No. 24-1234

In the Supreme Court of the United States

UNITED STATES OF AMERICA, PETITIONER

v.

ALI DANIAL HEMANI

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES

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QUESTION PRESENTED

Whether 18 U.S.C. 922(g)(3), the federal statute that prohibits the possession of firearms by a person who "is an unlawful user of or addicted to any controlled substance," violates the Second Amendment as applied to respondent.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-2a) is available at 2025 WL 354982. The order of the district court (Pet. App. 3a-4a) is available at 2024 WL 5375143. The report and recommendation of the magistrate judge (Pet. App. 5a-39a) is available at 2023 WL 9659173.

JURISDICTION

The judgment of the court of appeals was entered on January 31, 2025. On April 21, 2025, Justice Alito extended the time within which to file a petition for a writ of certiorari to and including June 2, 2025. The petition was filed on that date and granted on October 20, 2025. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Pertinent constitutional and statutory provisions are reproduced in the appendix. App., *infra*, 1a-2a.

INTRODUCTION

For the Founders, the Second Amendment stood second to none among the Bill of Rights. They regarded the right to "keep and bear arms" for lawful purposes as "the true palladium of liberty" and believed that infringements of the right would put liberty "on the brink of destruction." *District of Columbia* v. *Heller*, 554 U.S. 570, 606 (2008) (citation omitted). The generation that adopted the Fourteenth Amendment similarly "counted the right to keep and bear arms among those fundamental rights necessary to our system of ordered liberty." *McDonald* v. *City of Chicago*, 561 U.S. 742, 778 (2010). Today, "millions of Americans" rely on that right in possessing and carrying arms for lawful purposes. *Heller*, 554 U.S. at 624 n.24. The Second Amendment "does not merely narrow the Government's regulatory power. It is a barrier, placing the right to keep and bear arms off limits to the Government." *United States* v. *Rahimi*, 602 U.S. 680, 750 (2024) (Thomas, J., dissenting).

Given the Second Amendment's central role in our constitutional scheme, the government bears a significant burden in justifying restrictions on that right. See *NYSRPA* v. *Bruen*, 597 U.S. 1, 17 (2022). Specifically, the government must show that the challenged regulation "is consistent with this Nation's historical tradition of firearm regulation." *Ibid.* That is a stringent test, not a "regulatory blank check." *Id.* at 30.

This case presents narrow circumstances where the government can satisfy that rigorous burden. Congress enacted 18 U.S.C. 922(g)(3) in 1968 alongside various

other provisions disarming particular categories of people. Section 922(g)(3) forbids a person from possessing a firearm in or affecting commerce if he "is an unlawful user of or addicted to any controlled substance." 18 U.S.C. 922(g)(3). Section 922(g)(3) plays an integral role in a statutory scheme that "probably does more to combat gun violence than any other federal law." *Rehaif* v. *United States*, 588 U.S. 225, 239 (2019) (Alito, J., dissenting). As Congress and this Court have repeatedly recognized, "drugs and guns are a dangerous combination." *Smith* v. *United States*, 508 U.S. 223, 240 (1993). At issue here is Section 922(g)(3)'s disarmament of a defined class of people—habitual users of controlled substances, *i.e.*, those who regularly and unlawfully use drugs that are subject to the Controlled Substances Act, 21 U.S.C. 801 *et seq.* That restriction is temporary and limited: a person regains his ability to possess arms as soon as he stops habitually using drugs.

Under *Bruen*, the critical question is whether the government can "identify an American tradition justifying" Section 922(g)(3)'s temporary disarmament of habitual drug users. 597 U.S. at 38-39. As this case comes to the Court, all agree that the answer is yes for at least many individuals subject to Section 922(g)(3); the question is how broadly the tradition runs. All agree that there is a deeply rooted history and tradition of temporarily barring people from possessing firearms based on their use of alcohol. Further, all agree that this history and tradition would encompass the use of controlled substances such as marijuana. See, *e.g.*, Br. in Opp. 18. The only dispute is a narrow one: does the longstanding body of restrictions support disarming only people *actively* under the influence of alcohol or controlled substances, as the Fifth Circuit has held and

as respondent contends? Or does the historical record also support temporarily disarming people who habitually use alcohol (and, today, controlled substances)?

A close look at the historical record reveals that habitual users of controlled substances—not just those intoxicated at the moment that they possess a firearm—can be temporarily disarmed. There is a well-defined body of historical precedent for disarming intoxicated individuals. But Section 922(g)(3) is grounded in an additional, highly robust body of much harsher founding-era restrictions on the rights of habitual drunkards. Early American legislatures recognized that habitual drunkards present heightened dangers of crime and violence. They classified drunkards as criminal vagrants subject to confinement in jail or workhouses, committed drunkards to lunatic asylums, and subjected drunkards to surety laws backed by threat of jail—burdens even more severe than those imposed by Section 922(g)(3).

That founding-era history suffices to uphold Section 922(g)(3), which subjects habitual drug users to the lesser restriction of temporary disarmament only while drug use remains habitual. If any doubts remained, post-ratification history provides further support. Both Congress and the States have restricted firearm possession by illegal drug users for as long as that social evil has plagued America. The relevant categories of historical evidence thus "confirm what common sense suggests": those who "pos[e] a clear threat of physical violence to another," such as habitual drug users, "may be disarmed," but only for as long as the basis for that threat persists. *Rahimi*, 602 U.S. at 698.

The Fifth Circuit instead held that history and tradition support applying Section 922(g)(3) only where the government proves that a defendant was presently in-

toxicated while possessing a firearm. That erroneous conclusion ignores the vagrancy, civil-commitment, and surety laws that historically restricted the rights of habitual drunkards. The Fifth Circuit's present-intoxication test also raises unworkable practical difficulties for the government and especially for law-enforcement officers, who would have to complicate already high-risk encounters with armed drug users by routinely administering drug tests solely to preserve evidence for potential Section 922(g)(3) prosecutions. Moreover, at least 43 States, the District of Columbia, and all five territories have enacted similar laws restricting the possession of firearms by drug users and drug addicts—in addition to many other laws disarming habitual drunkards. The Fifth Circuit's reasoning would throw all those laws' validity into doubt. Finally, any constitutional concerns about the application of Section 922(g)(3) in marginal cases can be addressed by petitioning the Attorney General under 18 U.S.C. 925(c), subject to judicial review. This Court should reverse the Fifth Circuit's judgment.

STATEMENT

1. Congress enacted the Gun Control Act of 1968, Pub. L. No. 90-618, 82 Stat. 1213, in response to "an onslaught of violent gun crime" that "destroyed lives and devastated communities, particularly in America's cities." *United States* v. *Davis*, 588 U.S. 445, 470-471 (2019) (Kavanaugh, J., dissenting). One of the statute's core provisions, 18 U.S.C. 922(g), generally prohibits firearm possession by certain categories of dangerous persons, such as felons, fugitives, and persons committed to mental institutions.

This case concerns 18 U.S.C. 922(g)(3), which forbids a person from possessing a firearm in or affecting com-

merce if he "is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802))." That Act "classifies substances into five schedules," beginning with Schedule I, which is "subject to the most comprehensive restrictions, including an outright ban on all importation and use, except pursuant to strictly regulated research projects." *Gonzales* v. *O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 425 (2006). Schedule I lists drugs with a "high potential for abuse" and "a lack of accepted safety for use of the drug or other substance under medical supervision," including heroin, fentanyl-related substances, and marijuana. See 21 U.S.C. 812(b)(1)(A) and (C).

A knowing violation of Section 922(g)(3) is a felony, punishable by up to 15 years of imprisonment. See 18 U.S.C. 924(a)(8) (Supp. IV 2022). In recent years, over 300 defendants have been charged with violating Section 922(g)(3) each year.

2. Respondent Ali Danial Hemani is a dual citizen of the United States and Pakistan whose actions have drawn the attention of the Federal Bureau of Investigation (FBI). C.A. ROA 376. In 2019, a search of his phone at a border crossing revealed communications suggesting that he was poised to commit fraud at the direction of suspected affiliates of the Iranian Revolutionary Guard Corps, a designated foreign terrorist organization. *Id.* at 414-417.

In 2020, respondent and his parents traveled to Iran to participate in a celebration of the life of Qasem Soleimani, an Iranian general and terrorist who had been killed by an American drone strike the month before. C.A. ROA 368-370. Respondent's mother was captured on video telling an Iranian news agency that she prayed

that her two sons, including respondent, would become martyrs like Soleimani. *Id.* at 367, 371. Respondent also maintains weekly contact with his brother, who attends an Iranian university that the U.S. government has designated as having ties to terrorism. *Id.* at 362-364. And respondent has told law-enforcement officials that, if he knew about an imminent terrorist attack by "a Shia brother" that would kill innocent people, he would not report it to the authorities. *Id.* at 423.

Respondent also is a drug dealer who admittedly used illegal drugs routinely before his arrest. Text messages recovered from his phone showed that he used and sold promethazine and that he found that substance addictive. C.A. ROA 378-379.[1] He also admitted to law enforcement that he used cocaine and marijuana. *Id.* at 379-380.

The FBI obtained a warrant to search respondent's family home. C.A. ROA 378. Agents found a Glock 9mm pistol, 60 grams of marijuana, and 4.7 grams of cocaine. *Id.* at 379-380. Respondent told the FBI that he used marijuana about every other day. *Id.* at 381. He also told the FBI that the cocaine, which had been found in his mother's room, belonged to him. *Id.* at 397-398.

3. A federal grand jury in the Eastern District of Texas charged respondent with possessing a firearm as an unlawful user of a controlled substance, in violation of 18 U.S.C. 922(g)(3). Pet. App. 1a. The prosecution rests on respondent's habitual use of marijuana. Gov't C.A. Br. 7 n.2.

Respondent moved to dismiss the indictment on the ground that Section 922(g)(3) violates the Second Amend-

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[1] Promethazine with codeine is a controlled substance and a "major street drug." *United States* v. *Achobe*, 560 F.3d 259, 261 (5th Cir. 2008), cert. denied, 558 U.S. 819 (2009).

ment. Pet. App. 5a; see *id.* at 3a. A magistrate judge recommended granting the motion, reasoning that Section 922(g)(3) lacks adequate "historical analogues." *Id.* at 23a; see *id.* at 5a-39a.

Soon after the magistrate judge issued her report and recommendation, the Fifth Circuit held in *United States* v. *Daniels*, 77 F.4th 337 (2023), vacated, 144 S. Ct. 2707 (2024), that Section 922(g)(3) violates the Second Amendment as applied to a defendant whom the government did not prove was "under an impairing influence" while possessing the firearm. *Id.* at 349. The court considered "three general buckets" of historical laws—"(1) statutes disarming intoxicated individuals, (2) statutes disarming the mentally ill or insane, and (3) statutes disarming those adjudged dangerous or disloyal"—and determined that this "limit[ed]" set of historical materials did not support application of Section 922(g)(3) to habitual users beyond the moment of intoxication. *Id.* at 344 & n.8.

The government conceded that this case could not be distinguished from *Daniels*. Pet. App. 3a-4a. Relying on *Daniels*, the district court dismissed the indictment on the ground that Section 922(g)(3) violates the Second Amendment as applied here. *Id.* at 4a.

4. After the district court issued its decision in this case, this Court vacated *Daniels* and remanded that case for the Fifth Circuit to reconsider in light of *United States* v. *Rahimi*, 602 U.S. 680 (2024). See *United States* v. *Daniels*, 144 S. Ct. 2707 (2024). The Fifth Circuit then reinstated essentially the same interpretation of the Second Amendment in another then-pending case. *United States* v. *Connelly*, 117 F.4th 269 (2024).

The government conceded before the Fifth Circuit that *Connelly* controlled this case. Pet. App. 2a. Citing

Connelly, the Fifth Circuit summarily affirmed the district court's dismissal of the indictment. *Id.* at 1a-2a.

5. Other courts of appeals have adopted a range of approaches to the question presented. The Seventh Circuit has determined that the government may disarm "persistent drug users," *United States* v. *Seiwert*, 152 F.4th 854, 872 (2025), and the Ninth Circuit has determined that the government may apply Section 922(g)(3) "at least" to defendants "who are presently intoxicated," *United States* v. *Stennerson*, 150 F.4th 1276, 1285 (2025). The Third Circuit has agreed that disarming "frequent drug users" is "well-grounded in history," but has concluded that the government may apply Section 922(g)(3) to a defendant only if it makes an individualized showing of dangerousness (treating the defendant's possession of a firearm while intoxicated as evidence of dangerousness). *United States* v. *Harris*, 144 F.4th 154, 162, 165-166 (3d Cir. 2025), petition for cert. pending, No. 25-372 (filed Sept. 26, 2025); see *United States* v. *VanOchten*, 150 F.4th 552, 556 (6th Cir. 2025) (similar); *United States* v. *Cooper*, 127 F.4th 1092, 1096 (8th Cir) (similar), cert. denied, No. 24-1247 (Oct. 20, 2025). And the Eleventh Circuit has held that a complaint alleging that Section 922(g)(3) is unconstitutional "as applied to medical marijuana users" could proceed beyond the motion-to-dismiss stage. *Florida Commissioner of Agriculture* v. *Attorney General*, 148 F.4th 1307, 1320-1321 (2025).

SUMMARY OF ARGUMENT

The Second Amendment does not prohibit Congress from restricting the possession of firearms by habitual drug users, as Section 922(g)(3) does.

A. History and precedent establish that legislatures may temporarily restrict the possession of firearms by

those who threaten the safety of the community. This Court recently upheld 18 U.S.C. 922(g)(8), which disarms a person subject to a domestic-violence restraining order containing an individualized finding of dangerousness. *United States* v. *Rahimi*, 602 U.S. 680, 700 (2024). A related strand of traditional firearm regulation also allows legislatures to disarm "categories of persons" who "present a special danger of misuse." *Id.* at 698. Such restrictions date to the early Republic, have remained prevalent throughout the Nation's history, and have been endorsed by this Court's Second Amendment cases since *District of Columbia* v. *Heller*, 554 U.S. 570 (2008).

B. Section 922(g)(3) falls well within Congress's authority to temporarily disarm categories of dangerous persons—here, habitual drug users. All agree that history and tradition support application of Section 922(g)(3) at least to drug users who possess firearms while they are presently intoxicated, which explains why every court of appeals to address the issue has held that the statute is facially constitutional. And founding-era evidence independently supports Section 922(g)'s application to habitual drug users even during intervals between intoxication. Section 922(g)(3) is relevantly similar to founding-era laws restricting the rights of habitual drunkards even during intervals between intoxication, including vagrancy, civil-commitment, and surety laws. Indeed, Section 922(g)(3)'s strong justifications and limited scope mean that its constitutionality follows *a fortiori* from these historical precursors as to "both why and how it burdens the Second Amendment right." *Rahimi*, 602 U.S. at 698.

Post-ratification history, to the extent relevant, confirms Section 922(g)(3)'s constitutionality. For as long

as America has had a drug problem, jurisdictions have restricted drug users' access to firearms. Precedent underscores that Congress was justified in determining that armed habitual drug users endanger public safety in multiple ways, including through the physical and mental impairments caused by many illegal drugs, the violent crime associated with drug addiction and the drug trade, and particular dangers to the police.

C. Section 922(g)(3)'s limits bolster its constitutionality. The provision applies only to *unlawfully used* drugs, putting it on an even stronger footing than historical restrictions tied to the abuse of alcohol (which has been legal for most of American history). Section 922(g)(3) also applies only to *habitual* drug users, and imposes only temporary disarmament while that habitual use persists.

D. Contrary arguments lack merit. The Fifth Circuit has held—and respondent has maintained in this Court—that Section 922(g)(3) cannot be constitutionally applied to persons who are not presently intoxicated while they possess firearms. But beyond the well-established practice of disarming the presently intoxicated, a distinct historical tradition allows disarming habitual drug users during sober intervals. The Third, Sixth, and Eighth Circuits have held that Section 922(g)(3) requires a defendant-specific showing of dangerousness (with the Third Circuit treating possession of a firearm while intoxicated as evidence of dangerousness), but that requirement is inconsistent with the historical tradition allowing legislatures to restrict firearm rights of limited categories of unusually dangerous persons. Administering that approach also would raise vexing practical problems for law-enforcement officers, prosecutors, and courts. And if any constitutional doubts remain, Con-

gress has addressed them by authorizing relief from Section 922(g)(3) and other federal firearms laws through an administrative procedure under 18 U.S.C. 925(c) that the Attorney General has recently revitalized.

ARGUMENT

The government has satisfied its rigorous burden of showing that Section 922(g)(3) complies with the Second Amendment as applied to habitual users of controlled substances. History and tradition establish that the Second Amendment allows Congress to temporarily restrict the possession of firearms by categories of persons who pose a special danger of misuse, including habitual drug users.

A. Congress May Temporarily Restrict The Possession Of Firearms By Dangerous Persons

This Court's methodology for interpreting the Second Amendment "center[s] on constitutional text and history." *NYSRPA* v. *Bruen*, 597 U.S. 1, 22 (2022). Courts should not simply "defe[r] to legislative interest balancing." *Id.* at 26. Instead, the government "bears the burden" of justifying a firearms regulation by showing that the regulation is consistent with the "principles that underpin our regulatory tradition." *United States* v. *Rahimi*, 602 U.S. 680, 691-692 (2024). That tradition plainly precludes broad prohibitions that amount to near-total bans on exercising Second Amendment rights. See *Bruen*, 597 U.S. at 50.

As *Rahimi* recognized, however, that tradition allows narrower laws that "temporarily" limit the possession of firearms by individuals who pose "a clear threat of physical violence." 602 U.S. at 698, 702. Applying that principle, the Court rejected a constitutional challenge to 18 U.S.C. 922(g)(8), which disarms a person sub-

ject to a domestic-violence restraining order containing a finding that he poses a threat to someone else's physical safety. *Rahimi*, 602 U.S. at 700.

Rahimi involved one aspect of our Nation's tradition of temporarily disarming dangerous individuals: disarmament based on a case-by-case judicial finding that a person poses a threat of physical violence. See 602 U.S. at 699. This case involves a different aspect of the same tradition: laws targeting "categories of persons" who "present a special danger of misuse." *Id.* at 698. Specifically, the government may disarm a group of dangerous individuals, such as habitual drug users, if an analogous group was subject to similar or more severe limits at the founding.

This Court has repeatedly indicated that disarmament laws that target particular people presenting special dangers of misuse may comply with the Second Amendment. *District of Columbia* v. *Heller*, 554 U.S. 570 (2008), described "longstanding prohibitions on the possession of firearms by felons and the mentally ill," among other examples, as "presumptively lawful." *Id.* at 626, 627 n.26. *McDonald* v. *City of Chicago*, 561 U.S. 742 (2010), repeated *Heller*'s "assurances" about the constitutionality of "'prohibitions on the possession of firearms by felons and the mentally ill.'" *Id.* at 786 (plurality opinion); accord *Bruen*, 597 U.S. at 80-81 (Kavanaugh, J., concurring). And *Rahimi* declined to question "laws banning the possession of guns by categories of persons" who "present a special danger of misuse." 602 U.S. at 698.

That tailored restriction "comport[s] with the principles underlying the Second Amendment" more generally. *Rahimi*, 602 U.S. at 692. For instance, legislatures can prohibit "dangerous and unusual weapons" that are not

in common use for lawful purposes, *id.* at 691 (quoting *Heller*, 554 U.S. at 627), but cannot bend that principle to ban weapons "in common use" for lawful purposes, *Bruen*, 597 U.S. at 47. The "sensitive places" doctrine allows legislatures to exclude firearms from unusually dangerous places, *Rahimi*, 602 U.S. at 735 (Kavanaugh, J., concurring) (quoting *Heller*, 554 U.S. at 626), but forecloses overbroad geographical restrictions that "would eviscerate the general right to publicly carry arms," *Bruen*, 597 U.S. at 31. Similarly, legislatures may restrict the possession of firearms by unusually dangerous people, but such restrictions cannot be so sweeping or open-ended as to cover most ordinary citizens (including formerly dangerous people once the basis for the threat subsides).

The historical principles supporting disarmament of limited categories of persons whose use of firearms presents especially acute dangers dates to the earliest days of the Republic. During the Revolutionary War, States prohibited loyalists from possessing arms. In some States, government officials made case-by-case decisions about individuals' loyalty.[2] Some States categorically disarmed those who had been convicted of certain crimes[3] or had

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[2] See Act of Dec. 1775, *The Public Records of the Colony of Connecticut From May, 1775, to June, 1776, inclusive* 193 (Charles J. Hoadly ed., 1890) (*Public Records of Connecticut*); Act of Sept. 20, 1777, ch. 40, § 20, *Acts of the General Assembly of the State of New-Jersey* 90 (1777).

[3] See Act of Dec. 1775, *Public Records of Connecticut* 193; Resolutions of Sept. 1, 1775, 1 *Journals of the Provincial Congress, Provincial Convention, Committee of Safety and Council of Safety of the State of New-York* 132 (1842); Resolution of Mar. 13, 1776, *Journal of the Provincial Congress of South Carolina, 1776*, at 77 (1776).

failed to swear allegiance to the United States.[4] Some jurisdictions combined the two approaches, presumptively disarming those who refused to swear allegiance but providing an individualized opportunity to rebut the presumption.[5] Early legislatures thus disarmed individuals because they bore "individual markers of risk," belonged to "a dangerous category," or both. *Kanter* v. *Barr*, 919 F.3d 437, 451 (7th Cir. 2019) (Barrett, J., dissenting). "Legislative power to strip the right from certain people or groups" was "a historically accepted feature" of the right. *Id.* at 453 n.3.

After the Revolution and through the 19th century, States continued enacting laws restricting firearm possession by categories of people who presented well-recognized dangers. For instance, States restricted the possession of firearms by, or the sale of firearms to, rebels,[6] persons of unsound mind,[7] and tramps.[8] Upholding a state

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[4] See Act of 1777, ch. 6, § 9, 24 *The State Records of North Carolina* 89 (Walter Clark ed., 1905); Act of June 13, 1777, ch. 756, § 3, 9 *The Statutes at Large of Pennsylvania from 1682-1801*, at 112-113 (James T. Mitchell & Henry Flanders eds., 1903); Act of May 1777, ch. 3, 9 *The Statutes at Large; Being a Collection of All the Laws of Virginia, from the First Session of the Legislature, in the Year 1619*, at 282 (William Waller Henning ed., 1821).

[5] See Act of May 1, 1776, ch. 21, § 2, 5 *The Acts and Resolves, Public and Private, of the Province of the Massachusetts Bay* 480 (1886); Act of 1776, 7 *Records of the Colony of Rhode Island and Providence Plantations in New England* 567 (John Russell Bartlett ed., 1862).

[6] See, *e.g.*, Act of Feb. 23, 1867, ch. 12, § 1, 1867 Kan. Sess. Laws 25.

[7] See Act of Feb. 4, 1881, ch. 3285, No. 67, § 1, 1881 Fla. Laws 87; Act of Mar. 5, 1883, ch. 105, § 1, 1883 Kan. Sess. Laws 159; Act of Feb. 17, 1899, ch. 1, § 52, 1899 N.C. Pub. Laws 20-21.

[8] See Act of Apr. 30, 1855, §§ 1-2, 2 *The General Laws of the State of California, from 1850 to 1864, inclusive* 1076-1077 (Theodore H. Hittell ed., 1865); Act of Mar. 27, 1879, ch. 59, § 4, 1879 Conn. Pub.

law disarming tramps, the Ohio Supreme Court explained that the right to bear arms "was never intended as a warrant for vicious persons to carry weapons with which to terrorize others." *State* v. *Hogan*, 58 N.E. 572, 575 (1900).

The tradition of disarming dangerous categories of people continued into the 20th century. In the 1930s, Congress forbade violent criminals and fugitives from receiving firearms. See Federal Firearms Act, ch. 850, § 2(f), 52 Stat. 1251. In the 1960s, Congress disarmed felons, persons with mental illnesses, illegal aliens, and persons who have been dishonorably discharged from the Armed Forces. See Act of Oct. 3, 1961, Pub. L. No. 87-342, §§ 1-2, 75 Stat. 757; Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. No. 90-351, Tit. VII, § 1202, 82 Stat. 236; Gun Control Act of 1968, Pub. L. No. 90-618, § 102, 82 Stat. 1220. And in the 1990s, Congress disarmed domestic-violence misdemeanants. See Omnibus Consolidated Appropriations Act, 1997, Pub. L. No. 104-208, Div. A, Tit. I, Sec. 101(f) [tit. VI, § 658(b)(2)], 110 Stat. 3009-372.

Acts 394; Act of Mar. 27, 1879, ch. 155, § 8, 16 Del. Laws 225; Act of May 3, 1890, ch. 43, § 4, 1890 Iowa Acts 68-69; Act of Apr. 24, 1880, ch. 257, § 4, 1880 Mass. Acts 232; Miss. Rev. Code ch. 77, § 2964 (1880); Act of Aug. 1, 1878, ch. 38, § 2, 1878 N.H. Laws 170; Act of May 5, 1880, ch. 176, § 4, 1880 N.Y. Laws, Vol. 2, at 297; Act of Mar. 12, 1879, ch. 198, § 2, 1879 N.C. Sess. Laws 355; Act of June 12, 1879, § 2, 1879 Ohio Laws 192; Act of Apr. 30, 1879, No. 31, § 2, 1879 Pa. Laws 34; Act of Apr. 9, 1880, ch. 806, § 3, 1880 R.I. Acts & Resolves 110; Act of Nov. 26, 1878, No. 14, § 3, 1878 Vt. Acts & Resolves 30; Act of Mar. 4, 1879, ch. 188, § 4, 1879 Wis. Sess. Laws 274.

B. Section 922(g)(3) Falls Within Congress's Authority To Temporarily Disarm Categories Of Dangerous Persons

Given those principles, Section 922(g)(3) complies with the Second Amendment. As this case comes to the Court, all agree that the Second Amendment permits, at a minimum, "limits on a *presently* intoxicated person's right to carry a weapon." *United States* v. *Connelly*, 117 F.4th 269, 272 (5th Cir 2024). Founding-era legislatures enacted "restrictions on gun use by drunken New Year's Eve revelers." *Rahimi*, 602 U.S. at 691. And during the 19th century, States and localities continued to forbid the carrying of firearms by intoxicated individuals. See *United States* v. *Stennerson*, 150 F.4th 1276, 1284 (9th Cir. 2025). For example, the Missouri Supreme Court upheld one such statute, citing the "mischief to be apprehended from an intoxicated person going abroad with fire-arms." *State* v. *Shelby*, 2 S.W. 468, 469 (1886). Analogizing to that well-settled practice, courts of appeals have correctly recognized Section 922(g)(3)'s validity as applied to individuals who possess firearms while under the influence of controlled substances. See, *e.g.*, *Connelly*, 117 F.4th at 272; *Stennerson*, 150 F.4th at 1285.

This case concerns whether Section 922(g)(3) also complies with the Second Amendment as applied to those who are not presently intoxicated. It does. Since the founding era, legislatures have restricted the rights of habitual drunkards—a category closely analogous to habitual drug users. That body of historical laws is, if anything, even more robust than the tradition of disarming presently intoxicated individuals. Post-ratification practice confirms that legislatures may disarm habitual drug users even during the intervals between their intoxication, and precedent underscores the dangers that

habitual drug users pose even during such intervals. This Court should hold that the government has met its rigorous burden to identify a robust historical analogue sufficient to justify temporarily disarming this discrete category of individuals only as long as they maintain their habitual drug use.

1. Section 922(g)(3) is analogous to founding-era laws restricting the rights of drunkards

"Constitutional rights are enshrined with the scope they were understood to have when the people adopted them." *Heller*, 554 U.S. at 634-635. Founding-era evidence thus supplies the most important evidence of the Second Amendment's meaning, and the most compelling way in which the government can justify a regulation of arms-bearing conduct is to show that similar laws were prevalent at the founding. See *Bruen*, 597 U.S. at 26-31, 34-35. While a modern law need not "precisely match its historical precursors," it must at least be "'analogous'" to prior regulations in "[w]hy and how" it burdens the right. *Rahimi*, 602 U.S. at 692 (citation omitted). Section 922(g)(3) has close founding-era analogues: laws restricting the rights of drunkards, including during intervals when they were not intoxicated.

a. American legislatures have long enacted laws for the "restraint" of "habitual drunkards." *Lawton* v. *Steele*, 152 U.S. 133, 136 (1894). A "drunkard" (sometimes known as a common or habitual drunkard) is "a person who habitually or frequently is drunk." 1 Noah Webster, *An American Dictionary of the English Language* 68 (1828); see 1 Samuel Johnson, *A Dictionary of the English Language* (6th ed. 1785) ("one addicted to habitual ebriety"); *State* v. *Pratt*, 34 Vt. 323, 324 (1861) ("one who is in the habit of getting drunk"). For a person to be a drunkard, "it is not necessary he should be

always drunk." *Ludwick* v. *Commonwealth*, 18 Pa. 172, 174 (1851); see *id.* at 175 ("A man may be an habitual drunkard, and yet be sober for days and weeks together."). Rather, the person must have a "habit" of alcohol abuse. *Northwestern Life Insurance Co.* v. *Muskegon Bank*, 122 U.S. 501, 507 (1887).

Anti-drunkard laws responded to concerns that habitual drinking "could provoke people to act dangerously," including by "contributing to crime and violence." *United States* v. *Harris*, 144 F.4th 154, 158 (3d Cir. 2025), petition for cert. pending, No. 25-372 (filed Sept. 26, 2025). American legislatures historically enacted a variety of measures to address those concerns. Three types of anti-drunkard laws are pertinent here: criminal vagrancy laws, civil-commitment laws, and surety laws.

Vagrancy statutes have been a "fixture of Anglo-American law at least since the time of the Norman Conquest." *City of Chicago* v. *Morales*, 527 U.S. 41, 103 (1999) (Thomas, J., dissenting). Eighteenth-century statutes in at least four States classified drunkards as vagrants—meaning that being a drunkard was a crime, punishable by jail or confinement in a workhouse.[9] At least ten additional States enacted such statutes in the

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[9] See Act of Oct. 1727, *The Public Records of the Colony of Connecticut from May, 1727, to May, 1735, inclusive* 128 (Charles J. Hoadly ed., 1873); Act of June 29, 1700, ch. 8, § 2, 1 *The Acts and Resolves of the Province of the Massachusetts Bay* 378 (1869); Act of May 14, 1718, ch. 15, 2 *Laws of New Hampshire* 266 (Albert Stillman Batchellor ed., 1913); Act of June 10, 1799, §§ 1, 3, *Laws of the State of New-Jersey* 473-474 (1821); see also *Atwater* v. *City of Lago Vista*, 532 U.S. 318, 337-338 (2001).

19th century.[10] Justice-of-the-peace manuals in at least five States, reflecting a consensus view of the common law, explained that drunkards could be confined in jails or workhouses.[11] As one manual explained, "[t]he crime of drunkenness is distinct from that of being a common drunkard; the former is punished by a forfeiture of two dollars only: but in the latter case, the offender may be bound to his good behaviour, or sentenced to the workhouse." John M. Niles, *The Connecticut Civil Officer* 180 (1823). And a leading treatise noted that States had criminalized "being a common drunkard, or habitual drunkard" (as distinguished from mere "'[o]ccasional acts of drunkenness'"). 2 Joel Prentiss Bishop, *Commentaries on the Criminal Law* § 267, at 178 (1858) (quoting *Ludwick*, 18 Pa. at 174).

Other jurisdictions addressed alcohol abuse through civil-commitment laws. See David Korostyshevsky, *Incapable of Managing His Estate*, Law & Hist. Rev. 1, 8-13 (2025). In the 19th century, Congress (legislating for the District of Columbia) and at least 22 States provided

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[10] See Act of Dec. 15, 1865, No. 107, § 1, 1865-1866 Ala. Acts 116; Act to Establish a Penal Code, Tit. XVII, § 1014, *Revised Statutes of Arizona* 753-754 (1887); Act of Feb. 14, 1872, § 647, 2 *The Codes and Statutes of the State of California* 1288 (Theodore H. Hittell ed., 1876); Act of Feb. 4, 1885, § 1, 1884-1885 Idaho Terr. Gen. Laws 200; Act of Feb. 22, 1825, ch. 297, § 4, 1825 Me. Pub. Acts 1034; Act of Feb. 22, 1881, § 1, 1881 Mont. Terr. Laws 81-82; Act of Mar. 7, 1873, ch. 114, § 1, 1873 Nev. Stat. 189-190; Act of June 2, 1871, No. 1209, § 2, 1871 Pa. Laws 1301-1302; Act of Mar. 15, 1865, ch. 562, §§ 1-2, 1865 R.I. Acts & Resolves 197; Act of Feb. 18, 1876, § 378, *The Compiled Laws of the Territory of Utah* 647 (1876).

[11] See, *e.g.*, Samuel Freeman, *The Town Officer* 51 (6th ed. 1805); Moses Hodgdon, *The Complete Justice of the Peace* 140 (1806); Daniel Davis, *A Practical Treatise upon the Authority and Duty of Justices of the Peace in Criminal Prosecutions* 412 (1824); Charles J. Fox, *A Guide to Officers of Towns* 249 (1843).

for habitual drunkards to be committed to asylums, placed in the custody of guardians, or both, in the same manner as lunatics.[12] "A typical statute ma[de] 'All laws relating to guardians for lunatics * * * applicable to the guardians' for drunkards." *Kendall* v. *Ewert*, 259 U.S. 139, 146 (1922) (citation omitted). Treatises recognized that "habitual drunkard[s]" could be taken into "custody" "in the same manner as in case of lunatics" and remain under restriction until they produced "proof of a permanent reformation"—which required "as a general rule a voluntary refraining from the use of intoxicating drinks for at least one year." Amos Dean, *Principles of Medical Jurisprudence* 590 (1850). Those restrictions could persist "during the intervals of temper-

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[12] See, *e.g.*, Act of Mar. 30, 1876, ch. 40, § 8, 19 Stat. 10 (District of Columbia); Ark. Rev. Stat., ch. 78, § 1, at 456 (William M. Ball & Sam C. Roane eds., 1838); Act of Apr. 1, 1870, ch. 426, § 2, 1869-1870 Cal. Stat. 585-586; Act of July 25, 1874, ch. 113, § 1, 1874 Conn. Pub. Acts 256; Ga. Code pt. 2, tit. 2, ch. 3, Art. 2, § 1803, at 358 (R.H. Clark et al. eds., 1861); Act of Feb. 21, 1872, § 1, 1872 Ill. Laws 477; Act of May 1, 1890, ch. 42, § 1, 1890 Iowa Acts 67; Act of Mar. 2, 1868, ch. 60, § 5, *The General Statutes of the State of Kansas* 553 (John M. Price et al. eds., 1868); Act of Mar. 28, 1872, ch. 996, §§ 10-11, 1872 Ky. Acts, Vol. 2, at 523-524; Act of July 8, 1890, No. 100, § 1, 1890 La. Acts 116; Act of Mar. 5, 1860, ch. 386, §§ 6-7, 1860 Md. Laws; Act of June 18, 1885, ch. 339, §§ 1-3, 1885 Mass. Acts 790; Act of Apr. 12, 1827, § 1, 1827 Mich. Terr. Laws 584-585; Minn. Terr. Rev. Stat. ch. 67, § 12, at 278 (1851); Act of Mar. 31, 1873, ch. 57, §§ 1, 3, 1873 Miss. Laws 61-62; Act of Mar. 3, 1853, ch. 89, § 1, 1853 N.J. Acts 237; Act of Feb. 7, 1856, ch. 38, § 1, 1855-1856 N.M. Terr. Laws 94; Act of Mar. 27, 1857, ch. 184, § 9, 1857 N.Y. Laws, Vol. 1, at 431; Act of Jan. 5, 1871, § 1, 68 *Ohio General and Local Laws and Joint Resolutions* 6 (1871); Act of Feb. 1, 1866, No. 11, § 10, 1866 Pa. Laws 10; Act of Aug. 18, 1876, ch. 112, § 147, 1876 Tex. Gen. Laws 188; Act of Mar. 17, 1870, ch. 131, § 1, 1870 Wis. Gen. Laws 197.

ance, if any such exist." 1 Theodoric R. Beck, *Elements of Medical Jurisprudence* 376 (1823).

Surety laws—which were "[w]ell entrenched in the common law," *Rahimi*, 602 U.S. at 695—provided a third mechanism for restraining alcohol abusers. Surety laws allowed justices of the peace to compel anyone who posed a risk of future misbehavior, including misuse of firearms and other weapons, to post bond. See *id.* at 695-696. A person who failed to post bond would be jailed, while a person who posted bond and then misbehaved would forfeit the bond. See *ibid.* "[A]t the Founding, the consensus was that surety laws extended to all 'common drunkards.'" *Harris*, 144 F.4th at 163 (quoting 4 William Blackstone, *Commentaries on the Laws of England* 256 (10th ed. 1787)). Thus, "Founding-era legislatures often required drunks to post bonds for their good behavior or face imprisonment." *Id.* at 162.[13]

Each of those types of laws subjected habitual drunkards to prophylactic restrictions that were not limited to exigent bouts of drunkenness. Vagrancy laws restricted the rights of a person who was "in the habit" of entering "a state of gross intoxication."[14] Civil-commitment laws were likewise "precautionary"; they drew an "inference" of a drunkard's likely behavior from his "habitual drunkenness." *Ludwick*, 18 Pa. at 174-175. And surety laws were a "form of 'preventive justice'" that "provided a mechanism for preventing violence before it occurred"

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[13] See, *e.g.*, Eliphalet Ladd, *Burn's Abridgement, Or The American Justice* 405-406 (2d ed. 1792) (N.H.); James Parker, *Conductor Generalis* 422 (1764) (N.J.); James Parker, *Conductor Generalis* 348 (Hugh Gaine prtg. 1788) (N.Y.); James Parker, *Conductor Generalis* 348 (Robert Campbell prtg. 1792) (Pa.); 5 Nathan Dane, *A General Abridgment and Digest of American Law* 301 (1824).

[14] *E.g.*, p. 20 n.10, *supra* (Idaho and Montana).

by "requir[ing] individuals suspected of future misbehavior to post a bond." *Rahimi*, 602 U.S. at 695, 697 (quoting 4 Blackstone 251).

b. The disarmament of habitual drug users under Section 922(g)(3) is closely analogous to the restriction of drunkards' rights under vagrancy, civil-commitment, and surety laws—and differs mostly by imposing far lesser burdens. To begin, Section 922(g)(3) resembles its historical precursors as to "why" it burdens arms-bearing conduct. *Rahimi*, 602 U.S. at 698. Like those precursors, it "does not broadly restrict arms use by the public generally," *ibid.*, but instead addresses the heightened risks posed by individuals who habitually use intoxicating substances.

Indeed, unlawful drug users pose a greater danger than users of alcohol, which was lawful at the founding and remained so for most of American history. Congress and the Executive have determined that marijuana and other Schedule I drugs "ha[ve] a high potential for abuse" and "a lack of accepted safety for use of the drug or other substance under medical supervision" that justifies their criminal prohibition, unlike alcohol. 21 U.S.C. 812(b)(1)(A) and (C); see p. 6, *supra*. The widespread adoption of drunkard laws notwithstanding alcohol's "complicated place in this country's history," *Tennessee Wine & Spirits Retailers Ass'n* v. *Thomas*, 588 U.S. 504, 544 (2019) (Gorsuch, J., dissenting), amply justifies analogous restrictions on users of unlawful drugs.

Further, courts of appeals have uniformly determined that a person is a "user" of a controlled substance within the meaning of Section 922(g)(3) only if he engages in the habitual or regular use of a controlled sub-

stance.[15] That interpretation reflects the ordinary meaning of Section 922(g)(3)'s text. In this context, the verb "use" means "to take or consume (an alcoholic drink, a narcotic drug) regularly or habitually." 19 *The Oxford English Dictionary* 354 (2d ed. 1989); see *The Random House Dictionary of the English Language* 2097 (2d ed. 1987) ("to drink, smoke, or ingest habitually"); *Webster's Third New International Dictionary of the English Language Unabridged* 2524 (1967) ("to consume or take (as liquor or drugs) regularly"). And court of appeals cases addressing Second Amendment challenges to Section 922(g)(3) have generally involved defendants who admitted to using drugs at least weekly.[16] Just as

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[15] See *United States* v. *Marceau*, 554 F.3d 24, 30 (1st Cir.), cert. denied, 556 U.S. 1275 (2009); *United States* v. *Augustin*, 376 F.3d 135, 138-139 (3d Cir. 2004); *United States* v. *McCowan*, 469 F.3d 386, 392 (5th Cir. 2006); *United States* v. *Bowens*, 938 F.3d 790, 792-794 (6th Cir. 2019), cert. denied, 589 U.S. 1156, and 140 S. Ct. 2572 (2020); *United States* v. *Cook*, 970 F.3d 866, 874 (7th Cir. 2020); *United States* v. *Purdy*, 264 F.3d 809, 812-813 (9th Cir. 2001).

[16] See *United States* v. *Claybrooks*, 90 F.4th 248, 253 (4th Cir. 2024) (defendant "admitted he was addicted to marijuana and had been smoking the substance on a daily basis") (citation omitted); *United States* v. *Yates*, 746 Fed. Appx. 162, 165 (4th Cir.) (per curiam) (daily), cert. denied, 586 U.S. 1044 (2018); *United States* v. *Daniels*, 124 F.4th 967, 970 (5th Cir. 2025) (approximately 14 days out of a month), petition for cert. pending, No. 24-1248 (filed June 5, 2025); *United States* v. *Gil*, No. 23-50525, 2024 WL 2186916, at *1 (5th Cir. May 15, 2024) (per curiam) (daily); *United States* v. *Mitchell*, No. 24-60607, 2025 WL 3251467, at *1 (5th Cir. Nov. 21, 2025) (three times a day); *United States* v. *Nyandoro*, 146 F.4th 448, 453 (5th Cir. 2025) (daily), petition for cert. pending, No. 25-6218 (filed Nov. 20, 2025); *United States* v. *VanOchten*, 150 F.4th 552, 554 (6th Cir. 2025) (every three nights); *United States* v. *Cook*, 914 F.3d 545, 548 (7th Cir.) (almost daily), vacated, 589 U.S. 902 (2019); *United States* v. *Seiwert*, 152 F.4th 854, 858 (7th Cir. 2025) (daily); *United States* v. *Yancey*, 621 F.3d 681, 682 (7th Cir. 2010) (per curiam)

laws concerning habitual drunkards applied to individuals with a habit of getting drunk, Section 922(g)(3) applies only to individuals with a habit of using drugs unlawfully.

In addition, Section 922(g)(3) applies only to someone who "*is* an unlawful user of or addicted to" a controlled substance. 18 U.S.C. 922(g)(3) (emphasis added). By contrast, other clauses of Section 922(g) disarm one who "*has been* convicted" of a felony or "*has been* committed to a mental institution." 18 U.S.C. 922(g)(1) and (4) (emphases added). The variation in tense shows that "Congress carefully distinguished between present status and a past event." *Dickerson* v. *New Banner Institute, Inc.*, 460 U.S. 103, 116 (1983). The restriction imposed by Section 922(g)(3) lasts "only as long as someone is using drugs regularly," and a drug user can restore his ability to possess firearms by forgoing his drug use. *Harris*, 144 F.4th at 163.

Section 922(g)(3) is also "'relevantly similar'" to its precursors as to "how" it burdens the right to bear arms. *Rahimi*, 602 U.S. at 698 (quoting *Bruen*, 597 U.S. at 29). It burdens that right *less* severely than vagrancy laws and civil-commitment laws, which provided for drunkards to be confined in jails, workhouses, or asylums. Confinement inherently "involved disarmament," *Id.* at 772 (Thomas, J., dissenting); indeed, it has long

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(daily); *United States* v. *Cooper*, 127 F.4th 1092, 1094 (8th Cir.) (three to four times a week), cert. denied, No. 24-1247 (Oct. 20, 2025); *United States* v. *Madden*, 135 F.4th 629, 630-631 (8th Cir. 2025) (one to two times a day); *United States* v. *Perez*, 145 F.4th 800, 803 (8th Cir. 2025) (two or three times a day); *United States* v. *Tucker*, No. 23-2758, 2024 WL 3634232, at *1 (8th Cir. Aug. 2, 2024) (per curiam) (daily), cert. denied, 145 S. Ct. 2684 (2025); *Stennerson*, 150 F.4th at 1280 (daily); *United States* v. *Richard*, 350 Fed. Appx. 252, 255 (10th Cir. 2009) (every day or every other day).

been a crime to give "arms" to a "prisoner," 4 Blackstone 131. *Rahimi* therefore reasoned that, if "imprisonment was permissible to respond" to a problem at the founding, then "the lesser restriction of temporary disarmament" will often be permissible to respond to a similar problem today. 602 U.S. at 699 (majority opinion). The "greater" burden of imprisonment of habitual drunkards at the founding supports the disarmament of habitual drug users today. *Harris*, 144 F.4th at 163.

In addition, the burden imposed by Section 922(g)(3) resembles the burden imposed by surety laws. *Rahimi* treated the burden imposed by "surety bonds," which were "of limited duration," as analogous to "temporary disarmament." 602 U.S. at 699. *Rahimi* reasoned that, because domestic abusers could be required to post such bonds at the founding, persons subject to domestic-violence protective orders may be temporarily disarmed today. See *id.* at 696, 698. So too, the application of surety laws to habitual drunkards at the founding supports "temporar[ily]" disarming habitual drug users today. *Harris*, 144 F.4th at 163.

Finally, Section 922(g)(3) provides greater procedural protections than its historical forebears. Founding-era vagrancy laws allowed a justice of the peace to judge, in a summary proceeding, whether the defendant was a drunkard. See *District of Columbia* v. *Clawans*, 300 U.S. 617, 624 (1937); pp. 19-20 & nn.9-11, *supra*. Civil-commitment laws and surety laws provided for the adjudication of a person's status in civil proceedings. See *Rahimi*, 602 U.S. at 696-697; pp. 20-22 & nn.12-13, *supra*. Section 922(g)(3), by contrast, entitles respondent to a full-dress criminal trial. In that trial, the government bears the burden of proving the elements of the crime, including respondent's habitual use of drugs, be-

yond a reasonable doubt to a unanimous jury. Such safeguards substantially exceed those historically offered by surety laws, which *Rahimi* approvingly described as "significant procedural protections." 602 U.S. at 696.

Section 922(g)(3)'s restriction on the rights of habitual drug users is thus analogous to historical laws restricting the rights of drunkards, making it "well-grounded in history." *Harris*, 144 F.4th at 162. If anything, it rests on stronger justifications, imposes less severe burdens, and provides more robust process than historical precursors addressing the same "general societal problem," *Bruen*, 597 U.S. at 26, of risks posed by individuals who habitually use intoxicating substances. The restriction it imposes fits comfortably within our Nation's regulatory tradition.

2. Legislatures have long restricted the possession of firearms by habitual drug users

Post-ratification history confirms Section 922(g)(3)'s constitutionality. While post-ratification history cannot supersede the Second Amendment's text or founding-era evidence, it can play an important role in cases of uncertainty about the Amendment's original meaning. See *Rahimi*, 602 U.S. at 723-729 (Kavanaugh, J., concurring). Because Section 922(g)(3) has a clear founding-era analogue, this Court need not turn to post-ratification history—but if the Court does so, that history buttresses the statute's validity.

a. Early Americans "were not familiar" with drug use or the modern drug trade. *United States* v. *Daniels*, 77 F.4th 337, 343 (5th Cir. 2023), vacated, 144 S. Ct. 2707 (2024). In particular, they were unfamiliar with the use of marijuana as an intoxicant, see *ibid.*, a practice that did not begin "in North America until the late nineteenth century, and in the United States until the early

twentieth century," Richard J. Bonnie & Charles H. Whitebread II, *The Marijuana Conviction* 1 (1999).

Though limited forms of drug use became more prevalent in the 19th century, American society did not fully appreciate its dangers. The *New York Times* touted cocaine as a "new and valuable" medical innovation, explaining that "if a child has the earache," other cures "will be forgotten as its mother asks for the cocaine jar." *A Remedy for Many Ills: The Great Demand Springing up for Cocaine*, N.Y. Times, Sept. 2, 1885, at 8. And the Bayer Company ran advertisements reading: "Aspirin for joint pains. Heroin for coughs." David F. Musto, *The American Experience with Stimulants and Opiates*, 2 Perspectives on Crime & Justice 51, 56 (1998).

State legislatures began to recognize the dangers of drug use only in the late 19th century. See Richard J. Bonnie & Charles H. Whitebread, II, *The Forbidden Fruit and the Tree of Knowledge*, 56 Va. L. Rev. 971, 985-987 (1970). Oregon prohibited selling cocaine without a prescription in 1887; "seven states followed" by 1900, "as did thirty-nine more by 1914." *Id.* at 986. Congress, in turn, began regulating drugs in the early 20th century, enacting statutes such as the Harrison Act of 1914, ch. 1, 38 Stat. 785, and the Marihuana Tax Act of 1937, ch. 553, 50 Stat. 551, each of which "imposed registration and reporting requirements" but "did not outlaw the possession or sale of [the covered drugs] outright." *Gonzales* v. *Raich*, 545 U.S. 1, 11 (2005).

b. In the early 20th century, state legislatures also began to address the risks posed by the combination of drugs and guns. The National Conference of Commissioners on Uniform State Laws drafted model legislation banning the sale of a pistol to any "drug addict."

Handbook of the National Conference of Commissioners on Uniform State Laws 352 (1929). Taking the Uniform Firearms Act (or its antecedents) as a model, state and territorial legislatures started to prohibit drug addicts or drug users from possessing, carrying, or purchasing handguns in the 1920s and 1930s.[17] As part of their adoption of the Uniform Firearms Act, States and territories—which generally had abandoned forced confinement of habitual drunkards by the end of the 19th century, see Korostyshevsky 3—began disarming habitual drunkards, too.[18]

Congress followed suit. In 1932, Congress adopted the Uniform Firearms Act for the District of Columbia, including its prohibition on the sale of pistols to drug addicts. See District of Columbia Dangerous Weapons Act, ch. 465, § 7, 47 Stat. 652. In 1968, it enacted Section 922(g)(3), banning drug users and addicts nationwide from shipping, transporting, or receiving firearms. See Gun Control Act § 102, 82 Stat. 1220. And in 1986, it amended Section 922(g)(3) to prohibit possession as well. See Firearm Owners' Protection Act, Pub. L. No. 99-308, § 102, 100 Stat. 452.

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[17] See Act of Apr. 6, 1936, No. 82, § 8, 1936 Ala. Gen. Laws 52; Act of June 19, 1931, ch. 1098, § 2, 1931 Cal. Stat. 2316-2317; Act of Feb. 21, 1935, ch. 63, § 6, 1935 Ind. Laws 161; Act of Apr. 29, 1925, ch. 284, § 4, 1925 Mass. Acts & Resolves 324; Act of Mar. 30, 1927, ch. 321, § 7, 1927 N.J. Acts 745; Act of June 11, 1931, No. 158, § 8, 1931 Pa. Laws 499; Act of July 8, 1936, No. 14, § 2, 1936 P.R. Acts & Res. 128; Act of Mar. 14, 1935, ch. 208, § 8, 1935 S.D. Laws 356; Act of Mar. 23, 1935, ch. 172, § 8, 1935 Wash. Sess. Laws 601.

[18] See n.17, *supra* (Alabama, Indiana, Pennsylvania, Puerto Rico, South Dakota, and Washington); Act of June 5, 1925, ch. 3, § 7, 1925 W. Va. Acts 25-26.

Today, at least 43 States, the District of Columbia, and all five permanently inhabited territories have laws restricting the possession of firearms by drug users or addicts. Of those, at least 27 jurisdictions ban possession of all firearms[19] or handguns[20] by habitual drug users. And aside from bans on possession, a partially overlapping set of at least 23 jurisdictions restricts issuance of concealed-carry permits[21] or otherwise limits habitual drug users' rights to carry firearms.[22] Some of these state

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[19] See Am. Sam. Code Ann. § 46.4207(a)(2); Cal. Penal Code § 29800(a)(1); D.C. Code § 22-4503(a)(4); Haw. Rev. Stat. § 134-7(c)(1); 720 Ill. Comp. Stat. § 5/24-3.1(a)(3) and (4); Kan. Stat. Ann. § 21-6301(a)(10); Me. Rev. Stat. tit. 15, § 393(1)(G); Md. Code Ann., Pub. Safety, § 5-133(b)(7); Mass. Gen. Laws ch. 140, § 121F(j)(ii)(A); Minn. Stat. Ann. § 624.713(10)(iii); Mo. Rev. Stat. § 571.070.1(2); Nev. Rev. Stat. § 202.360(1)(f); N.J. Stat. Ann. § 2C:58-3(c)(3); N.Y. Penal Law § 400.00.1(e); 6 N. Mar. I. Code § 10610(a)(3); Ohio Rev. Code Ann. § 2923.13(A)(4); P.R. Laws Ann. tit. 25, § 462a(a)(3); 18 Pa. Cons. Stat. § 6105(c)(3); R.I. Gen. Laws Ann. § 11-47-6; Utah Code Ann. §§ 76-11-303(5), 76-11-306; V.I. Code Ann. tit. 23, §§ 456a(a)(3), 458(a); Wash. Rev. Code § 9.41.040(2)(a)(i)(D); W. Va. Code § 61-7-7(a)(3); Wis. Stat. § 51.20(1)(a)(1) and (13)(cv).

[20] See Ala. Code § 13A-11-72(b); Okla. Stat. Ann. tit. 21, § 1290.11(A)(5)-(7); S.C. Code Ann. § 16-23-30(A)(1) and (B).

[21] See Ala. Code § 13A-11-75(c)(8); Alaska Stat. Ann. § 18.65.705(5); Ark. Code Ann. § 5-73-309(7); Colo. Rev. Stat. § 18-12-203(1)(f); Fla. Stat. Ann. § 790.06(2)(e)(2) and (f); 10 Guam Code Ann. § 60109.1(b)(5) and (6); Idaho Code Ann. § 18-3302(11)(e); Ind. Code §§ 35-47-1-7(5), 35-47-2-3; Ky. Rev. Stat. Ann. § 237.110(4)(d); La. Rev. Stat. Ann. § 40:1379.3(C)(12); Miss. Code Ann. § 45-9-101(2)(e); Mont. Code Ann. § 45-8-321(1)(f); Neb. Rev. Stat. § 69-2433(2); N.M. Stat. Ann. § 29-19-4(A)(9); N.C. Gen. Stat. Ann. § 14-415.12(b)(5); N.D. Cent. Code § 62.1-04-03(1)(c)(4); Or. Rev. Stat. Ann. § 166.291(1)(L); S.D. Codified Laws § 23-7-7.1(3); Tenn. Code Ann. § 39-17-1351(c)(10); Va. Code Ann. § 18.2-308.09.8 and .18; Wyo. Stat. Ann. § 6-8-104(b)(v).

[22] See Ga. Code Ann. § 16-11-129(b)(2)(I)(i) and (J) (banning issuance of licenses to carry under specified circumstances); Tex. Gov't

laws apply by their terms to unlawful users or drug addicts—a category that some States define expressly,[23] some define by reference to federal law,[24] and others (like Congress) do not define and so leave to ordinary meaning, see pp. 23-25, *supra*. Still other States define the covered category using proxies such as commitment for substance-abuse treatment, or multiple convictions for drug possession or intoxication, within a specified period.[25]

Laws like Section 922(g)(3) are thus the norm throughout the Nation. That sharply distinguishes the statute from the handgun bans in *Heller* and *McDonald*, which were "extreme outlier[s]" employed in "only a few jurisdictions," *Bruen*, 597 U.S. at 78 (Alito, J., concurring), and the licensing regime in *Bruen*, which was likewise an "outlier" employed in only six States, *id.* at 79 (Kavanaugh, J., concurring).

The practice of disarming drug users, in short, is both longstanding—as old as legislative recognition of the drug problem itself—and widespread. The practice applies principles that formed part of the Second Amendment's original meaning (legislatures may restrict the rights of habitually intoxicated persons and may restrict the possession of firearms by those who

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Code Ann. § 411.172(a)(6) (similar); Va. Code Ann. § 18.2-308.1:5 (banning purchase or transport of handguns).

[23] *E.g.*, Fla. Stat. § 790.06(2)(f) (applying to persons who "chronically and habitually use alcoholic beverages or other substances to the extent that his or her normal faculties are impaired").

[24] *E.g.*, Colo. Rev. Stat. § 18-12-203(1)(f) ("Whether an applicant is an unlawful user of or addicted to a controlled substance shall be determined as provided in federal law and regulations.").

[25] *E.g.*, Ky. Rev. Stat. Ann. § 237.110(4)(d) (applying to persons who have "been committed to a state or federal facility for the abuse of a controlled substance" in the past three years).

posed a special danger to the peace and safety of the community) to a particular problem that the Founders did not directly confront (habitual unlawful use of drugs). To the extent that this Court consults post-ratification history, that history further supports Section 922(g)(3)'s validity.

3. Precedent confirms that habitual drug users pose a clear danger of misusing firearms

This Court has repeatedly identified "drugs and guns" as a "dangerous combination."[26] Precedent underscores that armed habitual drug users endanger public safety in multiple ways.

To start, drug users pose a danger of misusing firearms because of "drug-induced changes in physiological functions, cognitive ability, and mood." *Harmelin* v. *Michigan*, 501 U.S. 957, 1002 (1991) (Kennedy, J., concurring in part and concurring in the judgment). "The use of drugs can embolden [individuals] in aggression." *Florence* v. *Board of Chosen Freeholders*, 566 U.S. 318, 332 (2012). Armed drug users pose "extraordinary" "hazards," as "'even a momentary lapse'" caused by their "impaired perception and judgment" can result in "'disastrous consequences.'" *National Treasury Employees Union* v. *Von Raab*, 489 U.S. 656, 670-671, 674 (1989) (citation omitted). In particular, the physiological, cognitive, and mood-based effects of many illegal drugs—

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[26] See *Rosemond* v. *United States*, 572 U.S. 65, 75 (2014); *Muscarello* v. *United States*, 524 U.S. 125, 132 (1998); *Smith* v. *United States*, 508 U.S. 223, 240 (1993); see also *Richards* v. *Wisconsin*, 520 U.S. 385, 391 n.2 (1997) ("This Court has encountered before the links between drugs and violence."); *Heller* v. *District of Columbia*, 670 F.3d 1244, 1295 (D.C. Cir. 2011) (Kavanaugh, J., dissenting) (acknowledging "the gun, drug, and gang violence that has plagued all of us").

such as marijuana, cocaine, methamphetamine, heroin, phencyclidine (PCP), and fentanyl—present grave risks of firearm misuse. "All it takes is a few minutes flipping through the pages of the Federal Reporter to locate some examples." *United States* v. *Veasley*, 98 F.4th 906, 917 (8th Cir.), cert. denied, 145 S. Ct. 304 (2024).[27] And habitual drug users by definition will pose these dangers on a frequent and recurring basis.

Drug users also "commit crime in order to obtain money to buy drugs" and so pose a danger of using firearms to facilitate such crime, regardless of whether drug users are intoxicated at the time. *Harmelin*, 501 U.S. at 1002 (Kennedy, J., concurring in part and concurring in the judgment). Before Section 922(g)(3)'s enactment, President Lyndon Johnson and both Houses of Congress recognized that drug use often motivates

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[27] See, *e.g.*, *Payne* v. *LeFevre*, 825 F.2d 702, 704 (2d Cir.) (defendant smoked marijuana before shooting police officer), cert. denied, 484 U.S. 988 (1987); *United States* v. *Barrett*, 797 F.3d 1207, 1232 (10th Cir. 2015) (defendant "had been using marijuana, methamphetamine, heroin, tranquilizers, and other drugs up until the time of the shooting"), cert. denied, 580 U.S. 827 (2016); *Hardwick* v. *Crosby*, 320 F.3d 1127, 1137, 1167 (11th Cir. 2003) (defendant "'continually smoked marijuana,'" used Quaaludes, and drank alcohol before "shooting the victim twice") (citation and emphasis omitted); *Ochoa* v. *City of Mesa*, 26 F.4th 1050, 1054, 1057 (9th Cir. 2022) (defendant "under the influence of meth" "engaged in a domestic dispute that allegedly involved a gun"); *United States* v. *Ferguson*, 889 F.3d 314, 315 (7th Cir. 2018) ("high and drunk" defendant shot carjacking victim "several times"); *Jackson* v. *Calderon*, 211 F.3d 1148, 1151 (9th Cir. 2000) (defendant "shot and killed" police officer "while grossly intoxicated" with PCP), cert. denied, 531 U.S. 1072 (2001).

crime.[28] And this Court's opinions are replete with examples of crimes prompted by drug habits.[29]

In addition, "violent crime may occur as part of the drug business or culture." *Harmelin*, 501 U.S. at 1002 (Kennedy, J., concurring in part and concurring in the judgment). Violence frequently results from "disputes and ripoffs among individuals involved in the illegal drug market." Bureau of Justice Statistics, Office of Justice Programs, U.S. Dep't of Justice, *Drugs & Crime Data—Fact Sheet: Drug-Related Crime* 3 (Sept. 1994). The introduction of firearms at the scene of a drug deal "dramatically heightens the danger." *Smith* v. *United*

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[28] See H.R. Doc. 407, 89th Cong., 2d Sess. 7 (1966) (presidential message) ("Drug addiction * * * drives its victims to commit untold crimes to secure the means to support their addiction."); H.R. Rep. No. 1486, 89th Cong., 2d Sess. 8 (1966) ("Narcotic addicts in their desperation to obtain drugs often turn to crime in order to obtain money to feed their addiction."); S. Rep. No. 1667, 89th Cong., 2d Sess. 13 (1966) (drug users are driven "to commit criminal acts in order to obtain money with which to purchase illegal drugs").

[29] See, *e.g.*, *Ramirez* v. *Collier*, 595 U.S. 411, 458 (2022) (Thomas, J., dissenting) ("brutal slaying of a working father during a robbery spree to supply a drug habit"); *Andrus* v. *Texas*, 590 U.S. 806, 807 (2020) (per curiam) (committed crimes to "fund a spiraling drug addiction"); *Wong* v. *Belmontes*, 558 U.S. 15, 15-16 (2009) (per curiam) ("bludgeoned [the victim] to death, * * * stole [her] stereo, sold it for $100, and used the money to buy beer and drugs"); *Smith* v. *Texas*, 543 U.S. 37, 41 (2004) (per curiam) ("regularly stole money from family members to support a drug addiction"); *Lockyer* v. *Andrade*, 538 U.S. 63, 67 (2003) ("[H]is addiction controls his life and he steals for his habit.") (citation omitted); *Bell* v. *Cone*, 535 U.S. 685, 703 (2002) (Stevens, J., dissenting) ("committed robberies" in an "apparent effort to fund [a] growing drug habit"); *Buford* v. *United States*, 532 U.S. 59, 62 (2001) ("robberies" "motivated by her drug addiction").

States, 508 U.S. 223, 239 (1993) (citation omitted). Again, this Court's opinions are replete with examples.[30]

Finally, armed drug users endanger the police. "[D]ue to the illegal nature of their activities, drug users and addicts would be more likely than other citizens to have hostile run-ins with law enforcement officers." *United States* v. *Carter*, 750 F.3d 462, 469 (4th Cir.) (citation omitted), cert. denied, 574 U.S. 907 (2014). This Court has noted, for instance, that "the execution of a warrant to search for narcotics is the kind of transaction that may give rise to sudden violence." *Michigan* v. *Summers*, 452 U.S. 692, 702 (1981). Law enforcement officers thus face grave risks from confrontations with habitual drug users, and those risks grow markedly when the habitual drug users are armed.

C. Section 922(g)(3)'s Narrow Scope Underscores Its Constitutionality

Several features of Section 922(g)(3) narrow its scope and reduce the burden it imposes. Those features confirm the statute's constitutionality.

First, Section 922(g)(3) applies to "unlawful" users of controlled substances. 18 U.S.C. 922(g)(3). Legislatures may restrict a person's rights based on the habitual use of a lawful substance such as alcohol: Early legislatures

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[30] See, *e.g.*, *Rahimi*, 602 U.S. at 687 ("The first [shooting] * * * arose from Rahimi's dealing in illegal drugs."); *Shoop* v. *Cunningham*, 143 S. Ct. 37, 37 (2022) (Thomas, J., dissenting from denial of certiorari) ("armed robbery of his drug dealer"); *Brumfield* v. *Cain*, 576 U.S. 305, 327 (2015) (Thomas, J., dissenting) ("fatal shooting of a fellow drug dealer in a deal gone bad"); *Rosemond*, 572 U.S. at 67 (shooting arising from "a drug deal gone bad"); *Holland* v. *Jackson*, 542 U.S. 649, 650 (2004) (per curiam) (shooting "after an argument over drugs"); *Moore* v. *Texas*, 535 U.S. 1044, 1045 (2002) (Scalia, J., dissenting) ("three brutal killings during the course of a drug deal").

restricted the rights of drunkards, see pp. 18-27, *supra*, and at least 30 States, the District of Columbia, and four territories today restrict drunkards' gun rights.[31] Restrictions based on a person's habitual use of unlawful drugs stand on an even stronger footing. The Second Amendment guarantees the right to possess a gun, but not the right to simultaneously choose both gun possession and "another act, the taking of drugs, which itself can cause terrifying and dangerous behavior." *Veasley*, 98 F.4th at 917.

Second, Section 922(g)(3) applies to drug "user[s]," 18 U.S.C. 922(g)(3)—those who habitually or regularly use unlawful drugs. See pp. 23-25, *supra*. Respondent, for instance, admitted to using drugs about every other day. See C.A. ROA 381. The statute does not disarm someone who uses drugs once, or even someone who uses them occasionally.

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[31] See Ala. Code § 13A-11-72(b); Alaska Stat. § 18.65.705(5); Am. Sam. Code Ann. § 46.4207(a)(2); Ark. Code Ann. § 5-73-309(8); Colo. Rev. Stat. § 18-12-203(1)(e); D.C. Code § 7-2502.03(a)(5); Fla. Stat. Ann. § 790.06(2)(f); Ga. Code Ann. § 16-11-129(b)(2)(J); 10 Guam Code Ann. § 60109.1(b)(6); Haw. Rev. Stat. § 134-7(c)(1); Ind. Code § 35-47-1-7(5); Iowa Code § 724.8(2); Kan. Stat. Ann. § 21-6301(a)(13); Ky. Rev. Stat. Ann. § 237.110(4)(e); La. Rev. Stat. Ann. § 40:1379.3(C)(8); Md. Code Ann., Pub. Safety, § 5-133(b)(6); Mass. Gen. Laws ch. 140, § 121F(j)(ii)(A); Miss. Code Ann. § 45-9-101(2)(f); Mo. Rev. Stat. § 571.070.1(2); Nev. Rev. Stat. § 202.3657(4)(d); N.J. Stat. Ann. § 2C:58-3(c)(3); N.M. Stat. Ann. § 29-19-4(A)(9); N.C. Gen. Stat. Ann. § 14-415.12(b)(5); Ohio Rev. Code § 2923.13(A)(4); Okla. Stat. Ann. tit. 21, § 1290.11(A)(6) and (7); 18 Pa. Cons. Stat. § 6105(c)(3); P.R. Laws Ann. tit. 25, § 462a(a)(3); S.C. Code Ann. § 16-23-30(A)(1) and (B); S.D. Codified Laws § 23-7-7.1(3); Tenn. Code Ann. §§ 39-17-1316(a)(1)(A)(ii), 39-17-1351(c)(10); Tex. Gov't Code Ann. § 411.172(a)(6); V.I. Code Ann. tit. 23, § 458(a); Wash. Rev. Code § 9.41.040(2)(a)(i)(D); W. Va. Code § 61-7-7(a)(2); Wyo. Stat. Ann. § 6-8-104(b)(vi).

Finally, like the statute upheld in *Rahimi*, Section 922(g)(3) authorizes only "temporary disarmament." 602 U.S. at 699. Section 922(g)(3) applies to one who "*is* an unlawful user" of a controlled substance. 18 U.S.C. 922(g)(3) (emphasis added). The restriction lasts only as long as the unlawful drug use continues. In fact, the restriction here is even narrower than the restriction in *Rahimi*. The statute in *Rahimi* disarms individuals who are subject to domestic-violence protective orders, and the duration of such an order is determined by a court. See 18 U.S.C. 922(g)(8); *Rahimi*, 602 U.S. at 766 (Thomas, J., dissenting). By contrast, a drug user's own "decision to engage in illegal and dangerous conduct * * * is what leads to a temporary deprivation" of his right to keep and bear arms. *Veasley*, 98 F.4th at 917. He can regain that right simply by "end[ing]" his habitual use of unlawful drugs. *Ibid.* If he lacks the motivation or will to do so because of addiction or other factors, that fact alone provides strong evidence of society's interest in keeping him disarmed.

D. Contrary Arguments Lack Merit

1. The Fifth Circuit and respondent (Br. in Opp. 18) have concluded that, while the government may apply Section 922(g)(3) to "presently intoxicated persons," "there is no historical justification for disarming a sober citizen not presently under an impairing influence." *Connelly*, 117 F.4th at 275-276; see *id.* at 281-282. That conclusion is unsound.

The Fifth Circuit is correct that the United States has a long tradition of banning intoxicated individuals from carrying firearms. See p. 17, *supra*. But, as discussed above, the United States also has a long, arguably even more robust tradition of restricting the rights of habitual drunkards, even during sober intervals, including

through criminal vagrancy laws, civil-commitment laws, and surety laws. The Fifth Circuit did not consider any of those measures as part of its "limit[ed]" review of other historical laws. *Daniels*, 77 F.4th at 344 n.8. That distinct tradition justifies Section 922(g)(3).

In addition, American legislatures have historically viewed habitual drunkards as more serious threats than persons guilty of isolated episodes of drunkenness. Mere public drunkenness was punishable by a small fine or a few hours in the stocks,[32] but being a habitual drunkard was punishable by jail or confinement in the workhouse. See pp. 19-22, *supra*. And while legislatures have traditionally deemed bans on carrying arms while intoxicated a sufficient response to the risks posed by people who occasionally get drunk, they have traditionally resorted to far more drastic measures, such as imprisonment and civil commitment, to address the risks posed by habitual drunkards. The Fifth Circuit's rule, under which Congress may address present impairment but not habitual drug use, turns that history upside down.

Even focusing on the risk that habitual drug users will misuse firearms while intoxicated, the Fifth Circuit's analysis is unsound and unworkable. As a practical matter, drug users who are under impairing influences are unlikely to put away their firearms until they regain their sobriety. To the contrary, the "use of drugs" can itself "embolden" individuals in "aggression." *Florence*, 566 U.S. at 332. And implementing the Fifth Circuit's present-intoxication test would presumably require law

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[32] See, *e.g.*, Act of Mar. 12, 1803, ch. 2, § 5, *A Digest of the Laws of the State of Alabama* 218 (1823) (one-dollar fine); An Act for the Punishment of Drunkenness, *Acts and Laws of the State of Connecticut, in America* 148 (1796) ($1.34 fine or one to three hours in the stocks).

enforcement officers to constantly carry and administer drug tests during every encounter leading to an arrest of an armed suspect, which would aggravate the already heightened risks that drug crimes pose for law enforcement. See p. 35, *supra*. It could also hinder or prevent prosecutors and courts from relying on defendants' admissions of habitual drug use to establish that they are unlawful drug users, as past cases often have. See p. 24 & n.16, *supra*.

2. The Third, Sixth, and Eighth Circuits have concluded that the government may apply Section 922(g)(3) to a defendant only if it makes an individualized showing of dangerousness. According to the Third Circuit, district courts must make an "individualized judgmen[t]" about whether disarmament is "needed to address a risk that [the drug user] would pose a physical danger to others," after considering the "length and recency" of the drug use, the "drug's half-life," whether the drug induces "psychosis," the "long-term physical and mental effects of the use of that drug," and other factors. *Harris*, 144 F.4th at 165-166. The Sixth Circuit, meanwhile, instructs district courts to "glean[] from [defendants'] criminal history and other relevant information" whether "they [are] dangerous because of their particular characteristics," including whether they "have a history of violent conduct" or of "committing crimes that inherently pose a significant threat of danger to others." *United States* v. *VanOchten*, 150 F.4th 552, 560 (2025). And the Eighth Circuit requires an "individualized assessment" of whether drug use caused the defendant to "act like someone who is 'both mentally ill and dangerous,'" to "'induce terror,'" or to "'pose a credible threat to the physical safety of others.'" *United*

States v. *Cooper*, 127 F.4th 1092, 1096 (2025) (citations omitted), cert. denied, No. 24-1247 (Oct. 20, 2025).

That interpretation, too, is wrong because it ignores the extensive historical tradition discussed above. Congress may rely on close analogies to historical laws disarming narrow categories of especially dangerous persons; it need not require individualized showings. Indeed, these circuits' reasoning would also impugn Section 922(g)(3)'s application to presently intoxicated individuals, barring individualized proof that intoxication renders a particular person especially dangerous. An individualized-dangerousness approach also raises thorny practical questions. What level of risk must the government prove before it may apply Section 922(g)(3) to an individual? May the court consider only the defendant's drug use, or may it consider his record and conduct more broadly? Depending on the answers to those questions, these circuits' approach could render Section 922(g)(3)—and other provisions of Section 922(g)—entirely unworkable. Like the Fifth Circuit's present-intoxication test, an individual-dangerousness approach would make it difficult for law-enforcement officers to identify, prosecutors to prove, and courts to find the detailed facts that these circuits would require even for heartland applications of Section 922(g)(3).

3. To the extent Section 922(g)(3) raises constitutional concerns in marginal cases, the recently revitalized mechanism under 18 U.S.C. 925(c) addresses them. Under Section 925(c), a "person who is prohibited from possessing * * * firearms or ammunition may make application to the Attorney General for relief from the disabilities imposed by Federal laws." 18 U.S.C. 925(c). The Attorney General "may grant such relief" if "the circumstances regarding the disability, and the appli-

cant's record and reputation, are such that the applicant will not be likely to act in a manner dangerous to public safety" and "the granting of the relief would not be contrary to the public interest." *Ibid.* If the Attorney General denies relief, the applicant may seek judicial review in federal district court, including as-applied constitutional challenges to the denial of relief. See *ibid.*

Before 2025, that statutory authority was delegated to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). See *United States* v. *Bean*, 537 U.S. 71, 74 (2002). Since 1992, however, provisos in appropriations statutes have barred ATF from using funds to act on Section 925(c) applications. See *id.* at 74-75. Recognizing that the appropriations bar applies only to ATF, the Attorney General in March 2025 issued an interim final rule reclaiming the authority that had been delegated to ATF. See *Withdrawing the Attorney General's Delegation of Authority*, 90 Fed. Reg. 13,080 (Mar. 20, 2025). Soon thereafter, she granted relief to ten people. See *Granting of Relief; Federal Firearms Privileges*, 90 Fed. Reg. 17,835 (Apr. 29, 2025). And in July 2025, the Department of Justice issued a notice of proposed rulemaking to establish "criteria to guide determinations for granting relief" under Section 925(c). *Application for Relief from Disabilities Imposed by Federal Laws With Respect to the Acquisition, Receipt, Transfer, Shipment, Transportation, or Possession of Firearms*, 90 Fed. Reg. 34,394, 34,394 (July 22, 2025). Because persons covered by Section 922(g)(3) "can ordinarily take themselves out of the prohibited category by discontinuing their unlawful conduct," the proposed rule would treat them as "presumptively ineligible for relief." *Id.* at 34,396. But the proposed rule would still

allow such individuals to seek relief in "extraordinary circumstances." *Ibid.*

Section 925(c) thus "bears a striking resemblance to the individualized dangerousness determinations made by the justices of the peace of old." *United States* v. *Williams*, 113 F.4th 637, 661 (6th Cir. 2024); see *Harris*, 144 F.4th at 163 (citing Section 925(c)). Given the opportunity for relief under Section 925(c), there is no sound basis for requiring the government, in a criminal prosecution under Section 922(g)(3), to make a further individualized showing about the risks that the defendant poses.

Section 925(c), to be sure, was not operational at the time of respondent's offense conduct. But respondent has not argued that he would have satisfied Section 925(c)'s standard—*i.e.*, that his record and reputation show that he is unlikely to "act in a manner dangerous to public safety" and that granting relief "would not be contrary to the public interest." 18 U.S.C. 925(c). Nor did respondent file a civil suit seeking "protection from prosecution under [Section 922(g)(3)] for any future possession of a firearm." *Range* v. *Attorney General*, 124 F.4th 218, 232 (3d Cir. 2024) (en banc). He instead "violated the law in secret," "tried to avoid detection," and raised an as-applied challenge as a defense to a criminal charge after he was caught. *United States* v. *Gay*, 98 F.4th 843, 847 (7th Cir. 2024). Section 922(g)(3) raises no constitutional concerns as applied to him.

CONCLUSION

This Court should reverse the judgment of the court of appeals.

Respectfully submitted.

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APPENDIX

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APPENDIX

1. U.S. Const. Amend. II provides:

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

2. 18 U.S.C. 922(g)(3) provides:

Unlawful acts

(g) It shall be unlawful for any person—

(3) who is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)); * * *

to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

3. 18 U.S.C. 925(c) provides:

Exceptions: Relief from disabilities

(c) A person who is prohibited from possessing, shipping, transporting, or receiving firearms or ammunition may make application to the Attorney General for relief from the disabilities imposed by Federal laws with respect to the acquisition, receipt, transfer, shipment, transportation, or possession of firearms, and the Attorney General may grant such relief if it is established to his satisfaction that the circumstances regarding the disability, and the applicant's record and reputation, are

such that the applicant 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. Any person whose application for relief from disabilities is denied by the Attorney General may file a petition with the United States district court for the district in which he resides for a judicial review of such denial. The court may in its discretion admit additional evidence where failure to do so would result in a miscarriage of justice. A licensed importer, licensed manufacturer, licensed dealer, or licensed collector conducting operations under this chapter, who makes application for relief from the disabilities incurred under this chapter, shall not be barred by such disability from further operations under his license pending final action on an application for relief filed pursuant to this section. Whenever the Attorney General grants relief to any person pursuant to this section he shall promptly publish in the Federal Register notice of such action, together with the reasons therefor.