IN THE SUPREME COURT OF IOWA

IN THE MATTER OF N.F.,

N.F.,
Petitioner-Appellee

IOWA DEPARTMENT OF HEALTH AND HUMAN SERVICES,
Appellant.

No. 24-0297

BRIEF OF APPELLEE

Appeal from the Iowa District Court for Monona County
Hon. Jeffrey Neary, District Court Judge

Case No. MHMH001061

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II. Under federal law, when a respondent has been fully released or discharged from all mandatory treatment, supervision, or monitoring, the commitment shall be deemed not to have occurred for purposes of 18 U.S.C. § 922(g)(4). The commitment against N.F. was dismissed. Should the district court be affirmed because the commitment should not have been in N.F.'s record?

III. Fourteen-year-old N.F. was committed when he experienced a crisis following the collapse of his parents' marriage. After the commitment, he was taken in by a foster family who gave him a loving home for the rest of his adolescence. He is now a stable, employed, and law-abiding young adult. Should the district court's grant of relief from the firearm disability be affirmed as substantively correct?

ROUTING STATEMENT

This is an appeal from an order granting a petition for relief from disabilities under Iowa Code § 724.31 (2023). The appeal presents two substantial issues of first impression: whether the director of the Iowa Department of Health and Human Services has the right to appeal an order granting relief under Iowa Code § 724.31 (2023) and whether a mental health commitment proceeding where no order requires the respondent to presently receive treatment qualifies as a disqualifying commitment under 18 U.S.C. § 922(g)(4) and 34 U.S.C. § 40911(c)(2)(B). Retention by the Iowa Supreme Court is therefore appropriate. Iowa R. App. P. 6.1101(3)(a).

STATEMENT OF THE FACTS

N.F. petitioned the district court in August 2023, to grant him relief from disabilities under Iowa Code § 724.31 (2023). D0001. The district court held a hearing on the petition on January 10, 2024. D0044, Tr. Hearing on Pet. 1. At the hearing, the district court took judicial notice of four Monona County court files: MJMH000810, MJMH000811, MJMH000812, and MJMH000821. The district court received four exhibits from N.F. and six exhibits offered by the director of the Department of Human Services. D0044 at 37:24-38:6.

N.F. was 14 years old when he was committed by his parents in March 2016. D0002 (MJMH000811), D0001 (MJMH000812). N.F.'s parents filed applications under both Chapter 229 (MJMH000811) and Chapter 125 (MJMH000811) of the Code. The juvenile court entered orders in each case that placed N.F. for immediate custody for evaluation. D0004 (MJMH000811), D0005 (MJMH000812). N.F. was sent to the Jackson Child and Adolescent Recovery Hospital in Sioux City. *Id.*

Evaluation reports from the same physician were filed in each case. D0080 (MJMH000811), D0010 (MJMH000812). Dr. Richard Brown recommended continuing in-patient care for N.F. in each case. *Id.* The juvenile court accepted this recommendation and entered an order accordingly. D0009 (MJMH000811), D0011 (MJMH000812). A review hearing in each case was set for a month later.

Progress reports were filed in both cases. D0011 (MJMH000811), (D0012) MJMH000812. Despite the juvenile court's order for a physician's report to be submitted, the reports were prepared by a social worker. *Id.* The juvenile court dismissed both cases. In the mental health case, the juvenile court adopted the

argument of N.F.'s attorney that the case should be dismissed because of "the fact that the only evidence offered relates to substance abuse, not mental illness, and the report was not authored by the required medical practitioner." D0012 (MJMH000811). In the substance use disorder case, the juvenile court held "that the progress report filed yesterday (April 27, 2016) does not comply with the requirements of either Iowa Code Section 125.85(1) or Section 125.86(1); at least one and probably both of which are needed to authorize the court to order the child to remain in an inpatient facility." D0013 (MJMH000812).

N.F. had no other commitments. The other files for which the district court took notice were two cases that each resulted solely in a 48-hour hold but went no further (MJMH000810 and MJMH000821). All four cases came within a four-month span when N.F. was 14. *Id.*

N.F. testified in his own behalf at the hearing on his petition. He offered four exhibits: a document showing the results of a criminal history check with the Iowa DCI (D0028), his answers to a questionnaire sent to him by the director about his petition (D0029), a letter of support from a peer (D0030), and a letter of support from the man who took him in after his parents' marriage ended and served as an important mentor (D0031).

N.F. explained that after his commitment at Jackson Recovery he had two voluntary placements. D0044 at 6:4-6. His family was involved with DHS "investigating me, my mom, and – the integrity of the household." D0044 at 6:7-9. N.F. described the chaotic home life with his mother after his father moved away following the divorce. D0044 at 8:1-25. N.F. suspected his mother was abusing drugs. D0044 at

8:10-11. He found needles in her room, and she would have episodes where she would "pass out randomly for roughly five to 10 minutes unconscious, and I would have to deal with that and take care of my little brother and little sister while those episodes were happening because my mom wasn't really in the – in the condition to take care of my younger siblings at the time." D0044 at 8:19-25.

After completing the second voluntary placement, he was contacted by the author of D0031 who offered to take N.F. into his residence. D0044 at 6:10-12. The following year, the man and his wife established a guardianship over N.F. D0044 at 6:16-18. The guardianship was established at the recommendation of DHS. D0044 at 9:1-4. N.F. considers his guardians to be his family now. D0044 at 9:12-13.

The new home environment with his guardians changed everything for N.F. He testified "after this committal at Jackson Recovery, there was no other mental health committals or anything like that. There was no therapy visits or anything like that. DHS said that it really wasn't necessary after the guardianship court." D0044 at 9:23-10:4. In response to direct questioning from the court, N.F. denied being under care for mental health, substance use disorder, or other issues. D0044 at 11:5-13.

After the director's cross-examination of N.F., the experienced district court judge identified the cause of N.F.'s commitment proceeding. "[I]t seems to me that you were having a lot going on with your mom and dad getting divorced, and the relationship you had with your mom, and what you thought or believed may be drug involvement of your mom. Do you think that contributed to how you responded to her parenting of you?" D0044 at 40:17-23.

N.F. agreed. "Absolutely. It was kind of hard to put my trust into somebody like that, especially with somebody that I grew up with. I'd never seen this side of my mom before in the past, so it was really new. So I kind of got blindsided by this whole fact." D0044 at 40:24—41:4. "My – my family was, I'd say, just a normal family until this point. My mom and dad got along very well. My siblings got along very well. And roughly around that time, when they were getting a divorce and my mom acting these ways, going unconscious for 10 minutes, and my mom being stressed out from the divorce and putting that on us kids, it was – it was a tough time to go through." D0044 at 41:5-12.

The district court's order granting N.F.'s petition explains why the removal of disabilities is in the public interest. "[N.F.] has had more than six years without the need for mental health intervention either by way of voluntary participation or involuntary participation. He has also gone that long without the need for medication to assist him with mental or emotional challenges. [N.F.] appears to have been caught as a teenager in the middle of the breakup of his parents that very likely had a significant impact on his behavior at the time." D0038 at 7. The district court understood that it was a new guardian family, not mental health treatment, that made the difference. "They appear to have provided the stability [N.F.] needed, helped him get grounded, and got him on the right path at a difficult time in his life." *Id.*

The director moved to reconsider the grant of the petition. D0036. The director claimed the district court should have analyzed the Chapter 125 commitment proceeding in more detail because it also caused a firearms disability under federal law. *Id.* at 1-5. The director also criticized the district court's evaluation of the evidence.

Id. at 6-10. Finally, the director attacked the district court's order for failing to follow a Court of Appeals case involving the appeal of a denial of a petition. *Id.* at 10-15. The district court denied the motion on February 20, 2024. D0038.

Additional facts as necessary to explain the correctness of the district court's decision will be discussed below.

ARGUMENT

I. The right to appeal is purely statutory. In a proceeding to obtain relief from firearm-possession disabilities because of a prior mental health commitment, the statute gives a right of appeal only to a petitioner who is denied relief. After the district court granted the requested relief, the Iowa Department of Health and Human Services filed a notice of appeal. Should the appeal be dismissed?

The right to appeal "is purely statutory" and may "be granted or denied by the legislature as it determines." *James* v. *State*, 479 N.W.2d 287, 290 (Iowa 1991). For example, a criminal defendant has the right to seek discretionary review of "[a]n order denying probation." Iowa Code § 814.6(2)(c) (2023). But the state cannot seek review of an order granting it. *See* Iowa Code § 814.5(2) (2023). The Court has the obligation to "police its own jurisdiction." *Crowell* v. *State Pub. Def.*, 845 N.W.2d 676, 681 (Iowa 2014). Because there is no appellate jurisdiction, the director's appeal should be dismissed.[1]

A. Iowa Code § 724.31 only gives a petitioner the right to appeal the denial of his petition.

Petitioner N.F. brought the underlying application under Iowa Code § 724.31 (2023) to request the district court lift the disabilities he otherwise suffers under 18 U.S.C. § 922(g)(4). That provision of federal law says a person "who has been…committed to a mental institution" cannot "ship or transport in interstate or foreign commerce, or possess in or affecting

[1] N.F. filed a motion to dismiss the appeal. Iowa R. App. P. 6.1006(a). On March 22, 2024, the motion was denied in a single Justice order with the direction for the parties to brief the jurisdictional issue in their appellate briefs.

commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce."

The Iowa legislature enacted section 724.31 in response to federal legislation that encouraged states to adopt procedures to permit, at the state level, restoration of firearms rights that had been otherwise lost due to a mental health commitment. *See* NICS Improvement Amendments Act of 2007, Public Law 110-180 (121 Stat. 2569-70). That statute requires the state procedure to "grant the relief, pursuant to State law and in accordance with the principles of due process, if the circumstances regarding the disabilities…and the person's record and reputation, are such that the person will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest." *Id.* at 2570.

Consistent with this purpose, the hearing is not a traditional adversarial process. Rather than having a person or entity charged with the duty to resist the application, the statute simply requires service of the application on the county attorney and the director of the Iowa Department of Health and Human Services. Iowa Code § 724.31(2) (2023). Both "may appear, support, object to, and present evidence relevant to the relief sought by the petitioner." *Id.* But no provision *requires* the county attorney or the director to participate in these hearings. *See* Iowa Code § 331.756 (2023) (listing duties of county attorney); Iowa Code Chapter 217 (listing duties of director). And nothing in the code creates a hearing styled "Petitioner v. State of Iowa."

This lack of a direct adversarial process carries over to the statute's grant of a right of appeal. Federal law directs that the State's appeal process must "permit[] a person *whose application for the relief is denied* to file a petition with the State court of appropriate jurisdiction for a de novo judicial review of the denial." 121 Stat. 2570 (emphasis added.) To this end, Iowa law says, "[t]he *petitioner may appeal a denial* of the requested relief, and review on appeal shall be de novo." Iowa Code § 724.31(4) (2023) (emphasis added.)

This language affords no right of appeal to anyone other than a petitioner denied relief. That grant implies the lack of the same right of the county attorney or director to appeal the opposite result. *State* v. *Beach*, 630 N.W.2d 598, 600 (Iowa 2001) ("the express mention of one thing implies the exclusion of other things not specifically mentioned.") The legislature could have, if it chose, expressly given someone the ability to challenge the grant of a relief from disabilities. Its choice to not do so reflects its intent, consistent with the direction from federal law, to craft a remedial scheme that permits persons who are no longer a danger to have their rights restored. "The legislature may express its intent by the omission, as well as the inclusion of terms." *Doe* v. *Iowa Dept. of Hum. Services*, 786 N.W.2d 854, 859 (Iowa 2010).

Because there is no statutory right of appeal, the director's appeal must be dismissed. She raises two alternative arguments in response. First, she says the Iowa Rules of Appellate Procedure give a right to appeal. Second, she asks the Court to construe her notice of appeal as a petition for writ of certiorari. Neither alternative argument has merit.

B. The Iowa Rules of Appellate Procedure cannot create appellate jurisdiction in conflict with a statute.

The director claims Iowa R. App. P. 6.103 provides appellate jurisdiction. But she forgets that a specific statute removing a court's jurisdiction cannot be overridden by a general rule of procedure. *Llewellyn* v. *Iowa State Com. Comm.*, 200 N.W.2d 881, 884-85 (Iowa 1972). In that case, the Iowa State Board of Engineering Examiners sought to intervene in a lawsuit filed by a landowner against the Iowa State Commerce Commission that claimed the commission's grant of a franchise for an electricity transmission project was invalid because of its use of improperly certified land survey records of the project's path. *Id.* at 882. But a statute provides that state agencies must arbitrate, rather than litigate, their disputes with each other. *Id.*

The engineering board claimed that it had the right to intervene, regardless of the statute, because the rules of civil procedure permitted intervention. *Id.* at 884. "The board points out that rule 75 is remedial and should be liberally construed to reduce litigation and expeditiously determine matters before the court." *Id.* The Court rejected this argument. The arbitration statute "obviates the board's standing to litigate the dispute despite its conceivable interest in the subject matter." *Id.* at 885. To the extent there is a conflict between the right to appeal in section 724.31 and rule 6.103, "the provisions of the specific statutes control." *Oyens Feed & Supply, Inc.* v. *Primebank*, 808 N.W.2d 186, 194 (Iowa 2011).

It is not enough that the director claims to be interested in whether N.F. gets his rights restored. A party's interest "must be a legally recognized interest to participate at all" in litigation. *Bd. of Directors of Linden Consol. Sch. Dist.* v. *Bd. of Ed. In & For Dallas Cnty.*, 251 Iowa 929, 937, 103 N.W.2d 696, 701 (1960). In *Linden*, two school districts followed a procedure for reorganization and merger after a petition for that purpose by voters. *Id.* at 251 Iowa 932-33, 103 N.W.2d at 698-99. A neighboring school district sought to intervene in the court proceeding to confirm the merger because it claimed its interests were harmed by the merger. *Id.* at 251 Iowa 933, 103 N.W.2d at 699. Because the "legislature desired to limit the right to appeal by parties legally interested through certain representative bodies whose territory was involved in the proposed reorganization, and by no others," the general rule of procedure for intervention could not allow the neighboring district to participate. *Id.*

The director needs a statutory "hook" to pursue this appeal. She points to the rules of procedure, but those do not create legal rights or define legal relationships. *Anderson* v. *Goodyear Tire & Rubber Co.*, 259 N.W.2d 814, 818 (Iowa 1977). A party "cannot have a vested right in a rule of procedure." *Id.* The rules simply "prescribe the method" that preexisting rights are enforced. *Id.*

The director's claim about rule 6.103 is just like an argument made by a criminal defendant who wanted to appeal the dismissal of his third motion for new trial. *State* v. *LePon*, 928 N.W.2d 873 (Iowa Ct. App. 2019) (unpublished). The defendant said the appellate rules gave him a right of appeal, no matter what the statutes purported to grant.

But as explained by the State of Iowa's brief, "[t]he rules of appellate procedure also provide no support for a right to appeal here." Brief for State of Iowa at 24, *State* v. *LePon*, 928 N.W.2d 873 (Iowa Ct. App. 2019) (No. 18-0777) ("*LePon* brief"). The State of Iowa argued that, despite the language of Rule 6.103, other substantive criminal law provisions meant there was no right to appeal the denial of the new trial motion. *Id.* In a prior decision, the Iowa Supreme Court held there was no right to appeal from a denial of a post-sentencing motion for new trial. *State v. Coughlin*, 200 N.W.2d 525, 526 (Iowa 1972). The State of Iowa's explanation of *Coughlin* contradicts the director's position here:

> [G]iven the strict statutory nature of the right to appeal, the explicit grant of authority to appeal a "final judgment of sentence" is by necessity a denial of the right to appeal other orders. *See State v. Wright*, 82 N.W. 1013, 1014 (Iowa 1900) (Deemer, J., dissenting) ("[W]hen a statute does give the right of appeal from certain orders in a criminal case, appeals from all other orders are by necessary implication excluded. This is simply an application of the maxim, 'Expressio unius est exclusion alterius.'"). [Plus], specific provisions trump general provisions, and section 814.6 is more specific (applying only to criminal appeals) than Rule 6.103(1) (applying to all appeals). See Iowa Code § 4.7 (2015).

LePon brief 25-26.

Just so. The State of Iowa wrapped up this argument with the exact point petitioner makes here. "Lastly—but perhaps most importantly if the court questions the continuing validity of *Coughlin*—a statute trumps a rule." *Id.* at 26. "Iowa case law recognizes the bedrock principle that, even if a rule

arguably did grant the right of appeal from a motion for new trial, such an interpretation conflicts with the Iowa Code and thus cannot stand." *Id.*

The Court of Appeals agreed with this argument and dismissed the appeal. *LePon*, 928 N.W.2d 873 at *3. Because the statute only gives a petitioner the right to appeal a denial, the director cannot use the Rules to justify an appeal of the opposite result. And she should not be permitted to challenge the district court's order through a different mechanism.

C. The notice of appeal cannot be construed as a petition for writ of certiorari because the director of the Department of Health and Human Services is not injured by the grant of relief from firearms disabilities.

The director argues that even if she cannot take a direct appeal, the Court can construe the notice of appeal as a petition for writ of certiorari. *See* Iowa R. App. P. 6.108. But the general rule is that only a party to the action below may seek the writ. *Hohl* v. *Bd. of Educ.*, 250 Iowa 502, 509, 94 N.W.2d 787, 791 (1959). For a nonparty to have standing to seek the writ, it must show it has a "specific personal or legal interest in the litigation" and must show it has "been injured in a special manner, different from that of the public generally." *Alons* v. *Iowa Dist. Ct. for Woodbury County*, 698 N.W.2d 858, 864-65 (Iowa 2005). The director, claiming to assert the interests of the State of Iowa, suggests that even if the statute does not give her the right to appeal, the Court should construe the notice of appeal as a petition for writ of certiorari and grant the writ. But the director appears before this Court on her own behalf,

not as the State of Iowa. And because she has not been injured by the order granting N.F. relief, she lacks standing to petition for a writ.

(1) This appeal is brought by the director of the Department of Health and Human Services, not the State of Iowa.

N.F. brought his petition under Iowa Code § 724.31 (2023). D0001. That statute requires notice of the petition to be given to the county attorney and the director of the Iowa Department of Health and Human Services. The director[2] appeared through counsel. D0004. The director resisted the petition in the district court. This included its motion asking the district court to reconsider its order granting the petition. D0036. After the denial of that motion, it was the Department of Health and Human Services that filed a notice of appeal. D0039. The notice of appeal was styled as given by "Respondent-Appellant, the Department of Health and Human Services…") Similarly, the combined certificate recites that the party bringing the appeal was the "Department of Health and Human Services."

But then N.F. moved to dismiss the appeal. (Motion to Dismiss, Feb. 28, 2024). He explained that the statute does not give the director the right to appeal the grant of a petition. N.F.'s motion expected that the director might claim that even if there were no right to appeal, she would ask this Court to

[2] The appearance recited it was made on behalf of the "Department of Human Services," however that agency merged with the Iowa Department of Public Health on July 1, 2022, to become the Department of Health and Human Services. 2022 Iowa Acts Ch. 1131, § 51.

construe her notice of appeal as a petition for writ of certiorari. Iowa R. App. P. 6.151(1). But N.F. argued that the director was not injured by the grant of the petition and had no independent duty to enforce the statute. Because only a party that has suffered such an injury may petition for a writ of certiorari, the director could not save her appeal by changing the form of review.

This is when the director shifted position. The resistance to the motion to dismiss was not filed on behalf of HHS. (Resistance to Motion to Dismiss, Feb. 29, 2024). Instead, it recited that it was brought by the "Respondent-Appellant the State of Iowa…" The resistance then claimed the generalized duty of the State of Iowa to "maintain[] order and protect[] the public" justified its appeal of the district court's order. The director maintains this on appeal—claiming to be the State of Iowa before this Court. Appellant Br. 21. The reason is obvious: the director seeks to sidestep the question about her specific authority by cloaking herself in the general sovereign power of the State of Iowa.

But the director of HHS is different from the State of Iowa. When the "State of Iowa" is the litigant, it normally refers to actions brought to enforce the people's interest in law and order. Iowa Const. Art. V, § 8 ("The style of all process shall be, 'The State of Iowa', and all prosecutions shall be conducted in the name and by the authority of the same.") But in litigation about the power and duties of state agencies, those agencies are named individually and treated as separate entities.

Thus, in *Crowell* the Court held the State Public Defender could not challenge a juvenile court order to pay certain indigent representation costs because the order did not require the funds to come out of the defender's budget. "As to the State Public Defender, then, the issues raised in this appeal are of academic interest only." *Crowell*, 845 N.W.2d at 682. But because the legal costs were to be paid from the general fund, the Department of Management had standing to contest the order through a petition for writ of certiorari. *Id.* at 687.

Crowell makes no sense if state agencies can simply put on a "State of Iowa" hat as they please to avoid appellate jurisdiction problems. The Court spilled much ink to explain why the Department of Management was a proper litigant if it could have simply treated the State Public Defender as the State of Iowa and pressed on with the legal analysis. But that did not happen.

Crowell is not an outlier. In *Motor Club of Iowa* v. *Dep't of Transp.*, 251 N.W.2d 510 (Iowa 1977), an association challenged a rule promulgated by the DOT that allowed, in some cases, 65-foot-long commercial trucks on the highway. After the district court found the rule was invalid because the DOT did not comply with the Administrative Procedure Act when it created conditions for legislative action before the rule would go into effect, the Attorney General appealed. *Id.* at 512-13. But after a change in the membership of the DOT commission, the commission voted to accept the district court's ruling and dismiss the appeal. *Id.* at 513. The Attorney General refused, arguing "the State of Iowa is the real party in interest" and that he, as "a constitutional officer [is]

free to prosecute and defend any case in which the State is a party or interested." *Id.* The Attorney General claimed, "he possesses complete dominion over all litigation in which he appears in the interest of the State." *Id.*

The Court rejected this claim. Reviewing the office's powers, the Court held that his only role in the appeal was under his duty to "[p]rosecute and defend all actions and proceedings brought by or against any state officer in his official capacity." *Id.* at 514 (citing Iowa Code § 13.2(3) (1977)). This meant the Attorney General could not ignore his client's wishes. "A department of state government was sued and the attorney general appeared to defend the department, not to assert his vision of state interest." *Id.* Because the DOT was not interchangeable with the State of Iowa, the Attorney General had to take the direction of his client and dismiss the appeal. *Id.* at 516. "To accord the attorney general the power he claims would leave all branches and agencies of government deprived of access to the court except by his grace and his consent." *Id.*

The Court's analysis in *Crowell* and *Motor Club of Iowa* follows the distinction it draws between state officers and the State of Iowa in applying the *Ex parte Young* doctrine in state court. "The United States Supreme Court held in *Ex parte Young* [209 U.S. 123 (1908)] that 'a suit challenging the constitutionality of a state official's action is not one against the State.'" *Lee* v. *State*, 844 N.W.2d 668, 675 (Iowa 2014) (citing *Pennhurst State Sch. & Hosp.* v. *Halderman*, 465 U.S. 89, 102 (1984)). The distinction between state officials and the state itself, "while…sometimes called a 'fiction,' the long history of its

felt necessity shows it to be something much more estimable…" *Id.* And although *Ex parte Young* has its source in the Eleventh Amendment immunity of states in federal court, the doctrine applies in state courts as well. *Id.*

If the table was turned, the Court can be certain that the Attorney General would seek dismissal of a suit against state officials who had no connection to a challenged statute. *Hatfield* v. *Williams*, 376 F.Supp. 212 (N.D. Iowa 1974) (Attorney General's successful motion to dismiss because he had no connection with enforcement of the challenged statute). The Attorney General, while defending a state official, would surely emphasize the Court's standing doctrine requires the plaintiff show "an injury in fact that is fairly traceable to the *defendant's* conduct…" *Iowa Citizens for Cmty. Improvement* v. *State*, 962 N.W.2d 780, 790 (Iowa 2021) (emphasis added). And she would likely argue that because "no court may lawfully enjoin the world at large or purport to enjoin challenged laws themselves," the court's equitable powers can be directed only to specific government officials with enforcement power. *Whole Woman's Health* v. *Jackson*, 595 U.S. 30, 44 (2021) (cleaned up). Finally, she would note that "[r]emedies operate with respect to specific parties, not on legal rules in the abstract." *Murphy* v. *National Collegiate Athletic Ass'n*, 584 U.S. 453, 488-49 (2018) (Thomas, J., concurring) (cleaned up).

Government officials are simply not interchangeable with the state itself or those with other duties. *Digital Recognition Network, Inc.* v. *Hutchinson*, 803 F.3d 952, 956-57 (8th Cir. 2015). Under *Ex parte Young*, a suit against a state official does not violate the state's Eleventh Amendment immunity only when

the official has some connection with the enforcement of the state law. *Id.* "When a plaintiff brings a pre-enforcement challenge to the constitutionality of a particular statutory provision, the causation element of standing requires the named defendants to possess authority to enforce the complained-of provision." *Id.* at 957-58. Suing the correct state official with the authority to enforce the challenged law is a fundamental duty of a plaintiff.

The director cannot slough off these procedural details simply because she wants to contest N.F.'s firearm rights. If she can raise that challenge by a petition for writ of certiorari, it can only be because her duties are implicated by the district court's order. If she has no injury, she has no right to seek review.

(2) Because the director of HHS is not injured by the order granting relief from disabilities, she lacks standing to petition for a writ of certiorari.

The district court's order imposes no obligation on the director.[3] Because of this, "the issues raised in this appeal are of academic interest only."

[3] Although the district court did order the Department of Public Safety to update the "record in any database that the Department of Public Safety makes available to the national instant criminal background check system and shall notify the United States Department of Justice that the basis for such record being made available no longer applies," the actual mechanism for updating NICS records is an automatic data exchange between the Clerk of Court and the Department of Public Safety. Iowa Code § 229.24(4)(b) (2023). This data exchange, in turn, is automatically updated to the Federal Bureau of Investigation's CJIS database. *See* Iowa Admin. Code 661—8.102. Thus, the Clerk of Court's action to update the record of the underlying mental health commitment is all that is necessary to remove the record of the disability that would otherwise prevent petitioner from possession of a firearm or ammunition under federal law.

Crowell, 845 N.W.2d at 682. The director, like the State Public Defender in *Crowell*, has suffered no injury from the restoration of petitioner's firearm rights. "Accordingly, we will not entertain the State Public Defender's appeal because it is not aggrieved by the district court order and will not be aggrieved in light of the limited nature of the issues raised." *Id.*

The director lacks a "specific personal or legal interest in the litigation" where she has not "been injured in a special manner, different from that of the public generally." *Alons*, 698 N.W.2d at 864-65. The director simply asserts that she "owes a duty to the people of Iowa to make sure that petitioners who have their rights restored are not a risk to the public safety and the restoration is not contrary to the public interest." Appellant Br. 22.

The authority for this claim? The director cites only section 724.31(4), the provision that provides the standard for the district court to grant the petition if it finds the petitioner "will not be likely to act in a manner dangerous to the public safety and that the granting of the relief would not be contrary to the public interest." Nothing in that statute gives the director a freestanding public-safety mission. She cites no other provision that charges her with a duty to resist petitions for relief from disabilities. The code simply gives her the right to notice and the opportunity to "appear, support, object to, and present evidence relevant to the relief sought by the petitioner." Iowa Code § 724.31(2) (2023).

The legislature created a remedial scheme to permit persons who have lost their firearm rights because of a mental health commitment to petition to get

them back. The director has no statutory duty to keep people like the petitioner away from firearms and doesn't have to do *anything* in response to the court's order. The code gives the director the right to notice and the opportunity to be heard. She got both. The director therefore lacks the kind of interest necessary to petition for a writ of certiorari.

Because the director does not have a statutory right of appeal and has no injury to her duties caused by the issuance of the order removing disabilities, this appeal should be dismissed.

II. Under federal law, when a respondent has been fully released or discharged from all mandatory treatment, supervision, or monitoring, the commitment shall be deemed not to have occurred for purposes of 18 U.S.C. § 922(g)(4). The commitment against N.F. was dismissed. Should the district court be affirmed because the commitment should not have been in N.F.'s record?

"A prevailing party may support the district court judgment on any ground contained in the record, provided that the affirmance on that ground does not alter the rights of the parties established in the judgment." *Meier* v. *Senecaut*, 641 N.W.2d 532, 540 n. 1 (Iowa 2002). Rules about preservation of error "ordinarily should apply only to an unsuccessful party. Our cases are legion which hold that a trial court may be affirmed on grounds upon which it does not rely." *Johnston Equip. Corp. of Iowa* v. *Industrial Indem.*, 489 N.W.2d 13, 17 (Iowa 1992).

Here, the Court may affirm the district court's grant of relief to N.F. on the alternative ground that under federal law he was not under any firearm disability following the dismissal of the commitment proceedings.

A. Any firearms disability suffered by N.F. is imposed solely by federal law.

N.F.'s firearm disability is solely imposed by federal law. 18 U.S.C. § 922(g)(4). The director does not claim otherwise.[4] There is nothing in Chapter 724 that independently prohibits a person who has been a respondent in a Chapter 229 or Chapter 125 proceeding from possession of firearms or ammunition. Because federal law treats mental health commitments as the transitory things that they are, the director is wrong to view the proceedings against N.F. as having permanent effect.

Although the treatment and commitment of mentally ill persons is primarily the business of the states, certain components of the federal government share this responsibility. As explained above, Congress enacted the NICS Improvement Amendments Act of 2007, Public Law 110-180 (121 Stat. 2569-70). In addition to providing incentives for states to adopt procedures to grant relief from firearms disabilities, the statute directed the Department of

[4] The director cites Iowa Code § 724.15 (2023) in her argument that Chapter 125 proceedings should be reported to federal authorities for inclusion in the National Instant Background Check System. Appellant Br. 31-32. Her brief does not clearly explain that the cited code section simply involves Iowa's exemption from the Brady Handgun Violence Prevention Act instant check system because it has an alternative system to issue permits to acquire and permits to carry. *See* 18 U.S.C. § 922(t)(3).

Homeland Security, the Department of Defense, and the Department of Justice to follow certain procedures with reporting mental commitments within their jurisdiction. 34 U.S.C. § 40911(b). Those components may not provide records of a mental health commitment when it "has been set aside or expunged, or the person has otherwise been fully released or discharged from all mandatory treatment, supervision, or monitoring." 34 U.S.C. § 40911(c)(1)(A). Nor should records be included when "the person has been found by a court…to no longer suffer from the mental health condition that was the basis of the…commitment…or has otherwise been found to be rehabilitated through any procedure available under the law." 34 U.S.C. § 40911(c)(1)(b).

Federal law instructs the U.S. Attorney General (who is the official responsible for the National Instant Background Check System (NICS)) to "ensure that any information submitted to, or maintained by, the Attorney General…is kept accurate and confidential..." 34 U.S.C. § 40911(b)(3)(A). He is also directed to "provide for the timely removal and destruction of obsolete and erroneous names and information" from the system and to "work with States" to encourage electronic recordkeeping that will notify when "a court order has been issued, lifted, or otherwise removed by order of the court…" 34 U.S.C. § 40911(b)(3)(B) and 34 U.S.C. § 40911(b)(3)(C).

The 2007 legislation includes an important limitation on the use of dismissed mental commitment proceedings to strip an individual of his firearm rights. Once a proceeding has terminated, federal law requires the information

about the proceeding to be withdrawn from NICS and deems the commitment to have never occurred. Because of this requirement, N.F. should have never been under a firearms disability at all.

B. Under Federal law, a mental commitment case that has been dismissed is deemed to have not occurred for purposes of 18 U.S.C. § 922(g)(4).

Both the Chapter 229 and Chapter 125 proceedings resulted in dismissals. D0012 (MJMH000811), D0013 (MJMH000812). Once dismissed, N.F. was not under any court order to do anything with respect to his mental health or substance use disorder. Under 34 U.S.C. § 40911(c)(1)(A), N.F. was "fully released or discharged from all mandatory treatment, supervision, or monitoring."

As we have seen, if N.F. had originally been committed in a proceeding involving a federal agency, the dismissed commitment proceeding would never have been reported for inclusion in NICS. *Id*. And while that statute applies only to federal agencies and not states, a separate provision has a broader effect. "In the case of an adjudication related to the…commitment of person to a mental institution, a record of which may not be provided to the Attorney General under paragraph (1)…the…commitment…shall be deemed not to have occurred for purposes of…[18 U.S.C. § 922(g)(4)]." 34 U.S.C. § 40911(c)(2)(B).

"The plain text of subsection (c)(2)(B) is not limited to federal agencies or departments." *In re State for J.M.P.*, 05-22-00878-CV, 2024 WL 1171377, at

*14 (Tex. App. Mar. 24, 2024) (Miskel, J., concurring). "In other words, upon full release or discharge from court-ordered mental health treatment, the commitment is deemed not to have occurred, and the federal firearms disability under § 922(g)(4) ceases to exist." *Id.* "Federal law may have already granted J.M.P. Jr. relief from his federal firearms disability…[n]evertheless, because I could find no clear authority directly addressing this application of [subsection (c)(2)(B)], I agree fully with the majority opinion's analysis of J.M.P. Jr.'s [other] arguments." *Id.*

The concurring judge in *J.M.P.* was correct to note the tension between the treatment of federal and state mental commitments. As applied to N.F., there is no Iowa policy at play here. If he is prohibited from possessing firearms because he was committed at age 14, it is only because a federal interest is being vindicated. Yet federal law instructs the U.S. Attorney General to disregard the very kind of dismissed commitments as is involved here.

As recognized by the concurring judge in *J.M.P.*, the sweep of subsection (c)(2)(B) appears to be broader than the direction specific to federal departments and agencies not to report dismissed commitments in subsection (c)(1)(A). Yet there is no reported case where, for example, a criminal defendant has successfully raised this issue to obtain dismissal in a 922(g)(4) prosecution. Thus, there are two competing interpretations of (c)(2)(B): one in which dismissed commitments in state and federal proceedings have the same treatment and one in which the treatment is wildly different. What to do with this interpretive problem?

"If fairly possible, a statute will be construed to avoid doubt as to constitutionality." *Thompson* v. *Joint Drainage Dist. No. 3-11*, 259 Iowa 462, 468, 143 N.W.2d 326, 330 (1966). Given the choice of two interpretations of a statute, "a court must consider the necessary consequences of its choice." *Clark* v. *Martinez*, 543 U.S. 371, 380 (2005). This is particularly true when interpreting statutes (like whether N.F. is subject to federal firearms prohibitions) that have application in both a civil and criminal context. "If one of them would raise a multitude of constitutional problems, the other should prevail—whether or not those constitutional problems pertain to the particular litigant before the Court." *Id.* at 380-81.

Other familiar rules of statutory interpretation complement the instruction to avoid constitutional problems. The court should consider "the structure and purpose of the statute in its entirety." *Den Hartog* v. *City of Waterloo*, 847 N.W.2d 459, 462 (Iowa 2014). In enacting a statute, "a just and reasonable result is intended." Iowa Code § 4.4(3) (2023).

To resolve this interpretive question, therefore, we must consider whether an interpretation of subsection (c)(2)(B) that applies only to federal commitments would have constitutional implications. Since gun rights are like other constitutional rights, a narrow interpretation of that subsection is not appropriate.

C. Because the constitutional right to keep and bear arms is implicated, the federal law that deems dismissed mental commitments to have not occurred must be applied to state mental commitment proceedings.

N.F.'s constitutional rights are at the core of this case. As recognized by the U.S. Supreme Court in *District of Columbia* v. *Heller*, 554 U.S. 570 (2008) and *McDonald* v. *Chicago*, 561 U.S. 742 (2010), "the Second and Fourteenth Amendments protect the right of an ordinary, law-abiding citizen to possess a handgun in the home for self-defense." *New York State Rifle & Pistol Assn.* v. *Bruen*, 597 U.S. 1, 8 (2022) (extending *Heller* and *McDonald* to recognize that the U.S. Constitution protects the right to carry a handgun for self-defense outside the home).[5]

(1) Under *Bruen*, there is no historical tradition of disarming mentally ill individuals because of a dismissed commitment proceeding.

Although *Heller* explained that its holding did not "cast doubt on longstanding prohibitions on the possession of firearms by…the mentally ill…," *Heller*, 554 U.S. at 626, this does not mean that the way the government

[5] N.F. also enjoys a right to keep and bear arms under the Iowa Constitution. Iowa Const. Art. I, § 1A. But because his firearms disability is caused solely by federal law, the Second Amendment, not state constitutional law, is what limits the ability of federal law to disarm N.F. U.S. Const. Art. VI, cl. 2 ("This Constitution, and the Laws of the United States which shall be made in Pursuance thereof…shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.")

deprives mentally ill persons of their firearms rights is free from constitutional scrutiny. *See Atkinson* v. *Garland*, 70 F.4th 1018 (7th Cir. 2023) (applying *Bruen* methodology to challenge to felon-in-possession statute.) Despite the Court's statement in *Heller* about certain "longstanding prohibitions," "[n]othing allows us to sidestep *Bruen*…" *Id.* at 1022.

N.F. is still part of "the people" encompassed under the Second Amendment. *Range* v. *Attorney Gen. of the U.S.*, 69 F.4th 96, 102-03 (3d Cir. 2023). "At root, the Government's claim that only 'law-abiding, responsible citizens' are protected by the Second Amendment devolves authority to legislators to decide whom to exclude from 'the people.' We reject that approach because such 'extreme deference gives legislatures unreviewable power to manipulate the Second Amendment by choosing a label.'" *Id.*

Because "the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct." *Bruen*, 597 U.S. at 17. "To justify its regulation, the government may not simply posit that the regulation promotes an important interest. Rather, the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation." *Id.*

That historical tradition provides the key backdrop to understanding the scope of the right protected by the Constitution. "Only if a firearm regulation is consistent with this Nation's historical tradition may a court conclude that the individual's conduct falls outside the Second Amendment's 'unqualified command.'" *Id.* (citing *Konigsberg* v. *State Bar. of Cal.*, 366 U.S. 36, 50, n. 10

(1961)). Interest balancing is not the appropriate analytical method. Understanding of the Second Amendment right does not "support applying means-end scrutiny…" *Id.* at 19. "Instead, the government must affirmatively prove that its firearms regulation is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms." *Id.*

"This Second Amendment standard accords with how we protect other constitutional rights." *Id.* at 24. "Take, for instance, the freedom of speech in the First Amendment, to which *Heller* repeatedly compared the right to keep and bear arms." *Id.* "In that context, when the Government restricts speech, the Government bears the burden of proving the constitutionality of its actions." *Id.* (cleaned up). And in considering the Sixth Amendment's guarantee of the right to "be confronted with the witnesses against him," "we require courts to consult history to determine the scope of that right." *Id.* at 25. Or, returning to the First Amendment, the Court will "look to history for guidance" in its Establishment Clause cases. *Id.* (citing *Am. Legion* v. *Am. Humanist Assn.*, 588 U.S. ____ (2019)).

This tradition does not support imposing a firearms disability because of a dismissed mental commitment proceeding. Founding-era common law procedure treated the accusation of lunacy akin to a criminal charge, with the accused enjoying a presumption of sanity, the right to hear and contest the evidence against him, the right to counsel, and the right to a unanimous jury finding. George Dale Collinson, *A Treatise on the Law Concerning Idiots, Lunatics, and Other Persons Non Compos Mentis*, Vol. I, 130-145 (1812). This tradition is

incompatible with imposing legal consequences for a dismissed proceeding. A dismissal, after all, is the "termination of an action, claim, or charge…through the entry of an order or judgment that imposes no civil or criminal liability on the defendant with respect to that case." DISMISS, Black's Law Dictionary 589 (11th Ed. 2019). If anyone achieved a result with the dismissal of the commitment proceeding, it was N.F. A dismissal with prejudice is a final adjudication on the merits. *Mensing* v. *Sturgeon*, 250 Iowa 918, 924, 97 N.W.2d 145, 148 (1959). It is perverse to suggest that N.F. permanently lost his rights because of a court case in which he prevailed.

Imposition of firearms disabilities on N.F. because of a dismissed commitment proceeding is constitutionally suspect at best. But any argument for that result cannot survive the 2007 decision by Congress to remove firearms disabilities caused by dismissed cases.

(2) If N.F.'s original commitment had been done by a federal agency, the dismissed proceeding would not be included in the NICS database, and he would not be prohibited from possessing a firearm. The law must treat his state commitment the same way.

Greater statutory *protections* of constitutionally protected activity are relevant to understanding a right's scope. *Bruen* reversed the lower court's finding that the challenged New York pistol licensing regime was constitutional. *Bruen*, 597 U.S. at 71. Six Justices voted for this result. Justice Kavanaugh joined by Chief Justice Roberts, wrote a separate concurring opinion that

emphasized the outlier status of the New York law. Noting that 43 States had "shall-issue" licensing regimes, "[t]he Court's decision addresses only the unusual discretionary licensing regimes, known as "may-issue" regimes, that are employed by 6 States including New York." *Id.* at 79 (Kavanaugh, J., concurring). In contrast, the "shall-issue" regimes relied on objective criteria. *Id.* (citing Brief for Arizona et al. as Amici Curiae 7).

The concurring Justices were influenced by an evolving national standard on the proper treatment of firearms rights. The "shall-issue" regimes, "began with New Hampshire in 1923, and by 1995 half of all states had adopted one." Brief for Arizona et al. as Amici Curiae Supporting Petitioners, New York Pistol & Rifle Assn. v. Bruen, 597 U.S. 1 (2022) (No. 20-843) at *7. The concurring Justices therefore were influenced by the legislative trend to enact statutes that were more protective of individual rights. This informed their understanding of the Nation's historical understanding of firearms rights. While recent innovations in gun control would ignore *Bruen*'s central holding, recent innovations in gun rights are instructive. "But to the extent later history *contradicts* what the text says, the text controls." *Bruen*, 597 U.S. at 36 (emphasis added).

Considering the 2007 legislation that sharply limited the lasting effects of a federal mental commitment and mindful of *Bruen*'s instruction to treat the Second Amendment like other constitutional rights, the disparate treatment of state and federal mental commitments that would be caused by a narrow reading of 34 U.S.C. § 40911(c)(2)(b) must be rejected. Restrictions on

constitutional rights must be narrowly tailored. *Americans for Prosperity Foundation* v. *Bonta*, 594 U.S. 595, 609 (2021). This requires the government to demonstrate that the interest it asserts cannot be met by "any less intrusive alternatives." *Id.* at 613. "If a less restrict alternative would serve the Government's purpose, the legislature must use that alternative." *U.S.* v. *Playboy Ent. Group, Inc.*, 529 U.S. 803, 813 (2000).

Here, the analysis is straightforward. When the government itself creates a less restrictive alternative, a court will require it to be applied to prevent an infringement on constitutionally protected activity. *Burwell* v. *Hobby Lobby Stores, Inc.*, 573 U.S. 682, 730 (2014) (applying least-restrictive-means test under federal Religious Freedom Restoration Act, 42 U.S.C. § 2000bb et seq.). "HHS itself has demonstrated that it has at its disposal an approach that is less restrictive than requiring employers to fund contraceptive methods that violate their religious beliefs." *Id.*

Under federal firearms policy (the only policy at stake here), public safety is satisfied by only imposing a firearms disability when the person is under a court order for "mandatory treatment, supervision, or monitoring." 34 U.S.C. § 40911(c)(1)(A). As a simple matter of logic, the same federal policy cannot be interpreted to require a firearms disability for dismissed commitment proceedings in the state system. If Congress had intended such a bizarre result (assuming it would have been constitutional to do so), it should have said so clearly.

Subsection (c)(2)(B)'s instruction that dismissed commitment proceedings are deemed to not exist is conclusive as to N.F. The grant of relief from disabilities granted by the district court should be upheld because the record of the dismissed proceeding should have never been reported to the national system.

III. Fourteen-year-old N.F. was committed when he experienced a crisis following the collapse of his parents' marriage. After the commitment, he was taken in by a foster family who gave him a loving home for the rest of his adolescence. He is now a stable, employed, and law-abiding young adult. Should the district court's grant of relief from the firearm disability be affirmed as substantively correct?

The director claims error is preserved because of a timely notice of appeal. Appellant Br. 34. "While this is a common statement in briefs, it is erroneous, for the notice of appeal has nothing to do with error preservation." *State* v. *Lange*, 831 N.W.2d 844, 846-47 (Iowa Ct. App. 2013) (citing Thomas A. Mayes & Anuradha Vaitheswaran, *Error Preservation in Civil Appeals in Iowa: Perspectives on Present Practice*, 55 Drake L. Rev. 39, 48 (Fall 2006)). The Court of Appeals has stated this basic point "almost seventy times" since *Lange*. *Interest of T.G.*, 997 N.W.2d 163 at n. 1 (Iowa Ct. App. 2023) (unpublished). As explained below, not every error cited by the director was preserved.

The appropriate standard of review is tied to whether the director can appeal or seek review by a writ of certiorari as discussed above. Iowa Code § 724.31 (2023) provides, "[t]he petitioner may appeal a denial of the requested relief, and review on appeal shall be de novo." The director cites only

this provision as authority for her claim that review of the grant of the requested relief should also be de novo. But this begs the question, as it is not the petitioner who seeks review of a denial. The director ignores this and states the same de novo standard of review applies.

But normally the Court reviews challenges to the sufficiency of the evidence in involuntary commitment proceedings for errors at law. *In re B.B.*, 826 N.W.2d 425, 428 (Iowa 2013). Findings of fact in Chapter 229 proceedings "are binding on us if supported by substantial evidence." *In re J.P.*, 574 N.W.2d 340, 342 (Iowa 1998). "Evidence is substantial if a reasonable trier of fact could conclude the findings were established by clear and convincing evidence. We will not set aside the trial court's findings unless, as a matter of law, the findings are not supported by clear and convincing evidence." *Id.*

And if the director can only proceed by a petition for writ of certiorari, the standard of review is also correction of errors at law. *Johnson* v. *Iowa Dist. Court*, 385 N.W.2d 562, 564 (Iowa 1986). "A petition for writ of certiorari is appropriate when a party claims the district court exceeded its jurisdiction or otherwise acted illegally." *In re Detention of Schuman*, 2 N.W.3d 33, 44 (Iowa 2024) (cleaned up). Thus, applying the normal rules to the director's appeal should result in a deferential standard of review.

But even in de novo review, the Court will "give weight to the district court's findings of fact, especially when considering the credibility of witnesses," even though the Court is not bound by the district court's factfinding. *In re Marriage of Anliker*, 694 N.W.2d 535, 539 (Iowa 2005). Because the

experienced district court judge's decision was ultimately based on its opportunity to see and hear N.F., his conclusion that granting him relief was appropriate is entitled to a practical deference.

But before the district court's order granting relief from disabilities for the Chapter 229 proceeding is discussed, the director's mistaken claim that N.F.'s dismissed Chapter 125 proceeding also caused a disability must be examined.

A. Chapter 125 proceedings cannot cause a firearms disability under 18 U.S.C. § 922(g)(4).

The director claims that N.F.'s Chapter 125 proceeding also imposed a firearms disability. This argument is based on a single sentence in an ATF regulation. But because it contradicts other specific statutory protections about the confidentiality of substance use disorder proceedings and the practices of Iowa courts, it must be rejected.

Under federal law, a person "who has been…committed to a mental institution," cannot ship, transport, or receive firearms and ammunition. 18 U.S.C. § 922(g)(4). Because the term "committed to a mental institution" is not defined under federal law, federal courts will normally look to state law to determine whether a particular proceeding qualifies. *U.S.* v. *Whiton*, 48 F.3d 356, 358 (8th Cir. 1995).

But rather than look to state law to understand the effects of N.F.'s Chapter 125 proceeding, the director insists the answer is found in a federal

regulation. The director cites the definition of "committed to a mental institution" found in 27 C.F.R. § 478.11:

> **Committed to a mental institution.** A formal commitment of a person to a mental institution by a court, board, commission, or other lawful authority. The term includes a commitment to a mental institution involuntarily. The term includes commitment for mental defectiveness or mental illness. *It also includes commitments for other reasons, such as for drug use.* The term does not include a person in a mental institution for observation or a voluntary admission to a mental institution.

(emphasis added). The director points to the inclusion in this definition of "commitments for other reasons, such as for drug use" to make the surprising claim that Chapter 125 commitment proceedings result in the loss of firearm possession rights.

The claim is surprising, because, as the district court points out in its order denying the director's motion to reconsider, "[t]his is not the law in Iowa and no notice is included to Respondents in such actions of the potential loss of such a right." D0038 at 2-3. *See*, Iowa Code § 724.31(1) (2023) (directing clerk of court to notify respondent of the prohibitions imposed under 18 U.S.C. § 922(g)(4)). Aside from the lack of notice to respondents, the district court notes that nothing in the clerk of court's manual instructs for there to be notification of Chapter 125 proceedings to the Department of Public Safety. *Id.* at 3. There is good reason for this lack of direction: mental health and substance use disorder commitments have different confidentiality rules.

Mental health commitments are confidential. Iowa Code § 229.24(1) (2023). But notwithstanding the general rule, the code directs the court and the Department of Public Safety to forward to the FBI "information that a person has been disqualified from possessing, shipping, transporting, or receiving a firearm pursuant to section 724.31." Iowa Code § 229.24(4)(b) (2023). This authorized the electronic transmission of the information about N.F.'s Chapter 229 proceeding into NICS discussed above.

But substance use disorder cases are far different. They enjoy confidentiality under state law. Iowa Code § 125.37 (2023) (confidentiality of treatment records), Iowa Code § 125.93 (2023) (confidentiality of commitment proceeding records). These code sections have no equivalent to section 229.24(4)(b). There is no statutory authorization for the clerk of court to report Chapter 125 proceedings to anyone. To the contrary, section 125.93 cross references a provision of federal law, the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act, 42 U.S.C. § 290dd-2, that has extraordinary confidentiality rules.

Federal law prohibits the use of substance use disorder treatment information "in any civil, criminal, administrative, or legislative proceedings conducted by any…State, or local authority, against a patient…" 42 U.S.C. § 290dd-2(c). The records may not "be entered into evidence," "form the part of the record for decision or otherwise taken into account in any proceeding," and may not be used "for a law enforcement purpose or to conduct any

law enforcement investigation." *Id.* Violations are punishable by a fine of up to $50,000 and imprisonment of up to a year. 42 U.S.C. § 1320d-6.

The clerk of court doesn't report substance use disorder commitments for inclusion in NICS *because it would violate federal criminal law to do so*. Plus, how would a prosecutor prove a violation of 18 U.S.C. § 922(g)(4) when the underlying records cannot be used in an investigation or entered into evidence? Perhaps this explains why there are no reported cases involving a prosecution under 922(g)(4) where the underlying commitment was for substance use disorder.

The director's claim about the effect of Chapter 125 commitments is not just wrong. It is shockingly wrong. State officials should be held to a higher standard about what the law requires and means.

B. The district court correctly determined that N.F. would not be likely to act in a manner dangerous to the public safety and that granting relief from the firearms disability would not be contrary to the public interest.

The statute directs the district court to consider four factors to determine whether, by a preponderance of the evidence, the petitioner "will not be likely to act in a manner dangerous to the public safety" and "granting of the relief would not be contrary to the public interest." Iowa Code § 724.31(4) (2023). The factors are "the circumstances surrounding the original issuance of the order…resulting in the firearms disability…," the "petitioner's record, which shall include, at a minimum, the petitioner's mental health records and

criminal history records, if any," the petitioner's "reputation, developed, at a minimum, through character witness statements, testimony, and other character evidence," and "[a]ny changes in the petitioner's condition or circumstances since the issuance of the original order…" Iowa Code § 724.31(3) (2023). Each of these factors support the district court's decision.

The director's attack on the district court's decision focuses, to the exclusion of nearly everything else, on the allegations made about N.F. in the initial commitment papers. If the director's arguments were stripped of context, one would think she was resisting the request for parole by a hardened violent criminal by focusing on the original crime at the expense of later rehabilitative efforts. To the director, what N.F.'s parents said in the original application and affidavit are more important than the dismissal a month later because the commitment proceeding was legally inadequate. Fortunately, the district court looked to N.F. as he is today, not as he was claimed to be when he was 14.

(1) The original commitment occurred because of N.F.'s chaotic home situation, not mental illness.

The record amply supports the district court's finding that N.F.'s problem was the breakdown of his parents' marriage and the likelihood that his mother was experiencing her own crisis. A month's evaluation in a residential setting resulted in a progress report that described no mental health concerns. D0011 (MJMH000811). The director claims the facts "establish that N.F. had

serious mental illness and substance use disorder issues independent of any alleged overreaction by his parents to what he characterizes as normal teenage boundary-pushing." Appellant Br. 39. The director essentially argues only she understands how dangerous N.F. is. Everyone else, in her view, is wrong. The professionals who evaluated N.F., the juvenile court judge who dismissed the commitment case, and the district court judge who restored N.F.'s rights all failed to understand the situation.

Perhaps nothing explains the director's view of the evidence better than her observation that "N.F. makes it 66 words into his testimony before bringing up his mother." Appellant Br. 15. What? Is this legal argument? It sounds more like amateurish psychological analysis. The director then scolds N.F.: "[m]ore than eight years after involuntary committal, N.F. does not accept that he has or had a mental illness, that he has or had a substance use disorder, or that he played a role in his involuntary committal beyond upsetting his mother and drinking moderation." Appellant Br. 45.

It is the director who does not accept the facts. She does not accept that the commitment proceeding was dismissed after there was no finding by a qualified professional that he had any mental health diagnosis. She does not understand that the substance use disorder file is legally irrelevant. And she ignores that N.F.'s arrival in a foster family home resolved his concerns.

The district court correctly understood that N.F.'s issues as a fourteen-year-old were caused by family crisis and not mental health. Getting into a foster home made all the difference. N.F. did not need mental health treatment

at that point because he did not have a mental health condition. And because the circumstances of the commitment were so paltry, the district court's conclusion that N.F.'s rights should be restored naturally followed.

(2) N.F. proved he had no criminal history or additional mental health records.

The director complains that N.F. did not provide recent mental health records. But as he explained, there are no such records because he has not needed any care since he was taken in by his foster family. D0044 at 9:23-10:4, D0044 at 11:5-13. The director claims that submission of such records "are required for the district court to restore firearms rights." Appellant Br. 41. She then quotes section 724.31's direction to consider the petitioner's record. She claims the statute says the record "shall include, at a minimum, the petitioner's mental health records and criminal history records." *Id.* (citing Iowa Code § 724.31(3)(b) (2023)). But this is, at best, inaccurate. The director omits the last two words of that subsection. Following "criminal history records" the statute reads, "if any." *Id.* The director's misquote of the statute changes its fundamental meaning and reflects poorly on her obligation of candor with the Court.

There is *no* requirement for a petitioner to submit mental health records. The statute does not require a recent mental health evaluation. As the district court held, the statute "does not presume that documents need to be created or treatment needs to occur to create some sort of track record or documents just to show that you do not need the treatment you are getting. Such a

requirement would be absurd." D0036 at 3. "The lack of a substantial amount of evidence, i.e., medical reports, from [N.F.] is not construed by this Court as negative but rather positive." *Id.* at 4. The director's claim otherwise is without merit.

(3) N.F. proved his good character by his own testimony and statements from two supporters.

The director complains that the statements of support submitted by N.F. were not signed. Yet they were admitted without objection. D0036 at 38:5. The time for the director to raise this issue was at the time the statements were offered. *State* v. *Dessinger*, 958 N.W.2d 590, 598 (Iowa 2021) ("The preservation of error doctrine is grounded in the idea that a specific objection to the admission of evidence be made known, and the trial court be given an opportunity to pass upon the objection and correct any error.")

N.F., who navigated the process in district court pro se, may well have been able to address the concern by asking for the hearing to be continued so he could produce live witnesses. But even if a timely objection were made, the district court would have committed no error by admitting and relying on the statements. The code directs the district court to consider, "character witness *statements*, testimony, and other character evidence." Iowa Code § 724.31(3)(c) (2023) (emphasis added). Despite the director's belated concern, the word "affidavit" does not appear on this list.

The experienced district court judge was impressed by N.F.'s presentation in court. "[N.F.] was very respectful when he presented his case, he was

respectful to the Court when the Court had questions and he was likewise respectful when Ms. Jennings conducted her cross-examination." D0036 at 5. Even under a de novo standard of review, the Court will normally give deference to the trial court's findings of witness credibility and reliability. *State* v. *Lovig*, 675 N.W.2d 557, 562 (Iowa 2004). N.F. presented exactly as he is: a responsible young adult who can safely receive his firearms rights back.

(4) Because everything changed for N.F. after he was taken in by a foster family at age 14, the district court correctly understood that the mental commitment did not indicate safety concerns today.

The director has little to say about this factor other than to attack N.F. for drinking beer with his friends. She again treats N.F. like a recidivist. "To ensure such problems do not recur, N.F. should acknowledge what happened and be able to explain why they will not happen again. But N.F. repeatedly showed the district court that he is devoid of such insight." Appellant Br. 47. The director claims the "only long term change that N.F. has shown in his life is that now he has a job." Appellant Br. 49.

This, of course, is nonsense. He explained the impact his foster family had on him and showed the district court that he is a productive and law-abiding young adult. The director's argument about the facts has a fundamental inconsistency. She portrays N.F. as an untreated mentally ill person who is in denial about his alcohol abuse and in desperate need for treatment. One would think that somewhere between ages 14 and 22 this condition would have

resulted in another contact with the juvenile or criminal justice systems. But that never happened. It never happened because N.F. understands himself better than the director does.

(5) The district court properly distinguished the holding in *Matter of A.M.*

The director attacks the district court's "spurious distinctions" between N.F. and *Matter of A.M.*, 908 N.W.2d 280 (Iowa Ct. App. 2018). *Matter of A.M.* involved the appeal of a denial of a petition to remove disabilities. *Id.* at 285. The case, much like N.F.'s, is fact bound. A.M.'s commitment came from an incident when he was 20 where he drunkenly attempted to get his mother's shotgun from her residence so he could take his own life. *Id.* at 281-82. After assaulting three family members he was taken into custody. *Id.* at 282. Following the commitment, A.M. was discharged to outpatient treatment for his diagnosed mental health and substance use disorder issues. *Id.* at 282.

Reviewing the district court's denial of the petition, the court said, "[t]his case presents a close call. A.M. has shown personal growth and stability since his hospitalization more than six years ago. But we give due deference to the trial court's ability to see and hear A.M. and his character witnesses." *Id.* at 287.

Rather than spurious, the distinctions between *Matter of A.M.* and N.F. are obvious. If the case means anything, it is that the district court's ability to see and hear N.F. in court should receive the same deference given by the court

in *Matter of A.M.* The cases have different facts, it is not surprising that the district court judges in each reached different conclusions.

CONCLUSION

The Court should dismiss this appeal. In the alternative, it should affirm the district court's order granting N.F. relief from firearms disabilities because the dismissed commitment proceeding did not impose a disability on him and because he met the standard for relief under section 724.31.

REQUEST FOR ORAL SUBMISSION

N.F. requests that this appeal be submitted for oral argument.

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) because it contains 11,891 words, excluding parts of the brief exempted by that rule.

This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the typestyle requirements of Iowa R. App. P. 6.903(1)(f) because it has been prepared in a proportionally spaced typeface using Microsoft Word in Equity B and Equity B Caps, 14-point type.

/s/ Alan R. Ostergren
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