemeanor conviction, without a meaningful opportunity for a hearing or an individualized assessment of the risk they pose, so clearly denies that person of his right to due process.

Moreover, treating all nonviolent misdemeanors as a basis for disarmament fails to consider the potential for rehabilitation and reform. Punishments for nonviolent misdemeanors are typically designed to facilitate reintegration into society rather than permanently restrict an individual’s rights. So, beyond its effrontery to the Constitution and unalienable natural rights, disarming a person without a clear nexus to public safety undermines the principles of proportionality and rehabilitation in our criminal justice system.

When evaluating whether a person should be disarmed based on a nonviolent misdemeanor conviction, it is essential to consider the actual risk he poses to public safety. Numerous studies have shown that individuals with nonviolent misdemeanor convictions have significantly lower rates of subsequent criminal behavior compared to those convicted of felonies.



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Public safety concerns should focus on individuals who have demonstrated a propensity for violence or pose a genuine threat to society. Disarming individuals based solely on nonviolent misdemeanors ignores the distinction between minor offenses and more serious crimes, casting too wide a net and unjustly — and now in light of the Third Circuit’s opinion — unconstitutionally stripping otherwise law-abiding citizens of their basic rights.



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