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Supreme Court Will Hear UVA Law Clinic Case Involving Felons and Firearms Tuesday



Professor Dan Ortiz practices his argument with colleagues Tuesday as students in the Supreme Court Litigation Clinic watch and prepare to give feedback.

At the Supreme Court on Tuesday, University of Virginia law professor [Daniel Ortiz](#) will argue a case at the intersection of criminal and property law involving felons' rights to own or sell non-contraband firearms.

[Henderson v. United States](#) is the 12th case UVA Law's [Supreme Court Litigation Clinic](#) has taken to Washington, and the fourth case Ortiz, the clinic's director, will argue before the court. Working in teams, students handle actual cases, from the seeking of Supreme Court review to briefing on the merits.

"The students in the clinic do everything except one thing which the court does not allow them to do," Ortiz said. "They cannot get up on the day of argument and represent the client before the Supreme Court."

In the days leading up to the argument, Ortiz has practiced before the clinic's students, UVA Law professors, and appellate litigators and Supreme Court experts who interrogate him in practice mootings, much as the justices will do on Tuesday.

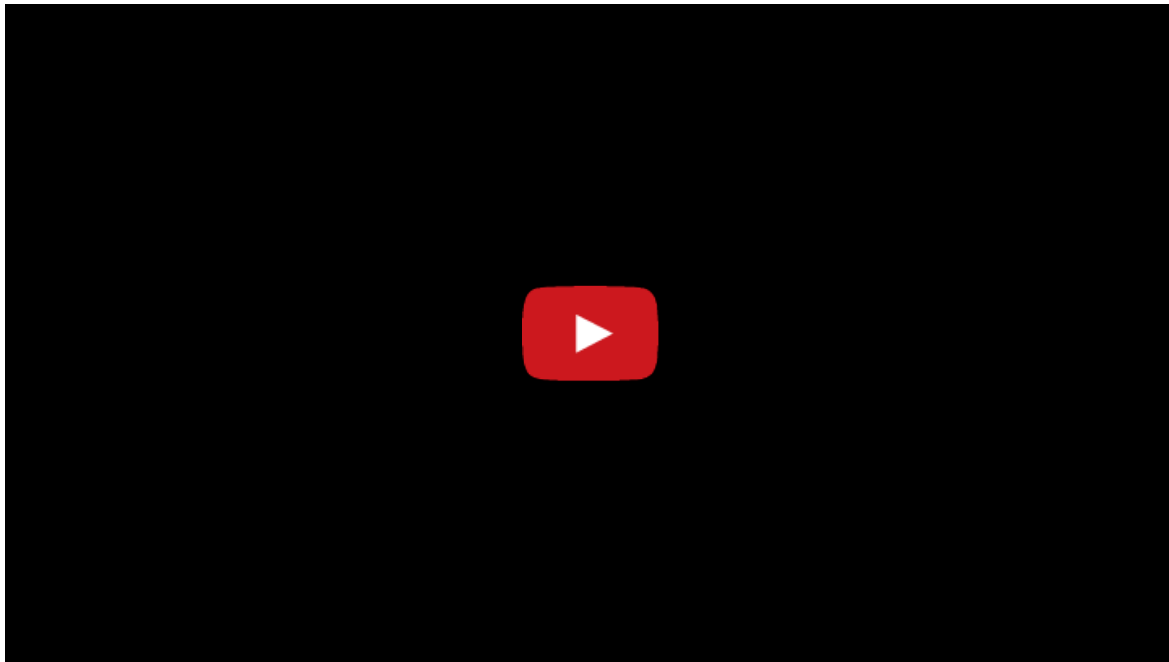
Henderson involves the "felon-in-possession" statute and former U.S. Border Patrol agent Tony Henderson, a Florida man charged with selling marijuana in 2006.

"This is a statute that makes it a crime for someone who's already been convicted of a felony to possess any firearms," Ortiz said. "While he was being prosecuted, the judge encouraged him to give all his firearms to the government for safekeeping, and he did."

CBS on the Supreme Court Litigation Clinic and *Henderson v. United States*



Professor Ortiz Discusses Henderson



Henderson gave the FBI his 19 guns and served six months for felony drug offenses.

"Knowing that his conviction barred him from ever possessing firearms himself, he later tried to arrange for the government to transfer the guns to someone who would pay him for them," Ortiz said. "The government refused, saying that to do so would somehow attach constructive possession of the guns to our client."

Ortiz said the Supreme Court's decision will have a broad impact.

"There are over a million people convicted of felonies in this country every year, and in many cases the value of the firearms can be quite high," he said.

Ortiz said he will argue the statute means what it says.

"The statute says a convicted felon cannot 'possess' a firearm. It doesn't say he can't sell a firearm that the government is possessing on his behalf," he said.

If the court decides in favor of Henderson, felons whose firearms are in government possession could ask that their firearms be transferred to a third party for sale, he said, or to a trust that would benefit the felon's dependents, for example. If the Supreme Court decides for the U.S. government, people in Henderson's position won't be able to reclaim their firearms' economic value.

"That seems to be a rather harsh penalty," Ortiz said.

Former clinic student Gillian Giannetti, a 2014 UVA Law graduate, found the case while researching opinions from the 11th U.S. Circuit Court of Appeals.

"It's incredibly satisfying to see all of the clinic's work pay off. It's a fascinating case," Giannetti said. "I was intrigued by the clear circuit split, as well as the uniqueness of the question. I have never read a case before in which a convicted felon was seeking to transfer firearms he had legally owned prior to his conviction, when the firearms were completely unrelated to the offense committed."