No. 24-1234

In the Supreme Court of the United States

UNITED STATES OF AMERICA,

Petitioner,

v.

ALI DANIAL HEMANI,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF FOR *AMICI CURIAE* HISTORY AND LAW PROFESSORS IN SUPPORT OF PETITIONER

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INTEREST OF THE *AMICI CURIAE*

Amici are professors of History, Law, and English. They have studied the history of criminal law and firearm regulation in the United States, as well as Founding era constitutionalism.[1] Their scholarship has been published by major university presses and in leading law journals; awarded numerous prizes; and cited in opinions of this Court, courts of appeal, and state courts.

Amici submit this brief because Second Amendment doctrine places great weight on the history and tradition of firearm regulation. It is critical, in such cases, that the Court is presented with accurate and reliable accounts of the key history and tradition. As historians who have developed a deep knowledge of the relevant practices, *amici* are well qualified to assist the Court in evaluating the historical record. In addition to canvassing pertinent secondary scholarship, this brief makes reference to a wealth of primary sources that are vital to understanding how the law governing access to firearms actually functioned and evolved throughout American history.

INTRODUCTION AND SUMMARY OF ARGUMENT

The statute at issue in this case, 18 U.S.C. § 922(g)(3), reflects a measured response to a serious problem: It temporarily disarms those who use or are addicted to illegal drugs. The statute's restriction rests on the legislature's measured judgment that those impaired by habitual use of illegal drugs pose a

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[1] A list of *amici* is included in the appendix to this brief. No counsel for a party authored the brief in whole or in part. No person, other than *amici* or their counsel, made a monetary contribution intended to fund the preparation or submission of this brief.

risk to themselves and others when they take up arms. A quick glance through federal case law illustrates that this concern is well founded. See, *e.g.*, *Palmer* v. *Bagley*, 330 F. App'x 92, 98 (6th Cir. 2009) (while "under the influence of alcohol or LSD," Palmer shot victim but "did not remember pulling the trigger" because he was in a state of "mass confusion"); *Chandler* v. *Greene*, 1998 WL 279344, at *2 (4th Cir. May 20, 1998) (defendant testified he shot the victim while "under the influence of drugs and alcohol" and did not have "the slightest idea" why he pulled the trigger); *Benson* v. *Terhune*, 304 F.3d 874, 877 (9th Cir. 2002) ("Benson, who admitted she was under the influence of methamphetamine at the time, fatally shot Wright as she lay in bed.").

Respondent Ali Danial Hemani, an alleged drug dealer and confessed drug addict, challenges Section 922(g)(3)'s restriction on his right to bear arms. U.S. Br. 6-7. In accepting that challenge, the Fifth Circuit committed reversible error. That court purported to nod toward the history-and-tradition test this Court articulated in *New York State Rifle & Pistol Ass'n, Inc.* v. *Bruen*, 597 U.S. 1 (2022), and *United States* v. *Rahimi*, 602 U.S. 680 (2024), seeing a constitutional problem because the Founding and Reconstruction-era laws it considered were not "dead ringer[s]" for Section 922(g)(3). *Bruen*, 597 U.S. at 30. But as this Court has explained, that sort of close correspondence is not necessary. Rather, modern-day laws need comport only with the "principles that underpin our regulatory tradition" (*Rahimi*, 602 U.S. at 692); the Constitution does not require a "historical twin" when Congress is addressing modern-day problems that did not exist at the Founding. *Bruen*, 597 U.S. at 30.

Three points are especially relevant here.

First, this case should be resolved by reference to the history and tradition of restricting access to firearms by persons who threaten public safety. That inquiry must be made at a sufficiently high level of generality so that the law is not "trapped in amber" (*Rahimi*, 602 U.S. at 691), taking into account understandings that were current at the Founding era, just before and after Reconstruction, and that continued without change into the twentieth century. The Court also should be sensitive to the reality that many Founding era practices were set by common law and not memorialized in positive law (see Saul Cornell, *Common-Law Limits on Firearms Purchases By Minors: The Original Understanding*, 173 U. Penn. L. Rev. Online 133, 133 (2025)), and therefore are not easily uncovered in the course of litigation despite their significant impact on daily life.

Second, the historical analogues we highlight reflect the long-standing principle that Congress may temporarily disarm those who threaten the public peace or physical safety of others. Founding-era legislation routinely restricted individuals perceived to be dangerous—whether from intoxication, mental illness, or youth and inexperience—so as to protect the community. The same "why" undergirds Section 922(g)(3). The government imposed these restrictions through a variety of means—including permanent disarmament, imprisonment, civil commitment, confiscation of property, and bodily punishment—that operated with a much more severe "how" than the temporary disarmament effected by Section 922(g)(3).

Third, although the Founders and legislators in the early nineteenth century certainly were familiar with and took steps to limit dangerously irresponsible behavior, they had no experience with the modern

forms of drugs, drug addiction, or gun violence.[2] In these circumstances, it would make no sense to look for a historical "twin" of modern regulations directed at those harms. But the government acted when these issues arose. As drug addiction soared after the Civil War, legislatures across the country enacted a variety of restrictions against drug sales, consumption, and arms use by drug addicts. Notably, legislatures modified the Founding era laws that are most analogous here—those restricting habitual drunkards—to include drug users, showing without doubt that those laws are relevant historical analogues that support the constitutionality of Section 922(g)(3).

ARGUMENT

I. This Case Should Be Resolved By Reference To The Full Range Of Historical Practices And Tradition That Reflects Restrictions On Individuals Who Threaten Public Safety.

In *Bruen*, the Court articulated a "history and tradition" test in evaluating firearms restrictions. 597 U.S. at 17. Under that approach, the government must "justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation" by pointing to "historical analogies" that are "relevantly similar." *Id.* at 24, 27, 29. This search for analogies involves two inquiries: "*how* and *why* the regulations burden a law-abiding

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[2] See, *e.g.*, Eric Monkkonen, *Homicide: Explaining America's Exceptionalism*, 111 Am. Hist. Rev. 76, 85-86 (2006); Brian DeLay, *The Myth of Continuity in American Gun Culture*, 113 Cal. L. Rev. 1, 15-17 (2025); Stephen Hargarten & Jennifer Tucker, *How Modern Bullets Maximize Lethality*, Vital City NYC (Sept. 10, 2025), https://perma.cc/2BRF-EHTL.

citizen's right to armed self-defense." *Id.* at 29 (emphasis added).

To satisfy this test, the government need identify only a "historical *analogue*, not a historical *twin*." 597 U.S. at 30. That is necessarily so if a regulation implicates "unprecedented societal concerns or dramatic technological changes" (*id.* at 27), when the Constitution "can, and must, apply to circumstances beyond those the Founders specifically anticipated." *Id.* at 29. In that context, courts must look to the *principles* that underpin our regulatory tradition. *Rahimi*, 602 U.S. at 691-692. This is crucial because, as this Court has recognized, the right to bear arms does not "sweep indiscriminately." *Id.* at 691.

In conducting the historical inquiry, time period matters. Obviously relevant are the periods around 1791 and 1868, when the Second and Fourteenth Amendments were adopted. *Bruen*, 597 U.S. at 4. But the Court has taken a broader view. Sources that reflect "how the Second Amendment was interpreted from immediately after its ratification through the end of the 19th Century" are a "critical tool of constitutional interpretation." *Id.* at 35 (quotation omitted). And a "regular course of practice" may "liquidate" and "settle" constitutional meaning. *Ibid.* (quotation omitted). This is important because "the Second Amendment permits more than just those regulations identical to ones that could be found in 1791." *Rahimi*, 602 U.S. at 691-692. "Holding otherwise would be as mistaken as applying the protections of the right only to muskets and sabers." *Id.* at 692.

But conducting the historical inquiry, even for historians, is no simple task. As this Court recognized, "historical analysis can be difficult." *Bruen*, 597 U.S.

at 25 (cleaned up). *Amici* highlight three difficulties relevant here:

First, centuries-old governing regulations—especially common law requirements—can be very hard to identify. Attorneys searching for these regulations, who are not trained historians and often lack access to primary sources, may be forced to engage in a scavenger hunt that is, at best, hit-or-miss. Conducting a proper inquiry requires access to an archive, comprehensive library, or complete online database that has compiled all relevant historical regulations; a full understanding of the types of laws that are analogous to the challenged regulation and how those laws worked in practice; and ample time. And even when all of this is present, there is no guarantee that a complete record will be generated.

This case illustrates the point. Although the United States compiled a robust historical record in defense of Section 922(g)(3), this *amicus* brief fills in gaps in the United States' historical presentation. In particular, the United States' brief does not identify laws enacted immediately following the Civil War that addressed the growing problem of drug addiction. See Section III.A, *infra*. Yet those laws are relevant here, as reflecting Reconstruction era solutions to the evolving problem addressed in Section 922(g)(3). And even this brief, offered by professional historians, does not purport to present a complete record, but one focused on the specific laws that appear most relevant to the Court's immediate inquiry.

Second, the most significant Founding era restrictions appeared in the common law, much of which was not codified or reflected in statutes or judicial decisions. For example, surety laws were administered by the local justice of the peace. Richard Burn, *The*

Justice of the Peace and Parish Officer 14-15 (3rd. ed. 1756). These authorities were empowered to restrain dangerous persons and restrict their gun ownership; the Court has recognized that surety restrictions therefore bear heavily on Second Amendment analysis. See *Rahimi*, 602 U.S. at 695-696; see generally Saul Cornell, *The Long Arc of Arms Regulation in Public: From Surety to Permitting, 1328-1928*, 55 U.C. Davis L. Rev. 2545 (2022). But very little of this important record was memorialized or retained for posterity in published records, and what remains is difficult to locate and not easily accessible. See *id.* at 2589.

Third, this case exemplifies why, as the Court has recognized, the historical inquiry must focus on principles, not historical twins. *Rahimi*, 602 U.S. at 692. At the historically relevant time, neither gun use nor drug abuse looked anything like they do now.

During the Founding and Reconstruction eras, although firearms were available, the relatively primitive nature of then-existing technology meant that guns were rarely used to commit homicides. See *National Ass'n for Gun Rts.* v. *Lamont*, 153 F.4th 213, 239 (2d Cir. 2025). In colonial times, guns were slow to load and dangerous to operate; users had one shot and then had to spend critical time reloading, a tedious, high-risk task. See Randolph Roth, *Why Guns Are and Aren't the Problem: The Relationship between Guns and Homicide in American History*, in *A Right to Bear Arms? The Contested Role of History in Contemporary Debates on the Second Amendment*, 113-33 (Jennifer Tucker et al. eds. 2019). This made "[m]uzzle-loading blackpowder weapons * * * ill-suited to impulsive acts of gun violence." Cornell, *Common-Law Limits on Firearms Purchases By Minors: The Original Understanding* 135.

Drug use was also uncommon. To be sure, some drugs, such as opium, were known. But prior to Reconstruction, drugs were expensive, far more benign than modern counterparts, and misunderstood. See David F. Musto, *The American Experience with Stimulants and Opiates*, 2 Persps. on Crime & Just., 51, 51 (1998). And drug production and distribution networks looked nothing like they do today.

It is therefore unsurprising that few "dead ringers" exist between modern and Founding era laws regulating guns and drug users. Searching the historical record, therefore, requires a more "nuanced approach" that looks to the underlying principle that individuals who pose a special danger may be disarmed. *Bruen*, 597 U.S. at 27; *Rahimi*, 602 U.S. at 692.

With that framework, we highlight the following historical analogues: (1) Founding and Reconstruction era laws restricting persons perceived to be dangerous, including "drunkards," the mentally ill, minors, and others perceived as threats to society; and (2) post-Reconstruction laws that specifically targeted drug use after it had become a more recognized social ill. Based on these analogues, it is evident that Section 922(g)(3) fits comfortably within the Nation's historical tradition of firearms regulation.

II. Section 922(g)(3) Is Consistent With Our Nation's History And Tradition Of Restricting Firearms Possession By Those Perceived To Threaten Society.

There is a long-standing tradition of disarming, or otherwise restricting access to firearms those who are perceived to be dangerous, jeopardize the physical safety of others, or threaten to disrupt the public peace. *E.g.*, *Rahimi*, 602 U.S. at 698 ("When an individual poses a clear threat of physical violence to another, the threatening individual may be disarmed."); *D.C.* v. *Heller*, 554 U.S. 579, 626 (2008) (recognizing "longstanding prohibitions on the possession of firearms by felons and the mentally ill"); *Zherka* v. *Bondi*, 140 F.4th 68, 88 (2d Cir. 2025) ("before, during, and shortly after the Founding, legislative bodies regulated firearms by prohibiting their possession by categories of persons perceived to be dangerous"); *United States* v. *Harrison*, 153 F.4th 998, 1030 (10th Cir. 2025) ("the founding generation and their English ancestors permitted legislatures to disarm those believed to pose a risk of future danger"); *United States* v. *Williams*, 113 F.4th 637, 654 (6th Cir. 2024) ("Colonial governments frequently deemed entire groups too dangerous to possess weapons."); *Kanter* v. *Barr*, 919 F.3d 437, 451 (7th Cir. 2019), abrogated by *Bruen*, 597 U.S. at 1, (Barrett, J., dissenting) ("History is consistent with common sense: it demonstrates that legislatures have the power to prohibit dangerous people from possessing guns.").

The "why" of such restrictions is straightforward and inarguable—preventing dangerous individuals from harming themselves or others. *E.g.*, *Harrison*, 153 F.4th at 1027. And the "how" reveals that regulations were closely analogous to, or *more* (often much

more) restrictive than, the statute at issue in this case, a temporary ban on firearms carriage that is entirely within the individual's control.

In this regard, it also bears emphasis that the gun possessors at issue here are unlawful users of or addicted to controlled substances. 18 U.S.C. § 922(g)(3). The colonial generation had no qualms about imposing much stricter penalties than firearms restrictions on persons who violated the law, including capital punishment or estate forfeiture. See, *e.g.*, *United States* v. *Duarte*, 137 F.4th 743, 756 (9th Cir. 2025).[3] It follows that, if colonial legislatures imposed greater restrictions on those who were perceived to be dangerous, the lesser restriction of temporary disarmament fits within our historical tradition. *Rahimi*, 602 U.S. at 682.

We highlight the following laws that reflect the principle that legislatures may temporarily disarm individuals perceived to be dangerous: laws restricting drunkards, the mentally ill, minors, and individuals perceived to be threats to others.

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[3] See also Act of Feb. 21, 1788, ch. 37 (N.Y. Laws 664-665) (authorizing the death penalty for theft of goods worth over five pounds); Act of Sept. 29, 1773 (Ga.), in Robert Watkins and George Watkins, *A Digest of the Laws of the State of Georgia*, 184 (1880) (providing that a horse or cattle thief "be publicly whipped on his bare back three several times, and receive at each time thirty-nine lashes, and also shall be branded on the shoulder with the letter R"); Act of Mar. 24, 1787, ch. 65 (N.Y. Laws 499-500) (authorizing "corporal punishment * * * by whipping" for the fraudulent taking or carrying away of goods worth "five pounds * * * or under"); Act of March 31, 1785, 1788, ch. 47 (N.Y. Laws 106-107) (those convicted of obtaining funds by false pretenses were to be sentenced to "corporal punishment (not extending to life or limb or exceeding thirty-nine lashes)").

A. Laws Restricting Alcohol Users Are Analogous To Section 922(g)(3).

At the Founding, alcohol consumption, unlike drug use, was commonplace, and the Founders were aware of the risk that alcohol could cause a lapse in judgment. See generally Matthew Hale, 1 *Historia Placitorum Coronae: The History of the Pleas of the Crown* (London, 1736). For that reason, multiple courts have found that historical laws regulating alcohol are "the next-closest 'historical analogue' that we can look to" in assessing laws regulating drug users. *E.g.*, *United States* v. *Contreras*, 125 F.4th 725, 732 (5th Cir. 2025). Early American regulation restricted drunkards, and other alcohol users, in a variety of ways. These laws can be grouped into at least five categories.

First, the common law and colonial legislatures severely restricted "habitual drunkards," frequently lumping them together with those of "unsound mind" in recognition of the severe impact that alcohol can have on decision-making, judgment, and control, and the resulting threat to safety. The common law recognized drunkenness as a type of dementia, and that for habitual drunkards, this disability could be long lasting. As Sir Matthew Hale wrote, "[t]he third sort of dementia is that, which is *dementia affectata*, namely *drunkenness*." Hale, 32. Blackstone agreed. William Blackstone, 4 *Commentaries on the Laws of England* 26, 64 (Dublin, 1770).

For example, an early post-colonial Pennsylvania law permitted courts to commit "habitual drunkards" or "lunatics" to "the custody and care" of a guardian, reflecting a severe loss of rights for those deemed to be mentally unsound from drink or mental illness. 1835 Pa. Laws 589. A later Virginia law is especially

notable as it permitted the court to commit not only habitual drunkards, but also "opium eaters," to a local hospital and kept under treatment until it was "safe" to allow them "to go at large." 1876 Vir. Acts 248. Other, similar laws permitted courts to commit habitual drunkards to "asylums," reflecting a severe restriction on liberty.[4] Numerous other laws imposed terms of imprisonment on habitual drunkards.[5]

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[4] On lunacy and asylums, see, *e.g.*, Blackstone, 1 *Commentaries on the Laws of England* 304-305 (Oxford, Clarendon Press 1768); Act of Mar. 30, 1876, ch. 40, § 8, 19 Stat. 10 (1876) (D.C.) (allowing imprisonment in an "asylum" for up to one year); Act of July 25, 1874, ch. 113, § 1, 1874 Conn. Pub. Acts 256 (same); Act of Mar. 28, 1872, ch. 996, §§ 10-11, 1872 Ky. Acts, Vol. 2, at 523-524 (allowing civil commitment of "any habitual drunkard"); Act of Mar. 5, 1860, ch. 386, §§ 6-7, 1860 Md. Laws 607-608 (same); Act of Mar. 27, 1857, ch. 184, § 10, 1857 N.Y. Laws, Vol. 1, 431 (same); Act of Feb. 1, 1866, No. 11, § 10, 1866 Pa. Laws 10 (same).

[5] See, *e.g.*, *In keepers, Ordinaries. Tipling, Drunkenness*, (1661) (Massachusetts Colony), reprinted in Edward Rawson, *The General Laws and Liberties of the Massachusetts Colony* 81 (Cambridge, 1672) (authorizing imprisonment of drunks who "abuse[d]" others "by striking or reviling" them); Act of Oct. 1727, in The Public Records of the Colony of Connecticut from May, 1727, to May, 1735, Inclusive 128 (Charles J. Hoadly ed., 1873) (permitting justice of peace to commit "common drunkards"); Mass. Gen. Stat. ch. 165, § 25-27 (same); Act of May 14, 1718, ch. 15, in 2 Laws of New Hampshire 266 (Albert Stillman Batchellor ed., 1913) (same); N.H. Gen Stat. ch. 253, sec. 3 (1853) (same); Act of June 10, 1799, §§ 1, 3, Laws of the State of New Jersey 473-474 (1821) (providing for sentence of "hard labor for any time not exceeding three calendar months"); *Act to Establish a Penal Code*, § 1014, in *Revised Statutes of Arizona* 753-754 (1887) (allowing imprisonment for a time period "not exceeding ninety days"); Act of Feb. 14, 1872, § 647, in 2 *The Codes and Statutes of the State of California* 1288 (Theodore H. Hittell ed., 1876) (same); 1873 Nev. Stat. 189-190, Act of Mar. 7, 1873, ch. 114, § 1 (same); Act of Feb. 18, 1876, § 378, *in The Compiled Laws of the Territory of Utah* 647 (1876) (same); 1865 R.I. Acts & Resolves

Second, early legislatures flatly prohibited "common drunkards" from militia service, a severe punishment given that militia service was a rite of passage for young American men and being banned from such service would result in harsh societal judgment. *E.g.*, Act of Apr. 20, 1837, ch. 240, 1837 Mass. Acts 273, 273 (excluding "common drunkards" from militia service); see also David Yassky, *The Second Amendment: Structure, History, and Constitutional Change,* 99 Mich. L. Rev. 588, 626–627 (2000) (discussing relationship between "virtue," community ties, and militia service). These laws frequently grouped "common drunkards" together with "lunatics," "vagabonds," and criminals, reflecting a commonsense approach that persons disposed to excessive drinking could not be entrusted with military service, which necessarily entailed handling guns.[6] These laws are especially notable because they imposed a permanent ban, a recognition that "drunkards" were repeat drinkers who would inevitably reoffend. See, *e.g.*, Act of Jan. 1840, § 46, 1840 R.I. Pub. Laws 3, 17(reenacted 1843 R.I. Pub. Laws 1 (June Session)) ("If any non-commissioned officer or private shall become a pauper, vagabond, or common drunkard, or be convicted of any infamous

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197 (January Session), Act of Mar. 15, 1865, ch. 562, §§ 1-2 (three months); 1884-1885 Idaho Terr. Gen. Laws 200, Act of Feb. 4, 1885, § 1 (thirty days); 1825 Me. Pub. Acts 1034, Act of Feb. 22, 1825, ch. 297, § 4 (any term exceeding 48 hours).

[6] See*, e.g.*, Act of Apr. 20, 1837, ch. 240, 1837 Mass. Acts 273, 273; Act of Jan. 1840, § 46, 1840 R.I. Pub. Laws 3, 17; (reenacted 1843 R.I. Pub. Laws 1 (June Session)); Act of Mar. 28, 1837, ch. 276, § 5, 1837 Me. Spec. Acts 421, 424; Act of Nov. 11, 1842, No. 28, tit. V, § 61, 1842 Vt. Acts & Resolves 27, 37; Act of May 4, 1864, sec. I, § 2, P.L. 221, in 2 *A Digest of the Laws of Pennsylvania* 1040 (Frederick C. Brightly, rev., Philadelphia, Kay & Brother 10th ed. 1873).

crime, he shall be forthwith disenrolled from the militia.").

Third, as this Court recognized in *Rahimi*, American legislatures used surety laws—a form of preventative justice in which offenders or their family members were permitted to post bond to avoid being jailed—to ensure public order. 602 U.S. at 695-96. Surety laws were also used to restrict habitual drunkards, following long-standing common-law norms.[7] As with militia restrictions, these laws imposed restrictions that outlasted temporary inebriation, again reflecting that drunkards had crossed a line and become a societal threat. See, *e.g.*, *A Compilation of the Penal Code of the State of Georgia, with the Forms of Bills of Indictment Necessary in Prosecutions Under it, and the Rules of Practice* 21 (Howell Cobb ed., Macon, Joseph M. Boardman 1850) ("Justices of the peace may bind over to the good behavior all * * * common drunkards * * *).

Fourth, numerous laws disarmed those under the influence, recognizing that alcohol, which impedes judgment and self-control, is a dangerous combination with guns.[8] Some of these laws also restricted

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[7] Under the surety system, those posting bond were considered "keepers" of the person at issue and their own fortunes would be forfeited in case of a violation. 4 Blackstone, *Commentaries*, 249, 252-253. 1702 Conn. Acts & Laws 91 ("the Surety of the Peace or good behavior, * * * may and shall be granted * * * against all and every such person and persons * * * drunkards * * * and if any such person or persons shall refuse to give surety for the peace or good behavior, it shall be in the power of any Assistant or Justice of the Peace, to commit such person or persons to the common jail, there to remain till delivered according to Order of Law").

[8] Act XII of Mar. 10, 1655 (Va.) (prohibiting "shoot[ing] any gunns [sic] at drinkeing [sic]"); (Act of Feb. 16, 1771) in *5 Col. Laws of*

possession of other weapons that were more commonly used at the time, including knives, daggers, and sling-shots.[9]

Fifth, in further recognition that guns and intoxicating substances do not mix, legislatures often banned guns and gunpowder from places where alcohol was sold or likely to be consumed, such as ballrooms.[10]

N.Y. 244-246 (1894) (prohibiting intoxicated persons from "discharg[ing] any Gun, Pistol, Rocket, Cracker, Squib or other fire Work in any House Barn or Other Building or before any Door or in any Garden, Street, Lane or other Inclosure on the said Ever or Days within [specified jurisdictions]"); Pa. Cons. Stat., ch. 167, § 57 (1780) (forbidding one "appear with his arms and accoutrements in an unfit condition, or be found drunk"); 1867 Kan. Sess. Laws 25, ch. 12, § 1 ("[A]ny person under the influence of intoxicating drink * * *who shall be found within the limits of this State, carrying on his person a pistol, bowie-knife, dirk or other deadly weapon, shall be subject to arrest upon charge of misdemeanor[.]"); 1 Mo. Rev. Stat. ch. 24, Art. I, § 1274, in 1 *The Revised Statutes of the State of Missouri*, 1879, at 224 (John A. Hockaday et al. eds.,1879) (similar); 1883 Wis. Sess. Laws 290, ch. 329, § 3 ("It shall be unlawful for any person in a state of intoxication, to go armed with any pistol or revolver.").

[9] *E.g.*, Ordinance of July 17, 1894, reprinted in *Revised Ordinances of the City of Huntsville, Missouri of 1894*, at 58-59 (1894) (prohibiting carrying any "fire arms, bowie-knife, dirk, dagger, sling-shot, or other deadly weapon * * * upon or about his person when intoxicated or under the influence of intoxicating drinks").

[10] New Orleans, Louisiana, Project of Resolution, Art. 1 (Jan. 25, 1804) ("No private persons, no matter what their standing or condition may be, officers, etc. will be allowed to enter the public ball with any weapon, cane, or cudgel."); 1852 N.M. Laws 67, § 3 (prohibiting "any person to enter said Ball or room adjoining said ball where Liquors are sold, or to remain in said balls or Fandangos with fire arms or other deadly weapons, whether they be shown or concealed upon their persons"); 1870 Tex. Gen. Laws 63, ch. 46, § 1 (prohibiting carrying any "bowie-knife, dirk or butcher-

Putting these restrictions together reveals a key principle that undergirds the "how" and "why" of Section 922(g)(3): Those who are mentally compromised by consuming intoxicants threaten others and their rights may be restricted, including through disarmament, to protect the community.

B. Laws Restricting The Mentally Ill Are Analogous To Section 922(g)(3).

Founding-era legislatures also restricted persons deemed dangerous by means of incompetence, including those with mental illnesses. Indeed, legislatures required that people with mental illnesses be either confined by the state or assigned a guardian to manage their persons, estates, and affairs.

Long before the Revolution, Massachusetts adopted a law requiring that individuals deemed "distracted" and "unruly" be put under the supervision of town selectmen to protect others from harm. Act of May 3, 1676, reprinted in 5 *Records of the Governor & Company of the Massachusetts Bay in New England* 80-81 (*Nathaniel* v. *Shurtleffed*, Boston, William White 1853).

To ensure the safety of their communities, States enacted similar laws that required either the appointment of a guardian to oversee mentally ill individuals and their property, or confined those persons to a

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knife, or fire-arms" at "a ball room, social party or other social gathering composed of ladies and gentlemen"); 1869-70 Tenn. Pub. Acts 23-24, ch. 22, § 2 (prohibiting "any person attending any fair, race course, or other public assembly of the people" to carry "any pistol, dirk, bowie-knife, Arkansas tooth-pick, or weapon in form, shape or size, resembling a bowie-knife, or Arkansas tooth-pick, or other deadly or dangerous weapon").

hospital.[11] Only some of these laws allowed for the termination of the restrictions based on an understanding that the conditions may not be permanent.[12] These laws applied a severe restriction on the rights and liberties of individuals falling within their grasp, a much greater imposition than disarmament alone.

By the time the Fourteenth Amendment was adopted, several States had expanded the restrictions to prohibit selling guns and other weapons to persons "of unsound mind."[13] Such laws demonstrate that for

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[11] See, *e.g.*, 1776-1789 N.H. Laws 235-237, *An Act for the Relief of Idiots and Distracted Persons* (1776) ("if the person, said to be an idiot * * * the said judge of probate shall assign and appoint some suitable person or persons to be guardian or guardians of such idiot, or non-compos, directing and impowering such guardian, or guardians to take care as well of the person, as estates, both real and personal, of the said idiot or distracted person"); 1780-1788 Mass. Laws 135-136 (1784) (similar); 1788 N.Y. Laws 617, An Act Concerning idiots, lunaticks [sic], and infant trustees (similar); 1700-1797 Del. Laws 1055-1056 (1793) (similar); Act of Nov. 17, 1794, in *Laws of the State of New-Jersey* 125 (William Paterson rev., Newark, Matthias Day 1800) (similar); 1799 Miss. Laws 35-38 (similar); 1804 Ohio Laws 163-165 (Ohio) (similar); 1769 Va. Acts 13 (similar).

[12] See, *e.g.*, Act of May 3, 1676, reprinted in 5 *Records of the Governor & Company of the Massachusetts Bay in New England* 80-81 (Nathaniel V. Shurtleff ed., Boston, William White 1853) ("also to take care & order the management of their estates in the times of their distemperature"); 1785 Ky. Act for the Restraint, Maintenance and Cure of Persons Not of Sound Mind, ch. 87, in 2 William Littell, *The Statute Law of Kentucky* 578 (1810) ("to retrain and take proper care of him or her, until the cause of confinement shall cease"); 1792 Va. Ch. 54, in 1 *Samuel Shepherd, Statutes at Large of Virginia from October Session 1792, to December Session 1806, Inclusive 163* (Richmond, 1835) (similar).

[13] See, *e.g.*, 1881 Fla. Laws 87; 1883 Kan. Sess. Laws 159; 1899 N.C. Pub. Laws 20-21.

individuals deemed unable to exercise sound judgment, disarmament was an appropriate response, either directly or through commitment.

C. Laws Restricting Minors Are Analogous To Section 922(g)(3).

Similar concerns about minors carried over from the English common law, which viewed minors as lacking sound judgment.[14]

This view remained prevalent in the Colonies, where "the prevailing legal understanding was that those under the age of twenty-one were not able to make mature, reasonable decisions." Megan Walsh & Saul Cornell, *Age Restrictions and the Right to Keep and Bear Arms, 1791-1868*, 108 Minn. L. Rev. 3049, 3057 (2024).[15] For instance, those under twenty-one "did not vote or serve on juries, and the law limited their ability to assert rights in court." *Id.* at 3056-57. Their ability to enter into oaths or binding contracts was also limited. *Id.* at 3057.[16]

And while those between eighteen and twenty-one could, in some States, serve in a militia, they did so under a host of restrictions, including gun restrictions. For example, parents, guardians, masters, or town officials supervised minors' gun use for militia

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[14] 1 Hale, 25; see also *id.* at 16-29.

[15] See also Holly Brewer, *By Birth or Consent* 207 (2005).

[16] See, *e.g.*, 1 Zephaniah Swift, *A System of the Laws of the State of Connecticut*, 216-217 (Windham, 1795); Vermont Constitution of 1786, ch. 2, art. 18 (1786) (permitting only men over twenty-one to take an oath to be entitled to all the privileges "of a freeman of this State"); An Act for the Better Security of Government, Laws of Md. 1777, ch. 20, § 2 (requiring "every free male person within this state, above eighteen years of age" to take oath to exercise his rights).

practice. Saul Cornell, *"Infants" and Arms Bearing in the Era of the Second Amendment: Making Sense of the Historical Record*, 40 Yale L. & Pol'y Rev. *Inter Alia* 1, 15 (2021). It was therefore considered the responsibility of the "parents, master or guardians" to supply weapons and ensure the young men training for armed service or battle.[17]

These same concerns about the specific threat posed by minors, especially with gun use, continued after the Founding. Restraints on minors' access to firearms remained in place through the nineteenth century, as States continued to enact laws to prevent minors from obtaining, carrying, or using guns without supervision from a parent or guardian.[18]

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[17] *Nat'l Rifle Ass'n* v. *Bondi*, 133 F.4th 1108, 1119-20 (11th Cir. 2025); see also Act of May 8, 1792 (1796) (Conn.), in *Acts and Laws of the State of Connecticut, in America* 308 (Hartford, Hudson & Goodwin, 1796).

[18] An Ordinance as to Retailing Gun Powder, Louisville, State and Municipal Laws in Force and Applicable To (Passed 1853) (C. Settle 1857) ("No person shall retail gunpowder to minors under fifteen years of age * * * without authority from his parent or guardian"); Act of Sept. 8, 1835, ch. 26, § 1–2, Conn. Acts & Laws 1855 (law passed 1835) ("where any minor or apprentice shall be guilty of any breach of the by-laws relating to the firing of guns, pistols, crackers, or other fire-works, the parent, guardian, or master of such minor or apprentice, shall be liable to pay the forfeitures incurred by said by-law"); Act of Mar. 2, 1885, ch. 51, § 1, 1855 Nev. Stat. 51 ("Every person under the age of twenty-one (21) years who shall wear or carry any dirk, pistol, sword in case, slung shot, or other dangerous or deadly weapon concealed upon his person, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be fined not less than twenty nor more than two hundred ($200) dollars, or by imprisonment in the county jail not less than thirty days nor more than six months, or by both such fine and imprisonment."); Act of Feb. 2, 1856, no. 26, § 1, 1856 Ala. Acts 17 ("[A]ny one who shall sell or give or

D. Laws Restricting Persons Perceived To Be A Threat Are Analogous To Section 922(g)(3).

Early common law disarmed persons deemed a threat or engaged in dangerous behavior prior to their taking actions, laws that later continued to appear in the Colonies and early States. As Blackstone noted, "[P]reventive justice is upon every principle, of reason, of humanity, and of sound policy, preferable in all respects to punishing justice." 4 Blackstone, 248. For example, over 400 years after the Statute of Northampton was passed, prohibiting individuals from "rid[ing] armed" through communal spaces punishable by disarmament (Statute of Northampton, 2 Edw. 3, 258 Ch. 3 (1328)), Virginia implemented a near-identical law prohibiting riding armed in "terror of the Country." An Act Forbidding and Punishing Affrays, ch. 49, 1786 Va. Acts 35. Other States enacted similar laws, with violation resulting in disarmament and imprisonment. *Ibid.*[19] The term of imprisonment lasted until

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lend, to any male minor, a bowie knife, or knife or instrument of the like kind or description, by whatever name called, or air gun or pistol, shall, on conviction be fined not less than three hundred, nor more than one thousand, dollars."); An Act to Amend the Criminal Laws of This State, ch. 81, §§ 2-3, 1856 Tenn. Acts 92, 92 (G.C. Torbett and Company) (similar); New York, New York, Ordinances of the Mayor, Aldermen and Commonality of the City, ch. 13, § 6 (Chas. W. Baker 1859) (similar); Ordinance of Sept. 15, 1859, art. 9, § 4, in *Charters and Ordinances of the City of Memphis* 265 (Bankhead rev., Memphis, Saunders, Oberly & Jones 1860) (similar); An Act to Amend "an Act to Reduce into One the Several Acts in Relation to the Town of Harrodsburg," ch. 33, § 23, 1860 Ky. Acts 241, 245 (similar).

[19] See, *e.g.*, An Act for the Punishing of Criminal Offenders, ch. 11, § 6, 1814 Mass. Laws 240, § 6 (1692)("[A]nd upon view of such justice or justices, confession of the party, or other legal conviction of such offence, shall commit the offender to prison, until he

the offender found another to pledge for his future behavior with sureties. *Ibid.*; See generally Cornell, *The Long Arc of Arms Regulation in Public: From Surety to Permitting, 1328-1928*, 2555-56. Other jurisdictions disarmed persons who had been loyalists during the Revolution. [20]

These laws rest on the same basis as Section 922(g)(3): preventing the possibility of future harmful behavior from individuals perceived to be a threat to public order. And as noted, they often went far beyond, and subsumed, penalties like restriction of gun ownership.

III. As Drugs Became A More Serious Problem, Legislatures Responded In Ways That Were Closely Analogous To Their Treatment Of Other Threatening Behaviors.

A. Drug Use Was Not A Significant Social Problem Prior To The Civil War.

As noted above, drug use was uncommon during the Founding era and early Americans did not

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find sureties for the peace and good behavior, and seize and take away his armour or weapons, and shall cause them to be apprized and answered to the king as forfeited"); An Act for Establishing and Regulating Courts of Public Justice Within this Province, 1705 N.H. Laws 1 (same); Francois Xavier Martin, *A Collection of Statutes of the Parliament of England in Force in the State of North Carolina*, 60-61 (Newbern 1792) (same).

[20] 4 *Journals of the Continental Congress* 205 (1776) (The Continental Congress "recommended to the several [colonies] * * *, immediately to cause all persons to be disarmed within their respective colonies, who are notoriously disaffected to the cause of America") (emphasis omitted); see also Brian DeLay, *The Myth of Continuity in American Gun Culture*, 113 Cal. L. Rev. 1, 33-34 (2025) (noting twelve States engaged in disarming loyalists in Revolutionary era).

understand drugs' harmful effects. See generally 2 Musto, 51; Elizabeth Kelly Gray, *Habit Forming: Drug Addiction in America*, 1776-1914, 24, 30 (2023); Richard J. Bonnie & Charles H. Whitebread II, *The Forbidden Fruit and the Tree of Knowledge: An Inquiry into the Legal History of American Marijuana Prohibition*, 56 Va. L. Rev. 971, 985-87, 1010-11 (1970). The harm was not appreciated until later in the nineteenth and twentieth centuries. See David R. Buchanan*, A Social History of American Drug Use*, 22 J. Drug Issues 31, 40 (1992).

This was for multiple reasons. For starters, the menu of available drugs was limited and those that did exist were, as a practical matter, available only to the wealthy. See Gray, 24 ("[N]arcotics were priced beyond the reach of the poor.").

Moreover, Founding era drugs were much less potent than modern synthetics, such as fentanyl and crystal methamphetamine, which have led to an explosion of overdoses in recent years. Magdalena Cerda et al., *The Future of the United States Overdose Crisis: Challenges and Opportunities*, 101 Millbank Q. 478, 479 (2023) (discussing sharp increase in overdose deaths since 2000); Buchanan, 40 (noting emergence of intravenous drug use in mid-1800s).

The Founding era generation also lacked a scientific understanding of the impact of drugs on physical health. Physicians initially believed that drugs offered health benefits, prescribing narcotics to treat various ailments—heroin for coughs, opium for pain management, and amphetamines for hay fever, melancholy, and energy. 2 Musto, 56, 68 (heroin and amphetamines); John P. Hoffman, *The Historical Shift in the Perception of Opiates: From Medicine to Social Menace*, 22 J. Psychoactive Drugs 53, 56-57 (1990)

(opiates). Coca-Cola famously contained cocaine and was touted as a "brain tonic." 2 Musto, 64 (quoting Cecil Munsey, *The Illustrated Guide to the Collectibles of Coca-Cola* 315-16 (1972)).

Reflecting this limited awareness, there was no regulatory framework to address narcotics. The early Republic permitted unlimited narcotic distribution and there were no licensing requirements for physicians or pharmacists. Musto, 56-57; Gray, 24 (no age restrictions or prescription requirements).

Because the Founders lacked a full appreciation for the perils of drug use and addiction, it is unsurprising that few, if any, Founding era laws restricted drug use, let alone possession of guns by drug users. But as the drug problem ballooned and scientific understanding developed, legislatures stepped in, mirroring their earlier response to alcohol abuse and other dangerous behaviors. We highlight statutory examples from shortly after the Civil War through the 1930s, reflecting the rise of opium use by Civil War veterans and an increasing drug epidemic.

B. Drug Use Increased After The Civil War And Legislatures Responded.

The Civil War ushered in a new era of drug use. During the war, opium-derived morphine was used to treat battlefield wounds and illness. See Buchanan, 40. Unsurprisingly, after the war ended in 1865, thousands of soldiers had become addicted. Roseann B. Termini & Rachel Malloy-Good, *50 Years Post-Controlled Substances Act: The War on Drugs Rages on with Opioids at the Forefront*, 46 Ohio N.U. L. Rev. 1, 4-5 (2020). Opium addiction steadily grew after the Civil War, reaching approximately 4.59 addicts per

thousand people by the end of the nineteenth century. *See* Buchanan, 39.

As addiction grew, so too did the legislative response. Restrictions took several forms. Some jurisdictions, for example, required that opium and other drugs be dispensed only by doctors or pharmacists for legitimate medical issues.[21] Others implemented licensing regimes.[22] And other jurisdictions outright prohibited the sale of opium.[23]

States also made use of existing tools. Several States, for example, expanded restrictions aimed at habitual drunkards to incorporate drug abusers.[24] Other jurisdictions expanded civil-commitment laws to include drug addicts.[25] Civil commitment forms

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[21] Act of Feb. 8, 1882, ch. 75, § 3, 1882 Wyo. Acts 163.

[22] Act of Mar. 13, 1885, ch. 121, § 1, 1885 N.D. Laws 179.

[23] Act of Feb. 21, 1879, ch. 43, § 1, 1879 Dakota Terr. Acts 118.

[24] Act of Apr. 6, 1936, No. 82, § 8, 1936 Ala. Gen. Laws 52 (listing drug addicts alongside habitual drunkards); Act of Feb. 21, 1935, ch. 63, § 6, 1935 Ind. Laws 161 (same); Act of June 11, 1931, No. 158, § 8, 1931 Pa. Laws 499 (same); Act of July 8, 1936, No. 14, § 2, 1936 P.R. Acts & Res. 128 (same); Act of Mar. 14, 1935, ch. 208, § 8, 1935 S.D. Laws 356 (same); Act of Mar. 23, 1935, ch. 172, § 8, 1935 Wash. Sess. Laws 601 (same); Act of Apr. 6, 1936, No. 82, § 8, 1936 Ala. Laws 52, (Dangerous Weapons Act) (same).

[25] See, *e.g.*, Political Code of the State of California, Tit. V, § 2170, at 588-89 (1872); Act of July 25, 1874, ch. 113, § 1, 1874 Conn. Pub. Acts 256; The Revised Statutes of the State of New York 889 (1875); Act of June 18, 1881, ch. 546, §§ 8, 10, 1881 N.Y. Acts 787; Act of Apr. 14, 1881, ch. 67, §§ 1-2, 1881 Ind. Acts 545-46; Act of Apr. 13, 1895, ch. 74, §§ 1-2, 1895 Colo. Acts 172; Act of Apr. 17, 1895, ch. 286, § 3, 1895 Mass. Acts 292; 1895 Conn. Acts 561, Incorporating the Darien Home; Act of May 25, 1897, No. 155, § 8, 1897 Mich. Acts 191; Act of Apr. 30, 1901, No. 93, § 1, 1901 Mich. Pub. Acts 134; Act of June 30, 1902, Pub. L. No. 57-106, ch. 1329 § 115f, 31 Stat. 524, 525; Act of Apr. 12, 1902, ch.

added questions regarding drug addiction. For example, California added questions regarding drug addiction to the forms used by medical examiners to determine whether to involuntarily commit an individual. Political Code of the State of California, Title III, § 2170, at 588 (1872).[26] These forms often linked alcohol consumption with drug use in determining a person's sanity.[27]

C. As Awareness Of The Dangers Of Drug Use Grew, Legislatures Restricted The Sale Of Guns To Drug Addicts.

Over time, the danger of drug addiction became more apparent and legislatures continued to respond. Just those perceived to be dangerous could be disarmed to protect the peace, as legislatures saw the link between drug addiction and gun violence, they limited gun access for the same reason.

93, § 2, 1902 Iowa Acts 58; Act of Mar. 13, 1872, ch. 75 § 1713a, 56 Code of Va. 881; Act of Apr. 22, 1907 ch. 288, 1907 Minn. Acts 387 *et seq.*; An Act to Amend Section 3736, No. 121, § 1, 1910 Vt. Acts & Resolves 125.

[26] See, *e.g.*, David Taylor, *The Revised Statutes of the State of Wisconsin* 1099 (1872) ("Was the patient ever addicted to the intemperate use of intoxicating drinks, opium or tobacco, or any improper habits?"); Political Code of the State of California, Title III, § 2170, at 588 (1872); Act of Apr. 19, 1893, ch. 5 § 20, 1893 Minn. Acts 84, sec. 201 (similar); Act of Apr. 14, 1881, ch. 67, § 2, 1881 Ind. Acts 546 ("*Fifteenth*. Does, or has he, or she, habitually used opium, chloral, or other narcotic, and if so, to what extent and for what time?"); Act of Apr. 17, 1895, ch. 286, § 3, 1895 Mass. Acts 292 (similar).

[27] See, *e.g.*, Political Code of the State of California, Tit. V, § 2170, at 589 (1872); David Taylor, *The Revised Statutes of the State of Wisconsin 1099* (1872); Act of Apr. 19, 1893, ch. 5, § 20, 1893 Minn. Acts 84; Act of Apr. 17, 1895, ch. 286, § 3, 1895 Mass. Acts 292.

Many jurisdictions, for example, began imposing licensing requirements for concealed carry, which included a good character requirement that likely excluded drug addicts.[28] In the early twentieth century, many States prohibited drug addicts from purchasing or possessing guns.[29]

Increased drug use after the Civil War, combined with greater scientific understanding, resulted in a significant legislative response. Two important points emerge: First, the absence of Founding era regulations restricting drug users' access to guns reflects that drug use did not become a significant social problem until *after* the Civil War. Second, as drug use evolved, legislatures responded to prevent drug users from harming themselves or others.

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[28] See, *e.g.*, Act of June 5, 1925, ch. 3, § 7(a), 1925 W. Va. Acts 25; Ordinance of Mar. 6, 1905, Part 6, ch. 72, §§ 1-5, in Municipal Code of the City of Albany (Albany 1910) (allowing police to issue licenses to carry concealed weapons if applicant is "proper and law abiding person"); Scandia Kan. Ordinance No. 79, *An Ordinance Relating to Crimes and Punishments*, in 23 Scandia J., Jan 5 1984 (same); John H. Parsons, *Town of Montclair: An Ordinance to Regulate the Carrying of Concealed Weapons and to Prohibit the Carrying of the Same Except as Herein Provided*, Montclair Times, May 15, 1897, at 8 (same).

[29] See, *e.g.*, Act of Apr. 6, 1936, No. 82, § 8, 1936 Ala. Gen. Laws 52; Act of June 19, 1931, ch. 1098, § 12, 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; Act of Apr. 6, 1936, No. 82, § 8, 1936 Ala. Laws 52 (Dangerous Weapons Act).

Section 922(g)(3) reflects these same aims and is therefore well within the Nation's history and tradition.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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*The representation of *amici* by a Clinic affiliated with Yale Law School does not reflect any institutitional views of Yale Law School or Yale University.

APPENDIX

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APPENDIX

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