NO. _____

In the

Supreme Court of the United States

JAMES GOULD, ***Petitioner,***

v.

UNITED STATES OF AMERICA, ***Respondent.***

APPENDIX A
TO PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

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163 F.4th 795
United States Court of Appeals, Fourth Circuit.

UNITED STATES of America, Plaintiff - Appellee,
v.
James GOULD, Defendant - Appellant.

No. 24-4192
|
Argued: December 12, 2024
|
Decided: January 2, 2026

Synopsis

Background: After the United States District Court for the Southern District of West Virginia, Thomas E. Johnston, Chief Judge, 672 F.Supp.3d 167, denied his motion to dismiss indictment, defendant pled guilty to possessing firearm after having previously been involuntarily committed to mental institution. Defendant appealed.

On rehearing, the Court of Appeals, Diaz, Chief Judge, held that as matter of first impression, statute prohibiting individuals who had previously been involuntarily committed to mental institution from possessing firearm did not violate Second Amendment on its face.

Affirmed.

Opinion, 146 F.4th 421, superseded.

Procedural Posture(s): Appellate Review; Pre-Trial Hearing Motion.

Appeal from the United States District Court for the Southern District of West Virginia, at Charleston. Thomas E. Johnston, District Judge. (2:22−cr−00095−1)

Attorneys and Law Firms

ARGUED: Lex A. Coleman, OFFICE OF THE FEDERAL PUBLIC DEFENDER, Charleston, West Virginia, for Appellant. Gabriel Caleb Price, OFFICE OF THE UNITED STATES ATTORNEY, Charleston, West Virginia, for Appellee. ON BRIEF: Wesley P. Page, Federal Public Defender, Jonathan D. Byrne, Appellate Counsel, OFFICE OF THE FEDERAL PUBLIC DEFENDER, Charleston, West Virginia, for Appellant. William S. Thompson, United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Charleston, West Virginia, for Appellee.

Before DIAZ, Chief Judge, and HEYTENS and BENJAMIN, Circuit Judges.

Affirmed by published opinion. Chief Judge Diaz wrote the opinion, in which Judge Heytens and Judge Benjamin joined.

ON REHEARING

DIAZ, Chief Judge:

***796** James Gould pleaded guilty to violating 18 U.S.C. § 922(g)(4) by possessing a firearm after having previously been involuntarily committed to a mental institution. He appeals, claiming that the Second Amendment renders the statute facially unconstitutional.

We disagree and affirm Gould's conviction.

I.

A.

Gould was involuntarily committed to mental health facilities four times between May 2016 and July 2019. In February 2022, police found Gould in his West Virginia home with a twelve-gauge shotgun.

A grand jury indicted him on one count of violating 18 U.S.C. § 922(g)(4). That statute makes it unlawful for anyone "who has been adjudicated as a mental defective ***797** or who has been committed to a mental institution" to possess a firearm. [1]

[1] Gould has never been "adjudicated as a mental defective." His facial challenge is to the provision barring anyone who "has been committed to a mental institution" from possessing a firearm.

Shortly after Gould's indictment, the Supreme Court decided *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 142 S.Ct. 2111, 213 L.Ed.2d 387 (2022). *Bruen* changed the framework by which we analyze Second Amendment challenges. *See Md. Shall Issue, Inc. v. Moore*, 116 F.4th 211,

218–19 (4th Cir. 2024) (en banc), *cert. denied*, —— U.S. ——, 145 S. Ct. 1049, 220 L.Ed.2d 380 (2025).

Before *Bruen*, we used a two-step test for Second Amendment challenges. We first looked to "whether the challenged law impose[d] a burden on conduct falling within ... the Second Amendment's guarantee," and, if it did, we applied means-end scrutiny. *See, e.g., United States v. Chester*, 628 F.3d 673, 680 (4th Cir. 2010) (citation omitted). *Bruen* replaced that test with an inquiry into the nation's history of firearm regulation, placing the onus on the government to demonstrate that the challenged regulation is "consistent with the Nation's historical tradition of firearm regulation." *Bruen*, 597 U.S. at 24.

Gould moved to dismiss his indictment. He argued that § 922(g)(4) was unconstitutional because there was no historical tradition at the founding of gun restrictions like those imposed by the statute. The district court rejected Gould's challenge, concluding that "because there is a historical basis for disarming individuals that have been determined to be dangerous to themselves and/or the public at large, § 922(g)(4) is constitutional on its face." *United States v. Gould*, 672 F. Supp. 3d 167, 184 (S.D. W. Va. 2023).

Gould then changed his plea to guilty.[2] The district court sentenced him to time served and three years of supervised release.

[2] Gould's guilty plea didn't prevent him from claiming on direct appeal that the statute of his conviction is unconstitutional. *Class v. United States*, 583 U.S. 174, 178, 138 S.Ct. 798, 200 L.Ed.2d 37 (2018).

This appeal followed.

B.

We begin with a brief historical primer on § 922(g)(4).

1.

The statute has its origins in the Gun Control Act of 1968. Its original iteration criminalized shipping or transporting firearms or ammunition in interstate commerce by those who had been adjudicated mentally incompetent or committed to a mental institution. Pub. L. No. 90-618, § 102, 82 Stat. 1213, 1220 (1968). The Firearm Owners' Protection Act of 1986 expanded § 922(g) crimes to include, as relevant here, possessing a firearm. Pub. L. No. 99-308, § 102(6)(D), 100 Stat. 449, 452 (1986).

Today, § 922(g)(4) prevents a person who has been either "adjudicated as a mental defective" or "committed to a mental institution" from possessing a firearm or ammunition. The Bureau of Alcohol, Tobacco, Firearms and Explosives has interpreted the phrase "committed to a mental institution" to apply only to those who have been committed involuntarily. The Bureau defines the phrase as:

> A formal commitment of a person to a mental institution by a court, board, commission, or other lawful authority. The term includes a commitment to a mental institution involuntarily. The ***798** term includes commitment for mental defectiveness or mental illness. It also includes commitments for other reasons, such as for drug use. The term does not include a person in a mental institution for observation or a voluntary admission to a mental institution.

27 C.F.R. § 478.11. In other words, the phrase "committed to a mental institution" in § 922(g)(4) means to be involuntarily placed there by a lawful authority.[3]

[3] Neither party challenges the Bureau's authority to promulgate this clarifying definition.

By its plain terms, § 922(g)(4) operates as a lifetime ban on possessing a firearm. But that's not the end of the story.

2.

Previously, one could petition the Attorney General for relief from the ban by showing that he or she "will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest." 18 U.S.C. § 925(c). But that "provision has been rendered inoperative" because Congress, since

1992, "has repeatedly barred the Attorney General from using appropriated funds to investigate or act upon [relief] applications." *Logan v. United States*, 552 U.S. 23, 28 n.1, 128 S.Ct. 475, 169 L.Ed.2d 432 (2007) (quotation omitted).

Instead, Congress has permitted states that meet certain requirements to grant relief from the statute's firearm ban. *See* 34 U.S.C. § 40915.[4] A state's process suffices if it (1) allows a person to apply for relief (2) before a state court, board, or commission that will determine—consistent with principles of due process—whether "the person will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest" and (3) provides for de novo judicial review of a denial of a petition. *Id.* § 40915(a). Thirty-three states,[5] including West Virginia, have established such processes.[6]

4 Congress enacted 34 U.S.C. § 40915 in 2008. NICS Improvement Amendments Act of 2007, Pub. L. No. 110-180, § 105, 121 Stat. 2559, 2569–70 (2008).

5 And one territory.

6 Bureau of Alcohol, Tobacco, Firearms & Explosives, NICS Improvement Amendments Act of 2007, https://www.atf.gov/firearms/docs/guide/nicsactlist7-7-210pdf/download [https://perma.cc/FB65-7KMG].

II.

Although we review Gould's constitutional challenge de novo, *United States v. Collins*, 982 F.3d 236, 243 (4th Cir. 2020), Gould must still clear a high hurdle. That's because he brings a facial challenge, "the most difficult challenge to mount successfully." *United States v. Salerno*, 481 U.S. 739, 745, 107 S.Ct. 2095, 95 L.Ed.2d 697 (1987).

To succeed, Gould must "establish that no set of circumstances exists under which [§ 922(g)(4)] would be valid or that the statute lacks any plainly legitimate sweep." *United States v. Stevens*, 559 U.S. 460, 472, 130 S.Ct. 1577, 176 L.Ed.2d 435 (2010) (cleaned up). He can't prevail if § 922(g)(4) "is constitutional in some of its applications." *United States v. Rahimi*, 602 U.S. 680, 693, 144 S.Ct. 1889, 219 L.Ed.2d 351 (2024).

III.

A.

The Second Amendment states, "A well regulated Militia, being necessary to the security of a free State, the right of ***799** the people to keep and bear Arms, shall not be infringed." U.S. Const. amend II. The text "guarantee[s] the individual right to possess and carry weapons in case of confrontation." *District of Columbia v. Heller*, 554 U.S. 570, 592, 128 S.Ct. 2783, 171 L.Ed.2d 637 (2008). *Heller* held that the District of Columbia's ban on possessing handguns in the home violated the Second Amendment. *Id.* at 635, 128 S.Ct. 2783. To reach that conclusion, it also held that the Second Amendment conferred an individual right to own firearms for self-defense in case of confrontation. *Id.* at 592–95, 128 S.Ct. 2783.

But the right isn't unlimited. As *Heller* described it, "[f]rom Blackstone through the 19th-century cases, commentators and courts routinely explained that the right was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose." *Id.* at 626, 128 S.Ct. 2783.

As an example, the Court noted that "nothing in [its] opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill." *Id.* These "presumptively lawful regulatory measures," *id.* at 627 n.26, 128 S.Ct. 2783, also include laws barring the carrying of firearms in "sensitive places" and "laws imposing conditions and qualifications on the commercial sale of arms," *id.* at 626–27, 128 S.Ct. 2783.

The government asks us to decide Gould's case based on *Heller*'s dictum that laws disarming the mentally ill are presumptively lawful.[7] And it's true that we "routinely afford substantial, if not controlling deference to dicta from the Supreme Court," *Manning v. Caldwell*, 930 F.3d 264, 281 (4th Cir. 2019) (en banc), especially "when the supposed dicta is recent and not enfeebled by later statements," *Hengle v. Treppa*, 19 F.4th 324, 347 (4th Cir. 2021) (cleaned up).

7 *Heller*'s discussion about "longstanding prohibitions on the possession of firearms by ... the mentally ill" is nestled in a brief section that the Court caveated by noting that it was not

> "undertak[ing] an exhaustive historical analysis ... of the full scope of the Second Amendment." 554 U.S. at 626, 128 S.Ct. 2783. We've acknowledged that this portion of *Heller* is dictum, albeit important dictum. *Md. Shall Issue*, 116 F.4th at 221–22.

Far from enfeebling its dictum, for the last fifteen years the Supreme Court has reiterated the presumptive validity of limitations on the right to keep and bear arms for the mentally ill. *McDonald v. City of Chicago*, 561 U.S. 742, 786, 130 S.Ct. 3020, 177 L.Ed.2d 894 (2010) (plurality opinion) ("We repeat [*Heller*'s] assurances [about prohibitions on the possession of firearms by the mentally ill] here."); *Rahimi*, 602 U.S. at 699, 144 S.Ct. 1889 ("*Heller* never established a categorical rule that the Constitution prohibits regulations that forbid firearm possession in the home. In fact, [*Heller*] stated that many such prohibitions, like those on the possession of firearms by felons and the mentally ill, are presumptively lawful." (cleaned up)).

We recently explained that the *Heller*'s dictum is consistent with our pre-*Bruen* precedent, which held that 18 U.S.C. § 922(g)(1) (prohibiting felons from possessing a firearm) was constitutional. *United States v. Hunt*, 123 F.4th 697, 702–04 (4th Cir. 2024) *cert. denied*, —— U.S. ——, 145 S.Ct. 2756, 222 L.Ed.2d 1046 (2025). And when we decided whether the Second Amendment protects the right to own a firearm with an obliterated serial number, we stated that "[n]othing in *Bruen* abrogated *Heller*'s extensive discussion of the contours of the scope of the right enshrined in the Second Amendment." *United States v. Price*, 111 F.4th 392, 400 (4th Cir. 2024) (en banc) *cert. denied*, ***800** —— U.S. ——, 145 S. Ct. 1891, 221 L.Ed.2d 583 (2025).

Even so, the issue is not so straightforward. For one thing, § 922(g)(4) doesn't refer to "the mentally ill," a phrase that logically describes those *currently* experiencing mental illness. Instead, the statute covers anyone "who has been [involuntarily] committed to a mental institution."

The two aren't synonymous. A person who was involuntarily committed for a mental illness and has recovered would still be swept up within the ambit of § 922(g)(4), but wouldn't be *currently* mentally ill. [8] Like the Ninth Circuit, "[w]e emphatically do not subscribe to the notion that 'once mentally ill, always so.' " *Mai v. United States*, 952 F.3d 1106, 1121 (9th Cir. 2020).

8 The Sixth Circuit, in an *as-applied*, pre-*Bruen* challenge, concluded that § 922(g)(4) at least could be unconstitutional when applied to an individual who suffered a bout of depression thirty years prior with no problems afterward. *Tyler v. Hillsdale Cnty. Sheriff's Dep't*, 837 F.3d 678, 688, 699 (6th Cir. 2016) (en banc) (plurality opinion); *id.* at 710 (Sutton, J., concurring in most of the judgment).

An additional complication is what to make of the term "mentally ill." Is it meant to capture all who've ever been prescribed an antidepressant? What about those who, at some point in their lives, have been diagnosed with depression, anxiety, schizophrenia, bipolar disorder, or any one of scores of discrete conditions? *See* Diagnostic and Statistical Manual of Mental Disorders (5th ed. 2013). And how severe must the mental illness have been to be denied the protections of the Second Amendment? Difficulties abound. [9]

9 This isn't the first time *Heller* has defied easy application. The *Heller* Court described the right protected by the Second Amendment as extending to "law-abiding, responsible citizens." *Heller*, 554 U.S. at 635, 128 S.Ct. 2783. In *United States v. Rahimi*, 602 U.S. 680, 144 S.Ct. 1889, 219 L.Ed.2d 351 (2024), the government argued that a person could be disarmed because he is not "responsible." *Id.* at 701, 144 S.Ct. 1889. But the Court rejected that argument because responsible "is a vague term" that its prior decisions "did not define." *Id.* at 701–02, 144 S.Ct. 1889. "Mentally ill" as used in the Court's Second Amendment decisions is similarly vague and undefined.

But there's another path: we can gauge the constitutionality of § 922(g)(4) by looking at the nation's history and tradition of restricting firearms access for persons deemed to be dangerous to themselves or others, which includes at least some deemed to be dangerous because of mental illness.

We turn now to that analysis, with our historian caps on, as dictated by *Bruen*.

B.

Recall that *Bruen*'s analysis proceeds in two steps. First, "[w]hen the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects

that conduct." *Bruen*, 597 U.S. at 24, 142 S.Ct. 2111. If it does, the second step requires "[t]he government [to] justify its regulation by demonstrating that it is *consistent with* the Nation's historical tradition of firearm regulation." *Id.* (emphasis added).

While we haven't shied away from deciding challenges at *Bruen*'s first step, *e.g.*, *Price*, 111 F.4th at 398; *Bianchi v. Brown*, 111 F.4th 438, 452–53 (4th Cir. 2024) (en banc), *cert. denied*, —— U.S. ——, 145 S. Ct. 1534, 222 L.Ed.2d 1059 (2025), we won't do so here. Section 922(g)(4) bars an individual who is otherwise law-abiding from possessing a weapon in common use for a common purpose. The conduct the statute prohibits is therefore covered by the Second Amendment's plain text and thus is presumptively protected.

***801** On to *Bruen*'s second step. *Bruen* jettisoned an interest-balancing test in favor of one focused on the historical understanding of the scope and limitations of the right to keep and bear arms. But it also recognized that, in conducting that analysis, courts may need to reason by analogy to modern laws that deal with modern problems that the Founders didn't anticipate. *Bruen*, 597 U.S. at 28–29, 142 S.Ct. 2111. And to prevail, the government need not show a historical "dead ringer." *Id.* at 30, 142 S.Ct. 2111. It need show only a "representative historical *analogue*, not a historical *twin*." *Id.*

The Court's decision in *United States v. Rahimi*, 602 U.S. 680, 144 S.Ct. 1889, 219 L.Ed.2d 351 (2024) is helpful here. Rahimi challenged 18 U.S.C § 922(g)(8), which prohibits possession of a firearm by an individual who is subject to a court order that "includes a finding that such person represents a credible threat to the physical safety of [an] intimate partner or child." 18 U.S.C § 922(g)(8)(C)(i). In upholding the statute's constitutionality, the Court explained that "[t]he [modern] law must comport *with the principles* underlying the Second Amendment" even if it lacks a "historical twin." *Rahimi*, 602 U.S. at 692, 144 S.Ct. 1889 (emphasis added) (cleaned up).

Rahimi never identified a historical law specifically disarming those who posed a threat to an intimate partner or child. Yet it still found the challenged statute constitutional based on the history of (1) surety laws, which required individuals found by a magistrate to pose a threat of future misbehavior, including spousal abuse, to post a bond or be jailed, and (2) "going armed" laws, which disarmed and imprisoned those who used arms to terrify the public. *Id.* at 694–98, 144 S.Ct. 1889.

And the Court upheld the statute's constitutionality even though it was "by no means identical to these founding era regimes." *Id.* at 698, 144 S.Ct. 1889. It was enough that the statute's "prohibition on the possession of firearms by those found by a court to present a threat to others fit[ ] neatly within the *tradition* the surety and going armed laws represent." *Id.* (emphasis added).

Our task then is to examine the historical right the Second Amendment codifies and evaluate its consistency with the bar imposed by § 922(g)(4), keeping in mind the principles undergirding the tradition of firearm regulation. In doing so, we look to the "how and why the regulation[ ] burden[s] a law-abiding citizen's right to armed self-defense." *Bruen*, 597 U.S. at 29, 142 S.Ct. 2111; *accord Rahimi*, 602 U.S. at 692, 144 S.Ct. 1889.

The "how" here is disarmament, on pain of incarceration. As for the "why," we consider the societal problem § 922(g)(4) seeks to address. *See Bruen*, 597 U.S. at 26–27, 142 S.Ct. 2111. We agree with the district court that the answer isn't simply "firearm violence by the mentally ill." *Gould*, 672 F. Supp. 3d at 179. The statute applies, as relevant here, to anyone who has been "committed to a mental institution," § 922(g)(4), which can include commitments for "mental defectiveness," mental illness, or "other reasons, such as for drug use," 27 C.F.R. § 478.11.

The statute doesn't bar every person who has suffered from mental illness from possessing a firearm. Rather, its reach is limited to those instances in which an independent "court, board, commission, or other lawful authority," *id.*, has determined that the individual poses a sufficient risk of danger to themselves or others that renders temporary confinement, against the person's will, necessary. *See Gould*, 672 F. Supp. 3d at 180 & n.7 (noting that posing a danger to oneself or others is a requirement ***802** for involuntary commitment in nearly every state and collecting statutes).

Mental illness is *a* reason why someone may be deemed to be a threat to themselves or others. The underlying societal problem, however, is preventing violence by those found to pose an increased risk of danger to the community or themselves.

With this foundation, we turn to the relevant history. [10]

10 Society's understanding of mental illness has advanced in the centuries since the founding. The forms, causes, and treatments of various mental illnesses were largely unknown in the eighteenth century. Whether our forefathers recognized it or not, the treatment of mental illnesses calls for a nuanced approach, and those who suffered from them at the founding and beyond deserved more compassion—and less stigma—than they received. We're nevertheless bound by *Bruen* and *Rahimi* to look at history, despite its shortcomings, to guide our analysis.

C.

1.

One scholar has noted that "[o]ne searches in vain through eighteenth-century records to find any laws specifically excluding the mentally ill from firearms ownership." Carlton F.W. Larson, *Four Exceptions in Search of a Theory:* District of Columbia v. Heller *and Judicial* Ipse Dixit, 60 Hastings L.J. 1371, 1376 (2009). But that's largely because the mentally ill were at the time "cared for on an ad hoc and informal basis either by the family or community." Gerald N. Grob, The Mad Among Us: A History of the Care of America's Mentally Ill 6 (1994).

In any event, the lack of historical laws specifically disarming the mentally ill isn't the final word. After all, laws restricting firearm ownership aren't "trapped in amber." *Rahimi*, 602 U.S. at 691, 144 S.Ct. 1889. And "assumptions" that "founding-era legislatures maximally exercised their power to regulate ... are flawed." *Id.* at 739–40, 144 S.Ct. 1889 (Barrett J., concurring).

So we consider whether the disarmament authorized by § 922(g)(4) is "relevantly similar to laws that our *tradition is understood to permit.*" *Id.* at 692, 144 S.Ct. 1889 (majority opinion) (emphasis added) (cleaned up). And here we find that support in two related historical traditions: the actions of legislatures and communities that *incapacitated* those suffering from mental illness when the afflicted posed a danger to themselves or others, and the accepted power of legislatures to disarm groups of people considered dangerous.

2.

In the years before the founding, legislatures routinely empowered "local officials to limit the freedom of 'distracted persons' who menaced other residents." Grob, *supra*, at 16. The main response was incarceration, whether by one's family members or the community at large. "If violent or troublesome, even the propertied insane were without compunction locked up and chained by their families in strong-rooms, cellars, and even in flimsy outhouses." Albert Deutsch, The Mentally Ill in America: A History of Their Care and Treatment from Colonial Times 40 (Columbia Univ. Press 2nd ed. 1949). When a family was unavailable and a town large enough, "[i]ncarceration in jail was the common solution." *Id.* at 41.

But where there was neither a jail nor family available, towns found other ways to incapacitate the mentally ill. In Pennsylvania, a court ordered the construction of a small house for confining Erik Cornelissen after his father Jan complained that Erik was "bereft of his naturall Sences & is ***803** turned quyt madd and [Jan] being a poore man [was] not able to maintaine him." The Record of Upland Court from the 14th of November, 1676, to the 14th of June, 1681, *in* 7 Memoirs of the Historical Society of Pennsylvania 35, 102 (Edward Armstrong ed., Philadelphia, J.B. Lippincott & Co. 1860). And the town of Braintree, Massachusetts funded the construction of a seven-by-five-foot house for a brother's "distracted" sister. Records of the Town of Braintree, 1640 to 1793, at 26 (Samuel A. Bates ed., Randolph, Daniel H. Huxford 1886).

The powers granted to authorities to detain individuals were sometimes extensive. For example, in 1676, Massachusetts resolved that "[w]hereas, [t]here are distracted persons in some tounes, that are unruly," "selectmen in all tounes where such persons are are hereby impowred & injoyned to take care of all such persons, that they doe not damnify others." Deutsch, *supra*, at 43.

And detainment meant incarceration. In 1727, Connecticut passed a bill to build its first correctional facility, which would house "persons under distraction and unfit to go at large, whose friends do not take care for their safe confinement" alongside criminals and beggars. *Id.* at 52. Rhode Island did the same. *Id.* at 52–53.

As urbanization progressed, legislatures became more active. The first hospital in the colonies, opened in Philadelphia in the 1750s, was created with a plea to the Pennsylvania Assembly that "Lunaticks ... are a Terror to their Neighbours, who are daily apprehensive of the Violences they may commit." Grob, *supra*, at 19. And Massachusetts mandated that "penal institutions accept 'lunatics, and persons furiously mad' whose behavior threatened the welfare of others." *Id.* at 43.

These efforts extended through to the founding. *See* Act of Feb. 9, 1788, ch. 31, 1788 N.Y. Laws 643, 645 (authorizing justices of the peace to "lock[ ] up in some secure place" "persons, who by lunacy or otherwise are furiously mad ... that they may be dangerous"); Act of Dec. 24, 1792, ch. 55, *in* 1 Va. Stat. at Large 162, 162–63 (Shepherd 1835) (authorizing justices of the peace to confine persons of "unsound mind" to a hospital).

Particularly noteworthy is the relative ease by which people could be institutionalized. At the hospital in Philadelphia, "[a]ll that was necessary was for a relative, a friend—or, perhaps, an enemy—to apply to one of the managers or physicians for an order of admission." Deutsch, *supra*, at 62.

This history points to two conclusions. First, at the time of the founding, and indeed for long before, governments routinely incapacitated those suffering from severe mental illness. Second, the reason for such action was that the individual was considered a threat to their community.

3.

Next, we consider the history of a legislature's ability to disarm people thought to be dangerous. At the outset, we note that some of the historical laws disarming categories of people based on a determination of dangerousness would (thankfully) flunk constitutional analysis today on other grounds. *United States v. Jackson*, 110 F.4th 1120, 1126–27 (8th Cir. 2024) (noting that restrictions on firearms ownership based on race and religion would be impermissible today); *United States v. Williams*, 113 F.4th 637, 656 (6th Cir. 2024) ("Classifying people as dangerous simply because of their race or religion was wrong from the beginning and unconstitutional from 1868."). We analyze them not to endorse their offensive aims, but to show that, at the founding, categorical disarmament of ***804** groups of people was permissible and consistent with the contemporary understanding of the Second Amendment.

We performed much of this work in *United States v. Hunt*, 123 F.4th 697 (4th Cir. 2024). There, we explained that legislatures historically imposed restrictions that "swept broadly, disarming all people belonging to groups that were, in the judgment of those early legislatures, potentially violent or dangerous." *Id.* at 707.

Those pre-ratification laws typically targeted religious or racial minorities. The seventeenth century was a chaotic one for England. In 1689—after a civil war, the reign of the Catholic King James II, and the Glorious Revolution which enthroned the Protestant King William III—Parliament passed "An Act for the better secureing the Government by disarming Papists and reputed Papists." 1 W. & M. c. 15 (1689).

That Act permitted any two justices of the peace to prohibit a Catholic from possessing any arms or ammunition other than as allowed by the justices. *Id.* § 3. But it allowed individual Catholics to retain their arms if they swore a loyalty oath. *Id.* § 6.

"According to this calculus, disarming what [Parliament] saw as a troublesome group would spare England from the religious wars that had rocked the kingdom for decades." *Williams*, 113 F.4th at 651. The upshot is that (1) Parliament could disarm a group of people based on the prospective threat they posed, not individually but as a class, but (2) an individualized showing that a particular person was not dangerous—here, an oath—provided relief.

Even earlier, and on this continent, colonists too disarmed groups of people.

In 1642, Puritans in Virginia asked their fellow worshippers in Massachusetts to send them ministers. Kevin Butterfield, The Puritan Experiment in Virginia, 1607–1650, at 11 (June 1999) (M.A. thesis, College of William & Mary). John Winthrop, the governor of Massachusetts, dispatched three. *Id.* at 15.

The governor of Virginia, under orders to "oppose any and all religious nonconformity," acted quickly to silence them. *Id.* at 22. Local authorities reacted by taking various measures against the Puritans, including "generally disarm[ing]" them, an extreme measure given the risks of living in mid-seventeenth century colonial America. Charles Campbell, History of the Colony and Ancient Dominion of Virginia 211–12 (Philadelphia, J.B. Lippincott & Co. 1860). Once

more, a category of people was disarmed based on their perceived status as a potential threat—here, a group of religious nonconformists.

Fast forward a century to the French and Indian War, part of the Seven Years' War that pitted Protestant England against Catholic France. Maryland, Virginia, and Pennsylvania each passed legislation disarming Catholics on a class-wide basis. Joseph G.S. Greenlee, *The Historical Justification for Prohibiting Dangerous Persons from Possessing Arms*, 20 Wyo. L. Rev. 249, 263 (2020). Individuals could petition for restoration of their right to bear arms, *see, e.g.*, An Act for Disarming Papists, and Reputed Papists, Refusing to Take the Oaths to the Government, ch. 4 (1756), *in* 7 Va. Stat. at Large 35, 38 (Hening 1820) (allowing Catholics to "be discharged of and from all disabilities and forfeitures" provided they swear an oath), but this relief was only prospective, and individuals had to demonstrate their loyalty post hoc.

The ratification debates reflected similar views on the reach of the Second Amendment. *Heller* described the Dissent of the Minority of the Convention of Pennsylvania ***805** of 1787 as "highly influential" to understanding the scope and limitations of the right to bear arms. *Heller*, 554 U.S. at 604, 128 S.Ct. 2783. That dissent proposed including the right to bear arms in the Constitution but excluded persons "for crimes committed, *or real danger of public injury from individuals*." The Address and Reasons of Dissent of the Minority of the Convention, of the State of Pennsylvania, to Their Constituents 1 (Philadelphia, E. Oswald 1787) (emphasis added).

Laws restricting racial groups' access to arms due to a belief that its members posed a danger were also common both before and after ratification. State legislatures banned enslaved people and freedmen from possessing firearms. *Range v. Att'y Gen.*, 124 F.4th 218, 264–65 (3d Cir. 2024) (en banc) (Krause, J., concurring in the judgment); *see also Williams*, 113 F.4th at 656. Those laws stemmed from fears of armed freedman facilitating slave revolts. Joseph G.S. Greenlee, *Disarming the Dangerous: The American Tradition of Firearm Prohibitions*, 16 Drexel L. Rev. 1, 27 (2024). But some post-ratification laws permitted freedmen to own firearms if they could show that they were not dangerous. *Williams*, 113 F.4th at 656; *see Range*, 124 F.4th at 265–66 (Krause, J., concurring in the judgment).

In sum, history shows that legislatures had the authority, consistent with the understanding of the individual right to keep and bear arms, to disarm categories of people based on a belief that the class posed a threat of dangerousness. *Hunt*, 123 F.4th at 707. And when combined with the historical treatment of those who suffered from mental illness, we perceive an unambiguous history and tradition of disarming and incarcerating those whose illness made them a danger to themselves or others.

D.

With history behind us, we return to the question presented — whether § 922(g)(4) is " 'relevantly similar' to laws our tradition is understood to permit." *Rahimi*, 602 U.S. at 692, 144 S.Ct. 1889 (quoting *Bruen*, 597 U.S. at 29, 142 S.Ct. 2111). We keep in mind that Gould's challenge to § 922(g)(4) is a facial one. And we take to heart "that facial challenges are 'disfavored' because they 'often rest on speculation,' 'short circuit the democratic process,' and 'run contrary to the fundamental principle of judicial restraint.' " *Bianchi*, 111 F.4th at 452 (quoting *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 450–51, 128 S.Ct. 1184, 170 L.Ed.2d 151 (2008)).

So we focus on "situations in which [§ 922(g)(4) is] most likely to be constitutional." *Rahimi*, 602 U.S. at 701, 144 S.Ct. 1889. At least in West Virginia, we find such situations. [11]

11 We focus on West Virginia because that's where Gould lives. In so doing, we don't mean to convert Gould's facial challenge into an as-applied one.

Rahimi again does much of the work here. The Court identified three characteristics there that led it to conclude that § 922(g)(8) is relevantly similar to its historical analogues, the surety and going armed laws. First, it explained that the statute "applies only once a court has found that the defendant represents a credible threat to the physical safety of another." *Rahimi*, 602 U.S. at 699, 144 S.Ct. 1889 (cleaned up). Second, § 922(g)(8) is time-limited, banning firearm possession only for so long as an individual is subject to a restraining order. *Id.* And third, the penalty for violating one of § 922(g)(8)'s historical analogues, the going armed laws, is imprisonment, which is a greater burden than the lesser restriction of disarmament. ***806** *Id.* Section 922(g)(4) and the historical tradition that preceded it largely share the same features.

Start with *Rahimi*'s discussion of the importance of a court finding of dangerousness. In the Mountain State, a person may be involuntarily committed because of a mental illness only upon a judicial finding (by clear and convincing evidence) that: (1) the individual is mentally ill; (2) because of the mental illness, the individual likely poses a risk to himself or others; and (3) there isn't a less restrictive alternative than commitment appropriate and available. W. Va. Code Ann. § 27-5-4(k). At the hearing, the individual has a right to counsel and to present witnesses. *Id.* § 27-5-4(h).

In short, the individual to be committed is afforded substantial protection against arbitrary commitment (and thus, disarmament). That's consistent with the history of requiring justices of the peace to find that someone was so mentally ill that they posed a danger sufficient to warrant commitment. So as in *Rahimi*, the fact that § 922(g)(4)'s ban applies only after a judicial finding that an individual is a threat to themselves or others counsels in favor of a finding of constitutionality. And those procedural protections, as discussed above, are similar to (and sometimes greater than) those afforded to the dangerously mentally ill at the founding.

Turning to *Rahimi*'s temporal considerations, a West Virginian who "is prohibited from possessing a firearm pursuant to ... provisions of federal law by virtue solely of ... having a prior involuntary commitment to a mental institution" can petition a state circuit court to have that right restored. W. Va. Code Ann. § 61-7A-5(a). If the petitioner can show by clear and convincing evidence that he or she can responsibly possess the firearm and doesn't pose a danger to public safety, and that restoration of the right isn't contrary to the public interest, the court may restore the right. *Id.* § 61-7A-5(e). And a petitioner denied relief may appeal the decision. *Id.*

Put another way, disarmament under § 922(g)(4) isn't categorically permanent in West Virginia. True, the time limit isn't self-executing and the person who has been involuntarily committed must prove their competency. But that hardly makes § 922(g)(4) unique—among modern provisions or its historic analogues.

For example, a sister provision, § 922(g)(3), bans those who are "addicted to any controlled substance" from possessing guns. We've explained that § 922(g)(3)'s ban is permissible because it covers "only the time period during which [Congress] deemed such persons to be dangerous." *United States v. Carter*, 669 F.3d 411, 419 (4th Cir. 2012); *see also United States v. Veasley*, 98 F.4th 906, 915 (8th Cir.) ("Stopping the use of drugs, after all, restores gun rights under § 922(g)(3)."), *cert. denied*, —— U.S. ——, 145 S. Ct. 304, 220 L.Ed.2d 100 (2024).

Just like stopping the use of drugs serves as a temporal stopping point (and puts the onus on the drug user to relieve the burden), § 922(g)(4) permits an individual to regain the right to carry arms if they remove the condition that makes them dangerous to themselves or others. And, as described above, early American laws often put the burden on those they disarmed to have their right restored—whether by swearing an oath or otherwise demonstrating that they were not dangerous.

Admittedly, this case differs from *Rahimi* in one aspect. One consideration in *Rahimi* was that if a state could constitutionally imprison an individual for certain conduct, then it could also disarm the individual for that conduct. ***807** *Rahimi*, 602 U.S. at 699, 144 S.Ct. 1889. Given that the going armed laws provided for imprisonment, it followed that disarmament, a lesser punishment, could also be imposed consistent with history and tradition. *Id.*

Though we find little evidence in the historical record of keeping firearms out of the hands of people released from mental institutions in the founding era, that dearth stems from a lack of mental institutions generally during that period. But what history does reveal is that people who were mentally ill were considered dangerous when their illness posed a threat to themselves or others, and so the state could incapacitate and disarm them.

When a person today is released from a mental institution, the setting changes. But the historical justification for their disarmament, that they pose a danger, persists until they can demonstrate otherwise to a court.

Rahimi doesn't hold that a law restricting firearm use is constitutional *only if* the historical tradition that justified disarming someone required continuous imprisonment. The laws disarming religious and racial groups during the eighteenth century didn't involve, for example, locking up all Catholics. Instead, we think—consistent with the reasoning in *Rahimi*—that a person (like Gould) found to be dangerous because of mental illness can be disarmed until he can show that his affliction no longer renders him dangerous.

Gould makes one more argument. He claims that § 922(g)(4) is facially unconstitutional because the fact that an institution has released someone necessarily means that the person is no longer a danger to themselves or others. And if that's true, their right to own a firearm should be restored automatically upon release.

The problem for Gould is that West Virginia doesn't require a finding that an individual is no longer a threat for them to be released from involuntary commitment. Rather, release may be granted when a medical official determines that "the conditions justifying involuntary hospitalization no longer exist or that the individual can no longer benefit from hospitalization." W. Va. Code Ann. § 27-7-1.

Sometimes the release occurs with conditions (such as a requirement to continue outpatient treatment) and can be revoked if the individual doesn't comply. *Id.* § 27-7-2. Or the individual may be released even when they are "unimproved" if a responsible person is willing and able to take care of them. *Id.* § 27-7-3.

It's not a stretch to find constitutional applications of § 922(g)(4) here. And it's reasonable to conclude that release from a mental institution (at least in West Virginia) isn't the same as a judicial determination that a person is no longer dangerous.

* * *

We emphasize the narrowness of our holding. Disarmament under § 922(g)(4) is facially constitutional because situations exist where it may be applied consistent with the Second Amendment. We express no opinion on as-applied challenges to the statute.

AFFIRMED

All Citations

163 F.4th 795

NO. _____

In the

Supreme Court of the United States

JAMES GOULD, ***Petitioner,***

v.

UNITED STATES OF AMERICA, ***Respondent.***

APPENDIX B
TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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672 F.Supp.3d 167
United States District Court, S.D. West Virginia, Charleston Division.

UNITED STATES of America, Plaintiff,
v.
James GOULD, Defendant.

CRIMINAL ACTION NO. 2:22-cr-00095
|
Signed May 5, 2023

Synopsis

Background: Defendant who had previously been involuntarily committed to mental health treatment facilities was indicted for unlawfully possessing a firearm. Defendant moved to dismiss the indictment as facially unconstitutional.

As a matter of first impression, the District Court, Thomas E. Johnston, Chief Judge, held that prohibiting individuals who had been determined to be a danger to themselves or others from possessing firearms was consistent with the Second Amendment.

Motion denied.

Procedural Posture(s): Pre-Trial Hearing Motion.

Attorneys and Law Firms

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MEMORANDUM OPINION AND ORDER

THOMAS E. JOHNSTON, CHIEF JUDGE

Pending before the Court is Defendant James Gould's ("Defendant") *Bruen*-Based Motion to Dismiss. (ECF No. 40.) For the reasons discussed below, the motion is **DENIED**.

I. BACKGROUND

For nearly a decade, Defendant struggled with his mental health so much that he was involuntarily committed to treatment facilities four separate times. He was first involuntarily committed on May 12, 2016. (ECF No. 43 at 6 n.2.) Then, he was again involuntarily committed on February 14, 2018. (*Id.*) Shortly after that, on June 28, 2019, Defendant was committed for a short-lived third time. (*Id.*) Finally, Defendant was committed one more time on June 30, 2019. (*Id.*)

Because of these involuntary commitments, Defendant was prohibited from possessing firearms under federal and state law. Yet in April 2019 and again in November 2020, Defendant was charged with unlawfully possessing a firearm under state law. (ECF No. 24 at 6–7.) He pleaded guilty to the 2019 offense, but the 2020 charge was dismissed. (*Id.*)

Defendant's habitual involuntary commitments and firearm violations intertwine with his turbulent relationship with his family. For instance, on June 4, 2019, a domestic violence emergency protection ***170** order was filed against Defendant by his wife and children, shortly before Defendant was involuntarily committed on June 28, 2019. (*Id.* at 2.) Then, on October 16, 2021, Defendant was charged with two counts of domestic battery and one count for brandishing a deadly weapon. (*Id.* at 7.) Although those charges were dropped, (*id.*), his wife and children filed another domestic violence emergency protection order against him on October 22, 2021, (*id.* at 2). Defendant's wife filed a final domestic violence emergency protection order against him on April 13, 2022, (*id.*), and, just seven days later, Defendant was arrested on April 20, 2022, for four violations of the protective order, (*id.* at 8). On March 24, 2022, [1] he pleaded guilty to one count, and the other three counts were dismissed. (*Id.*)

[1] On the same day, Defendant pled guilty to driving under the influence, for which he was arrested on January 3, 2022.

Shortly before the final protective order was filed, though, Defendant was found in possession of a Remington, 11-87, 12-gauge shotgun on February 18, 2022. (ECF No. 1.)

Defendant was then indicted by a federal grand jury on May 3, 2022, and arrested on August 23, 2022, for unlawfully possessing a firearm in violation of 18 U.S.C. §§ 922(g)(4), 924(a)(2). (ECF Nos. 1, 19.) However, on June 23, 2022—after Defendant's indictment was returned, but prior to his arrest—the Supreme Court of the United States rendered its decision in *N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 142 S. Ct. 2111, 213 L.Ed.2d 387 (2022).

On February 17, 2023, Defendant filed the pending motion to dismiss, arguing that *Bruen* invalidated § 922(g)(4). (*See* ECF No. 40.) The United States filed a response on March 17, 2023.[2] (ECF No. 43.) As such, this motion is fully briefed and ripe for adjudication.

2 Although Defendant was not afforded the opportunity to file a reply brief under the Local Rules of Criminal Procedure, *see* L.R. Cr. P. 12.1, he took it upon himself to file one almost a month later on April 13, 2023, (ECF No. 48). This is far beyond typical response/rely deadlines set forth in the local rules, but the Court will consider it nonetheless.

II. LEGAL STANDARD

Under Federal Rule of Criminal Procedure 12, the court should dismiss criminal charges in an indictment "where there is an infirmity of law in the prosecution[,]" such as when the statute charged is unconstitutional. *United States v. Engle*, 676 F.3d 405, 415 (4th Cir. 2012). Typically, "[a] facial challenge to a legislative Act is, of course, the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the Act would be valid." *United States v. Salerno*, 481 U.S. 739, 745, 107 S.Ct. 2095, 95 L.Ed.2d 697 (1987). However, the Supreme Court has made clear that the Government carries the burden in Second Amendment cases. *See Bruen,* 142 S. Ct. at 2130.

After the Supreme Court's decision in *District of Columbia v. Heller*, 554 U.S. 570, 128 S.Ct. 2783, 171 L.Ed.2d 637 (2008), courts applied the two-part test developed by circuit courts, including the Fourth Circuit, to Second Amendment challenges. Under that test, courts conducted a historical inquiry into whether a law regulated conduct within the scope of the Second Amendment, then conducted an intermediate scrutiny analysis to evaluate the fit between the law and the governmental objective. *United States v. Chester*, 628 F.3d 673, 680–83 (4th Cir. 2010). This intermediate scrutiny analysis determined whether the state's interest in the regulation was sufficient to overcome whatever burden the law placed on one's Second ***171** Amendment right. *See, e.g., United States v. Carter*, 669 F.3d 411 (4th Cir. 2012).

In *Bruen*, however, the Supreme Court determined that the lower courts had been incorrect in applying this "means-end scrutiny" test because it was inconsistent with the Second Amendment, and the appropriate methodology centers on the "constitutional text and history." *Bruen*, 142 S. Ct. at 2127–29. The Court articulated that the proper standard is as follows:

> In keeping with *Heller*, we hold that when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation. Only then may a court conclude that the individual's conduct falls outside the Second Amendment's "unqualified command."

Id. at 2129–2130 (quoting *Konigsberg v. State Bar of Cal.*, 366 U.S. 36, 50 n.10, 81 S.Ct. 997, 6 L.Ed.2d 105 (1961)).

Phrased another way, this test has two steps. The first step is determining whether the plain text of the Second Amendment covers the conduct at issue. *Id.* at 2129, 2134–35. The second step is determining whether the Government has established the regulation is consistent with the historical tradition of firearms regulation in the United States. *Id.* at 2129–30.

III. DISCUSSION

On March 30, 1981, John W. Hinckley, Jr. attempted to assassinate then-President Ronald Reagan. *Hinckley v. United States*, 163 F.3d 647, 648 (D.C. Cir. 1999). During his criminal trial, a jury found Hinckley not guilty by reason of insanity. *Id.* He was then involuntarily committed to St. Elizabeth's Hospital in 1982, *id.*, until his release in June

2022, *United States v. Hinckley*, No. CR 81-306, 2021 WL 8200009, at *4 D.D.C. Sept. 30, 2021.

Because he has been involuntarily committed, Hinckley—like Defendant—cannot possess a firearm under 18 U.S.C. § 922(g)(4). However, Defendant argues that § 922(g)(4) is unconstitutional under *Bruen*. (ECF No. 40.) Thus, Defendant claims full stop that he, Hinckley, and others like them who have been determined to be a danger to themselves or society, have a constitutional right to possess a firearm despite the danger they pose. (*See id.*) Even under *Bruen*'s more demanding standards, the Court disagrees.

A. The plain text of the Second Amendment

The first step of a Second Amendment challenge is deciding whether the regulated conduct falls within the scope of the Second Amendment's plain text. *Bruen*, 142 S. Ct. at 2129–30. The Second Amendment provides: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." In interpreting this text, courts are guided by the principle that "[t]he Constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary as distinguished from technical meaning." *United States v. Sprague*, 282 U.S. 716, 731, 51 S.Ct. 220, 75 L.Ed. 640 (1931). "Normal meaning may of course include an idiomatic meaning, but it excludes secret or technical meanings that would not have been known to ordinary citizens in the founding generation." *Heller*, 554 U.S. at 576–77, 128 S.Ct. 2783.

The Supreme Court has explained that the operative clause of the Second Amendment—"right of the people to keep and bear Arms"—protects the right to possess a handgun in the home for self-defense. ***172** *See Bruen*, 142 S. Ct. at 2122 (citing *Heller*, 554 U.S. 570, 128 S.Ct. 2783 (2008) and *McDonald v. Chicago*, 561 U.S. 742, 130 S.Ct. 3020, 177 L.Ed.2d 894 (2010)). *Bruen* further clarified that the Second Amendment also protects such conduct outside of the home. *Id.*

As to whose conduct is protected by this right, the Supreme Court has explained that the words "the people" in the Second Amendment "unambiguously refer[ ] to all members of the political community, not an unspecified subset." *Heller*, 554 U.S. at 580, 128 S.Ct. 2783 (stating that "the people" "refer[ ] to a class of persons who are part of a national community or who have otherwise developed sufficient connection with this country to be considered part of that community"). Based on this, *Heller* began its analysis with the "strong presumption that the Second Amendment right is exercised individually and belongs to all Americans," *id.* at 581, 128 S.Ct. 2783, and then confirmed that presumption, *id.* at 595, 128 S.Ct. 2783.

Still, the *Heller* Court made clear that "the right secured by the Second Amendment is not unlimited." *Id.* at 626, 128 S.Ct. 2783. Specifically, the *Heller* Court cautioned that "nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill." *Id.* The Court went so far as to say that such prohibitions are "presumptively lawful regulatory measures." *Id.* at 626-27 n.26, 128 S.Ct. 2783. The Court's assurances on these prohibitions' presumptive constitutionality confirm that the Second Amendment is not an absolute barrier to congressional regulation of firearms and that some categorical prohibitions are assumed to be constitutional. *See United States v. Carter*, 669 F.3d 411, 420–21 (4th Cir. 2012). However, in making this observation, the Court expressly noted that it was not "clarify[ing] the entire field" of the Second Amendment, and the Court reserved for later cases an exploration of the historical justifications for its enumerated prohibitions. *Heller*, 554 U.S. at 635, 128 S.Ct. 2783.

In this case, the Government contends that the Second Amendment does not cover the right of those adjudicated mentally defective or committed to a mental institution to possess arms. (ECF No. 43 at 5.) For support, the Government argues that "*Heller* held that the 'longstanding prohibitions on the possession of firearms by felons and the mentally ill' comport with the Second Amendment, which only protect the 'right of law-abiding, responsible citizens' to possess firearms." (*Id.* at 7–8.) Conversely, Defendant asserts that (1) the Supreme Court's reference to "law-abiding, responsible citizens" does not limit the scope of the Second Amendment, and (2) *Heller*'s "presumptively lawful" language is dicta.[3] (ECF No. 40 at 25.) Each of these arguments is discussed below.

3 Defendant also emphasizes that the first step of *Bruen* only asks whether the Second Amendment covers the *conduct* at issue without regard to the actor. (*See, e.g.*, ECF No. 40 at 9 ("That standard directs courts to begin by asking whether the Second Amendment's plain text covers an individual's conduct. If it does, then the Constitution presumptively protects that conduct." (internal quotation marks and citations

omitted) (emphasis in original)); ECF No. 48 at 2–3 (similarly emphasizing "conduct").)

1. "Law-abiding, responsible citizens"

When discussing the Second Amendment's scope, *Heller* referred to "law-abiding, responsible citizens." *See* 554 U.S. at 635, 128 S.Ct. 2783. *Bruen* echoed *Heller*, also referring to "ordinary, law-abiding citizens" throughout the opinion. *See* 142 S. Ct. at 2122, 2131, 2133, 2156.

***173** Based on this language, the Fourth Circuit has interpreted the Second Amendment as covering only "law-abiding" citizens. *See United States v. Carpio-Leon*, 701 F.3d 974, 975 (4th Cir. 2012) (stating that "the scope of the Second Amendment does not extend to provide protection to illegal aliens, because illegal aliens are not law-abiding members of the political community"). In *Bruen*'s wake, other district courts in the Fourth Circuit have continued to understand the Supreme Court's reference to "law-abiding" citizens as limiting the scope of the Second Amendment. *See United States v. Medrano*, No. 3:21-CR-39, 2023 WL 122650, at *3 (N.D. W. Va. Jan. 6, 2023) (collecting cases); *see also United States v. Jackson*, No. CR ELH-22-141, 2023 WL 2242873, at *7 (D. Md. Feb. 27, 2023) (collecting cases from other circuits). In fact, this Court recently referenced this language in rejecting a post-*Bruen* challenge to the constitutionality of §§ 922(g)(9) and 924(a)(2). *See United States v. Nutter*, 624 F.Supp.3d 636, 644 (S.D. W. Va. 2022) (Berger, J.) (underscoring the importance of "the Supreme Court's repeated invocation of 'law-abiding citizens' in its recent Second Amendment jurisprudence," and finding support in the historical tradition for laws prohibiting certain categories of persons from possessing firearms in the interest of public safety).

Now, similarly drawing on the reference to "responsible citizen[s]," the Government argues that individuals like Defendant "who have been involuntarily committed to a mental institution on multiple occasions are not responsible citizens with the same right to bear arms as other citizens." (ECF No. 43 at 6.) Defendant counters that neither the Constitution nor the Supreme Court have defined the category of "law-abiding, responsible citizens." (*See* ECF No. 40 at 38–39.) While Defendant questions the scope of the meaning of a "law-abiding" citizen, (*see id.* ("Is a jay walker not protected by the Second Amendment?")), a more difficult question is who constitutes a "responsible" citizen?

Further, Defendant argues that the Supreme Court's reference to "law-abiding, responsible citizens" "establishes a constitutional baseline that protects, rather than limits, Second Amendment rights." (ECF No. 40 at 25.) For support, Defendant cites to a Fifth Circuit opinion that has been withdrawn and superseded. (*See id.* at 35 (citing *United States v. Rahimi*, 59 F.4th 163 (5th Cir. 2023).) Nevertheless, the Fifth Circuit's superseding opinion is enlightening. *See United States v. Rahimi*, 61 F.4th 443 (5th Cir. 2023).

The *Rahimi* Court acknowledged that there is "some debate over the extent" that *Heller*'s "qualifier constricts the Second Amendment's reach." *Rahimi*, 61 F.4th 443. "As summarized by now-Justice Barrett, 'one [approach] uses history and tradition to identify the scope of the right, and the other uses that same body of evidence to identify the scope of the legislature's power to take it away.' " *Id.* at 451 (citing *Kanter v. Barr*, 919 F.3d 437, 452 (7th Cir. 2019) (Barrett, J. dissenting), *abrogated by Bruen*, 142 S. Ct. 2111). An argument that certain individuals fall outside the Second Amendment because they are not law-abiding, responsible citizens "rests on the first approach," but "runs headlong into *Heller* and *Bruen*, which ... espouse the second [approach]." *Id.* Thus, "in context, *Heller* simply uses 'law-abiding, responsible citizens' as shorthand in explaining that its holding—that the amendment codifies an individual right to keep and bear arms—should not 'be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill ....' " *Id.* The Government's argument, which focuses on the history of constitutional legislation that prohibited certain subsets of the community ***174** from possessing firearms, (ECF No. 43 at 7–13), supports this understanding.

Thus, the resolution of this issue rests upon *Heller*'s "presumptively lawful" language, which is addressed below.

2. "Presumptively lawful regulatory measures"

Defendant categorizes the Supreme Court's "presumptively lawful" language as dicta and urges the Court to disregard it, (ECF No. 40 at 25)—a proposition the Government disputes, (ECF No. 43 at 8) ("*Heller*'s commentary is not mere dicta."). This Court has addressed this question before and consistently found that "much of the language quoted by the Court in [*Heller* and] *Bruen*, both in the majority and the concurring opinions, is dicta." *See United States v. Price*, No. 2:22-CR-00097, 635 F.Supp.3d 455, 465 (S.D. W. Va. Oct. 12, 2022) (Goodwin, J.); *see also United States v. Tooley*, 717 F. Supp. 2d 580, 585 (S.D. W. Va. 2010) (Chambers, J.), *aff'd*,

468 F. App'x 357 (4th Cir. 2012); *United States v. Smith*, 742 F. Supp. 2d 855, 859 (S.D. W. Va. 2010) (Johnston, J.). Further, it is axiomatic that courts are "not bound by dicta or separate opinions of the Supreme Court." *Myers v. Loudoun Cnty. Pub. Schs.*, 418 F.3d 395, 406 (4th Cir. 2005).

Nevertheless, the Fourth Circuit has repeatedly instructed that courts should "afford substantial, if not controlling deference to dicta from the Supreme Court," "particularly when the supposed dicta is recent and not enfeebled by later statements." *Hengle v. Treppa*, 19 F.4th 324, 347 (4th Cir. 2021) (internal citations omitted) (noting that "[t]he lengthy discussion of alternative remedies ... was important, if not essential, to the Court's analysis"); *Manning v. Caldwell*, 930 F.3d 264, 281 (4th Cir. 2019) (recognizing the importance of relying on dicta when "grappling with complex legal questions of first impression ... so as to ensure consistent and uniform development and application of the law"); *McCravy v. Metro. Life. Ins. Co.*, 690 F.3d 176, 181 n.2 (4th Cir. 2012) ("[W]e cannot simply override a legal pronouncement endorsed just last year by a majority of the Supreme Court."). On the other hand, the Fourth Circuit has declined to follow Supreme Court dicta that is "unaccompanied by any analysis from which [it] might gain insight into the Court's reasoning." *In re Bateman*, 515 F.3d 272, 282 (4th Cir. 2008).

In this case, *Heller*'s "presumptively lawful" language has not been "enfeebled by later statements." *Hengle*, 19 F.4th at 347. In fact, it was reinforced two years later in *McDonald*, 561 U.S. at 786, 130 S.Ct. 3020 (quoting *Heller*), and again *just last year*, in *Bruen*, 142 S. Ct. at 2162 (Kavanaugh, J., concurring) (same). Additionally, the constitutionality of § 922(g)(4) in *Bruen*'s wake is certainly a "complex legal question of first impression." *Caldwell*, 930 F.3d at 281.

On top of that, the Fourth Circuit has already relied on *Heller*'s "presumptively lawful" language to resolve facial constitutional challenges to § 922(g). In *U.S. v. Moore*, 666 F.3d 313 (4th Cir. 2012), the Fourth Circuit—citing *Heller*'s "presumptively lawful" language—concluded with "no difficulty" that § 922(g)(1)—which prohibits individuals "convicted in any court of[ ] a crime punishable by imprisonment for a term exceeding one year" from possessing a gun—did not violate the Second Amendment on its face. *Id.* at 316–19 (explaining that the Supreme Court's identification of "longstanding prohibitions on the possession of firearms by felons [and the mentally ill]" as presumptively lawful "streamlined" the otherwise-applicable two-pronged analysis). In fact, almost every federal court of appeals has relied on the "presumptively lawful" language in ***175** *Heller* and *McDonald* and held that § 922(g)(1) does not facially violate the Second Amendment. *See United States v. Bogle*, 717 F.3d 281, 281–82 (2d Cir. 2013) (per curiam); *United States v. Barton*, 633 F.3d 168, 172 (3d Cir. 2011), *overruled on other grounds by Binderup v. Att'y Gen.*, 836 F.3d 336 (3d Cir. 2016) (en banc); *Moore*, 666 F.3d at 318–19; *United States v. Anderson*, 559 F.3d 348, 352 (5th Cir. 2009); *United States v. Khami*, 362 F. App'x 501, 508 (6th Cir. 2010), *cert. denied*, 560 U.S. 934, 130 S.Ct. 3345, 176 L.Ed.2d 1238 (2010); *United States v. Davis*, 406 F. App'x 52, 53–54 (7th Cir. 2010); *United States v. Joos*, 638 F.3d 581, 586 (8th Cir. 2011); *United States v. Smith*, 329 F. App'x 109, 110–11 (9th Cir. 2009); *United States v. McCane*, 573 F.3d 1037, 1047 (10th Cir. 2009), *cert. denied*, 559 U.S. 970, 130 S.Ct. 1686, 176 L.Ed.2d 179 (2010); *United States v. Battle*, 347 F. App'x 478, 480 (11th Cir. 2009) (per curiam); *Schrader v. Holder*, 704 F.3d 980, 989–91 (D.C. Cir. 2013), *cert. denied*, 571 U.S. 989, 134 S.Ct. 512, 187 L.Ed.2d 365 (2013).

Following *Moore*, the Fourth Circuit has consistently upheld the facial constitutionality of § 922(g)(1) and other provisions of § 922(g) based at least in part on *Heller*'s "presumptively lawful" language.[4] *See, e.g., United States v. Pruess*, 703 F.3d 242, 247 (4th Cir. 2012) (§ 922(g)(1)); *United States v. Izaguirre–De La Cruz*, 510 Fed.Appx. 233, 234 (4th Cir. 2013) (§ 922(g)(5)); *United States v. Larson*, 502 Fed.Appx. 336, 339 (4th Cir. 2013) (§ 922(g)(8)). Of relevance, the Fourth Circuit relied on *Heller*'s dicta to affirm the constitutionality of § 922(g)(4). *United States v. McRobie*, No. 08-4632, 2009 WL 82715, at *1 (4th Cir. Jan. 14, 2009) (unpublished) ("While the *Heller* opinion recognized a Second Amendment right for citizens to bear arms, it specifically cautioned that 'nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill.' " (citing *Heller*)). However, unpublished opinions are "entitled to only the weight they generate by the persuasiveness of their reasoning," *Collins v. Pond Creek Mining Co.*, 468 F.3d 213, 219 (4th Cir. 2006), and *McRobie* lacks any analysis or reasoning.

4 Defendant cites a Fourth Circuit case criticizing this approach that "treat[s] *Heller*'s listing of 'presumptively lawful regulatory measures[ ]' ... as a kind of 'safe harbor.' " (ECF No. 40 at (citing *United States v. Chester*, 628 F.3d 673, 679 (4th Cir. 2010)). But the "safe harbor"

> analysis that the Fourth Circuit was criticizing in *Chester* is an approach that some courts have used to evaluate laws that are "unlisted" in *Heller*'s "presumptively lawful" passage, such as Section 922(g)(9)'s dispossession of domestic-violence misdemeanants. *Id.* at 679. Whereas "prohibition[ ] on the possession of firearms by ... the mentally ill," *Heller*, 554 U.S. at 626, 128 S.Ct. 2783, is "specifically listed in *Heller*," *Chester*, 628 F.3d at 679.

While *Bruen* abrogated some of these cases to the extent they employed means-end scrutiny, *Bruen* does not question the "longstanding regulatory measures" declared presumptively lawful in *Heller* and *McDonald.* Importantly, the *Bruen* Court characterized its decision as "ma[king] the constitutional standard endorsed in *Heller* more explicit,"—not abrogating or overturning it. *Bruen*, 142 S. Ct. at 2134. In fact, two of the concurring opinions in *Bruen* emphasized the presumptively lawful regulations referenced in *Heller* and *McDonald. See id.* at 2162 (Kavanaugh, J., concurring) (reiterating language from *Heller* and *McDonald* about "longstanding prohibitions on the possession of firearms by felons and the mentally ill"); *id.* at 2157 (Alito, J., concurring) (clarifying that the Court's holding did not "disturb[ ] anything that we said in *Heller* or ***176** *McDonald v. Chicago* ... about restrictions that may be imposed on the possession or carrying of guns"). The dissent also viewed the majority opinion the same way, stating that it "understand[s] the Court's opinion today to cast no doubt on" *Heller*'s treatment of laws prohibiting firearm possession by felons and the mentally ill. *Id.* at 2189 (Breyer, J., joined by Sotomayor, J., and Kagan, J., dissenting). The Supreme Court's repeated emphasis on restraint and desire to avoid disturbing "presumptively lawful" regulations sounds a clarion call to lower courts to exercise the same caution to not apply the holdings of *Bruen, McDonald*, and *Heller* any further than the Court itself did.

Moreover, since *Bruen*, many courts—including this Court—have relied on that presumption to uphold the constitutionality of various provisions of § 922(g). *See Price*, 635 F.Supp.3d at 465–66 (collecting cases); *United States v. Riley*, No. 1:22-CR-163 (RDA), 635 F.Supp.3d 411, 423 n.9 (E.D. Va. Oct. 13, 2022) (collecting cases); *United States v. Robinson-Davis*, No. 7:22-CR-00045, 2023 WL 2495805, at *2 (W.D. Va. Mar. 14, 2023) (collecting cases); *see also United States v. Ingram*, 623 F.Supp.3d 660, 664 (D.S.C. 2022) (applying *Heller*'s presumptively lawful language to 21 U.S.C. § 924(c)). On this basis, courts across the country have deemed it unnecessary to engage in the historical analysis test articulated in *Bruen* as to § 922(g). *See Price*, 635 F.Supp.3d at 466 (explaining that "the Supreme Court left generally undisturbed the regulatory framework that keeps firearms out of the hands of dangerous felons through its decision in *Bruen* by reaffirming and adhering to its reasoning in *Heller* and *McDonald*" and deeming it unnecessary to engage in the *Bruen* historical analysis test). For so many courts to have systemically misunderstood the relevance and applicability of this language is unlikely.

Still, the Fourth Circuit recently acknowledged that relying on *Heller*'s dicta is a potentially faulty practice. *See Hirschfeld v. Bureau of Alcohol, Firearms, Tobacco & Explosives*, 5 F.4th 407, 415 n.6 (4th Cir. 2021), *vacated as moot*, 14 F.4th 322 (4th Cir. 2021) ("Though we follow this framework, one might question relying on the list in *Heller* to carve out exceptions to the Second Amendment."). Additionally, this Court was unable to find any post-*Bruen* district court decisions relying on *Heller*'s dicta to address § 922(g)(4), and none of the circuit courts that have addressed § 922(g)(4) have addressed a facial challenge or relied on *Heller*'s "presumptively lawful" dictum. *See Tyler v. Hillsdale Cnty. Sheriff's Dep't*, 837 F.3d 678, 687 (6th Cir. 2016) (refusing to give *Heller* conclusive effect to an as-applied challenge); *Beers v. Attorney Gen. U.S.*, 927 F.3d 150, 158 (3d Cir. 2019), *cert. granted, judgment vacated sub nom. Beers v. Barr*, —— U.S. ——, 140 S. Ct. 2758, 206 L.Ed.2d 933 (2020) (applying a two-part test to resolve an as-applied challenge); *Mai v. United States*, 952 F.3d 1106, 1115 (9th Cir. 2020) (applying intermediate scrutiny to an as-applied challenge).

While some believe there is no reason to "us[e] a different approach to evaluate challenges to § 922(g)(4)," as opposed to other subsections of § 922(g), *see Tyler*, 837 F.3d at 715 (Moore, J., dissenting), several courts relied on *Heller*'s dicta for other subsections of § 922(g) based on the Supreme Court's "emphasi[s] that its holding applied to gun laws relating to 'law-abiding, [ ] citizens.' " *See, e.g., Riley*, 635 F.Supp.3d at 419–20 (analyzing § 922(g)(1) for felon in possession). Those courts held that *Bruen* and its predecessors only "make[ ] clear that the Second Amendment protects the conduct of law-abiding citizens," ***177** but those cases "provide[ ] no constitutional sanctuary for those who use firearms to commit crimes." *United States v. Snead*, No. 1:22-CR-033, 2022 WL 16534278, at *5 (W.D. Va. Oct. 28, 2022).

Indeed, *Heller, McDonald*, and *Bruen* all concern "a law-abiding citizen's right to armed self-defense." *see Bruen*, 142 S. Ct. at 2133. Focusing on this fact, Defendant

asserts that, unlike subsections of § 922(g) that concern individuals like felons, the Supreme Court's reference to the "mentally ill," was "peripheral to the questions at issue," and was "unaccompanied by any analysis," "extended discussion" on relevant disarmament laws, or "any reasoning or explanation." (ECF No. 40 at 28 (internal citations omitted).) Defendant also points to *Heller*'s own discussion of dictum in a footnote of one of its previous decisions. (*Id.* at 31–32 (citing 554 U.S. at 625 n.25, 128 S.Ct. 2783 ("It is inconceivable that we would rest our interpretation ... upon such a footnoted dictum in a case where the point was not at issue and was not argued.")).)

Further, Defendant argues that while "nothing in *Heller* [or *Bruen*] cast doubt on longstanding prohibitions on the possession of firearms by felons ...*Bruen*'s new framework plainly does cast doubt on such laws." (ECF No. 40 at 33 (internal citations omitted).) It is true that "*Bruen* demands a 'text-and history' analysis that looks only to 'the Second Amendment's plain text' and our 'Nation's historical tradition of firearm regulation.' " (*Id.* (quoting *Bruen*, 142 S. Ct. at 2138).) Yet *Heller* did not "undertake an exhaustive historical analysis ... of the full scope of the Second Amendment," and even explicitly deferred an analysis of whether disarmament of the mentally ill had historical support. *See Heller*, 554 U.S. at 626–27 n. 26, 128 S.Ct. 2783.

Ultimately, the Court assumes without deciding that Defendant's conduct is protected by the Second Amendment. Because this issue can be resolved under the second prong of *Bruen*, the Court will not pave a new road by definitively answering the first step but will instead take the "well-trodden and judicious course" of conducting an analysis to determine whether § 922(g)(4) "does burden conduct protected by the Second Amendment." *See Pena v. Lindley*, 898 F.3d 969, 976 (9th Cir. 2018) (quoting *Woollard v. Gallagher*, 712 F.3d 865, 876 (4th Cir. 2013)). Further, "[w]hile courts may be free to 'presume' that many regulations (including those listed) will ultimately be declared lawful, it does not eliminate the need to conduct a careful constitutional analysis. The Second Amendment, after all, is now clearly an important individual right, which should not be given short shrift." *Tooley*, 717 F. Supp. 2d at 585.

B. Historical Basis

As to whether a challenged regulation has a historical basis, the Supreme Court explained that, "[i]n some cases, that inquiry will be fairly straightforward." *Bruen*, 142 S. Ct. at 2131. For example, "when a challenged regulation addresses a general societal problem that has persisted since the 18th century, the lack of a distinctly similar historical regulation addressing that problem is relevant evidence that the challenged regulation is inconsistent with the Second Amendment." *Id.* Conversely, in "other cases," a challenged law will "implicat[e] unprecedented societal concerns or dramatic technological changes," or will be addressed to "challenges" that are "not ... the same as those that preoccupied the Founders in 1791." *Id.* at 2132. Historical inquiry into these unprecedented statutes "may require a more nuanced approach," which "will often involve reasoning by analogy." *Id.*

***178** As discussed below, there is a historical basis for upholding the constitutionality of § 922(g)(4). Prior to engaging with the second prong of the *Bruen* test, though, the Court must determine the proper standard and scope of review.

1. The proper standard

Defendant argues that the "distinctly similar standard" must be employed in determining whether § 922(g)(4) has a historical basis under the second prong of *Bruen.* (ECF No. 40 at 22.) He reasons that "[t]he societal problem Congress sought to address through Section 922(g)(4) was firearm violence by the mentally ill," which "existed in 1791 when the Second Amendment was ratified." (*Id.* (arguing that "this was not a problem that came about during the Twentieth century, that was unimaginable at the founding, or which arose from dramatic technological changes")). Although the Government did not respond to this argument, (*see generally* ECF No. 43), Defendant's claims raise two issues, which the Court will now address.

i. Does *Bruen* create two different standards?

The first question is whether *Bruen* created different standards. The Court begins with a review of *Bruen's* analysis.

The Supreme Court began its reasoning with the following example:

> For instance, when a challenged regulation addresses a general societal problem that has persisted

> since the 18th century, the lack of a distinctly similar historical regulation addressing that problem is relevant evidence that the challenged regulation is inconsistent with the Second Amendment. Likewise, if earlier generations addressed the societal problem, but did so through materially different means, that also could be evidence that a modern regulation is unconstitutional. And if some jurisdictions actually attempted to enact analogous regulations during this timeframe, but those proposals were rejected on constitutional grounds, that rejection surely would provide some probative evidence of unconstitutionality.

Id., 142 S. Ct. at 2131. Then, the Court used one of the challenged regulations in *Heller*—"totally banned handgun possession in the home"—as an illustration of this framework in action. *Id.* (quoting *Heller*, 554 U.S. at 628, 128 S.Ct. 2783). After identifying the "perceived societal problem" as "firearm violence in densely populated communities," the Court determined that "the Founders themselves could have adopted" a flat ban on the possession of handguns. *Id.* Yet "after considering 'founding-era historical precedent,' including 'various restrictive laws in the colonial period,' and finding that none was analogous to the District's ban, *Heller* concluded that the handgun ban was unconstitutional." *Id.* (quoting *Heller*, 554 U.S. at 631, 634, 128 S.Ct. 2783).

That mode of analysis is only for the straightforward cases, though. The "other cases" "will often involve reasoning by analogy." *Id.* at 2132. Under this inquiry into unprecedented statutes, "determining whether a historical regulation is a proper analogue for a distinctly modern firearm regulation requires a determination of whether the two regulations are 'relevantly similar.' " *Id.* This standard is "neither a regulatory straightjacket nor a regulatory blank check." Instead, the standard "requires only that the government identify a well-established and representative historical analogue." *Id.* Further the challenged statute need not have a "historical twin" or be a "dead ringer for historical precursors." *Id.* In this way, the Supreme Court sought only to avoid "endorsing outliers that our ancestors would never have accepted." *Id.*

***179** Further, although *Bruen* does not "provide an exhaustive survey of the features that render regulations relevantly similar under the Second Amendment," it identified "two metrics: how and why the regulations burden a law-abiding citizen's right to armed self-defense." *Id.* at 2132-33. Sharpened even finer, there are two "central" considerations: (1) "whether modern and historical regulations impose a comparable burden on the right of armed self-defense" and (2) "whether that burden is comparably justified." *Id.* at 2133.

When determining how to do this historical analysis, *Bruen*'s discussion of limitations on firearms in sensitive places is instructive. The Court explained that "[a]lthough the historical record yields relatively few 18th- and 19th-century 'sensitive places' where weapons were altogether prohibited ... we are also aware of no disputes regarding the lawfulness of such prohibitions." *Id.* at 2133. "And courts can use analogies to those historical regulations of 'sensitive places' to determine that modern regulations prohibiting the carry of firearms in new and analogous sensitive places are constitutionally permissible." *Id.*

On the one hand, *Bruen* could be read to create two different standards. To start, the Supreme Court compared the "fairly straightforward" inquiry in "some cases," in which the societal problem existed at the time of the Founding Fathers, *id.* at 2131, with the "more nuanced approach" in "other cases," which addressed new issues, *id.* at 2132. This seems to identify two separate inquiries. Then, when discussing the first inquiry, the Court mentions "distinctly similar" historical regulations but only mentions "relevantly similar" historical regulations when discussing the second inquiry. As such, some courts have applied a more stringent standard of review for gun regulations aimed at societal ills dating to the Founding era. *See e.g., United States v. Holden*, 638 F.Supp.3d 931, 936–37 (N.D. Ind. Oct. 31, 2022); *United States v. Lewis*, 650 F.Supp.3d 1235, 1240–42 (W.D. Okla. Jan. 13, 2023).

On the other hand, *Bruen* does not *require* a "distinctly similar" historical regulation under the first inquiry. Instead, the Court provided several examples to guide courts, and "the lack of a distinctly similar historical regulation addressing that problem" was just one example of "relevant evidence" that the challenged law is unconstitutional. *Bruen*, 142 S. Ct. 2111. Importantly, the Court also seemed to endorse reasoning by analogy: "[I]f some jurisdictions actually attempted to enact *analogous regulations* during this timeframe," which "were

rejected on constitutional grounds, that rejection surely would provide some probative evidence of unconstitutionality." *Id.* (emphasis added). In fact, when discussing *Heller* as an example, the Court recalled that, of all the "founding-era historical precedent" it considered, "none was *analogous* to the District's ban." *Id.* at 2131 (emphasis added). Thus, under both inquiries, courts may use analogous reasoning.

Once again, though, the Court does not need to decide this issue either because, even if there are two standards, any such distinction does not help Defendant because clear historical precedent exists in this case as explained below.

ii. What is the proper "societal problem" to address?

The second question is whether Defendant is correct in asserting—without any explanation—that the "societal problem" § 922(g)(4) seeks to address is "firearm violence by the mentally ill"? Put simply, no.

Statutory interpretation starts with "the language of the statute itself." *United States v. Weaver*, 659 F.3d 353, 356 (4th Cir. 2011). "If the plain language is ***180** unambiguous, [a court] need look no further." *Lee v. Norfolk S. Ry. Co.*, 802 F.3d 626, 631 (4th Cir. 2015) (citation omitted). On the other hand, if the text of a statute is ambiguous, courts look to "other indicia of congressional intent such as the legislative history" to interpret the statute. *Id.* (quoting *CGM, LLC v. BellSouth Telecomms., Inc.*, 664 F.3d 46, 53 (4th Cir. 2011)). A court "determine[s] the 'plainness or ambiguity of statutory language ... 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.' " *Id.* (second and third alterations in original) (quoting *Yates v. United States*, 574 U.S. 528, 537, 135 S.Ct. 1074, 191 L.Ed.2d 64 (2015)). "A statute is ambiguous if it 'lends itself to more than one reasonable interpretation.' " *Id.* (quoting *Newport News Shipbuilding & Dry Dock Co. v. Brown*, 376 F.3d 245, 248 (4th Cir. 2004)).

In this case, Defendant's framing is far too broad for the simple reason that § 922(g)(4) does not prohibit just anyone with a mental illness from possessing a firearm. *See* 18 U.S.C. § 922(g)(4). Instead, it prohibits only individuals "who ha[ve] been *adjudicated as a mental defective* or who ha[ve] been *committed to a mental institution*" from possessing a firearm. *Id.* (emphasis added). In turn, "[a]djudicated as a mental defective" [5] is defined as follows:

> (a) A determination by a court, board, commission, or other lawful authority that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease:
>
> (1) Is a danger to himself or to others; or
>
> (2) Lacks the mental capacity to contract or manage his own affairs.

27 C.F.R. § 478.11.

5 The Court notes that scholars and disability rights activists criticize the term "mental defective" for being offensive and vague. *See, e.g.*, Jana R. McCreary, *"Mentally Defective" Language in the Gun Control Act*, 45 CONN. L. REV. 813, 864 (2013) ("Continuing the use of a term over forty years old ignores the strides made in recognizing the importance of people and people-first language."). It is used here only due to its statutorily enshrined status.

Similarly, the definition of "committed to a mental institution" is a "[f]ormal commitment of a person to a mental institution by a court, board, commission, or other lawful authority," including "commitment to a mental institution involuntarily" and "commitment for mental defectiveness or mental illness" or "drug use." 27 C.F.R. § 478.11.

These definitions are largely coextensive, as a defendant who is committed to a mental institution by a court because he poses a danger to himself or others, [6] which is a criterion for commitment in nearly every state, [7] qualifies both under the first ***181** prong of "committed to a mental institution" and as being adjudicated as a "mental defective." However, "committed to a mental institution" also captures a person who is committed "for other reasons, such as drug usage." *Id.*

6 Defendant takes great issue with the fact that West Virginia law allows for "involuntary commitment based only on a finding of probable cause." (*See, e.g.*, ECF No. 48 at 2.) However, nothing in his briefing or the Court's research suggests this issue is material for the present case in any way.

7 Alaska Stat. Ann. § 47.30.755(a); Ariz. Rev. Stat. Ann. § 36-540(A); Cal. Welf. & Inst. Code § 5250; Colo. Rev. Stat. Ann. § 27-65-109(4);

Conn. Gen. Stat. Ann. § 17a-498(c); Fla. Stat. Ann. § 394.467(1); Ga. Code. Ann. § 37-3-1(9.1); Haw. Rev. Stat. Ann. § 334-60.2; Idaho Code § 66-329(11); 405 Ill. Comp. Stat. Ann. 5/1-119; Ind. Code. Ann. § 12-26-6-8(a); Iowa Code Ann. § 229.1(20); Kan. Stat. Ann. § 59-2946(f); Ky. Rev. Stat. Ann. § 202A.026; La. Rev. Stat. Ann. § 28:55(E)(1); Mass. Gen. Laws. Ann. ch. 123, § 1; Mich. Comp. Laws Ann. § 330.1401(1); Miss. Code Ann. §§ 41-21-73(4), 41-21-61(f); Mo. Ann. Stat. §§ 632.350(5), 632.005(10); Mont. Code Ann. § 53-21-126(1); Neb. Rev. Stat. Ann. §§ 71-925(1), 71-908; Nev. Rev. Stat. §§ 433A.310(1), 433A.115(2); N.H. Rev. Stat. Ann. §§ 135-C:34, 135-C:27(1); N.J. Stat. Ann. §§ 30:4-27.2(m), 30:4-27.2(h); N.M. Stat. Ann. §§ 43-1-11(E), 43-1-3(M); N.C. Gen. Stat. Ann. §§ 122C-268(j), 122C-3(11); N.D. Cent. Code Ann. §§ 25-03.1-07, 25-03.1-02(14), (21); Ohio Rev. Code Ann. §§ 5122.15(C), 5122.01(B); 50 Pa. Stat. and Const. Stat. Ann. §§ 7304(a), 7301; S.C. Code Ann. § 44-17-580(A); S.D. Codified Laws §§ 27A-1-2, 27A-1-1(6)-(7); Tex. Health & Safety Code Ann. § 574.034(a); Utah Code Ann. § 62A-15-631(16); VT. Stat. Ann. tit. 18, §§ 7611, 7101(17); Va. Code. Ann. § 37.2-817(C); Wash Rev. Code Ann. § 71.05.240(3); W. Va. Code Ann. §§ 27-5-4(k), 27-1-12(a); Wis. Stat. Ann. §§ 51.20(1)(a)(1), 51.20(1)(a)(2); Wyo. Stat. Ann. §§ 25-10-110(j), 25-10-101(a)(ii).

From these definitions, it becomes clear that § 922(g)(4) seeks to prevent a variety of groups from possessing firearms. While possibly overlapping, the legal meanings of related concepts such as "marked subnormal intelligence,"[8] "mental illness,"[9] and "incompetency"[10] are not equivalent to the statutory definitions at issue. *See United States v. Hansel*, 474 F.2d 1120, 1125 (8th Cir. 1973) (recognizing that "the term 'mental defective' has on occasion, been given a more expansive meaning by courts and legislatures"). These related definitions only matter if they result in someone being *adjudged defective* or *involuntarily committed*. The legal determination is the operative status in the statute, not the underlying cause. As such, simply having a mental illness does not approach the necessary showing to fall under the statute's prohibitions.

8 "Marked" is defined as "very noticeable." Marked, Britannica.com, https://www.britannica.com/dictionary/marked (last visited March 21, 2023). And "subnormal" means "lower or smaller than normal." Subnormal, Britannica.com, https://www.britannica.com/dictionary/subnormal (last visited March 21, 2023). Thus, an individual with "marked subnormal" intelligence is someone with very noticeable, low intelligence. *See, e.g.*, *Henry v. Dees*, 658 F.2d 406, 411 (5th Cir. 1981) (noting that the defendant's "intelligence quotient places him in the educable mental retardate category").

9 Mental Illness, *Black's Law Dictionary* (11th ed. 2019) ("A disorder in thought or mood so substantial that it *impairs* judgment, behavior, perceptions of reality, or the ability to cope with the ordinary demands of life." (emphasis added)).

10 Legally Incapacitated Person, *Black's Law Dictionary* (11th ed. 2019) (explaining that a legal "incompetent" is synonymous with a "leally incapacitated person," which means "[a] person, other than a minor, who is temporarily or permanently impaired by mental illness, mental deficiency, *physical illness* or disability, or *alcohol or drug use* to the extent that the person *lacks sufficient understanding to make or communicate responsible personal decisions* or to enter into contracts" (emphasis added)).

The statute's disconnect from "mental illness" alone is further exemplified by the fact that the statutory standard is not *limited* to individuals who have been adjudged or committed based on their mental health. For example, someone who was committed to a mental institution for drug usage would not necessarily fit into one of the previously discussed categories—marked subnormal intelligence, mentally ill, or incapacitated. Nonetheless, the statute would still include them in its reach. As a result, following Defendant's logic, it could be argued that the societal problem § 922(g)(4) seeks to address is "firearm violence by those with below average intelligence," or "firearm violence by the incompetent" or "firearm violence by someone who uses drugs." The Court rejects this simplistic framing.

Rather, the societal problem that § 922(g)(4) addresses must encompass *all* of these individuals so long as they have been adjudged defective or involuntarily committed. So, what do they all have in common? To answer this question, the ***182** Court looks to the sole commonality of the two definitions:

individuals who have been determined to be a danger to themselves or others.

This answer is supported by legislative history. As the Supreme Court recognized long ago, Congress enacted the Gun Control Act of 1968 ("GCA") because "it was concerned with the widespread traffic in firearms and with their general availability to those whose possession thereof was contrary to the public interest." *Huddleston v. United States*, 415 U.S. 814, 824, 94 S.Ct. 1262, 39 L.Ed.2d 782 (1974). The GCA's broadly stated purpose "was to curb crime by keeping 'firearms out of the hands of those not legally entitled to possess them because of age, criminal background, or incompetency.' " *Id.* (quoting S.Rep. No. 1501, 90th Cong., 2d Sess. 22 (1968)); *see also* 114 Cong. Rec. 13219 (1968) (remarks by Sen. Tydings). After all, "[n]o one can dispute the need to prevent drug addicts, mental incompetents, persons with a history of mental disturbances, and persons convicted of certain offenses from buying, owning, or possessing firearms. This bill seeks to maximize the possibility of keeping firearms out of the hands of such persons." 114 Cong. Rec. 13647, 21784 (1968). "In order to accomplish this goal, Congress obviously determined that firearms must be kept away from persons ... who might be expected to misuse them." *Dickerson v. New Banner Inst., Inc.*, 460 U.S. 103, 119, 103 S.Ct. 986, 74 L.Ed.2d 845 (1983).

More specifically, Congress had two purposes for enacting § 922(g)(4): (1) protecting the community from crime and (2) preventing suicide, both of which were intended to be accomplished by "cut[ting] down or eliminat[ing] firearms deaths caused by persons who are not criminals, but who commit sudden, unpremeditated crimes with firearms as a result of mental disturbances." *See* 114 Cong. Rec. 21,829 (1968). Thus, members of Congress thought it necessary to prevent dangerous individuals who are likely to "commit sudden, unpremeditated crimes with firearms as a result of mental disturbances" from possessing those firearms. *Id.* In doing so, the statutory provision aimed to prohibit firearm ownership among those who "by their previous conduct or mental condition" have *proven* themselves "incapable of handling a dangerous weapon in ... an open society." *Id.* at 21,809-10 (statement of Rep. Tenzer).

Thus, the societal problem § 922(g)(4) seeks to address is firearm violence by individuals who have been determined to be a danger to themselves or others—not firearm violence by those who simply have any kind of mental illness.

2. Historical basis for Section 922(g)(4)

Having determined the societal problem at play, the second step of a Second Amendment challenge is deciding whether the regulation is consistent with the Nation's historical tradition of firearm regulation. *Bruen*, 142 S. Ct. at 2129–30. To do this, the Court must determine whether the Government has met its burden of showing that prohibiting individuals who have been determined to be a danger to themselves or others from possessing firearms is consistent with the Nation's historical tradition of firearm regulation.[11] As detailed below, the Government has met this burden.

11 The Court stresses that district courts are "ill equipped to conduct the type of searching historical surveys that the [*Bruen*] Court's approach requires," *Bruen*, 142 S. Ct. at 2179 (Breyer, J., dissenting), even if cases are to be decided "based on the historical record compiled by the parties," *id.* at 2130, n. 6 (Thomas, J.).

To start, the Government does not rebut Defendant's contention that a formal regulation prohibiting the possession of firearms ***183** by the *mentally ill* did not exist at the time the Second Amendment was enacted. (*See* ECF No. 43.) Nevertheless, the Government suggests that the absence of historical statutory prohibitions on firearm possession may have been the consequence of the fact that "in eighteenth-century America, justices of the peace were authorized to 'lock up' 'lunatics' who were 'dangerous to be permitted to go abroad.' " (*Id.* at 7) (citing Carlton F.W. Larson, *Four Exceptions in Search of a Theory: District of Columbia v. Heller and Judicial Ipse Dixit*, 60 HASTINGS L.J. 1371, 1377 (2009)); Gerald N. Grob, *The Mad Among Us: A History of the Care of America's Mentally Ill* 5-21, 29, 43 (1994) (explaining that these individuals were often removed from the community at large through home confinement or involuntary commitment to welfare and penal institutions).) As such, the Government reasons that "formal laws regarding disarmament were simply unnecessary." (*Id.* at 12 n.7.) Other courts have used this rationale to conclude that "[i]f eighteenth century America viewed it as a permissible infringement on liberty to 'lock up' individuals of unsound mind, then a lesser intrusion on liberty such as a prohibition on firearm possession would seem to have been permissible, as well." *Keyes v. Lynch*, 195 F. Supp. 3d 702, 718 (M.D. Pa. 2016) (citing *Larson*, supra).

Further bolstering its argument, the Government presents a history of restrictions aimed at preventing persons considered to be dangerous to themselves or others from possessing and using firearms. (ECF No. 43 at 9–12, 13–14.) In particular, the Government points to the 1689 English Declaration of Rights, (*id.* at 9), which *Heller* identified as "the predecessor of our Second Amendment," 554 U.S. at 593, 128 S.Ct. 2783. The Declaration provided that "the subjects which are Protestants may have arms for their defense *suitable to their conditions* and *as allowed by law.* 1 W. & M., c. 2, § 7, in 3 Eng. Stat. at Large 441 (1698) (emphasis added). The Government also cites the Address and Reasons of Dissent of the Minority of the Convention of the State of Pennsylvania to Their Constituents, another "highly influential" "precursor" to the Second Amendment, *Heller*, 554 U.S. at 604, 128 S.Ct. 2783, in support of its position, (ECF No. 43 at 7). That Address notes that at the time of the Second Amendment's ratification, citizens were excluded from the right to bear arms if they posed a "real danger of public injury." *United States v. Skoien*, 614 F.3d 638, 640 (7th Cir. 2010).

Further, the Government provides copious sources discussing the historical basis of laws disarming individuals deemed "dangerous" to society. (*See, e.g.*, ECF No. 43 at 7 (citing Robert Dowlut, *The Right to Arms: Does the Constitution or the Predilection of Judges Reign?*, 36 OKLA. L. REV. 65, 96 (1983) ("Colonial and English societies of the eighteenth century ... have excluded infants, idiots, lunatics, and felons [from possessing firearms].")); *id.* at 14 (citing *Nat'l Rifle Ass'n of Am., Inc. v. Bureau of Alcohol, Tobacco, Firearms, & Explosives*, 700 F.3d 185, 200 (5th Cir. 2012) (identifying classes of individuals perceived to be dangerous and disarmed during the colonial era).) In fact, this Court recently detailed the United States's historical tradition for laws prohibiting individuals deemed "dangerous" from possessing firearms in the interest of public safety. *See Nutter*, 624 F.Supp.3d at 641–45.

As this Court explained, "[h]istory is consistent with common sense: it demonstrates that legislatures have the power to prohibit dangerous people from possessing guns." *Nutter*, 624 F.Supp.3d at 645 (quoting *Kanter*, 919 F.3d at 451 (Barrett, J., dissenting).) And "[c]ommon sense tells us that the public understanding of the Second Amendment at the time of its enactment, ***184** which allowed for disarmament of Blacks and Native Americans based on their perceived threat, would have accepted disarmament of people" who have been involuntarily committed to a mental institution because they were part of "a group found by the legislative branch to present a danger of misusing firearms." *See id.* Thus, despite Defendant's claims, "[n]othing in the historical record suggests a popular understanding of the Second Amendment at the time of the founding that extended to preserving gun rights for groups who pose a particular risk of using firearms against [themselves or other] innocent people." *See id.*

When the *Heller* Court interpreted the Second Amendment, it reviewed history and tradition from England, the colonial and founding periods, and the nineteenth century to determine how that history and tradition informed or reflected the founding-era understanding of the Second Amendment. Examining these same kinds of sources to identify the historical justification for § 922(g)(4) reveals one controlling principle that applies to each historical period: dangerous persons could be disarmed. Accordingly, because there is a historical basis for disarming individuals that have been determined to be dangerous to themselves and/or the public at large, § 922(g)(4) is constitutional on its face.

IV. CONCLUSION

For these reasons, Defendant's *Bruen*-Based Motion to Dismiss, (ECF No. 40), is **DENIED.**

IT IS SO ORDERED.

All Citations

672 F.Supp.3d 167

NO. _____

In the

Supreme Court of the United States

JAMES GOULD, ***Petitioner*****,**

v.

UNITED STATES OF AMERICA, ***Respondent*****.**

APPENDIX C
TO PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

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Federal Public Defender

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AO 245B (Rev. 02/18) Judgment in a Criminal Case
Sheet 1

UNITED STATES DISTRICT COURT

Southern District of West Virginia

UNITED STATES OF AMERICA
v.
JAMES GOULD

JUDGMENT IN A CRIMINAL CASE

Case Number: 2:22-cr-00095

USM Number: 17889-510

Lex A. Coleman
Defendant's Attorney

THE DEFENDANT:

☑ pleaded guilty to count(s) Single Count Indictment

☐ pleaded nolo contendere to count(s) _____ which was accepted by the court.

☐ was found guilty on count(s) _____ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. §§ 922(g)(4)	Possession of a Firearm After Being Adjudicated Mentally	February18, 2022	One
and 924(a)(2)	Defective or Involuntarily Committed		

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.

☐ The defendant has been found not guilty on count(s) _____

☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

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.

March 21, 2024
Date of Imposition of Judgment

THOMAS E. JOHNSTON, CHIEF JUDGE

April 1, 2024
Date

DEFENDANT: JAMES GOULD
CASE NUMBER: 2:22-cr-00095

IMPRISONMENT

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

time served.

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

☐ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____ .

☐ as notified by the United States Marshal.

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

☐ before 2 p.m. on _____ .

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____ , with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: JAMES GOULD
CASE NUMBER: 2:22-cr-00095

SUPERVISED RELEASE

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

3 years.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
   - ☑ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☑ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq*.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

DEFENDANT: JAMES GOULD
CASE NUMBER: 2:22-cr-00095

STANDARD CONDITIONS OF SUPERVISION

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, but may decline to do so if you believe it will incriminate you. See United States v. Meeks-Little, 5:21-cr-129 (3/1/23), Dkt. 72, Judgment at 4, item 4.
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.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____ Date _____

DEFENDANT: JAMES GOULD
CASE NUMBER: 2:22-cr-00095

ADDITIONAL SUPERVISED RELEASE TERMS

In addition, the defendant shall comply with the following special conditions of supervised release:

The Defendant shall comply with the Standard Conditions of Supervision adopted by the Southern District of West Virginia in Local Rule of Criminal Procedure 32.3, as follows:

1) If the defendant is unemployed, the probation officer may direct the offender to register and remain active with Workforce West Virginia.
2) Defendants shall submit to random urinalysis or any drug screening method whenever the same is deemed appropriate by the probation officer and shall participate in a substance abuse program as directed by the probation officer. Defendants shall not use any method or device to evade a drug screen.
3) As directed by the probation officer, the defendant will make copayments for drug testing and drug treatment services at rates determined by the probation officer in accordance with a court-approved schedule based on ability to pay and availability of third-party payments.
4) A term of community service is imposed on every offender on supervised release or probation. Fifty hours of community service is imposed on every offender for each year the offender is on supervised release or probation. The obligation for community service is waived if the offender remains fully employed or actively seeks such employment throughout the year.
5) The defendant shall not possess a firearm, ammunition, destructive device, or any other 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), and shall reside in a residence free from such items.
6) The defendant shall not purchase, possess, or consume any organic or synthetic intoxicants, including bath salts, synthetic cannabinoids, or other designer stimulants.

The defendant must participate in a mental health treatment program and follow the rules and regulations of the program. The probation officer, in consultation with the treatment provider, will supervise your participation in the program.

As part of the sentence, the defendant has been ordered to pay the special assessment. The payment of the special assessment shall be a special condition of the defendant's supervised release.

DEFENDANT: JAMES GOULD
CASE NUMBER: 2:22-cr-00095

CRIMINAL MONETARY PENALTIES

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

	Assessment	JVTA Assessment*	Fine	Restitution
TOTALS	$ 100.00	$ 0.00	$ 0.00	$ 0.00

☐ The determination of restitution is deferred until _____ . An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss**	Restitution Ordered	Priority or Percentage

TOTALS $ 0.00 $ 0.00

☐ Restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.
** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: JAMES GOULD
CASE NUMBER: 2:22-cr-00095

SCHEDULE OF PAYMENTS

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

A ☑ Lump sum payment of $ 100.00 due immediately, balance due

☐ not later than _____ , or
☑ in accordance with ☐ C, ☐ D, ☐ E, or ☑ F below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $ _____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after the date of this judgment; or

D ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $ _____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ *(e.g., 30 or 60 days)* after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

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

If not paid immediately, the defendant shall pay the special assessment within the first three months of supervised release. The defendant shall make the payments to the Clerk, United States District Court, P. O. Box 2546, Charleston, WV 25329.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers *(including defendant number)*, Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

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

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) JVTA assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.