No. _____

In the
# Supreme Court of the United States

ERIK HARRIS,

*Petitioner*,

v.

UNITED STATES OF AMERICA,

*Respondent*.

**On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit**

## PETITION FOR WRIT OF CERTIORARI


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## QUESTIONS PRESENTED

18 U.S.C. § 922(g)(3) prohibits firearm possession by an "unlawful user of" "any controlled substance." The statute does not define the phrase "unlawful user" or specify what nexus, if any, the government must show between drug use and firearm possession. Petitioner Erik Harris, a 21-year-old, first-generation college student working part-time for a Christian nonprofit, had no prior arrests or history of violence when he purchased three guns in early 2019. He was later convicted under § 922(g)(3) based solely on his police interview admission to smoking marijuana once every three days. Nothing in the record indicates that Harris was intoxicated when he purchased the firearms or at any time that he carried a firearm. The questions presented are:

I. Whether 18 U.S.C. § 922(g)(3), the federal statute that prohibits 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 an individual who sometimes used marijuana but was not intoxicated at the time of the possession.

II. Whether 18 U.S.C. § 922(g)(3)'s prohibition on firearm possession by "an unlawful user" of "any controlled substance" is unconstitutionally vague.

## PARTIES TO THE PROCEEDING

Petitioner Erik Harris was the defendant in the district court and appellant below.

Respondent United States of America was the plaintiff in the district court and appellee below.

## RELATED PROCEEDINGS

United States District Court (W.D. Pa.):

*United States v. Harris*, No. 2:19-cr-00313 (May 7, 2021)

United States Court of Appeals (3d Cir.):

*United States v. Harris,* No. 21-3031 (July 14, 2025)

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## PETITION FOR WRIT OF CERTIORARI

Section 922(g)(3) bars an "unlawful user of" any controlled substance from possessing firearms without defining the term "unlawful user" or explaining what nexus, if any, must exist between the drug use and firearm possession. *See* 18 U.S.C. § 922(g)(3). Erik Harris, a twenty-one-year-old African American college student with no history of violence or prior arrests, was convicted under § 922(g)(3) based solely on his admission to smoking marijuana once every three days. The government below did not allege or try to establish that Harris was intoxicated when he purchased the firearms or at any time while carrying firearms.

When the government chooses to regulate arms-bearing conduct, the Second Amendment presumptively protects that conduct and the government bears the burden of proving that its regulation is "consistent with this Nation's historical tradition of firearm regulation." *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 17 (2022). And when the regulation restricts a fundamental right and exposes violators to severe criminal penalties, the Constitution demands that Congress speak with clarity. *See Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 498-99 (1982).

In the decision below, the court of appeals determined that 18 U.S.C. § 922(g)(3)—at least as applied in some cases—is consistent with the Nation's purported historical tradition of disarming "the dangerously drunk and dangerously mentally ill," and is not unconstitutionally vague as applied to an adult who "routinely smok[es] marijuana." App.2a, 5a.

As the government has observed, the Third Circuit's decision forms part of a clear and intractable circuit conflict on the constitutionality of § 922(g)(3) under the Second Amendment that necessitates this Court's review. *See* U.S. Pet. 7, 24, Reply 7, *United States v. Hemani* (No. 24-1234). Indeed, disarming Harris would be unconstitutional in at least the Fifth and Eighth Circuits. The decision of the court of appeals, however, permits stripping Second Amendment rights from non-violent adults who recreationally use marijuana based on loose predictive judgments about their likelihood to pose a risk of danger if armed. Taken to its logical conclusion, the majority's view would sanction a law disarming the millions of ordinary Americans who regularly drink wine with dinner or enjoy a beer after work. This Court's intervention is needed.

The government urges this Court to review the Second Amendment question in a case it hand-picked with highly unusual facts—facts the government evidently views as favorable to its position. If the Court is going to review the question presented (and petitioner agrees that it should), then it would be better served by doing so in a case that cleanly presents an as-applied challenge by an individual who smoked marijuana recreationally and was not otherwise engaged in more serious, independent criminal conduct. This petition not only presents such a case but also offers the Court the opportunity to decide whether § 922(g)(3) is unconstitutionally vague—a question not presented in *Hemani*. The two questions are inextricably intertwined; resolution of one necessarily informs, and may dictate, resolution of the other. Accordingly, the Court should grant this

case instead of, or in addition to, *Hemani*. At minimum, this Court should hold the petition pending resolution of *Hemani* or any other case the Court may grant presenting the same question(s).

## OPINIONS BELOW

The opinion of the court of appeals, including a dissenting opinion by Judge Thomas Ambro, is reported at 144 F.4th 154. App.1a-49a.

## JURISDICTION

The judgment of the court of appeals was entered July 14, 2025. This Court has jurisdiction under 28 U.S.C. § 1254(1).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The relevant constitutional and statutory provisions are reproduced at App.62a.

## STATEMENT OF THE CASE

### A. Legal Background

1. In its seminal decision in *District of Columbia v. Heller*, this Court held that there is "no doubt … that the Second Amendment confer[s] an individual right to keep and bear arms." 554 U.S. 570, 595 (2008). While the Court acknowledged that the right is not "unlimited," it looked to historical restrictions on firearm possession to inform its analysis of the constitutionality of the law at hand. *Id.* at 626-27, 631-34. But the Court left a full-throated exposition of that historical analysis for another day.

Over the next decade, lower courts "coalesced around a 'two-step' framework for analyzing Second Amendment challenges that combines history with means-end scrutiny." *New York State Rifle & Pistol, Ass'n, Inc. v. Bruen*, 597 U.S. 1, 17 (2022). In *Bruen,* this Court rejected "that judicial deference to legislative interest balancing," explaining that the Second Amendment "'is the very *product* of an interest balancing by the people,'" and it is that "balance—struck by the traditions of the American people—that demands our unqualified deference." *Id.* at 26 (quoting *Heller*, 554 U.S. at 635). The Court laid out a more robust constitutional framework steeped in "the Nation's historical tradition of firearm regulation." *Id.* at 24. Under that approach, if the regulated conduct is covered by the plain text of the Second Amendment, then it is presumptively protected, and the burden shifts to the government to justify its regulation. *Id.* To do so, the government must identify historical firearm restrictions that are analogous to the modern challenged regulation in their "how and why"—*i.e.*, the "modern and historical regulations" must "impose a comparable burden on the right of armed self-defense" that "is comparably justified." *Id.* at 24, 29.

Two years later, this Court provided additional guidance on how to implement *Bruen*'s methodology in *United States v. Rahimi*, 602 U.S. 680 (2024). *Rahimi* confirmed *Bruen's* historical tradition test: "[W]hen a firearm regulation is challenged under the Second Amendment, the Government must show that the restriction 'is consistent with the Nation's historical tradition of firearm regulation.'" 602 U.S. at 689 (quoting *Bruen*, 597 U.S. at 24). The Court clarified that the modern law must be "consistent with the

principles that underpin our regulatory tradition." *Id.* at 692. But the "central" considerations in the "relevantly similar" inquiry remain "[w]hy and how the [challenged] regulation burdens the [Second Amendment] right." *Id.* at 692. In other words, the focus remains on whether the regulation "impos[es] similar restrictions for similar reasons." *Id.* at 692. Applying that framework, this Court held that 18 U.S.C. § 922(g)(8)(C)(i) is constitutionally sound, as it is grounded in a historical tradition of temporarily disarming individuals who have been found by a court to pose "a credible threat to the physical safety of another." *Id.* at 702.

In short, as exemplified in *Rahimi, Bruen* tasks courts with conducting a categorical comparison of the mechanics of the challenged provision and the government's historical analogues to assess whether the challenged law passes constitutional muster. In applying that methodology, Justice Barrett cautioned, "a court must be careful not to read a principle at such a high level of generality that it waters down the right." *Rahimi*, 602 U.S. at 740 (Barrett, J., concurring).

2. The Constitution provides that "[n]o person shall … be deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V. This Court has repeatedly recognized that the government "violates this guarantee by taking away someone's life, liberty, or property under a criminal law so vague that it fails to give ordinary people fair notice of the conduct it punishes, or so standardless that it invites arbitrary enforcement." *Johnson v. United States*, 576 U.S. 591, 595 (2015). The

prohibition on vague criminal statutes is a "'well-recognized requirement, consonant alike with ordinary notions of fair play and the settled rules of law,' and a statute that flouts it 'violates the first essential of due process.'" *Id.* at 595-96 (quoting *Connally v. General Constr. Co.*, 269 U.S. 385, 391 (1926)). As this Court has explained, the vagueness doctrine "is a corollary of the separation of powers—requiring that Congress, rather than the executive or judicial branch, define what conduct is sanctionable and what is not." *Sessions v. Dimaya*, 584 U.S. 148, 156 (2018).

Applying the vagueness doctrine, this Court has held that federal criminal laws must "give ordinary people fair warning about what the law demands of them" and avoid leaving them "with no sure way to know what consequences will attach to their conduct." *United States v. Davis*, 588 U.S. 445, 448 (2019). When a law fails to provide such notice, courts must "treat the law as a nullity and invite Congress to try again." *Id.*

### B. Factual Background

1. In 2019, Erik Harris, then 21 years old, was a first-generation college student employed part-time by a nonprofit Christian organization and had neither a history of violence nor any prior arrests. *See* C.A. App. 43, 61, 224-26, 231. *See also* App.46a. He purchased three guns in February and March of that year, answering "no" on a federal form asking whether he was a user of or addicted to marijuana. He regularly smoked marijuana during this period. App.46a.

2. Five days after he bought the second gun, Harris and his childhood friend, Jaemere Scott,

celebrated Scott's mother's birthday at Scott's home and later at a bar. App.46a. Scott lived across the street from Harris's girlfriend. C.A. 3 App. 67. After that night, one of Harris's handguns was found in Scott's possession. C.A. App. 161, 172.

3. When Harris and Scott arrived at the bar, Scott asked Harris whether he had his gun on him, and Harris replied "No, I don't." C.A. 3 App. 37. Although Harris thought he had left the gun in his car, it was not there when he checked after leaving the bar. *Id*. at 38. Back at Scott's house, and with Scott's help, Harris searched the car, Scott's house, and his girlfriend's house. *Id*. at 38-39. The next morning, he again checked his car, as well as the homes of two friends, before returning to the bar to search. *Id*. at 39-40. Coming up empty, Harris promptly contacted the police and reported the gun stolen. App.46a-47a.

4. The police ultimately found the gun with Scott, a convicted felon. Suspecting Harris had purchased the gun for Scott, they interviewed Harris. During the interview, Harris denied doing so but admitted to frequently smoking marijuana. App.46a-47a.

5. Based entirely on Harris's police interview, the government charged him with three counts of possessing firearms as an unlawful user of a controlled substance, in violation of 18 U.S.C. § 922(g)(3). App.3a. In addition, the indictment charged him with three counts of knowingly making a false statement that he was not an "unlawful user" of marijuana in connection with the firearms purchases, in violation of 18 U.S.C. § 922(a)(6). *Id*. The indictment recited no other allegations regarding Harris's drug use. C.A. App. 25-27.

6. The district court determined that Harris did not pose a danger to the community: Harris was released pretrial on unsecured bond, and at sentencing, bond was continued to permit his self-surrender. D. Dkt. 14. *See* 18 U.S.C. § 3142(b) (authorizing pretrial release unless, *inter alia,* it "will endanger the safety of any other person or the community"); *id*., § 3143(a) (authorizing release based on judicial finding by clear and convincing evidence the person is not likely to pose a danger).

7. Harris moved to dismiss the indictment, arguing that § 922(g)(3) violates the Second Amendment as applied to him. His initial motion raised these arguments in the context of the means-end scrutiny analysis that *Bruen* ultimately rejected. C.A. App. 32-51, 134-46, 148-72. He also argued that the statute was unconstitutionally vague, both facially and as applied, in violation of the Fifth Amendment and the separation of powers. *Id*. Finally, he attacked the false statement charges as rising or falling with the constitutionality of § 922(g)(3). If § 922(g)(3) is unconstitutional as applied to him, then his statement as to drug use was immaterial as it could not have affected the sale. It was also not knowingly made. *See* C.A. App. 50-51, 134-35, 145-46, 155; 3d Cir. Doc. 43 at 27-29 & Doc. 77.

8. The government asked the court to resolve the motion on the "undisputed facts." C.A. App. 161-62, 167. The parties agreed that the substance involved was marijuana and that Harris was not an addict, but used marijuana recreationally every three days at the relevant time. C.A. App. 52, 61, 161. The government did not claim that Harris was intoxicated while

carrying the firearm. Indeed, at the hearing on the motion to dismiss, the government summarized the "undisputed facts": when Harris purchased the firearms, "he was smoking marijuana every three days" and had been using marijuana recreationally for about six years. C.A. App. 161. It added that after Harris smoked one night, his gun "ended up in the possession of his friend." C.A. App. 161, 171-72.[1]

9. The district court summarily denied Harris's motion. App.54a. Harris then entered a conditional guilty plea to all six counts, preserving his right to appeal the issues raised in the motion to dismiss. C.A. App. 209; App.3a.

10. The district court sentenced Harris to six months' incarceration and three years' supervised release. D. Ct. Dkt. 103.

11. The court of appeals affirmed in a divided opinion. Starting with the threshold textual inquiry, the court easily found that the Second Amendment presumptively protects Harris's conduct. "Drug users

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[1] Editorializing, the majority below said that Harris "went out partying with one of his new guns," "got 'really drunk' and high and, in the revelry, lost his new gun." App.2a. The record does not support those claims. *See* App.46a-47a (Ambro, J., dissenting). Indeed, the government did not suggest that Harris may have been intoxicated while carrying a firearm at the birthday celebration until more than two years after the hearing on the motion to dismiss. *See* 3d Cir. Doc. 55 at 4 n.3 (Aug. 7, 2023). *See also* 3d Cir. Doc. 57 at 1-2 n.1 (Aug. 21, 2023) (objecting to government's belated claim). *See, generally*, *United States v. Harrison*, ___ F.4th ___, 2025 WL 2452293, *4 (10th Cir. 2025) (rejecting government's attempt to inject new factual claim—that the record permitted an inference Harrison was intoxicated—in supplemental briefing).

who are adult citizens are among 'the people'" and the charge at issue punishes Harris for "'for quintessential Second Amendment conduct: possessing a handgun.'" App.4a. And it correctly explained that under *Bruen* and *Rahimi* the government bears the burden to show that a modern law is consistent with this Nation's historical tradition of firearm regulation. App.4a (quoting *Bruen*, 597 U.S. at 26).

Turning to the historical-tradition inquiry, the majority found that historical regulations addressing public intoxication and mental illness imposed a comparable burden for comparable reasons to § 922(g)(3), at least as applied in some circumstances. App.5a-6a. From the historical regulations, the majority discerned a principle of confining and thereby disarming persons who pose a risk of physical danger to others if armed, that is, disarming people "based on a predictive judgment of danger." App.16a, 18a, 19a, 22a. In the majority's view, § 922(g)(3) is constitutional as applied to a "drug user[] who would pose a risk of danger to others if armed"—and a judge may make such a predictive determination even if the individual never "harmed someone, threatened harm, or otherwise acted dangerously" and even if he never possessed a firearm while intoxicated. App.13a, 22a. *See also* App.32a (concluding § 922(g)(3) "reflects the type of common-sense prophylactic judgment that the Second Amendment permits") (Krause, J., concurring). The majority remanded for the district court to apply its new rule to Harris's case—that is, to determine "how Harris's drug use affected his mental state and riskiness." App.21a-22a

The court of appeals also rejected Harris's vagueness challenge. App.22a-24a. Although the court acknowledged that "there will be borderline cases"—and that the "exact boundaries of 'unlawful user' are debatable"—it concluded that Harris's "habitual marijuana smoking" fell within the text of § 922(g)(3). App.24a. In so holding, the court relied on its precedent interpreting § 922(g)(3) to require a defendant to "'have engaged in regular use [of drugs] over a period of time proximate to or contemporaneous with the possession of the firearm.'" App.24a (quoting *United States v. Augustin*, 376 F.3d 135, 139 (3d Cir. 2004)). Leaving "closer calls" for "[f]uture cases," the court of appeals determined that the statute was not vague as applied to Harris. App.25a.

Judge Ambro dissented on Second Amendment grounds. He criticized the majority's "amorphous holding"—which allows the government to disarm citizens based on a speculative "increased risk of dangerousness"—as lacking any historical analogue. App.40a, 47a-49a (Ambro, J., dissenting). Whereas "Founding-era laws targeted dangerous behavior that followed from intoxication," App.38a, the majority extended disarmament to an individual who is "plainly [] not dangerous, so long as his drug use increases the chance that he could act dangerously." App.40a. That leap, Judge Ambro warned, both flouts precedent and creates a circuit split. App.47a-49a. Under the dissent's historically grounded approach—consistent with *Bruen* and *Rahimi*—only "those who pose a 'credible threat to the physical safety of others' because of their intoxication may be disarmed." App.38a-39a, 40a (quoting *Rahimi*, 602 U.S. at 693, 700).

## REASONS FOR GRANTING THE PETITION

This case presents two important and inextricably linked questions warranting review. First, as the government has conceded elsewhere, the circuits are hopelessly divided on whether 18 U.S.C. § 922(g)(3), which disarms an "unlawful user" of any controlled substance, is consistent with the Nation's historical tradition of firearms regulation. *See* U.S. Pet. 7, 24, *United States v. Hemani* (No. 24-1234). Second, because the statute neither defines "unlawful user" nor identifies the required nexus, if any, between drug use and firearm possession, this case also presents the question whether § 922(g)(3) is unconstitutionally vague. Courts have long acknowledged the vagueness concerns raised by § 922(g)(3)—a statute that burdens a fundamental Constitutional right and exposes defendants to fifteen years' imprisonment—but have responded by inventing a patchwork of nebulous temporal nexus requirements. These two questions cannot be meaningfully separated; resolving whether the statute may constitutionally disarm "unlawful users" necessarily requires resolving whether the statute provides constitutionally adequate notice of who qualifies as such.

The government agrees that there is "a clear circuit conflict" over § 922(g)(3)'s constitutionality under the Second Amendment that warrants this Court's immediate attention. *See* U.S. Pet. 24-25, Reply 7-8, *Hemani, supra*. The decision below not only deepens that conflict but is egregiously wrong. The court contemplates disarming a sober citizen who is not engaged in threatening or violent behavior and has no prior "history of violence or threatening

behavior" based solely on predictive judgments about the individual's likelihood to pose a risk of danger if armed. *See* App.16a-17a, 18a-19a, 22a; App.34a (Ambro, J., dissenting). No other court sets the threshold for stripping citizens of their Second Amendment rights this low. *See* App.34a (Ambro, J., dissenting). The court's test cannot be reconciled with *Rahimi* or *Bruen*, and it threatens to embroil the lower courts in the judge-empowering interest-balancing *Bruen* rejected.

Harris's case presents a far better vehicle to review § 922(g)(3)'s constitutionality than the government's cherry-picked alternative because it involves application of § 922(g)(3) to an adult who admitted smoking marijuana recreationally and was not otherwise engaged in more serious, independent criminal conduct. Although Harris and Hemani are in the same procedural posture, only Harris offers a clean vehicle—unencumbered by Hemani's more aggravated facts involving cocaine use and drug dealing. This clarity matters. The instant case allows the Court to focus directly on the government's justification for disarming recreational marijuana users—a question of growing national importance, as roughly 74% of Americans live in states where marijuana is legal in some form.

Further, this case is an ideal vehicle because it presents the additional preserved question of whether § 922(g)(3) is unconstitutionally vague. Lower courts have repeatedly recognized that § 922(g)(3) raises vagueness concerns, attempting—but failing—to craft a clear and consistent limiting construction that provides the notice the Constitution requires. (And

that is even *before* considering the additional layer of conflicting interpretations to ensure the statute's constitutionality under the Second Amendment.) Given that the federal courts cannot settle on what the law means, it is unreasonable to expect that ordinary citizens have notice of what conduct the law prohibits. The result is a fluid, unpredictable statute that welcomes arbitrary or discriminatory enforcement by the government while also undermining separation-of-powers principles by leaving it to police, prosecutors, and judges to define the scope of criminal liability. Indeed, Harris's case exemplifies this risk.

Accordingly, if the Court considers the constitutionality of § 922(g)(3) under the Second Amendment (as it should), the Court should have the benefit of arguments regarding the statute's vagueness. Of the pending petitions that raise the constitutionality of § 922(g)(3), only this case asks the Court to consider both of those important and entangled questions.

## I. The decision below defies this Court's Second Amendment precedents and deepens a circuit split.

### A. The courts of appeals are hopelessly divided over the constitutionality of § 922(g)(3) as applied to non-violent adults who use marijuana, and over whether Congress may categorically disarm entire classes of people based on presumptions of dangerousness.

As the government has explained elsewhere, the decision below entrenches "a clear circuit conflict"

regarding the constitutionality of § 922(g)(3) under the Second Amendment that requires this Court's immediate review. *See* U.S. Pet. 24-25, Reply 1, 7-8, *Hemani* (No. 24-1234). Indeed, by setting out a test based solely on predictive judgments about a "risk" of danger, the decision below charts a new path that no other court has taken.

1. The Fifth Circuit has held that § 922(g)(3) is unconstitutional as applied to a person based on her "habitual or occasional drug use" when there is no evidence that the person "was presently or even recently engaged in unlawful drug use" at the time of the firearms possession. *United States v. Daniels*, 124 F.4th 967, 970 (5th Cir. 2025) (quoting *United States v. Connelly*, 117 F.4th 269 (5th Cir. 2024)). Although "history and tradition may support some limits on a *presently* intoxicated person's right to carry a weapon," they do not support "'disarming a sober citizen based exclusively on his past drug usage.'" *Id.* at 971, 976; s*ee also* U.S. Pet. 25, Reply 6, *Hemani*, *supra*.

2. By contrast, the Eighth Circuit has held that § 922(g)(3) is constitutional only as applied to someone whose drug use causes him to "act like someone who is 'both mentally ill and dangerous'" by "induc[ing] terror," or "pos[ing] a credible threat to the physical safety of others" with a firearm. *United States v. Cooper*, 127 F.4th 1092, 1096 (8th Cir. 2025) (citations omitted). The Eighth Circuit concluded that the historical record supports an *individualized*, not a categorical, determination: "Nothing in our tradition allows disarmament simply because [an individual] belongs to a category of people, drug users, that

Congress has categorically deemed dangerous." *Id.* at 1096. Accordingly, the court requires a nexus between the individual's drug use and the conduct resembling that of someone who is dangerously mentally ill: The proper question is whether a citizen's marijuana use "*caused* him to act 'mentally ill and dangerous,'" *i.e.*, "in an outwardly erratic or aggressive manner … reasonably perceived as disturbing or dangerous to others." *United States v. Perez*, 145 F.4th 800, 807 (8th Cir. 2025). The court does not require such conduct to have occurred contemporaneously with the carry of firearms. *Id.* at 806.

3. The Sixth Circuit has adopted an entirely different approach, authorizing categorical disarmament based on class membership while simultaneously placing the burden on the accused to rebut the presumption of dangerousness. *United States v. VanOchten*, 150 F.4th 552 (6th Cir. 2025). The Sixth Circuit has held that history and tradition allow Congress to use "class-based legislation" to disarm "whole classes" of individuals "it believes are dangerous, so long as members of that class have an opportunity to show they aren't." *Id.* at 558 (quoting *United States v. Williams*, 113 F.4th 637, 649-50 (6th Cir. 2024)). According to the court, Congress judged drug users as a class to be "presumptively dangerous" and used class-based legislation in § 922(g)(3) to disarm them. *Id.*

Notably, the Sixth Circuit does not require any nexus between a person's membership in a class and his "dangerousness." That is, the government need not show a person charged with § 922(g)(3) is dangerous *because of his drug use*. *See VanOchten*, 150 F.4th at

560-62. Rather, the government can disarm illegal drug users based entirely on unrelated individual characteristics like criminal record or other judicially noticeable information. *Id.*

4. The Tenth Circuit has offered yet another test. The court relied on historical laws disarming Catholics and Loyalists to discern a principle that legislatures can disarm entire categories of people believed to pose a risk of future danger. *United States v. Harrison*, ___ F.4th ___, 2025 WL 2452293, *1, *16, *24 (10th Cir. 2025). The court cautioned against deferring to legislative judgments that "a category of people [are] dangerous" as that would "subjugate the right to bear arms." *Id.* at *25 (quoting *Worth v. Jacobson*, 108 F.4th 677, 694 (8th Cir. 2024)). Instead, in determining whether Congress's decision to disarm non-intoxicated marijuana users under § 922(g)(3) is consistent with the Second Amendment, the relevant question is "whether the government [can] justify its assertion that non-intoxicated marijuana users pose a risk of danger." *Harrison,* 2025 WL 2452293*,* *25; *see id*. at *28 (Kelly, J., concurring in part).

5. Most recently, the Seventh Circuit held that § 922(g)(3) is constitutional as applied to an individual whose cognitive abilities are *presently* and persistently impaired—specifically, a person with a 20-year history of heroin and crack addiction, who was under the influence when the firearms were seized, having used crack just hours earlier while awaiting another delivery from his dealer. *United States v. Seiwert*, ___ F.4th ___, 2025 WL 2627468, *1, *8 & n. 4 (7th Cir. 2025).

In sum, at least six circuit courts have considered Second Amendment challenges to § 922(g)(3), and each announced a different test. Although the government identified the same set of historical regulations in each case, the courts have disagreed on which of those regulations, if any, are proper analogues to § 922(g)(3). Moreover, jurists disagree about the principle to draw from the historical analogues. The multi-circuit split is highly unlikely to resolve by itself, and this Court's guidance is sorely needed.

**B. The decision below is wrong.**

The court of appeals misinterpreted the historical record to draw a broad principle of disarming citizens who are not presently dangerous—and who have no history of dangerous or violent conduct—based on predictive judgments about a citizen's likelihood to pose a risk of danger if armed. But the majority drew its "principle" from the historical record "at such a high a level of generality that it waters down the right." *Rahimi*, 602 U.S. at 740 (Barrett, J., concurring). In addition to deepening the clear circuit conflict, the decision below is flawed.

The majority determined that historical regulations addressing public intoxication and mental illness were analogous to § 922(g)(3), at least as applied in some circumstances: "Both the drunkenness and lunacy laws temporarily incapacitated people based on the judgment that their impaired mental state posed a risk to others." App.14a-15a. Even assuming those laws reflected an enduring historical tradition, they regulated the conduct of individuals who were *presently* under the

influence of alcohol (or presently experiencing a disordered mental state), not those who simply admitted to frequent casual drinking. If those laws could support § 922(g)(3), they would likewise justify a law disarming anyone who drinks wine with dinner three nights each week. Given that the majority's purported "principle" would support banning gun possession by the millions of ordinary Americans who have "multiple alcoholic drinks a week," it is a sure sign that the court stretched the analogical reasoning too far. *Connelly*, 117 F.4th at 282.

The court also relied on "surety regimes" that it described as empowering magistrates to make drunkards give security for peace and good behavior or be imprisoned. App.8a. But those laws simply required individuals to post sureties after public drunkenness (and authorized jail time for those who did not comply); the laws said nothing about firearms violence by common drunkards. By contrast, the surety laws discussed in *Rahimi* did "target[] the misuse of firearms." *Rahimi*, 602 U.S. at 696. *See Seiwert*, 2025 WL 2627468, *11 (concluding that surety and going-armed law are a mismatch as applied to drug users who do not engage in terrifying conduct). As the Fifth Circuit observed, while early Americans "consumed copious amounts of alcohol," no Founding era laws "barred gun possession by regular drinkers." *Connelly*, 117 F.4th at 279-80. And none disarmed "ordinary citizens for drunkenness, even if their intoxication was routine." *Daniels*, 124 F.4th at 974.

Nonetheless, from the historical regulations, the majority drew a broad principle of disarming citizens—whether or not they are experiencing an

impaired mental state that causes them to pose a risk to others—"based on a predictive judgment" that they are likely to become impaired and in their impaired state pose a risk to others. *See* App.18a, 19a, 21a, 22a. As the majority put it, "[a] drug user need not have harmed someone, threatened harm, or otherwise acted dangerously to justify disarmament." App.22a. Rather, according to the court, the relevant question is only whether an individual's "frequent marijuana use increased the risk that [the individual] could not handle guns safely." App.20a. That sweeping principle is untethered from the historical record. Notably, the surety regime on which this Court relied in *Rahimi* required an objective, individualized determination that an individual posed a credible threat to the physical safety of another. *Rahimi*, 602 U.S. at 695, 702; *see also id.* at 711 (Gorsuch, J., concurring). And even then, the disarmament could last only as long as that determination remained in place. That is a far cry from § 922(g)(3), which, in the court of appeals' view, authorizes disarmament based on subjective predictive judgments that a person poses a *risk* of future danger if armed based on past drug use.

As the dissent explained, whereas "Founding-era laws targeted dangerous behavior that followed from intoxication," the majority allowed disarmament of those who are "plainly [] not dangerous, so long as [their] drug use increases the chance that he could act dangerously." App.38a-40a (Ambro, J., dissenting). The dissent emphasized that "there is a difference between (a) disarming someone who presents a clear threat of danger to others based on his behavior before he has harmed another person and (b) disarming someone because he poses some undefined level of

risk." App.43a. In short, "[b]y holding that the Government can disarm someone even when he does not pose a clear threat of physical violence to another by a preponderance of the evidence, the majority draws a principle unsupported by history and tradition." *Id*.

The Third Circuit's approach runs headlong into the exact problem *Bruen* sought to solve—avoiding an "interest-balancing inquiry" that gives the government the power to decide "on a case-by-case basis whether the right is *really worth* insisting upon." 597 U.S. at 22-23. Review is warranted to correct the methodology employed by the court of appeals and to ensure that Americans are not disarmed based on a subjective, predictive assessment of risk that has no basis in this Nation's history and tradition.

## II. This Court should determine whether 18 U.S.C. § 922(g)(3) is void for vagueness.

The Constitution does not tolerate vague laws. A statute is void for vagueness if it "fails to give ordinary people fair notice of the conduct it punishes, or [is] so standardless that it invites arbitrary enforcement." *Johnson v. United States*, 576 U.S. 591, 595 (2015). By requiring "a legislature [to] establish minimal guidelines to govern law enforcement," the doctrine protects against "a standardless sweep" enabling executive and judicial officials "to pursue their personal predilections." *Kolender v. Lawson,* 461 U.S. 352, 358 (1983) (quoting *Smith v. Goguen*, 415 U.S. 566, 574-75 (1974)).

"The degree of vagueness that the Constitution tolerates … depends in part on the nature of the

enactment." *Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 499 (1982). The Court has consistently demanded greater clarity for laws imposing criminal penalties and laws restricting fundamental rights. *Id.* at 499-50. Section 922(g)(3) implicates both concerns: it threatens to inhibit an individual's fundamental Second Amendment right to possess a handgun and it imposes severe criminal penalties, including up to fifteen years of imprisonment.

Section 922(g) lists nine categories of persons barred from possessing firearms. In eight, Congress specified a triggering event or objective criteria—such as felony convictions, mental health commitments, or immigration status—to identify who falls within the prohibition. Section 922(g)(3) is the outlier. It prohibits possession by "any person who is an unlawful user" of "any controlled substance," but it neither defines that amorphous phrase nor identifies any nexus between drug use and firearm possession. That is, the statutory text does not indicate when or how a person becomes (or ceases to be) an unlawful user—*e.g.*, how frequently or for how long he must use—or how close in time or place the drug use must be to the firearm possession.

Lacking any legislatively defined objective criteria, the courts for decades have struggled to give content to the statute's terms. In defining "unlawful user," some courts invoke nebulous formulations such as "regular," "prolonged," or "habitual" drug use, without specifying duration. Others require drug use "with regularity, over an extended period of time." All impose some judicially-created temporal nexus. Some

require drug use "at or about the time" of firearm possession; others permit an inference of current use from a conviction for use or possession of a controlled substance within the past year. The result is not a discernable rule, but judicial improvisation. The absence of clear and objective standards does not allow ordinary citizens to determine when their fundamental constitutional right to bear arms is restricted and invites arbitrary enforcement.

The statute is incurably vague as applied to Mr. Harris—an adult who recreationally used marijuana, a substance approximately fifty percent of U.S. adults have at least sampled. Mr. Harris had no fair notice that he could be deemed an "unlawful user" of marijuana on each of three days in 2019 even if he did not use, was not under the influence of, and did not possess marijuana on those days. He was swept up in the executive's arbitrary enforcement of a far-reaching, indeterminate statute. This Court's intervention is urgently needed to ensure that § 922(g)(3) does not continue to ensnare ordinary Americans in felony liability.

### A. The courts of appeals have responded to the vagueness concerns raised by § 922(g)(3) with a patchwork of atextual, amorphous requirements for a temporal nexus between the drug use and firearm possession.

Section 922(g)(3) is unlike every other subsection of § 922(g): it contains no clear and objectively

ascertainable standards triggering disarmament.[2] Section 922(g)(3) prohibits firearm possession by "any person who is an unlawful user" of "any controlled substance" without defining "unlawful user" or identifying the nexus, if any, between use and possession required to trigger the ban. The statute gives no hint as to when a person becomes an unlawful user or ceases to be a user, how frequently or for how long he must use, or how close in time or place the use must be to the possession.

"The plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole." *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 (1997). Here, the statute reaches anyone "who is an unlawful user of or addicted to any controlled substance." 18 U.S.C. § 922(g)(3). "[A]ddict" is a defined term meaning "any individual who habitually uses any narcotic drug so as to endanger the public morals, health, safety, or welfare, or who is so far addicted . . . as to have lost the power of self-control…." 21 U.S.C. § 802(1). "Unlawful user," however, is not defined. Although courts generally default to a phrase's common usage, *see Smith v. United States*, 508 U.S. 223, 237-38 (1993), dictionary definitions of "user" as "one who uses" provide no boundaries. *User* (def. 1a),

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[2] *Compare* 18 U.S.C. § 922(g)(2) (disarming "fugitive from justice," a term defined in the chapter's definitional section at § 921(a)(15); § 922(g)(4) (disarming any person who has been "adjudicated as a mental defective or committed to a mental institution"); § 922(g)(6) (disarming those who have been "discharged from the Armed Forces under dishonorable conditions").

Oxford English Dictionary (2d ed. 1989). So courts have engaged instead in "wholly subjective judgments without statutory definitions, narrowing context, or settled legal meanings" to determine what conduct falls under § 922(g)(3)'s purview. *United States v. Williams*, 553 U.S. 285, 306 (2008).

Faced with Congress's failure to define "unlawful user," the Third Circuit concluded that a single use does not make one an "unlawful user[;]" rather, "use of drugs with some regularity is required." *United States v. Augustin*, 376 F.3d 135, 139 & n.6 (3d Cir. 2004). In reaching that conclusion, the court departed from the statutory text by first identifying a definition for a term in the statute—"user"—and then extrapolating from that definition an additional requirement—regularity—that Congress did not include: "A 'user' is a 'person who takes narcotic, etc., drugs,' implying some regularity of use. *User* (def. 1b), Oxford English Dictionary (2d ed. 1989)." *See* App.24a.

The Sixth Circuit added an additional qualifier, requiring not just regular use, but use "over an extended period of time, and contemporaneously with [the] purchase or possession of a firearm." *United States v. Bowens*, 938 F.3d 790, 793 (6th Cir. 2019). The Eighth Circuit, by contrast, explicitly rejected a qualification "that would require evidence of use over an extended period." *United States v. Carnes*, 22 F.4th 743, 748-49 (8th Cir. 2022).

The Fifth Circuit observed with alarm that "an inference of 'current use' can be drawn even from 'a conviction for use or possession of a controlled substance *within the past year*.'" *Connelly*, 117 F.4th

at 282 (quoting 27 C.F.R. § 478.11); *see United States v. Patterson*, 431 F.3d 832, 838 (5th Cir. 2005).

The Seventh Circuit deemed the phrase "unlawful user" synonymous with "habitual user," without differentiating a habitual user from an addict under the statute. *United States v. Yancey*, 621 F.3d 681, 684-85 (7th Cir. 2010); *see also United States v. Boslau*, 632 F.3d 422, 430 (8th Cir. 2011) (approving an instruction defining an "unlawful user" as one "who uses a controlled substance and has lost the power of self-control with reference to [its] use."). *But see Corley v. United States*, 556 U.S. 303, 314 (2009) (holding that "one of the most basic interpretive canons [is] that '[a] statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant ....'") (citations and internal quotation marks omitted).

The Ninth Circuit attempted to provide guidance by identifying what the statute does *not* cover: "Had [the defendant] used a drug that may be used legally by laymen in some circumstances, or had his use of [the controlled substance] been infrequent and in the distant past," then maybe that would not suffice to classify him as an "unlawful user." *United States v. Ocegueda*, 564 F.2d 1363, 1366 (9th Cir. 1977). The defendant in *Ocegueda* was a heroin addict. *Id.* Heroin, unlike marijuana, may not be used legally in any circumstances.

Between the extremes of single use (or infrequent use in the distant past) and addicts lies a staggering number of adult Americans who use marijuana, a drug legalized for adult recreational use in twenty-four states, two territories, and the District of Columbia.

The statute provides no objective guidance for determining where within that chasm an individual becomes an "unlawful user" who risks federal prosecution if he possesses a gun.

The statute is also missing a temporal nexus between the drug use and the firearm possession. Multiple courts interpreting § 922(g)(3) have concluded that the statute "runs the risk of being unconstitutionally vague without a judicially-created temporal nexus between the gun possession and regular drug use." *Augustin*, 376 F.3d at 138; *United States v. Espinoza-Roque*, 26 F.4th 32, 35 (1st Cir. 2022); *United States v Turnbull*, 349 F.3d 558, 561 (8th Cir. 2003), *vacated on other grounds*, 543 U.S. 1099 (2005). As the Fifth Circuit recently observed, "[t]he statutory term 'unlawful user' captures regular marijuana users, but the temporal nexus is most generously described as vague—it does not specify how recently an individual must 'use' drugs to qualify for the prohibition." *Connelly*, 117 F.4th at 282. In the absence of a statutorily defined objective test, the courts have responded with a patchwork of judicially-created, amorphous requirements for that temporal nexus. Beyond the agreement on requiring *some* nexus—which appears nowhere in the statutory text—the law devolves into incoherence, as courts have struggled in vain to come up with a workable, let alone uniform, test for *what* nexus is sufficient.

The Third Circuit requires that a defendant "have engaged in regular use [of drugs] over a period of time proximate to or contemporaneous with the possession of the firearm." *Augustin,* 376 F.3d at 139. The Second Circuit requires a "pattern of use" or "ongoing" use

"that reasonably covers the time of the events charged[.]" *United States v. Nevarez*, 251 F.3d 28, 30 (2d Cir. 2001); *United States v. Yepez*, 456 F. App'x 52, 54 (2d Cir. 2012). The Eighth Circuit requires drug use "recently enough to indicate that the individual is actively engaged in such conduct" and approved an instruction stating that use need not be "within a matter of days or weeks" of the firearm possession. *Boslau*, 632 F.3d at 429-30; *Carnes*, 22 F.4th at 748. The Eleventh Circuit, by contrast, held that an instruction that use "is not limited to … within a matter of days or weeks" of the possession dilutes the temporal nexus requirement for "contemporaneous" use. *United States v. Clanton*, 515 F. App'x 826, 830 (11th Cir. 2013).

None of those divergent extra-textual interpretations provides an ordinary person with clear notice or a discernible rule. Moreover, the judicially invented limits raise more questions than they resolve. Is someone a "regular" user if he smokes marijuana with siblings annually on family vacations, or at music festivals? Does "contemporaneous" use mean using—or experiencing the effects—while carrying a firearm, while one is within reach, or simply while a firearm is within one's control? When does a person *cease* to be an unlawful user—after months of abstinence for marathon training, or the very day someone resolves to quit and later buys a firearm?

The very existence of these judicially-created temporal definitions illustrates § 922(g)(3)'s unconstitutionality. Rescuing the statute from unconstitutional vagueness by judicially inserting

(competing) extratextual requirements contravenes the separation of powers. As this Court has recognized, when a law "hand[s] off the legislature's responsibility for defining criminal behavior to unelected prosecutors and judges," "the role of courts under our Constitution is not to fashion a new, clearer law to take its place, but to treat the law as a nullity and invite Congress to try again." *United States v. Davis*, 588 U.S. 445, 448 (2019).

**B. The decision below is wrong.**

The court of appeals erred by rejecting Harris's vagueness challenge to § 922(g)(3). Harris is an adult who used marijuana recreationally—like millions of Americans today. The government did not put forward any evidence that Harris was experiencing the effects of marijuana *while* he actually possessed any firearm (a limitation, of course, that appears nowhere in the statute). *See* App.46a-47a (Ambro, J., dissenting). His conviction turned on the government's arbitrary determination that Harris's statement to police—that he recreationally used marijuana and also owned firearms—was enough to prosecute him for violating § 922(g)(3). That result cannot be squared with the Due Process Clause. Criminal liability cannot hinge on such an imprecise standard—one that fails to give fair notice and encourages haphazard enforcement.

Notably, in remanding for consideration of the Second Amendment question, the court of appeals identified various factors for the district court to consider regarding Harris's marijuana use and the effects of marijuana more broadly. App.21a-22a. That freewheeling inquiry—and the involvement of a

fundamental Constitutional right—only heightens the grave vagueness problem with § 922(g)(3).

It is past time for this Court's intervention. The lower courts have tried—and failed—to come up with a formulation that saves § 922(g)(3) from vagueness. Because the term "user" is "so open-ended"—and because the statute lacks any nexus requirement—Harris could not have known whether his marijuana use "may result in forfeiture of his rights under the Second Amendment." *United States v. Herrera,* 313 F.3d 882, 889 (5th Cir. 2002) (DeMoss, J., dissenting). Section 922(g)(3) gives police and prosecutors immense power to interpret and apply the law according to their "personal predilections." *Kolender*, 461 U.S. at 358. This Court should grant review and hold that § 922(g)(3) is unconstitutionally vague as applied to Harris.

## III. The questions presented are important and this case is the ideal vehicle to decide them.

Section 922(g)(3)'s disarmament of "unlawful users" of any controlled substance runs afoul of two of the Constitution's guarantees. It violates the Second Amendment by lacking any basis in the Nation's historical tradition of firearms regulation, and it is void for vagueness because it fails to define "unlawful user" while lacking any nexus requirement between the drug use and the firearm possession. The government has filed petitions for a writ of certiorari in five cases presenting the first question, but it urges the Court to accept review in a sui generis case where it brought a § 922(g)(3) charge against a defendant who apparently engaged in conduct that would have warranted more serious charges. *See United States v.*

*Hemani* (No. 24-1234).[3] Significantly, in the § 922(g)(3) cases where the government has sought this Court's review, neither the government nor respondents ask the Court to consider the vagueness question presented here.[4] Harris's case—unencumbered by Hemani's more aggravated facts—raises both questions of exceptional importance while powerfully illustrating how the vagueness of § 922(g)(3) empowers arbitrary, and perhaps even discriminatory, trampling of the Second Amendment's guarantee.

### A. This case is the best vehicle for resolving both questions presented.

Harris's case presents a far better vehicle to review § 922(g)(3)'s constitutionality because it is unencumbered by *Hemani*'s more aggravated facts involving cocaine use and drug dealing, and because Harris alone presents both a Second Amendment and a vagueness challenge, allowing the Court to consider these intertwined issues together. Harris, a 21-year-old, first-generation college student working part-time for a Christian nonprofit, had no prior arrests or history of violence when he purchased three guns in

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[3] The government urges this Court to hold the remaining petitions pending disposition of *Hemani*. *See United States v. Cooper* (No. 24-1247) (petition filed June 5, 2025); *United States v. Daniels* (No. 24-1248) (same); *United States v. Sam* (No. 24-1249) (same); *United States v. Baxter* (No. 24-1328) (petition filed June 27, 2025).

[4] The petitioners in the other pending § 922(g)(3) petitions do not either. *See Smith v. United States* (No. 24-6936) (presenting facial challenge to § 922(g)(3)); *Clark v. United States* (No. 24-7188) (presenting facial and unpreserved as-applied challenge to § 922(g)(3)).

early 2019. His admission (during a non-criminal encounter with police) to smoking marijuana once every three days subjected him to prosecution under § 922(g)(3) and exposed him to a 10-year (now a 15-year) statutory penalty. *See* 18 U.S.C. § 924(a)(8).[5] The circumstances of Harris's case thus cleanly present the Second Amendment challenge to § 922(g)(3) as applied to an individual who sometimes uses marijuana but was not alleged to be intoxicated at the time of the possession while also illustrating how the statute invites arbitrary or discriminatory enforcement.

By contrast, the defendant in the government's preferred vehicle, *Hemani*, is alleged to be "a drug dealer who uses" cocaine and marijuana and possessed guns along with more than a user amount of each drug. The government paints Hemani as sympathetic to terrorist causes and intimates that other charges may have been available, though it elected to charge Hemani only with violating § 922(g)(3). U.S. Pet. 5, *Hemani*, *supra*. And *Hemani* presents no procedural advantage over this case, as both cases arose out of a motion to dismiss based upon agreed-upon facts—a posture that the government says presents a sufficiently developed record in *Hemani*. U.S. Pet. 26, Reply 12, *Hemani*, *supra*.

In fact, Harris's case presents an even better vehicle, as it was resolved by published opinion, with

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[5] Harris was not found in possession of, or under the influence of, marijuana. Regardless, in Pennsylvania, possession of marijuana for personal use, that is, thirty grams or less, is a misdemeanor punishable not more than 30 days imprisonment or by a fine up to $500. 35 P.S. §§ 780-113(a)(31) & (g).

each judge writing separately and one dissenting. By contrast, *Hemani* was disposed of in a two page *per curiam* opinion summarily affirming the order dismissing the indictment—at the government's own request. The government moved for summary affirmance after declining to even try to distinguish *Connelly*, which held that § 922(g)(3) is unconstitutional as applied to a marijuana user who was not intoxicated while carrying a firearm. *See United States v. Hemani*, Doc. 58 at 1-2, No. 24-40137 (5th Cir. Sept. 16, 2024). Notably, the government could easily have distinguished *Connelly* given Hemani's admission to "purchasing and using cocaine and marijuana regularly"; it chose not to. *See* U.S. Response to Motion to Dismiss, Doc. 18 at 2, 7, *United States v. Hemani*, Case No. 4:23-cr-18 (E.D. Tex., Feb. 23, 2023). This maneuvering suggests less an effort to provide this Court with the best-developed case possible, and more an effort to race to this Court with what the government believes to be the best instrument for presenting its arguments.

### B. The constitutionality of § 922(g)(3) as applied to adult marijuana users is exceptionally important given marijuana's widespread—and, in many states, legal—recreational use.

The particular fact pattern in which this case arises also makes the need for review especially acute. In recent years, using marijuana recreationally has become much like drinking alcohol for many Americans. About half of U.S. adults (51%) say they have used marijuana at some point, according to a

2023 National Survey on Drug Use and Health.[6] Despite being a Schedule I drug under federal law, marijuana is legal to some extent in most states. Twenty-four states, two territories, and the District of Columbia have legalized marijuana for adult recreational use.[7] Another fourteen allow the drug for medical use. *Id*. As of 2024, fifty-four percent of Americans live in a jurisdiction where adult recreational marijuana use is legal.[8] Seventy-four percent of Americans live in a state where marijuana is legal for either recreational or medical use.[9] Even in jurisdictions like Pennsylvania, where adult recreational marijuana is illegal, much of the population resides in communities where its criminalization is no longer enforced as a matter of local policy.[10] Notably, the DEA recently proposed reclassifying marijuana under Schedule III, based in part on HHS's data-driven finding that "the vast majority of individuals who use marijuana are doing so in a manner that does not lead to dangerous outcomes to themselves or others." Schedules of Controlled Substances: Rescheduling of Marijuana, 89 Fed. Reg. 44597-01 (proposed May 21, 2024).

Meanwhile, firearm ownership remains common throughout the Nation. About forty percent of U.S. adults live in a household with a firearm, including

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[6] *See* https://tinyurl.com/2kspr4r4

[7] *See* https://tinyurl.com/2s38hesb

[8] *Id*.

[9] *Id*.

[10] *See* https://tinyurl.com/3h3vkwh6

thirty-two percent who personally own one.[11] With both marijuana use and firearm ownership being so common, there is inevitably significant overlap between Americans who use marijuana and those who possess firearms. *See* App.48a (Ambro, J., dissenting) (warning against reasoning that "authorizes legislatures to suspend the constitutional rights of so many for such common behavior"). Whether and how that use impacts their Second Amendment rights is a question of surpassing importance.

### C. The court's decision will have significant and immediate practical consequences.

In its *Hemani* petition, the government correctly observes that this Court's immediate intervention is necessary because the various tests announced by the lower courts raise significant practical concerns. *See* U.S. Pet. 25, Reply 9-10, *Hemani*, *supra.* Here, the court of appeals' amorphous and free-wheeling inquiry into facts untethered from the elements of § 922(g)(3) raises a host of constitutional and procedural concerns, including questions about burdens of proof, the scope and admissibility of evidence, and the proper timing of the inquiry. As the government observed, the inquiry contemplated on remand only "heighten[s] the need for this Court's review." Reply 9-10, *Hemani*, *supra*. And if this Court rules in favor of Harris, including on vagueness grounds, the parties could avoid an unnecessary remand.

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[11] *See* https://tinyurl.com/k9whtuke

## CONCLUSION

For the foregoing reasons, this Court should grant the petition for certiorari.

Respectfully submitted,

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September 26, 2025

# APPENDIX

## TABLE OF APPENDICES

*Appendix A*

**UNITED STATES COURT OF APPEALS**
**FOR THE THIRD CIRCUIT**

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No. 21-3031

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UNITED STATES OF AMERICA,
*Appellee,*

v.

ERIK MATTHEW HARRIS,
*Appellant*.

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Argued: December 9, 2024
Filed: July 14, 2025

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Before: Krause, Bibas, and Ambro,
*Circuit Judges*.

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OPINION

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BIBAS, *Circuit Judge*.

Guns and drugs can be a lethal cocktail. So Congress passed 18 U.S.C. § 922(g)(3), barring illegal drug users from having guns until they stop using. Erik Harris, a frequent marijuana smoker, bought guns anyway. He was convicted of possessing them and of lying about his drug use to get them. Now he challenges those convictions, claiming that the gun

ban for illegal drug users violates the Second Amendment and is unconstitutionally vague.

Today, we hold that history and tradition justify § 922(g)(3)'s restrictions on those who pose a special danger of misusing firearms because they frequently use drugs. But we lack enough facts to tell whether the law's restrictions are constitutional as applied to Harris. Still, § 922(g)(3) is not vague; it warned Harris that he could not possess guns while routinely smoking marijuana. So we will affirm in part, vacate in part, and remand for the District Court to find facts needed to apply the Second Amendment law laid out here.

## I. WHILE SMOKING MARIJUANA REGULARLY, HARRIS BUYS THREE GUNS

When Erik Harris was 21, he bought his first pistol. Before buying the gun, Harris filled out a federal form that asked if he was "an unlawful user of or addicted to marijuana." 2 App. 199. He checked "no." Eleven days later, he went back to the same dealer to buy a second pistol. Again, he filled out the same form. And again, he checked "no."

Five days later, he went out partying with one of his new guns. He got "really drunk" and high and, in the revelry, lost his new gun. 3 App. 34. The next morning, he reported it stolen. Then he went back to the same dealer to buy a third pistol as a replacement. Once again, he filled out the form. And even though he had smoked marijuana the night before, he once again checked "no" to being an unlawful user.

When Harris's missing gun turned up in a felon's hands, officers called Harris in for questioning. There, he admitted that he smoked marijuana regularly,

including earlier that same day. But throughout the interview, he gave different estimates of how often he had smoked in the past year. And he did not say how much or how often he had smoked in the weeks leading up to and during his possession of the three guns.

When police asked him if, on the federal form, he had answered honestly about his marijuana use, he hedged that it "depends which way you look at it." 3 App. 54. But he conceded that he "didn't answer honestly, for the most part" on the form. 3 App. 58. He acknowledged being an "unlawful user" of marijuana "because I do use it today." 3 App. 53.

The government charged Harris with three counts under 18 U.S.C. § 922(g)(3) for possessing each gun as an "unlawful [drug] user" and three counts under § 922(a)(6) for lying to buy each one. 2 App. 25. Harris moved to dismiss all counts. He argued that § 922(g)(3) violates the Second Amendment as applied to him. He also argued that the phrase "unlawful user" is unconstitutionally vague, invalidating both § 922(g)(3) (which bars "unlawful user[s]" from having guns) and § 922(a)(6) (which bars lying about being an unlawful user).

The District Court denied Harris's motion. It made no specific finding about how much or how often Harris was smoking in the weeks around his gun possession. But it concluded that § 922(g)(3) was constitutional as applied to Harris, using means-end scrutiny under *Binderup v. Attorney General*, 836 F.3d 336, 353, 356 (3d Cir. 2016) (en banc). Then Harris pleaded guilty to all six counts, preserving his right to appeal the issues raised in his motion to dismiss. We

review the District Court's denial de novo. *United States v. Gonzalez*, 905 F.3d 165, 190 (3d Cir. 2018).

## II. TWO ANALOGUES JUSTIFY § 922(g)(3)'S RESTRICTIONS FOR SOME DRUG USERS

Section 922(g)(3) bans possession of a gun by anyone "who is an unlawful user of or addicted to any controlled substance." Harris claims that this ban violates his Second Amendment rights. To assess that claim, we use a two-step test focused on the Amendment's "text and historical understanding." *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 26 (2022). First, we decide whether the Amendment's text covers his conduct. *Id.* at 17. If it does, the government can justify disarming him only if doing so is "consistent with this Nation's historical tradition of firearm regulation." *Id.*

At step one, the Second Amendment presumptively protects Harris's conduct. Drug users who are adult citizens are among "the people" who fall within its scope. *Range v. Att'y Gen.*, 124 F.4th 218, 226–28 (3d Cir. 2024) (en banc). And § 922(g)(3) regulates "quintessential Second Amendment conduct: possessing a handgun." *United States v. Moore*, 111 F.4th 266, 269 (3d Cir. 2024).

So our inquiry turns on the second step: whether disarming Harris is "consistent with the principles that underpin our regulatory tradition." *United States v. Rahimi*, 602 U.S. 680, 692 (2024). Modern laws pass this test if they are "'relevantly similar' to laws that our tradition is understood to permit," especially in "[w]hy and how [they] burden[] the right." *Id.* (quoting *Bruen*, 597 U.S. at 29).

Though our Second Amendment law looks to history and tradition, it is not "trapped in amber." *Id.* at 691. The Amendment "permits more than just those regulations identical to ones that could be found in 1791." *Id.* at 692. We should not "assume[] that founding-era legislatures maximally exercised their power to regulate" and thus that every novel regulation is unconstitutional. *Id.* at 739–40 (Barrett, J., concurring). Modern regulations must rest on historical "principles" but need not squeeze into narrower historical "mold[s]." *Id.* at 692 (majority), 740 (Barrett, J., concurring). This means that the government need identify only a "historical analogue," not a "historical twin." *Id.* at 701 (majority) (quoting *Bruen*, 597 U.S. at 30). And the analogy turns on similarity in principle, not specific facts: A historical law is a fitting analogue for a modern one if it burdens Second Amendment rights for comparable reasons (the "why") using comparable means (the "how"). *Id.* at 692.

The most obviously applicable historical tradition here would be one regulating gun possession by marijuana users. Yet no Founding-era law disarmed them. That is no surprise. Despite speculation that some Founders smoked hemp, it was mainly a source of cloth, paper, and rope, not a drug. *See* Martin Booth, *Cannabis: A History* 33–37 (2003).

But the government identifies historical cousins to § 922(g)(3) that it says justify its restrictions: regulations on the dangerously drunk and dangerously mentally ill. We survey these analogues below and conclude that they support § 922(g)(3)'s constitutionality as applied to those whose drug use

would likely cause them to pose a physical danger to others if armed.

### A. The Founding Generation incapacitated drunks who posed a risk of danger to others

After marijuana, the next most intuitive analogue to the modern mind is alcohol. Drinking lots of alcohol was a normal part of colonial life. Mark Edward Lender & James Kirby Martin, *Drinking in America: A History* 9–14 (1987). But the Founders also understood that drinking could provoke people to act dangerously. In England, drunkenness was widely decried as contributing to crime and violence. *See* Dana Rabin, *Drunkenness and Responsibility for Crime in the Eighteenth Century*, 44 J. Brit. Studies 457, 459–66 (2005). So in 1606, England banned public drunkenness, declaring it "the roote and foundacion of many other enormious Synnes, as Bloodshed Stabbinge Murder … and such lyke." 4 Jac. 1, c. 5 (1606); *see also* 4 William Blackstone, *Commentaries* *64 (discussing the law). And justices of the peace could require twice-convicted drunks to post sureties for their good behavior; drunks who did not comply could be jailed. Michael Dalton, *The Country Justice: The Practice, Duty and Power of the Justices of the Peace* 289 (London, Henry Lintot 1746).

When the Founders crossed the Atlantic, they carried these concerns with them. Dr. Benjamin Rush, a signer of the Declaration of Independence, delegate to the Continental Congress, and preeminent Founding-era medical authority, noted that intoxication breeds crime, including "[f]ighting," "[b]urglary," and "[m]urder." Benjamin Rush, *An*

*Inquiry into the Effects of Ardent Spirits upon the Human Body and Mind* 2 (8th ed., Boston, James Loring 1823). Likewise, he viewed "crimes and infamy … [as the] usual consequences of the intemperate use of ardent spirits." *Id.* at 13.

States recognized the danger of mixing alcohol with guns. An early Rhode Island law banned firing guns at night and in taverns, and a New York law barred shooting around New Year's Eve to prevent damage caused by combining alcohol with firearms. *See Acts & Laws of the English Colony of Rhode-Island & Providence Plantations* 120 (Newport, Hall 1767); Act of Feb. 16, 1771, ch. 1501, *reprinted in* 5 *The Colonial Laws of New York from the Year 1664 to the Revolution* 244, 244–46 (Albany, James B. Lyon 1894).

Plus, early legislatures authorized constables to confine drunks who posed a risk to others until they sobered up. *See, e.g.*, *General Laws and Liberties of the Massachusetts Colony* 81 (1672) (authorizing officers to imprison any drunk who was "abus[iv]e to" or was "striking" others); *Grants, Concessions, and Original Constitutions of the Province of New-Jersey: The Acts Passed during the Proprietary Governments, and Other Material Transactions before the Surrender Thereof to Queen Anne* 107 (1753) (ordering that drunks who "are unruly and disturbers of the Peace, shall be put in the Stocks, until they are Sober").

Some jurisdictions even locked up anyone found drunk in public. Act of June 18, 1807, *reprinted in Laws of the State of New-Hampshire, Passed from December Session, 1805, to June Session, 1810, Inclusive* 74 (Concord, N.H., Isaac Hill 1811) (empowering officers to "arrest any … common

drunkards" found at night and keep them in jail "until the following day"); Act of Sept. 17, 1807, *reprinted in Compend of the Acts of Indiana, From the Year Eighteen Hundred and Seven Until That of Eighteen Hundred and Fourteen, Both Inclusive* 54–55, 91 (Vincennes, Ind., Elihu Stout 1817) (ordering justices of the peace to imprison noisy drunks for up to "48 hours").

Others enacted surety regimes empowering magistrates to make drunkards give security for peace and good behavior or be imprisoned. *Acts and Laws of his Majesties Colony of Rhode-Island, and Providence-Plantations in America* 11 (Boston, John Allen 1719); An Act Against Breaking the Peace, *reprinted in Acts and Laws of the State of Connecticut, in America* 189 (Hartford, Elisha Babcock 1786); *The Public Laws of the State of South-Carolina* App. II at 26 (Philadelphia, Aitken & Son 1790); Act of December 26, 1792, *in Digest of the Laws of Virginia Which are A Permanent Character and General Operation* 756 n.2 (Richmond, Smith & Palmer 1841); Act of Dec. 16, 1812, *in A Digest of the Laws of the Corporation of the City of Washington to the First of June, 1823*, at 141 (Washington, D.C., James Wilson 1823) (requiring those "found … drunk in or about the streets" to "enter into security for good behaviour for a reasonable time" or be sentenced to 90 days' labor); *see also* 1 *Laws of the State of Delaware* 173–74 (New Castle, Del., Samuel & John Adams 1797) (punishing drunkenness and requiring drunks who abused arresting officers to be "bound to his or her good behaviour" as "breaker[s] of the peace"); *A Digest of the Laws of Maryland* 206 (Baltimore, Thomas Herty ed., 1799) (punishing drunkenness and requiring any drunkard who

"revil[ed]" arresting officers to "give security … for his good behaviour for three months[] or suffer one month's imprisonment without bail").

Like the surety laws that the Court relied on in *Rahimi*, these regimes were a "form of preventive justice": Drunks had to promise not to break the peace, lest they be locked up and thus disarmed. *Rahimi*, 602 U.S. at 695 (internal quotation marks omitted).

### B. The Founding Generation likewise incapacitated the mentally ill who risked endangering others

After alcohol, the next most fitting historical analogy to marijuana is how the Founders thought about the danger posed by the mentally ill. "Obviously, mental illness and drug use are not the same thing." *United States v. Veasley*, 98 F.4th 906, 912 (8th Cir. 2024). But in dealing with a new social problem like habitual marijuana use, as Judge Stras has explained, "we cannot look at history through a pinhole." *Id.* (also providing many of the sources discussed below). Instead, we must broaden our view by looking at how the Founding generation addressed all analogous problems.

And the Founding Generation often analogized intoxication to mental illness, sharing our modern intuition that "their behavioral effects overlap." *Id.* They understood "habitual drinking" as, in part, a form of "blameless insanity." Erik Fisher, *The Urge: Our History of Addiction* 47 (2022). Dr. Rush described drunkenness as "a temporary fit of madness." Rush at 6. Likewise, one of Dr. Rush's patients, a chronic drug user, was diagnosed as suffering "[i]nsanity from the use of Opium." Elizabeth Kelly Gray, *Habit Forming:*

*Drug Addiction in America*, 1776–1914, at 20 (2023). Medical observers started seeing excessive drinking as a "significant" trigger of "madness." Mary Ann Jimenez, *Changing Faces of Madness* 72 (1987). Thomas Cooley's influential treatise later drew the same comparison. Thomas M. Cooley, *A Treatise on the Constitutional Limitations Which Rest upon the Legislative Power of the States of the American Union* *599 n.1 (Boston, Little, Brown & Co. 1868) ("Drunkenness is regarded as temporary insanity.").

The analogy fit because the Founders understood mental illness as "a transitory condition, just like intoxication," that impaired one's mental faculties temporarily. *Veasley*, 98 F.4th at 913. Those who suffered from bouts of mental illness were called "lunatic[s]," drawn from the Latin word for the moon, on the belief that they "ha[d] lucid intervals, sometimes enjoying [their] senses, and sometimes not, and that frequently depending on the change of the moon." 1 Blackstone at *304. (Because we focus on the history, we use the historical terms even though they offend modern ears.) Lunatics intermittently "lost the use of [their] reason" and regained it. *Id.*; *accord* Anthony Highmore, *A Treatise on the Law of Idiocy and Lunacy* 3, 104–05 (London, R. Wilks 1807); *Lunatic*, *in* 3 *A New and Complete Dictionary of Arts and Sciences* 1951 (London, Society of Gentlemen 1754). "[T]he law always imagine[d] that these accidental misfortunes [of mental illness] may be removed …." 1 Blackstone at *305.

Still, the Founders understood that some lunatics posed a risk of endangering others because of their mental state. When a lunatic posed no danger to

society, he remained free, retaining an ordinary citizen's rights and responsibilities. *Veasley*, 98 F.4th at 913; *see also* Highmore at 128–29 (stating that a will that a lunatic drew up while lucid was valid). But when officials determined that a person might be in a state of lunacy that would pose a danger to society, the lunatic temporarily lost his liberty. He was locked up in a jail, hospital, or asylum until the threat he posed abated. In eighteenth-century England, justices of the peace could lock up those "who by Lunacy, or otherwise, are furiously mad, or are so far disordered in their Senses that they *may* be dangerous to be permitted to go abroad." Justices Commitment Act of 1743, 17 Geo. 2, c. 5, § 20 (Eng.) (emphasis added). These restrictions were usually temporary, lasting "only so long as such lunacy or disorder shall continue, and no longer." Henry Care & William Nelson, *English Liberties, or the Free-Born Subject's Inheritance* 329 (6th ed., Providence, John Carter 1774).

The colonists brought these English practices with them across the Atlantic. Philadelphians who were both mentally ill and dangerous "were confined in barred cells in the basement" of a hospital; "particularly violent individuals" were "restrained … using a 'straitwaistcoat' or 'mad shirt,' or heavy arm and leg chains." Lynn Gamwell & Nancy Tomes, *Madness in America* 20 (1995). New York provided that the "furiously mad" could be "kept safely locked up" and "chained." An Act for Apprehending and Punishing Disorderly Persons, c.31 (1788), *reprinted in* 2 *Laws of the State of New York Passed at the Sessions of the Legislature Held in the Years 1785, 1786, 1787 and 1788, Inclusive* 643, 645 (Albany, Weed, Parsons & Co. 1886). Connecticut obligated

local authorities to lock up temporary lunatics who might "endanger[] [others] in person or estate." An Act for Relieving and Ordering of Idiots, Impotent, Distracted, and Idle Persons § 18 (1793), *in* 1 *The Public Statute Laws of the State of Connecticut* 382, 386 (Hartford, Hudson & Goodwin 1808). And Massachusetts authorized justices to confine any person "so furiously mad as to render [him] dangerous to the peace and safety of the good people." Stat. 1797, c. 62, § 3, *reprinted in* 2 *Compendium and Digest of the Laws of Massachusetts* 688 (Boston, Thomas B. Wait & Co. 1810).

To justify incapacitating someone, these officials had to predict whether he would become dangerous in periods of lunacy. They did not have to wait until he had harmed someone else. *See* Jimenez at 91–92 (noting that Boston's "maniac house" confined not only the "turbulent and almost ungovernable," but also some who "were only 'periodically' insane" and even some who "were calm and not violent" because they "were viewed as potentially dangerous"). Rather, they had "a lot of discretion" to discern when someone posed enough of a threat to public safety to warrant confinement. *Veasley*, 98 F.4th at 914. For instance, one manual for justices of the peace explained that "[a]ny person" could "confin[e]" a lunatic "as is proper in such circumstances." *Lunatics*, *in* James Parker, *Conductor Generalis: Or the Office, Duty and Authority of Justices of the Peace, High-Sheriffs, Under-Sheriffs, Coroners, Constables, Goalers* [*sic*]*, Jury-Men, and Overseers of the Poor* 290, 291 (New York, John Patterson 1788).

And these same officials had to make judgment calls to discern when a person no longer needed to be confined. Officials could not possibly monitor a person's mental state moment by moment. So people who were in a state of lunacy were "viewed as potentially dangerous," even if they were periodically lucid. Jimenez at 91–92. They could thus remain locked up until an official determined that the threat they posed had fully abated. *See id.* Those judgment calls were not exact science. Justices of the peace were typically laymen, trained neither in law nor in medicine. Chester H. Smith, *The Justice of the Peace System in the United States*, 15 Calif. L. Rev. 118, 127 (1927).

Temporary imprisonment required temporary disarmament. Those who were confined could not bring their guns with them into confinement. *Veasley*, 98 F.4th at 913 (collecting sources). So there was a longstanding, widespread tradition of disarming people whose mental illnesses caused them to lose their senses temporarily and pose a risk to others.

### C. History and tradition thus support § 922(g)(3)'s constitutionality as applied to drug users who would pose a risk to others if armed

"Taken together," these laws "confirm what common sense suggests": Someone who regularly uses mind-altering substances that make him a "credible threat to the physical safety of others with a gun" may be disarmed temporarily until he stops using drugs. *Rahimi*, 602 U.S. at 694, 698.

And that is precisely what § 922(g)(3) does. It bars gun possession by anyone "who is an unlawful user of

or addicted to any controlled substance." Controlled substances include Schedule I drugs like heroin, LSD, and marijuana. 21 U.S.C. § 812, sched. I. An "addict" is anyone "who habitually uses any narcotic drug so as to endanger the public morals, health, safety, or welfare, or who is so far addicted to the use of narcotic drugs as to have lost the power of self-control with reference to his addiction." 21 U.S.C. § 802(1). And a "user" is anyone who has "engaged in regular use [of drugs] over a period of time proximate to or contemporaneous with the possession of the firearm." *United States v. Augustin*, 376 F.3d 135, 139 (3d Cir. 2004). So by its own terms, § 922(g)(3) temporarily bars anyone who often uses drugs from possessing a gun shortly before, during, or after using drugs.

That restriction is well-grounded in history. By taking guns out of the hands of frequent drug users, § 922(g)(3) addresses a problem comparable to the one posed by the dangerously mentally ill and dangerous drunks: a risk of danger to the public due to an altered mental state. And its temporary restriction on gun rights is analogous to these historical restrictions as well. Of course, § 922(g)(3) "is by no means identical to" these historical precursors. *Id.* "[B]ut it does not need to be"; its temporary restriction on drug users who would pose a risk of danger with a gun in their hands "fits neatly" within this historical tradition. *Id.*

*First*, the historical laws targeted a problem comparable to the one that § 922(g)(3) addresses as applied to drug users who would risk danger to others if armed. Both the drunkenness and lunacy laws temporarily incapacitated people based on the judgment that their impaired mental state posed a

risk to others. The lunacy laws authorized officials to confine lunatics based on an individualized finding "that there would be some *risk* of 'mischief' without it." *United States v. Cooper*, 127 F.4th 1092, 1096 (8th Cir. 2025) (emphasis added) (quoting *Veasley*, 98 F.4th at 914 (quoting Daniel Davis, *A Practical Treatise upon the Authority and Duty of Justices of the Peace in Criminal Prosecutions* 41 (Boston, Hilliard, Gray, Little, & Wilkins 2d ed. 1828))). This meant that someone could be deemed "dangerous" and so needing confinement before he had harmed or threatened anyone. Officials did not need to wait for the danger to materialize. But such findings were still always based on an "individualized assessment" rather than a categorical judgment. *Id.*

Likewise, Founding-era legislatures often required drunks to post bonds for their good behavior or face imprisonment, based on the judgment that drunks posed a risk to public peace and the safety of others. *See, e.g.*, *Acts and Laws of the State of Connecticut* at 189; *The Public Laws of the State of South-Carolina* App. II at 26. In this way, both the drunkenness and lunacy laws operated like the surety and going-armed laws that the Supreme Court blessed in *Rahimi*: They "permit[ted] the disarmament of individuals who pose a credible threat to the physical safety of others," thereby "providing a mechanism for preventing violence before it occurred." *Rahimi*, 602 U.S. at 693, 697. And they both did so based on a risk assessment: Is someone likely to pose a danger to others because of his impaired mental state?

*Second,* the historical laws imposed a comparable, indeed greater, burden on gun rights. The lunacy laws

authorized magistrates to lock up in jails, hospitals, or asylums mentally ill people who they found posed a risk to others. So did Massachusetts's and New Jersey's drunkenness laws and many states' surety laws, which authorized locking up drunks who broke their promises to stay dry. Imprisonment necessarily involved disarmament. *Veasley*, 98 F.4th at 913 (collecting sources). And "if imprisonment was permissible" to protect "the physical safety of others, then the lesser restriction of temporary disarmament that [§ 922(g)(3)] imposes is also permissible." *Rahimi*, 602 U.S. at 699.

Plus, § 922(g)(3)'s burden is temporary. It forbids gun possession only as long as someone is using drugs regularly and so "likely poses an increased risk of physical danger to others if armed." *Pitsilides v. Barr*, 128 F.4th 203, 212 (3d Cir. 2025) (internal quotation marks omitted). To be sure, drug users who flout the ban will face a felony conviction, and felons can be disarmed. *See* 18 U.S.C. § 922(g)(1). But as we have recognized, disarmed felons may bring declaratory judgment actions or petition the Attorney General to get their rights back. *See Range*, 124 F.4th at 232; 18 U.S.C. § 925(c). Section 922(g)(3)'s "limited duration" thus tracks the historical restrictions on lunatics or drunks, which were also temporary and ceased once someone regained his senses or sobered up. *Rahimi*, 602 U.S. at 699.

Our partially dissenting colleague parts ways with us, contending that a test focused on *risk* of danger impermissibly lowers the bar. According to our dissenting colleague, someone must be "plainly" dangerous to be disarmed. Dissent at 6. Anything else

flouts the history and precedent that binds us, he says. Yet it is the other way around. To start, the history clearly shows that officials did not need to wait to act until a drunkard or mentally ill person had harmed another. Rather, as our sister circuit has acknowledged, officials determined whether to confine a "lunatic" based on whether there would be "some *risk* of mischief without it." *Cooper*, 127 F.4th at 1096 (emphasis added) (internal quotation marks omitted). The same goes for drunks. True, as our dissenting colleague points out, a few laws let officials confine drunks only after they acted abusively. Dissent at 4–5. But that plucks out a handful of the dozen that we cite, obscuring historical reality. *See Bruen*, 597 U.S. at 65–66 (cautioning against cherry-picking history). Many other laws deemed mere drunkenness sufficient to justify temporary disarmament. *See*, *e.g.*, *Acts and Laws of the State of Connecticut* at 189 (authorizing officials to make any "drunkard[]" post surety for good behavior or be imprisoned); *The Public Laws of the State of South-Carolina*, App. II at 26 (same); *Digest of the Laws of Virginia Which are A Permanent Character and General Operation* at 756 n.2 (same); *A Digest of the Laws of the Corporation of the City of Washington* at 141 (same); *Acts and Laws of the State of New-Hampshire* at 74 (authorizing officials to temporarily confine drunks); *Compend of the Acts of Indiana* at 54–55 (same). Even the Connecticut surety regime, which our dissenting colleague says disarmed only those who "terrif[ied] or disquiet[ed]" others, actually authorized officials to require all "drunkards" to post surety for good behavior. *Laws of the State of Connecticut* at 189; *see* Dissent at 4. Indeed, at the Founding, the consensus was that surety laws

extended to all "common drunkards," not just those who acted abusively. 4 Blackstone at *256; Parker at 348; Eliphalet Ladd, *Burn's Abridgement, Or The American Justice* 405–406 (2d ed. 1792). So in this respect, we must part ways with the dissent on the proper principle to extract from the history: Disarmament based on danger was always based on a predictive judgment of danger, not certainty.

Our colleague equally misses the mark when he claims that we dodge binding precedent. True, *Rahimi* concluded that someone found to "pose[] a clear threat of physical violence to another" could be disarmed. *Rahimi*, 602 U.S. at 698. But *Rahimi* did not exhaustively catalogue when someone could be disarmed; it answered only that narrower question presented. *Id.* at 684–85 (considering as-applied challenge to § 922(g)(8), which disarms those found to be a "credible threat to the physical safety of [an] intimate partner" or child). Its holding merely parroted the requirements of § 922(g)(8) itself. And it said no more and no less about the propriety of other restrictions. *See id.* at 698. Indeed, *Rahimi* expressly declined to "undertake an exhaustive historical analysis … of the full scope of the Second Amendment." *Id.* at 702 (internal quotation marks omitted).

The dissent similarly errs in analyzing *Pitsilides*. There, we considered only an as-applied challenge to § 922(g)(1), the felon-in-possession law. And we held, based on the history we recounted in *Range*, that the Second Amendment permits disarmament, "at a minimum," when an individual "present[s] a special danger of misusing firearms," meaning he "would

likely pose a physical danger to others if armed." *Pitsilides*, 128 F.4th at 210 (cleaned up). We said nothing about what might justify a different regulation, such as § 922(g)(3), which targets a different problem through different means.

Of course, the history justifying § 922(g)(8) or § 922(g)(1) in some applications may be relevant to any Second Amendment analysis. But it is only a slice of the history that reveals the "principles that underpin our regulatory tradition." *Rahimi*, 602 U.S. at 692. We must not blindly defer to historical principles extracted from partial surveys of history relevant to other regulations.

Even so, we discern a similar principle from the relevant history: Drug users can be disarmed based on the likelihood that they will physically harm others if armed. But here is the distinction: To assess that risk, judges need not wait until a drug user has harmed or threatened another. They may decide whether a drug user "would likely pose a physical danger to others if armed" based on the nature of someone's drug use and the risk that it will impair his ability to handle guns safely. *Pitsilides*, 128 F.4th at 210 (cleaned up); *see also id.* at 212 (noting that conduct can be relevant if it bears on whether someone "likely poses an increased risk of physical danger to others if armed"). In divining this rule, we do not flout precedent but abide by it. *Bruen* tells us to follow the history where it leads. *See Bruen*, 597 U.S. at 17. That is all we do here.

Finally, the dissent protests the consequences, worried that our holding will disarm even his hypothetical "hunters in a duck blind." Dissent at 13. But a buzzed brain with a loaded gun sounds like a

misfire waiting to happen—the exact risk that our historical tradition suggests justifies disarmament.

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In sum, § 922(g)(3) temporarily and constitutionally restricts the gun rights of drug users only as long as they "present a special danger of misusing firearms." *Pitsilides*, 128 F.4th at 211 (cleaned up); *see also United States v. Daniels*, 124 F.4th 967, 978–79 (5th Cir. 2025) (leaving open whether § 922(g)(3) is constitutional as applied to some marijuana users); *Cooper*, 127 F.4th at 1098 (same).

## III. ON REMAND, THE DISTRICT COURT MUST FIND MORE FACTS TO DECIDE WHETHER § 922(g)(3) IS CONSTITUTIONAL AS APPLIED TO HARRIS

The District Court let the government prosecute Harris under § 922(g)(3) without finding that Harris's frequent marijuana use increased the risk that he could not handle guns safely. We do not fault the District Court for failing to make this finding. When Harris moved to dismiss the indictment, the District Court was bound to apply the means-end scrutiny dictated by *Binderup*. But then the Supreme Court decided *Bruen*, "effect[ing] a sea change in Second Amendment law" and abrogating that decision. *Pitsilides,* 128 F.4th at 208. Now "history and tradition," not "legislative interest balancing," dictates whether a law comports with the Second Amendment. *Bruen*, 597 U.S. at 22, 26.

The District Court had no chance to take the first crack at whether § 922(g)(3) is constitutional as applied to Harris under this proper framework. Plus,

whether Harris's § 922(g)(3) conviction is constitutional turns on many facts unanswered by the existing record. Although Harris admitted smoking multiple times a week throughout the year *on average*, many other details are foggy. But we are not a fact-finding court. *Anderson v. Bessemer City*, 470 U.S. 564, 574 (1985). And we "are a court of review, not first view." *Frank v. Gaos*, 586 U.S. 485, 493 (2019) (internal quotation marks omitted). So we will remand for the District Court to fill in the record before applying the law outlined here.

On remand, the parties should have a chance to present their own evidence and arguments about how Harris's drug use affected his mental state and riskiness. In particular, the District Court should consider, among other factors:

- The length and recency of the defendant's use during and shortly before his gun possession;
- The drug's half-life;
- Whether use of the drug affects a person's judgment, decision-making, attention, inhibition, or impulse control;
- Whether the drug may induce psychosis;
- The drug's interference with a user's perception of his own impairment; and
- The long-term physical and mental effects of the use of that drug.

We include this non-exhaustive list of factors to guide the District Court's inquiry into the individual defendant's use, not to dictate it. On remand, the District Court should explore any questions that it thinks bear on the inquiry here. And future courts

considering § 922(g)(3) challenges should also consider these factors in determining whether someone's drug use suggests that he "likely poses an increased risk of physical danger to others if armed." *Pitsilides,* 128 F.4th at 212 (internal quotation marks omitted).

We stress that, consistent with the history, district courts need make only probabilistic judgments of danger. A drug user need not have harmed someone, threatened harm, or otherwise acted dangerously to justify disarmament. But consistent with the history, district courts must make individualized judgments and conclude that disarming a drug user is needed to address a risk that he would pose a physical danger to others. And in doing so, they should consider the questions we have suggested here and any others needed to discern whether a particular drug user may be disarmed to prevent a risk of danger.

## IV. SECTION 922(g)(3) IS NOT VAGUE

Harris also challenges the statute as vague on its face. He objects that it does not define the phrase "unlawful user" and so does not give "ordinary people fair notice of the conduct it punishes." 18 U.S.C. § 922(g)(3); *Johnson v. United States*, 576 U.S. 591, 595 (2015). But that argument fails.

### A. As a rule, defendants may not facially challenge criminal laws

To challenge § 922(g)(3) as facially vague, Harris must first show that it is vague as applied to his own conduct. The Supreme Court has long held that, with few exceptions, a defendant whose conduct is "clearly proscribed cannot complain of the vagueness of the law as applied to the conduct of others." *Holder v. Humanitarian L. Project*, 561 U.S. 1, 19 (2010)

(quoting *Vill. of Hoffman Ests. v. Flipside, Hoffman Ests.*, 455 U.S. 489, 495 (1982)). That rule "makes perfectly good sense." *United States v. Morales-Lopez*, 92 F.4th 936, 941 (10th Cir. 2024). If a statute clearly warns an ordinary person that his own conduct is a crime, he cannot dodge liability just because it might not be clear as to someone else.

Still, Harris claims that the Court jettisoned this bedrock rule in *Johnson*. There, it invalidated the Armed Career Criminal Act's residual clause as unconstitutionally vague. 576 U.S. at 597. It did so even though the clause was not vague "in all its applications" and did not consider whether it was vague as applied to the defendant's own conduct. *Id.* at 603. But it did that because of the unique problems with applying the categorical approach. *Morales-Lopez*, 92 F.4th at 942–43. Under that approach, courts had to ignore the defendant's "real-world facts" and instead hypothesize the "idealized ordinary case" of the crime. *Johnson*, 576 U.S. at 597. Those intellectual gymnastics denied defendants fair notice about what real-world conduct the residual clause punished. *Id.* at 604. But that provision is worlds apart from ordinary criminal laws, like § 922(g)(3), which depend not on hypotheticals, but on each case's facts.

We thus join our sister circuits in holding that *Johnson* did not abrogate the ordinary rule for facial-vagueness challenges. *See United States v. Requena*, 980 F.3d 30, 40–43 (2d Cir. 2020); *United States v. Hasson*, 26 F.4th 610, 620–21 (4th Cir. 2022); *United States v. Cook*, 970 F.3d 866, 877 (7th Cir. 2020); *United States v. Bramer*, 832 F.3d 908, 909 (8th Cir.

2016) (per curiam); *Morales-Lopez*, 92 F.4th at 942–43; *Bowling v. McDonough*, 38 F.4th 1051, 1061–62 (Fed. Cir. 2022). Harris cannot bring his facial-vagueness attack without first showing that the phrase "unlawful user" is vague as applied to his case.

**B. Section 922(g)(3) is not vague as applied to Harris**

Harris cannot clear that bar. Though there will be borderline cases, Harris's habitual marijuana smoking falls squarely within § 922(g)(3)'s plain text. So the statute put him on notice that his conduct was a crime.

Of course, the exact boundaries of "unlawful user" are debatable. *See Augustin*, 376 F.3d at 138–39. But when a statute "can be made constitutionally definite by a reasonable construction," we must give it that construction. *United States v. Harriss*, 347 U.S. 612, 618 (1954). Heeding that guidance, we have held that § 922(g)(3) requires a defendant to "have engaged in regular use [of drugs] over a period of time proximate to or contemporaneous with the possession of the firearm." *Augustin*, 376 F.3d at 139. That tracks the statute's text. A "user" is a "person who takes narcotic, etc., drugs," implying some regularity of use. *User* (def. 1b), *Oxford English Dictionary* (2d ed. 1989). And the verb "is" in the statute speaks in the present tense, requiring the use of drugs to be close in time to the gun possession.

Harris's conduct fits the bill. He smoked unlawfully: Federal law makes marijuana illegal. 21 U.S.C. § § 812, 841. And he did so often enough to be a "user." He admitted smoking marijuana at least several times per week around when he bought the

guns, including the night before buying his third gun. So under both the statute's "text" and "settled interpretations," he had clear notice that he was breaking the law. *United States v. Lanier*, 520 U.S. 259, 267 (1997); *see also United States v. Deng*, 104 F.4th 1052, 1055 (8th Cir. 2024) (rejecting vagueness claim by frequent marijuana smoker). His vagueness challenge fails.

Future cases will require closer calls about how often and how recently one must use a drug to count as an "unlawful user." For instance, does a person who smokes marijuana sporadically before bed for chronic back pain do it regularly enough to count? These cases will present close issues not only of statutory construction, but also of Second Amendment rights. But here, the question is not close. As applied, § 922(g)(3) is not unconstitutionally vague.

## V. HARRIS'S § 922(a)(6) CONVICTIONS MUST STAND

Finally, Harris challenges his convictions for falsely denying that he was an unlawful user. At first, he claimed that there was insufficient evidence to sustain the convictions. But his reply brief disavowed that claim. Now, he claims only that if we invalidate his § 922(g)(3) convictions under either the Due Process Clause or Second Amendment, we "must necessarily vacate [his] § 922(a)(6) convictions" too. Reply Br. 29.

Harris's convictions do not violate due process, so this claim would seem to rise and fall with how the District Court decides the Second Amendment issue on remand. But we do not reach this claim because Harris raised it for the first time in his reply brief.

*Barna v. Bd. of Sch. Directors of Panther Valley Sch. Dist.*, 877 F.3d 136, 146 (3d Cir. 2017). Harris insists that he has made the claim all along but simply mislabeled it in his opening brief. *See United States v. Negroni*, 638 F.3d 434, 445 (3d Cir. 2011). Yet nothing in that brief suggests that he was claiming, as he does in reply, that vacating his §922(a)(6) convictions would be "part of the remedy required" if his §922(g)(3) convictions were found to violate the Second Amendment. Reply Br. 29. Harris simply changed claims mid-stream, so he did not preserve this one for appeal. His § 922(a)(6) convictions must stand.

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Common sense tells us that some mind-altering substances make people too dangerous to trust with guns. So does our nation's regulatory tradition, which has long embraced similar common-sense restrictions for drunks and the dangerously mentally ill. Temporarily disarming a frequent marijuana user like Harris may fall within that tradition. But we lack enough facts to decide if that is so. Even so, the statutory phrase "unlawful user" is not vague as applied to Harris's own frequent marijuana use while he possessed guns. Plus, Harris's convictions for lying to get the guns must stand. So we will affirm in part, vacate in part, and remand for the District Court to find facts necessary to resolve Harris's Second Amendment challenge.

KRAUSE, *Circuit Judge*, concurring, with whom BIBAS, *Circuit Judge*, joins.

I join the majority opinion in full. As the majority persuasively explains, while habitual marijuana use was virtually nonexistent at the Founding, early legislatures wrestled with analogues concerns, namely drunkenness and lunacy. *See* Maj. Op. 7–14. And they imposed similar, if not more burdensome, restrictions on drunks and lunatics than those which 18 U.S.C. § 922(g)(3) imposes on users of controlled substances. I write separately, however, with some observations about our Nation's evolving—and conflicted—relationship with marijuana and how modern-day understandings may inform the application of § 922(g)(3) to habitual marijuana users.

Our regulations concerning marijuana have shifted over time with our developing uses of it and our understanding of its properties. As the majority recounts, early uses of hemp were limited to cloth, paper, and rope. *See id.* at 6. It was not until the early twentieth century that people began smoking marijuana recreationally. Martin Booth, *Cannabis: A History* 127–28 (2003). Early regulation—coming off the heels of the temperance movement—primarily consisted of state and local enforcement, until the federal government in 1937 stepped in with the Marihuana Tax Act, which imposed "onerous administrative requirements" and "prohibitively expensive taxes" that "practically curtailed the marijuana trade." *Gonzales v. Raich*, 545 U.S. 1, 11 (2005).

By the mid- to late-1960s, however, public sentiment had changed, with recreational marijuana

use budding among young people. *See* James B. Slaughter, *Marijuana Prohibition in the United States: History and Analysis of a Failed Policy*, 21 Colum. J.L. & Soc. Probs. 417, 420 (1988). And by the mid-1970s, marijuana gained wider acceptance as a recreational drug. Booth at 240. These changes in Americans' attitudes towards marijuana prompted states to revise their regulations, so that by 1973, nearly every state had substantially reduced its penalties for simple marijuana possession. Richard J. Bonnie & Charles H. Whitebread, *The Marijuana Conviction: A History of Marijuana Prohibition in the United States* 240, 278–79 (1999). Much of this deregulation has been chalked up to the congressionally directed National Commission on Marihuana and Drug Abuse's report, *Marihuana: A Signal of Misunderstanding*. *See* Slaughter at 422–24. Its comprehensive investigation into marijuana concluded, among other things, that "there is little proven danger of physical or psychological harm from the experimental or intermittent use of the natural preparations of cannabis," and that "its use at the present level does not constitute a major threat to public health." Nat'l Comm'n on Marihuana and Drug Abuse, *Marihuana: A Signal of Misunderstanding* 65, 90 (1972).

The federal government, however, remained unpersuaded. Recognizing its psychotropic effects, Congress prohibited the manufacture, distribution, dispensation, and possession of marijuana in 1970, replacing the preceding patchwork of various state

and federal regulation.[1] 21 U.S.C. §§ 841(a)(1), 844(a). This federal prohibition presaged a retrenchment in public perceptions of marijuana in the 1980s, triggered by "[a]dolescent marijuana use, the appearance of cocaine use and abuse on a national scale[,] and the rising potency of marijuana." Slaughter at 438–39. This pendulum swing catalyzed renewed federal enforcement of marijuana prohibitions and additional federal criminal legislation targeting the drug trade. *See id.* at 443–46; Comprehensive Crime Control Act of 1984, Pub. L. 98-473, 98 Stat. 1976.

Today, marijuana is legal to various extents in forty states, including for recreational use in twenty-four states and the District of Columbia. *State Medical Cannabis Laws*, Nat'l Conf. of State Legislatures (June 27, 2025), https://www.ncsl.org/health/state-medical-cannabis-laws. Federal law, however, has continued to bar its use, listing it in the Controlled Substances Act as a Schedule I controlled substance, 21 U.S.C. § 812, sched. I(c)(10), meaning that in the view of Congress and the Attorney General, *id.* § 811(a), it "has a high potential for abuse," "has no currently accepted medical use in treatment in the United States," and lacks "accepted safety for use of the drug or other substance under medical supervision," *id.* § 812(b)(1). And because marijuana is classified as a controlled substance, its users are

[1] While the federal government did regulate marijuana in various forms before 1970, the Controlled Substances Act was the first comprehensive federal law targeting illicit drug use and possession. *See Gonzales v. Raich*, 545 U.S. 1, 10-14 (2005).

subject to § 922(g)(3)'s ban on possession of a firearm by habitual users. 18 U.S.C. § 922(g)(3).

That brings us to the case presently before us, for even as some have pressed Congress to follow the states' lead, modern science has prompted a reassessment of that more permissive approach to marijuana use, *see, e.g.*, Rosalie Liccardo Pacula et al., *Developing Public Health Regulations for Marijuana: Lessons from Alcohol and Tobacco*, 104 Am. J. Pub. Health 1021, 1022 (2014) (recognizing the growing consensus about "certain acute effects and consequences of chronic [marijuana] use" warranting public health regulation), with implications for as-applied challenges by marijuana users.

Clinical studies reflect that marijuana use impairs users' judgment, decision-making, attention, and inhibition, Michael L. Alosco et al., *Neuropsychology of Illicit Drug Use and Impulse Control Disorders*, *in Clinical Neuropsychology: A Pocket Handbook for Assessment* 605, 608 (Michael W. Parsons & Thomas A. Hammeke eds., 3d ed. 2014),[2] causing symptoms that mirror those of mild cognitive impairment that might arise from mental illness or

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[2] *See also Harmelin v. Michigan*, 501 U.S. 957, 1002 (1991) (Kennedy, J., concurring) (observing the danger posed by "drug-induced changes in physiological functions, cognitive ability, and mood"); Nat'l Acads. of Scis., Eng'g, and Med., *The Health Effects of Cannabis and Cannabinoids: The Current State of Evidence and Recommendations for Research* 53 (2017) (explaining that the effects of marijuana intoxication include an altered "perception of time," "decreased short-term memory," and "impaired perception and motor skills," and that, at higher doses, marijuana can cause "panic attacks, paranoid thoughts, and hallucinations").

alcohol, *see Cognitive Impairment*, Nat'l Cancer Inst. Dictionary, https://www.cancer.gov/publications/dictionaries/cancer-terms/def/cognitive-impairment (last visited July 10, 2025). According to some studies, these effects can last for hours after use, Alosco et al. at 608, and in frequent cannabis users, they can be more intense and last longer, Rebecca D. Crean et al., *An Evidence Based Review of Acute and Long-Term Effects of Cannabis Use on Executive Cognitive Functions*, 5 J. Addiction Med. 1, 5–6 (2011).

Other studies reflect that this impaired judgment, diminished motor skills, and lower inhibition make it dangerous to combine marijuana with high-risk activities. *See, e.g.*, Thomas D. Marcotte et al., *Driving Performance and Cannabis Users' Perception of Safety*, 79 JAMA Psychiatry 201, 206 (2022) (finding that even though people may not perceive that they are unsafe drivers an hour and a half after smoking marijuana, they perform worse on driving simulators); Daniel T. Myran et al., *Cannabis-Involved Traffic Injury Emergency Department Visits After Cannabis Legalization and Commercialization* JAMA Network Open, Sept. 6, 2023, art. e2331551, at 7, https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2808961 (finding that, between 2010 and 2021, cannabis-involved traffic accidents in Ontario requiring emergency-room treatment rose 475%).

Some studies show that frequent marijuana use can prolong these consequences because smoking marijuana chronically causes THC, which gives marijuana its psychoactive properties, to build up in the blood, potentially contributing to longer-lasting cognitive effects. Emese Kroon et al., *Heavy Cannabis*

*Use, Dependence, and the Brain: A Clinical Perspective*, 115 Addiction 559, 565 (2019). One meta-analysis found that chronic marijuana use can impair decision-making, increase risk-taking, and exacerbate impulsivity for hours, days, or even a few weeks. *See* Crean et al. at 3 tbl. 2, 4–5. ("[C]hronic, heavy cannabis use[rs] show . . . enduring deficits following three weeks or more abstinence" in decision-making and other executive functions.).

Notably, the marijuana currently available for consumption may magnify these risks, as the marijuana available today is far more potent than it was several decades ago, containing about four times as much THC. *Compare* Mahmoud A. ElSohly et al., *Changes in Cannabis Potency over the Last Two Decades (1995–2014): Analysis of Current Data in the United States*, 79 Biological Psychiatry 613, 613 (2016) (reporting 4% THC concentration in 1995), *with* Suman Chandra et al., *New Trends in Cannabis Potency in USA and Europe During the Last Decade (2008–2017)*, 269 Eur. Archives Psychiatry & Clinical Neuroscience 5, 9 (2019) (reporting increase to 17% THC concentration by 2017).

I agree with the majority that § 922(g)(3), as applied to "those whose drug use would likely cause them to pose a physical danger to others if armed," Maj. Op. 6, is "consistent with this Nation's historical tradition" of regulating gun possession by drunks and lunatics, *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 17 (2022), and reflects the type of common-sense prophylactic judgment that the Second Amendment permits, *see* Maj. Op. 14–15. We leave it to the District Court on remand to develop the record

on which it relies to apply the statute to Harris. Given the cognitive and motor impairments associated with marijuana use, however, our evolving understanding of the effects of marijuana, as reflected in these types of scientific studies, will bear heavily on that determination.

AMBRO, *Circuit Judge*, concurring in part and dissenting in part

Erik Harris has no history of violence or threatening behavior. The Government wants to disarm him anyway under 18 U.S.C. § 922(g)(3) because he used marijuana around the time he bought his gun. Harris argues that charging him under that provision violates his Second Amendment right. I join my colleagues on a remand that would require the District Court to determine whether the Government has proven that Harris's marijuana causes him to "pose[] a clear threat of physical violence to another" before the Government can disarm him. *Pitsilides v. Barr*, 128 F.4th 203, 209 (3d Cir. 2025) (Krause, J.) (quoting *United States v. Rahimi*, 602 U.S. 680, 698 (2024)).[1] My colleagues correctly note that Harris may be disarmed if his marijuana use makes him a "credible threat to the physical safety of others with a gun." Maj. Op. 14 (citing *Rahimi*, 602 U.S. at 694, 698). But they also obscure this conclusion with language that sets the threshold for potential dangerousness too low. *See, e.g.*, *id.* at 16 ("likely pose[] an increased risk of physical danger to others if armed" (internal quotation marks omitted)), 19 (alluding to an undefined "likelihood" of risk), 20 (suggesting the District Court need only examine whether "Harris's frequent marijuana use increased the risk that he could not handle guns safely"). No other court does so, and on this I dissent.

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[1] I also join the portion of the decision that affirms Harris's convictions under 18 U.S.C. § 922(a)(6) and the District Court's denial of his constitutional vagueness challenge to § 922(g)(3).

## I

Any modern statutory ban on firearms must be "consistent with the principles that underpin the Nation's regulatory tradition." *Rahimi*, 602 U.S. at 681 (citing *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 26–31 (2022)). A two-step framework guides our analysis.

At the first step, we ask whether the Second Amendment presumptively protects Harris's conduct. All agree that it does. Harris is among "the people" who have a right "to keep and bear [a]rms." U.S. Const. amend. II. And he was convicted under § 922(g)(3) for "quintessential Second Amendment conduct: possessing a handgun." Maj. Op. 5 (quoting *United States v. Moore*, 111 F.4th 266, 269 (3d Cir. 2024), *cert. denied*, 2025 WL 1787742 (2025)).

At the second step, the Government must prove that disarming Harris is "consistent with the Nation's historical tradition of firearm regulation." *Range v. Att'y Gen.*, 124 F.4th 218, 228 (3d Cir. 2024) (en banc) (quoting *Bruen*, 597 U.S. at 24). To carry its burden, the Government must show that § 922(g)(3) is "relevantly similar" to historical "analogue[s]," which are Founding-era laws that "impose[d] a comparable burden" with a "comparabl[e] justifi[cation]." *Bruen*, 597 U.S. at 29–30. "[I]f laws at the [F]ounding regulated firearm use to address particular problems, that will be a strong indicator that contemporary laws imposing similar restrictions for similar reasons" are permissible. *Rahimi*, 602 U.S. at 692. But "[e]ven when a law regulates arms-bearing for a permissible reason, … it may not be compatible with the right if it

does so to an extent beyond what was done at the [F]ounding." *Id.*

Case law has distilled three additional rules. First, and most important, "the Second Amendment's touchstone is dangerousness." *Pitsilides*, 128 F.4th at 210 (Krause, J.) (quoting *Folajtar v. Att'y Gen.*, 980 F.3d 897, 924 (3d Cir. 2020) (Bibas, J., dissenting)). The consistent theme uniting Founding-era restrictions is that individuals who pose a threat to the physical safety of others can be disarmed. *Rahimi*, 602 U.S. at 693, 697 (addressing a challenge to § 922(g)(8)); *see also Range*, 124 F.4th at 230 (explaining that Range could not lose his Second Amendment rights without "evidence that he pose[d] a physical danger to others"). Other circuits to have addressed the question here agree. *See United States v. Cooper*, 127 F.4th 1092, 1095 (8th Cir. 2025) ("[F]or disarmament of drug users and addicts to be comparably justified [with Founding-era laws], it must be limited to those who pose a danger to others." (brackets and internal quotation marks omitted)); *United States v. Connelly*, 117 F.4th 269, 277 (5th Cir. 2024) (requiring a factfinder to determine whether the defendant "presents a danger to [himself] and others").

Second, we know that "[n]either our historical tradition nor our modern understanding of the Second Amendment … permits us to blindly defer to a categorical presumption that a given individual permanently presents a special risk of danger." *Range*, 124 F.4th at 276 (Krause, J., concurring in the judgment); *see also id.* at 230 (majority rejecting a "categorical argument" that all "those convicted of

serious crimes" could be "expected to misuse firearms" because it was "far too broad" (internal quotation marks omitted)). At the Founding, the state could burden a person's Second Amendment right only after an individualized determination that he posed a physical danger to others. So today's as-applied dangerousness inquiry is common sense: if the standard for disarming drug users is dangerousness, and countless marijuana users are not dangerous, then not every marijuana user can be stripped of his gun rights. Categories are out. Individual assessments are in.

Finally, we know that bans on gun possession by drug users must be temporary. A person may cease to be dangerous. *See Rahimi*, 602 U.S. at 698– 99. When he is no longer dangerous, he gets his rights—and guns—back. *See id.* at 699. And, per the majority, "[s]omeone who regularly uses mind-altering substances that make him a 'credible threat to the physical safety of others with a gun' may be disarmed temporarily until he stops using drugs." Maj. Op. 14 (quoting *Rahimi*, 602 U.S. at 694, 698).

**II**

So what relevantly similar principle at the Founding justifies applying § 922(g)(3) to Erik Harris? My colleagues agree that it has no historical twin. Maj. Op. 6. Instead, they cite Founding-era "regulations on the dangerously drunk and dangerously mentally ill." *Id*. But Founding-era lawmakers did not have free rein to disarm people who drank alcohol. The key to this "permissible reason," *Rahimi*, 602 U.S. at 692, was dangerousness caused by intoxication. *See* Maj. Op. 7 (explaining the Founding generation

"understood that drinking could provoke people to act dangerously").

For example, regulations on the "dangerously drunk" punished people who were "'abus[iv]e to' or 'striking' others." *Id.* at 8 (quoting *General Laws and Liberties of the Massachusetts Colony* 81 (1672)). They also restricted the gun-rights of those who "abused" or "revil[ed]" officers, *id.* at 9 (first citing *Laws of the State of Delaware* (New Castle, Del., Samuel and John Adams 1797); and then quoting *A Digest of the Laws of Maryland* (Baltimore, Thomas Herty ed., 1799)), or who "terrif[ied] or disquiet[ed] the good People of th[e] State," An Act Against Breaking the Peace, *reprinted in Acts and Laws of the State of Connecticut, in America* 189 (Hartford, Elisha Babcock (1786)). The throughline connecting these laws is that they disarmed drunkards who "pose[d] a danger to others." *United States v. Veasley*, 98 F.4th 906, 916 (8th Cir. 2024), *cert. denied*, 145 S. Ct. 304 (2024).

True, not all regulations punished "abusive" drunks. But there is no need to "cherry pick" history. Maj. Op. 17. As my colleagues suggest, the regime as a whole was aimed to ensure good behavior, prevent drunks from breaking the peace, and address threats "to the physical safety of others," *id.* at 14; *see id.* at 15 ("Founding-era legislatures often required drunks to post bonds … based on the judgment that drunks posed a risk to public peace and the safety of others."). The principle I thus draw is that Founding-era laws targeted dangerous behavior that followed from intoxication; so today those who pose a "credible threat to the physical safety of others" because of their

intoxication may be disarmed. *Rahimi*, 602 U.S. at 693, 700.

The majority's analogy to laws regulating "lunatics" at the Founding is more strained. True, "[s]ociety's answer to mental illness … was to lock up anyone who was dangerous or disturbing to others." *Veasley*, 98 F.4th at 915 (internal quotation marks omitted). But while "[e]arly in this country's history[] the 'mentally ill and dangerous' ended up in jails, makeshift asylums, and mental hospitals 'with straitjackets and chains[,]' … '[t]hose who posed no danger' … 'stayed at home with their families,' with 'their civil liberties … intact.'" *Cooper*, 127 F.4th at 1095 (quoting *Veasley*, 98 F.4th at 913, 915).

Neither the majority nor the Government credibly explains how marijuana users resemble the *dangerously mentally ill*. Without a much stronger connection between marijuana use and dangerousness of the kind posed by those with serious mental illness, we cannot use the rationale underlying Founding-era laws regulating those individuals to justify § 922(g)(3)'s regulation of marijuana users. *See Connelly*, 117 F.4th at 276 ("The government highlights nothing demonstrating that laws designed to confine (and consequently, disarm) those so severely mentally ill that they presented a danger to themselves and others map onto § 922(g)(3)'s rationale."); *United States v. Harrison*, 654 F. Supp. 3d 1191, 1214 (W.D. Okla. 2023) ("There are likely nearly 400,000 Oklahomans who use marijuana under state-law authorization. Lumping all those persons into a category with 'dangerous lunatics[]' … is a bridge too far.").

With this background, and assuming an analogy between alcohol intoxication and frequent marijuana use works when a marijuana user poses a threat of physical violence to another while armed, I abide a remand. No doubt dangerousness is the touchstone. *Contra* Maj. Op. 17 (suggesting I disagree with a "test focused on risk of danger"). Whether we call it a "clear threat," "credible threat," or something else, the Government must show by a preponderance of the evidence that Harris's drug use and weapon possession make him a physical danger to others.

Though my colleagues dispute my historical overview, they do not clearly explain if they draw a different principle or, if so, what it is. They instead give us varying dangerousness thresholds for one who is armed: *id.* at 3 ("pose a special danger of misusing firearms"); *id.* at 14, 16, 18 (credible threat); *id.* at 19 (likely poses a danger); *id.* at 16, 20 ("likely poses an increased risk of physical danger"); *id.* at 20 ("increased … risk"). It is the "increased risk" formulation that is both off-point and concerning. To the majority, someone who uses marijuana can be disarmed even if he plainly is not dangerous, so long as his use increases the chance he could act dangerously. No Founding-era analogue justifies restricting gun possession in that circumstance.

That lower threshold of increased risk ignores the bar the Supreme Court and our Court have established. The former in *Rahimi* spoke of a physical threat being "clear," 602 U.S. at 698, "credible," *id.* at 698-702, or "demonstrated," *id.* at 698, before the Government could disarm a person.

As for our Court, the en banc decision in *Range* borrowed from *Rahimi* that threats to others had to be "clear" or "credible." *Range*, 124 F.4th at 230. Or consider *Pitsilides*, a recent application of the dangerousness standard. We explained that *Rahimi* and *Range* showed "disarmament is justified as long as a felon … 'present[s] a special danger of misusing firearms,' in other words, when he would likely 'pose a physical danger to others' if armed." *Pitsilides*, 128 F.4th at 210 (first quoting *Rahimi*, 602 U.S. at 698; and then quoting *Range*, 124 F.4th at 232) (brackets omitted). Pitsilides had operated an illegal gambling ring on and off for more than a decade. *Id.* at 205–06. He staffed his games with security, and SWAT teams had broken them up. *Id.* at 206. Plus he had a criminal record related to his gambling offenses. *Id.* at 206, 212. Adding to that, we had law establishing a link between gambling and organized crime. *Id.* at 213 (citing *United States v. Williams*, 124 F.3d 411, 417 n.7 (3d Cir. 1997) (noting "Congress[']s recognition that gambling has historically provided a major source of revenue for organized crime groups")). Even on that record, we could not answer whether Pitsilides, if armed, met the dangerousness standard from *Rahimi* and *Range*, so we remanded for the District Court to determine whether he "pose[d] a special danger of misusing firearms in a way that would endanger others." *Id.* at 213.

In making that determination, we deemed "crucial" a court's "consideration of" a defendant's "post-conviction conduct" that might "indicat[e] … dangerousness." *Id.* at 212. That is because "such conduct may be highly probative of whether an individual likely poses an increased risk of physical

danger to others if armed." *Id. But that was not our holding*. We ended our opinion by emphasizing that we remanded to fill "gaps in [the] record" with "additional discovery of facts probative to the prevailing Second Amendment analysis, including whether Pitsilides poses a *special danger of misusing firearms in a way that would endanger others*." *Id.* at 213 (emphasis added). We never suggested that the Government could disarm Pitsilides if his gambling activity or criminal record merely "increased the risk that he could not handle guns safely." Maj. Op. 20. We did not, nor could we, expand the holdings of *Rahimi* and *Range* in that way.

Moreover, the majority says nothing about the level to which a person's risk must rise before the Government can disarm him. Could a person whose risk increases from negligible to slightly more than negligible be disarmed under this test? Theoretically, most people pose a slightly greater risk of danger with a gun while intoxicated than while sober. So what the majority calls an individualized dangerousness inquiry begins to look like a categorical rule in disguise. As explained above, however, the Second Amendment rarely tolerates categorical rules. *Range*, 124 F.4th at 276 ("Neither our historical tradition nor our modern understanding of the Second Amendment … permits us to blindly defer to a categorical presumption that a given individual permanently presents a special risk of danger.") (Krause, J., concurring in the judgment).

My colleagues respond by arguing that *Rahimi*, *Range*, and *Pitsilides* do not control the outcome here because they invoke different historical traditions—

those justifying §§ 922(g)(1) (regulating gun possession of felons) and (g)(8) (regulating gun possession of those subject to restraining orders). Maj. Op. 18–19. But then they reach the conclusion I espouse. They concede their cited history "operated like the surety and going-armed laws that the Supreme Court blessed in *Rahimi*." *Id.* at 16. And they purport to adopt—though not consistently—principles articulated in those cases. *E.g.*, *id.* at 3 (adopting the "pose a special danger of misusing firearms" principle from *Pitsilides*); 14 (adopting the "credible threat" standard in *Rahimi* and *Range*). How do those standards fit holding here a lower standard that requires only an increased risk of danger?

The also say that the relevant tradition here—disarming the dangerously intoxicated and the dangerously mentally ill—sanctioned predictive judgments about dangerousness even before someone got hurt. Constables, after all, did not need to wait until an intoxicated person injured somebody to disarm him. I agree. But there is a difference between (a) disarming someone who presents a clear threat of danger to others based on his behavior before he has harmed another person and (b) disarming someone because he poses some undefined level of risk. The tapestry of historical regulation yields a clear principle: people could be disarmed at the Founding when they posed a danger to others because of their intoxication. By holding that the Government can disarm someone even when he does not pose a clear threat of physical violence to another by a preponderance of the evidence, the majority draws a principle unsupported by history and tradition.

## III

My colleagues write separately to expound their views on the dangers posed by marijuana. But that separate writing contains virtually no legal reasoning and gives almost no sense that it is meant to. It instead reads like a policy statement to Congress advocating for a marijuana ban. Using select non-record sources, my colleagues draw their own conclusions about marijuana's effects on users' judgment, decision-making, attention, and inhibition, the duration of its alleged effects on cognition, and its potency.

For instance, they cite a meta-analysis for the proposition that "chronic marijuana use can impair decision-making, increase risk-taking, and exacerbate impulsivity for hours, days, or even a few weeks." Conc. 5 (citing Rebecca D. Crean et al., *An Evidence Based Review of Acute and Long-Term Effects of Cannabis Use on Executive Cognitive Functions*, 5 J. Addiction Med. 1, 3 tbl. 2, 4–5 (2011)). They speculate that "the marijuana currently available for consumption may magnify these risks, as the marijuana available today is far more potent than it was several decades ago." *Id.* at 6 (citing Suman Chandra et al., *New Trends in Cannabis Potency in USA and Europe During the Last Decade (2008–2017)*, 269 Eur. Archives Psychiatry & Clinical Neuroscience 5, 9 (2019)). Symptoms from marijuana use, they claim, mirror those of "mild cognitive impairment that might arise from mental illness or alcohol." *Id.* at 4 (Their support for this claim is a dictionary definition for "cognitive impairment" from the National Cancer Institute that does not mention marijuana. *Id.*)

We are judges—not scientists, sociologists, or policymakers. Parsing scientific evidence in the first instance is not our role, and we generally are not good at it. This kind of freewheeling appellate factfinding is inappropriate, *see Amadeo v. Zant*, 486 U.S. 214, 228 (1988) (reversing and remanding when "the Court of Appeals … engage[d] in impermissible appellate factfinding"), in part because it relieves the Government of its duty to "affirmatively prove[] that [§ 922(g)(3)] is 'consistent with the Second Amendment's text and historical understanding,'" *Rahimi*, 602 U.S. at 737 (Barrett, J., concurring) (quoting *Bruen*, 597 U.S. at 26).

As my colleagues note, marijuana is legal in some form in 39 states and the District of Columbia. For better or worse, our Nation's democratic policymaking process has gradually liberalized laws regulating marijuana over the past few decades. I take no position on the wisdom of this trend because I am a judge, not a legislator. My colleagues have deeply-held and good-faith views about marijuana, but those views are the stuff of policy, not law, and they would be better aired in an op-ed than in the Federal Reporter.

**IV**

Subsection 922(g)(3) is constitutional as applied to Harris only if his marijuana use makes him a "clear threat of physical violence to another." *Pitsilides*, 128 F.4th at 209 (quoting *Rahimi*, 602 U.S. at 698). I go no further.[2] "Future cases may present other and more

[2] The majority identifies several factors for the District Court to consider on remand, like marijuana's "half-life" and "[w]hether the drug may induce psychosis." Maj. Op. 21. These may be relevant to the ultimate dangerousness inquiry, but almost none

difficult questions …. But we take cases as they come and today [should] resolve only the question posed to us." *Bondi v. VanDerStok*, 145 S. Ct. 857, 869–70 (2025). It is a "fundamental principle of judicial restraint … that courts should neither anticipate a question of constitutional law in advance of the necessity of deciding it nor formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied." *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 450 (2008) (internal quotation marks omitted).

As for Harris, here is what we know. He was a college student in 2019 with no history of violence and no prior arrests. He bought a total of three guns in February and March of that year. With each purchase he answered "no" on a federal form asking whether he was a user of or addicted to marijuana. He was, however, a regular user at that time.

Five days after he bought the second gun, Harris and his childhood friend, Jaemere Scott, celebrated Scott's mother's birthday at Scott's home and later at a bar. Harris drank alcohol and smoked marijuana that evening. When the two arrived at the bar, Scott asked Harris whether he had his gun on him, warning him not to bring it into the bar. Harris did not, thinking he had left it in his car, and they entered the bar. But when Harris and Scott left, Harris realized that the gun was not in his car after all. He went to his girlfriend's house, checked there for the gun, could not find it, and went to sleep. The next day, he

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of the considerations they outline sheds light on whether Harris himself was dangerous.

searched Scott's house, another friend's house, and his car once more, but the gun was still missing. Harris then returned to the bar to look for it. Coming up empty, he called the police and reported the gun stolen. The police ultimately found it with Scott, a convicted felon. Suspecting Harris had purchased the gun for Scott, they interviewed Harris. During the interview, he denied doing so but admitted being a frequent user of marijuana.

The Government, joined by my colleagues in the majority, would disarm Harris because he could not locate his gun after smoking marijuana. But that gun was found with someone Harris grew up with and was close to personally. From the record, we do not know when (or if) he misplaced it, whether he was high at that time, or how it ended up with Scott (who may have stolen it). Despite its early suspicions that Harris had purchased the gun for Scott, the Government did not indict Harris for that conduct. In my view, nothing in the record before us suggests that he poses a danger to the physical safety of others.

## V

Why not stick to the Supreme Court's Second Amendment decisions, our en banc decision in *Range*, or this very panel's holding in *Pitsilides*? An unlawful drug user may be disarmed if he poses a credible threat to the physical safety of others with a gun—that is, if it is more likely than not that his drug use paired with gun possession makes him dangerous. The waters are roiled enough that we need a breather (awaiting further clarity from the Supreme Court) to sort things out. Instead, we get yet another test—what matters this time is not dangerousness but any whiff

of its increased risk, suggesting a lower threshold than before.

Many, if not most, readers of this partial dissent know someone who uses marijuana—maybe a sick friend who uses it to treat pain, an insomniac relative who uses it to sleep at night, a veteran who uses it to manage his post-traumatic stress disorder, or hunters in a duck blind.[3] Were intoxication minimally to increase the risk of dangerousness associated with possessing a gun, it is hard to imagine a marijuana user whom the majority's policy-made test would not lump together with dangerous drunks and "lunatics." Indeed, the majority states categorically that "[c]ommon sense tells us that [marijuana] make[s] people too dangerous to trust with guns." Maj. Op. 26. The consequence of that reasoning could be that most of these individuals, along with countless American adults, are vulnerable to disarmament. That should give us pause. If our reasoning authorizes legislatures to suspend the constitutional rights of so many for such common behavior, it may mean that we are not taking the Supreme Court's instruction seriously and are instead drawing a "principle at such a high level of generality that it waters down the right." *Rahimi*, 602 U.S. at 740 (Barrett, J., concurring).

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[3] My colleagues say that a "buzzed brain with a loaded gun sounds like a misfire waiting to happen." Maj. Op. 20. But their folksy retort gives the game away. If we accept that simply being intoxicated is enough to be disarmed, without some individualized determination that the user would be dangerous because of his intoxication, then we are endorsing a disarmament regime based on categorical dangerousness judgments. In the majority's view, if you drink, then you can be disarmed. That was certainly not the historical tradition at the Founding.

The majority leaves us with an amorphous holding that flouts precedent, defies common sense, and creates a circuit split. Gun possession and marijuana use may at times be a "lethal cocktail," Maj. Op. 2, but those times are scattered in a mountain of mismatches. I concur in the judgment only to the extent that it affirms Harris's convictions under 18 U.S.C. § 922(a)(6) and the District Court's denial of his constitutional vagueness challenge to § 922(g)(3). Because the majority instructs the District Court to consider Harris's increased risk of dangerousness rather than his actual threat of danger to others caused by his marijuana use, the tipping point is too low. Thus I respectfully dissent.

*Appendix B*

**UNITED STATES COURT OF APPEALS**
**FOR THE THIRD CIRCUIT**

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No. 21-3031

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UNITED STATES OF AMERICA,
*Appellee,*
v.
ERIK MATTHEW HARRIS,
*Appellant.*

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Filed: July 14, 2025

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JUDGMENT

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This cause came to be considered on the record from the U.S. District Court for the Western District of Pennsylvania and was argued on December 9, 2024.

On consideration whereof, it is now **ORDERED** and **ADJUDGED** that the District Court's judgment entered on October 27, 2021, is hereby **AFFIRMED IN PART AND VACATED AND REMANDED IN PART**. Costs will not be taxed. All of the above in accordance with the Opinion of this Court.

ATTEST:

s/ Patricia S. Dodszuweit
Clerk

Dated: July 14, 2025

*Appendix C*

**UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

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No. 19-cr-00313

---

UNITED STATES OF AMERICA,

v.

ERIK MATTHEW HARRIS,

*Defendant*.

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Proceedings Held: May 4, 2021

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EXCERPT OF TRANSCRIPT OF PROCEEDINGS ON MOTION TO DISMISS INDICTMENT

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…

distinguished from someone who is classified as addicted to a controlled substance. So we stand by our position as we classified his conduct as recreational marijuana use.

And some of the facts that the Government brings in about the gun ultimately going into the possession of someone else doesn't detract from the actual issue at hand, and that's whether recreational marijuana users, a complete bar on those users, survive intermediate scrutiny because it simply does not.

And that's all I have, Your Honor. Thank you.

THE COURT: Well, counsel, I've carefully reviewed the file in this case, the charges at issue, your both well-written briefs, considered the arguments you've submitted here today. And I've also carefully reviewed the entire exhibit that was submitted for the Court to look at in advance, which was the interview session with Mr. Harris. I've considered all of these factors, the laws at issue in this case, the directives of the courts' decisions in the past, and having considered your arguments, it is my position and decision that the motion to dismiss the indictment is denied. And we will issue an order forthwith scheduling this matter for a pretrial conference.

Anything further for the record?

MR. CZARNECKI: Nothing from the Government.

MS. LEE: No, Your Honor. Thank you.

THE COURT: Thank you very much. Have a good day.

(Proceedings adjourned at 10:51 a.m.)

*Appendix D*

**UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

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No. 19-cr-00313

---

UNITED STATES OF AMERICA,

v.

ERIK MATTHEW HARRIS,

*Defendant*.

---

Filed: October 27, 2021

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JUDGMENT IN A CRIMINAL CASE

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THE DEFENDANT:

☑ pleaded guilty to count(s) ONE through SIX of the Indictment

…

The defendant is adjudicated guilty of these offenses:

| Title & Section | Nature of Offense | Offense Ended | Count |
|---|---|---|---|
| 18 U.S.C. 922(g)(3) | Possession of a firearm and/or ammunition by an unlawful user of a controlled substance | 3/14/2019 | 1-3 |
| 18 U.S.C. 922(a)(6) | Falsification of firearms purchase form | 3/14/2019 | 4-6 |

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

…

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

10/26/2021
Date of Imposition of Judgment

[handwritten: signature]
Signature of Judge

Marilyn J. Horan, United States District Judge
Name and Title of Judge

10/26/2021
Date

**IMPRISONMENT**

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:

6 months.

☑ The court makes the following recommendations to the Bureau of Prisons:

1. That the defendant be placed at FCI Morgantown.

…

☑ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

…

☑ as notified by the United States Marshal.

**SUPERVISED RELEASE**

Upon release from imprisonment, you will be on supervised release for a term of:

3 years with the first 6 months to be served on home detention.

**MANDATORY CONDITIONS**

…

5. ☑ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

**STANDARD CONDITIONS OF RELEASE**

As part of your supervised release, you must comply with the following standard conditions of supervision.

These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.

2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.

3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.

4. You must answer truthfully the questions asked by your probation officer.

5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.

6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.

7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.

8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.

9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.

10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing

bodily injury or death to another person such as nunchakus or tasers).

11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.

12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.

13. You must follow the instructions of the probation officer related to the conditions of supervision.

…

**ADDITIONAL SUPERVISED RELEASE TERMS**

1. The defendant shall not illegally possess a controlled substance.

2. The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.

3. The defendant shall be placed on home detention for a period of 180 days, to commence as soon as arrangements can be made by the Probation Office. The defendant shall abide by all technology requirements. The location monitoring technology requirement, i.e., Radio Frequency (RF), Global Positioning System (GPS), or Voice Recognition, or Virtual Supervision Monitoring, is at the discretion of the probation officer. During the period of home

detention, the defendant shall remain at their residence except for employment; education; religious services; medical, substance abuse, or mental health treatment; attorney visits; court appearances; court-ordered obligations; or other activities as pre-approved by the probation officer. During this time, the defendant shall comply with the rules of the location monitoring program and may be required to maintain a landline telephone, without special features, at the defendant's place of residence. The defendant shall pay all or part of the costs of participation in the location monitoring program as directed by the court and probation officer, but not to exceed the daily contractual rate.

4. The defendant shall participate in a program of testing and, if necessary, treatment for substance abuse, said program to be approved by the probation officer, until such time as the defendant is released from the program by the Court. Further, the defendant shall be required to contribute to the costs of services for any such treatment in an amount determined by the probation officer but not to exceed the actual cost. The defendant shall submit to one drug urinalysis within 15 days after being placed on supervision and at least two periodic tests thereafter.

5. It is further ordered that the defendant shall not intentionally purchase, possess and/or use any substance(s) designed to simulate or alter in any way the defendant's own urine specimen. In addition, the defendant shall not purchase, possess and/or use any device(s) designed to be used for the submission of a third-party urine specimen.

6. The defendant shall submit his person, property, house, residence, vehicle, papers, business or place of employment, to a search, conducted by a United States Probation or Pretrial Services Officer at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of supervision. Failure to submit to a search may be grounds for revocation. The defendant shall inform any other residents that the premises may be subject to searches pursuant to this condition.

7. The defendant shall participate in the United States Probation Office's Workforce Development Program as directed by the probation officer.

8. The defendant shall cooperate in the collection of DNA as directed by the probation officer, pursuant to 28 C.F.R. § 28.12, the DNA Fingerprint Act of 2005, and the Adam Walsh Child Protection and Safety Act of 2006.

9. The defendant shall forfeit to the United States the following property, which is identified in the forfeiture allegation and the plea agreement: a Rock Island .45 caliber pistol, model 1911-A 1, bearing serial number RIA1982462; a Smith and Wesson .40 caliber pistol, model SD40VE, bearing serial number FXY1361; and a Smith and Wesson .40 caliber pistol, model SD40VE, bearing serial number FWX7043.

**CRIMINAL MONETARY PENALTIES**

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

| | **Assessment** |
|---|---|
| **TOTALS** | $600.00 |

…

**SCHEDULE OF PAYMENTS**

Having assessed the defendant's ability to pay, payment, of the total criminal monetary penalties is due as follows:

…

F ☑ Special instructions regarding the payment of criminal monetary penalties:

It is further ordered that the defendant shall pay to the United States a special assessment of $600, which shall be paid to the United States District Court Clerk forthwith.

…

☑ The defendant shall forfeit the defendant's interest in the following property to the United States:

Rock Island .45 caliber pistol, model 1911-A1, bearing serial number RIA1982462; a Smith and Wesson .40 caliber pistol, model SD40VE, bearing serial number FXY1361; and a Smith and Wesson .40 caliber pistol, model SD40VE, bearing serial number FWX7043.

…

*Appendix E*

## CONSTITUTIONAL AND STATUTORY PROVISIONS

### U.S. Const. amend. II

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.

### U.S. Const. amend. XIV, §1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

### 18 U.S.C. § 922(g)(3)

…

**(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.