

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

PATRICK ATKINSON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
JEFFREY A. ROSEN, in his official capacity	)	
as Acting Attorney General of the United	)	Case No.
States, and	)	
REGINA LOMBARDO, in her official	)	
capacity as Deputy Director, Head of Agency,	)	
of the Bureau of Alcohol, Tobacco, Firearms	)	
and Explosives,	)	
	)	
Defendants.	)	

**COMPLAINT**

Plaintiff, PATRICK ATKINSON, by and through LAW FIRM OF DAVID G. SIGALE, P.C., his attorney, and complaining of the Defendants, JEFFREY A. ROSEN, in his official capacity as Acting Attorney General of the United States of America, and REGINA LOMBARDO, in her official capacity as Deputy Director, Head of Agency, of the Bureau of Alcohol, Tobacco, Firearms and Explosives (“BATFE”), states and alleges as follows:

**INTRODUCTION**

Twenty-two years ago, Plaintiff unknowingly played a small part in a corporate recruiting scam, perpetrated by an employee in the recruiting department at a large Illinois company, and was convicted of a felony, still his only violation of the law. He paid a fine, received two years probation, which was ended a year early, with six months of home confinement. Due to the federal prohibition of felons ever

legally possessing firearms in 18 U.S.C. § 922(g)(1), Plaintiff has been permanently and unconstitutionally deprived of his right to armed self-defense under the Second Amendment.

This action seeks equitable, declaratory, and injunctive relief challenging on an as-applied basis the application of 18 U.S.C. § 922(g)(1) to Plaintiff, who wishes to avail himself of the Second Amendment right as he is not a danger to himself, others, or the public.

Federal law and case precedent make clear there must be felons who qualify for the restoration of their Second Amendment rights. Plaintiff is one of them.

### **JURISDICTION AND VENUE**

1. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1343, 1346, 2201, and 2202.

2. Venue lies in this Court pursuant to 28 U.S.C. § 1391(e)(1)(B) and (C), as a substantial part of the events and omissions giving rise to the claim occurred, and the Plaintiff resides, in this judicial district.

### **PARTIES**

3. Plaintiff, Patrick Atkinson (“Atkinson”), is a natural person residing in Glen Ellyn, Illinois. Atkinson is 62 years old. He is married with two grown children. Atkinson presently intends to obtain an Illinois Firearm Owners Identification Card (“FOID card”), pursuant to the Illinois Firearm Owners Identification Card Act, 430 ILCS 65/1, *et seq.* (“FOID Card Act”) so that he may lawfully possess a firearm for self-defense within his own home, and other lawful

purposes such as range training, but is prevented from doing so only by Defendants' active enforcement of unconstitutional policies complained of in this action.

4. Defendant, Jeffrey A. Rosen, is the Acting Attorney General of the United States of America, and is sued only in his official capacity. As Attorney General, Rosen is responsible for executing and administering laws, customs, practices, and policies of the United States, and is presently enforcing the laws, customs, practices and policies complained of in this action.

5. Defendant, Regina Lombardo, is the Deputy Director, Head of Agency, of the Bureau of Alcohol, Tobacco, Firearms and Explosives ("BATFE"), and is sued only in her official capacity. As Deputy Director, Head of Agency of BATFE, Lombardo is responsible for executing and administering laws, customs, practices, and policies of the United States, and is presently enforcing the laws, customs, practices and policies complained of in this action.

### **STATEMENT OF FACTS**

#### *Plaintiff's Background*

6. Patrick Atkinson is 62 years old and thus over the age of 21, is not under indictment, has never been convicted of a crime of domestic violence, is not a fugitive from justice, is not an unlawful user of or addicted to any controlled substance, has not been adjudicated a mental defective or committed to a mental institution, has not been discharged from the Armed Forces under dishonorable conditions, has never renounced his citizenship, and has never been the subject of a

restraining order relating to an intimate partner. He is married with two grown children.

7. On October 16, 1998, Atkinson pleaded guilty to, and was convicted, in the Northern District of Illinois Case No. 1:98-CR-00730-03, of one count of frauds and swindles, in violation of 18 U.S.C. § 1341, a Class C felony. The facts underlying the conviction are as follows:

8. In 1998, Atkinson was an Executive Recruiter with his own company, Waterford Executive Group, which he opened in 1990. One of his clients, his co-Defendant (Zerba), was in the recruiting department at a large Illinois company that specialized in consultants and outsourcing. Atkinson would place actuaries and consultants at the company and receive a consulting fee.

9. In or around 1998, Zerba offered Atkinson a moonlighting job, where Zerba would find professional candidates, and Atkinson would place them with employers, and they would split the recruiting fee. This happened a couple of times without incident.

10. A few months later, Zerba sent Atkinson the resume of a recruiting candidate from Virginia. Atkinson tried to place the man in an executive position but could not. Eventually, Zerba told Atkinson he thought the man would be a good fit at his own company, and the man was hired. Atkinson believed he would keep the recruiting fee since the candidate was placed at Zerba's own company where Zerba worked as a recruiter. However, Zerba demanded half of the fee and Atkinson gave it to him.

11. Soon thereafter, Zerba sent Atkinson another candidate for placement at Zerba's own company. Atkinson thought it seemed suspicious, and declined.

12. Soon after that, Zerba called Atkinson and said that he (Zerba) had been fired over referrals and that the police were investigating. When U.S. Postal Inspectors contacted Atkinson, he cooperated fully. Atkinson learned that Zerba was masterminding the scheme with a number of other recruiters, and that Atkinson was unknowingly part of a "hub and spoke" operation, where Atkinson turned out to be just one of multiple spokes.

13. For his share of one recruiting fee that totaled \$6,000.00, Atkinson was sued by Zerba's employer for \$150,000.00 for fraud, civil RICO violations, and conspiracy. Atkinson ultimately settled for \$45,000.00, and spent \$15,000.00 in legal fees.

14. Atkinson was then charged with mail fraud (frauds and swindles) and quickly pleaded guilty. On February 24, 1999, Atkinson was sentenced to two years of probation with six months of home confinement, a fine of \$15,000.00, and 200 hours of community service. He completed all his sentencing terms, and his probation was even terminated a year early, without objection from the Government, on March 7, 2000.

15. Other than the above referenced offense, Atkinson has never been charged or convicted of any offense which makes him ineligible to possess firearms under 18 U.S.C. § 922(g), or state law, and but for the above referenced charge, no federal law would prohibit Atkinson's possession of firearms.

16. Atkinson acknowledges that his behavior was wrong. Since that time, he owns two companies: Waterford Executive Group, the aforementioned executive recruiting firm; and Atkinson Ergonomic Solutions, Inc, which was formed in 2018, and which has created a device for lifting hotel beds for greater ease and efficiency of both making the beds, and cleaning underneath them. Atkinson has not been convicted of any further offenses, including any crime of violence or threatened violence.

17. Atkinson is a law-abiding citizen, and has been for several decades.

18. However, Atkinson's conviction prohibits him from possessing firearms due to 18 U.S.C. § 922(g)(1).

19. Had Atkinson been convicted in state court, he could seek relief from his firearms disability under Illinois law, including his firearms disability under federal law, and provide evidence that his rights should be restored. If he was to be successful, Atkinson could lawfully possess firearms under both federal and state law.

20. However, because Atkinson was convicted in a federal court, the state restoration system does not allow for Atkinson to restore his rights in his particular case.

21. That federal law provides that Atkinson can petition the Department of Justice to restore his civil rights, however, since about 1992, Congress has prohibited, by appropriation riders, the DOJ from processing petitions to restore civil rights, except for corporations, which does not apply to Atkinson.

22. Atkinson has a fundamental right to keep and bear arms in the home for self-defense, and while it may not be a violation of the Second Amendment to presumptively disqualify convicted felons from possessing arms, as applied to Atkinson, who committed a relatively minor non-violent felony, 22 years ago, who has not had any trouble with the law in the intervening 22 years, and who would be eligible to go through a process to restore his civil rights, and thereafter to lawfully possess arms, were he convicted in state court, or were he a corporation. or if the Congress would fund the civil rights restoration scheme adopted at the same time as the federal ban on felons possessing arms, by virtue of his federal conviction, there is no mechanism for Atkinson to restore his civil rights, no matter the merits of his position.

23. Atkinson does not challenge the ability to presumptively categorically prohibit him from possessing arms, rather, Plaintiff challenges the constitutionality of presumptively categorically prohibiting *him* from possessing arms, while at the same time affording him no opportunity, no matter the merits, short of a Presidential pardon, for an individualized assessment to show he is capable of safely and lawfully possessing arms, and thus restoring his civil rights.

24. While a categorical felon ban on firearms is “presumptively lawful,” that means that there must exist the possibility that the ban could be unconstitutional in the face of an as-applied challenge.

25. There can be no “strong showing” under *Skoien* that permanently disarming Atkinson is an important governmental objective. or that the

government's claimed objective is substantially related to the permanent prohibition of Atkinson possessing arms in his home for self-defense.

26. Atkinson is not a violent felon, nor has he a history of violence, so any valid objective to keep firearms out of the hands of violent felons is not met.

27. Furthermore, as Plaintiff has no history of violence, Defendant's objective is not advanced by prohibiting Atkinson from possessing arms in his home for self-defense.

28. Atkinson desires and intends to possess firearms for self-defense and for defense of his family.

29. Owing to his felony conviction, Atkinson is prohibited by Defendants from following through with his intent to obtain a firearm, based on Defendants' enforcement of 18 U.S.C. § 922(g)(1).

30. Also owing to his felony conviction, Atkinson is unable to obtain an Illinois FOID card, pursuant to 430 ILCS 65/4(a)(2)(ii) and 65/8(c) and (n), and 65/10(c)(4).

31. Atkinson refrains from possessing a firearm for self-defense and other lawful purposes only because he reasonably fears arrest, prosecution, incarceration and fine pursuant to 18 U.S.C. § 922(g)(1), and 430 ILCS 65/14(c)(3), should he possess a firearm.



*Defendants' Regulatory Scheme*

Federal Law

32. Title 18, United States Code § 922(g)(1) prohibits the possession of firearms by any person convicted of “a crime punishable by imprisonment for a term exceeding one year.” Violation of this provision is a felony criminal offense punishable by fine and imprisonment of up to ten years. *See* 18 U.S.C. § 924(a)(2).

State Law

33. Illinois prohibits the possession of firearms by any Illinois resident without a FOID card. *See* 430 ILCS 65/2(a)(1).

34. Illinois prohibits persons from obtaining a FOID card if the granting of same would be contrary to federal law, such as, in the instant case, if one has a felony conviction. *See* 430 ILCS 65/4(a)(2)(ii), 65/8(c) and (n), 65/10(c)(4).

35. Possession of a firearm by an Illinois resident without a FOID card, and who is not eligible to obtain a FOID card, is a Class C felony. *See* 430 ILCS 65/14(c)(3).

**COUNT I –**  
**INDIVIDUALIZED, AS-APPLIED CLAIM FOR RELIEF**  
**RIGHT TO KEEP AND BEAR ARMS,**  
**U.S. CONST. AMEND. II**

36. The allegations of paragraphs 1 through 35 are incorporated as though fully set forth herein.

37. Atkinson is a responsible, law-abiding American citizen. He has no history of violent behavior, or of any other conduct that would suggest he would pose any more danger by possessing firearms than an average, law-abiding

responsible citizen. Atkinson is unlikely to act in a manner dangerous to public safety, and his possession of firearms would not be contrary to the public interest.

38. On account of Atkinson's unique personal circumstances, including but not limited to the nature of his felony conviction, the passage of time since that conviction, Atkinson's law-abiding record over the years, his trustworthiness with firearms and the lack of danger that his possession of firearms would pose, it is an unconstitutional violation of Atkinson's Second Amendment rights to apply the firearms prohibition of 18 U.S.C. § 922(g)(1) against Atkinson personally, solely on account of his 1998 fraud conviction.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, PATRICK ATKINSON, respectfully requests that this Honorable Court enter judgment in his favor and against Defendants, and declare and order the following forms of relief:

1. A declaration that 18 U.S.C. § 922(g)(1) cannot be applied against Patrick Atkinson on account of his 1998 felony conviction under 26 U.S.C. § 7206(1);
2. A declaration that application of 18 U.S.C. § 922(g)(1) against Patrick Atkinson, on account of his 1998 felony conviction under 26 U.S.C. § 7206(1), violates the Second Amendment to the United States Constitution;
3. An order permanently enjoining Defendants, their officers, agents, servants, employees, and all persons in active concert or participation

with them who receive actual notice of the injunction, from enforcing 18 U.S.C. § 922(g)(1) against Patrick Atkinson on the basis of his 1998 felony conviction under 26 U.S.C. § 7206(1);

4. Costs of suit;
5. Attorney's Fees and Costs pursuant to 28 U.S.C. § 2412; and
6. Any other further relief as the Court deems just and appropriate.

Dated: January 18, 2021

/s/ David G. Sigale  
Attorney for Plaintiff

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