

IN THE SUPREME COURT OF THE UNITED STATES

No. 25A_____

PAMELA BONDI, ATTORNEY GENERAL OF THE UNITED STATES, ET AL.,
APPLICANTS

v.

VERA COOPER, ET AL.

APPLICATION FOR AN EXTENSION OF TIME
WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

Pursuant to Rules 13.5 and 30.2 of the Rules of this Court, the Solicitor General -- on behalf of applicants Pamela Bondi, Attorney General of the United States; Daniel Driscoll, Acting Director, Bureau of Alcohol, Tobacco, Firearms and Explosives; and United States of America -- respectfully requests a 29-day extension time, to and including December 19, 2025, within which to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit in this case. The opinion of the court of appeals (App., infra, 1a-26a) is reported at 148 F.4th 1307. The order of the district court (App., infra, 27a-48a) is reported at 640 F. Supp. 3d 1252.

The court of appeals entered its judgment on August 20, 2025. Unless extended, the time within which to file a petition for a

writ of certiorari will expire on November 18, 2025. The jurisdiction of this Court would be invoked under 28 U.S.C. 1254(1).

1. Respondents Vera Cooper, Nicole Hansell, and Neill Franklin are Florida residents who use (or wish to use) medical marijuana. App., infra, 6a. They brought this civil suit in the U.S. District Court for the Northern District of Florida, claiming that 18 U.S.C. 922(g)(3), the statute that prohibits unlawful users of controlled substances from possessing firearms, violates the Second Amendment as applied to them. App., infra, 6a.

The district court granted the government's motion to dismiss the suit. App., infra, 27a-48a. The court determined that Section 922(g)(3) complies with the Second Amendment because it falls within "the historical tradition of disarming those who engage in criminal activity." Id. at 42a. The court also determined that "the historical tradition of keeping guns from those the government fairly views as dangerous," such as "alcoholics and the mentally ill," "provides another justification for upholding" the statute. Id. at 44a.

2. The Eleventh Circuit vacated and remanded. App., infra, 1a-26a. The court concluded that the government had failed to show that "disarming medical marijuana users is consistent with this Nation's history and tradition of firearm regulation." Id. at 11a.

The court of appeals first rejected the government's reliance on "the Nation's history and tradition of disarming 'those engaged

in criminal conduct,'" explaining that the use of medical marijuana is "a misdemeanor, not a felony," and that the government "has not pointed to any historical tradition of disarming those engaged in misdemeanor conduct." App., infra, 19a. The court then rejected reliance on the "history and tradition of disarming individuals [the government] fairly deems as dangerous," observing that the complaint "contains no allegations regarding either the frequency of use or effects that consumption of marijuana has on [respondents] -- or other medical marijuana users." Id. at 21a-22a. The court stated that "the factual allegations," viewed "in the light most favorable" to respondents, "do not lead to an inference that they, because they are medical-marijuana users, can fairly be labeled as dangerous." Id. at 23a.

The court of appeals accordingly concluded that the government had failed to meet its burden "at the motion to dismiss stage." App., infra, 25a. It remanded the case to the district court, stating that the government "very well may prove at a later stage of litigation, after development of a factual record," that Section 922(g)(3) complies with the Second Amendment as applied to respondents. Id. at 26a n.16.

3. The Solicitor General has not yet determined whether to file a petition for a writ of certiorari in this case. The additional time sought in this application is needed to continue consultation within the government and to assess the legal and practical impact of the court of appeals' ruling. Additional time is

also needed, if a petition is authorized, to permit its preparation and printing.

Respectfully submitted.

D. JOHN SAUER
Solicitor General

NOVEMBER 2025

APPENDIX

Court of appeals opinion (11th Cir. Aug. 20, 2025)	1a
District court order (N.D. Fla. Nov. 4, 2022)	27a

[PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 22-13893

FLORIDA COMMISSIONER OF AGRICULTURE,

Plaintiff,

VERA COOPER,
NICOLE HANSELL,
NEILL FRANKLIN,

Plaintiffs-Appellants,

versus

ATTORNEY GENERAL OF THE UNITED STATES,
UNITED STATES OF AMERICA,
DIRECTOR OF BUREAU OF ALCOHOL, TOBACCO,
FIREARMS, AND EXPLOSIVES,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Florida
D.C. Docket No. 4:22-cv-00164-AW-MAF

Before BRANCH, LUCK, and TJOFLAT, Circuit Judges.

BRANCH, Circuit Judge:

“[W]hen the Government regulates arms-bearing conduct . . . it bears the burden to justify its regulation.” *United States v. Rahimi*, 602 U.S. 680, 691 (2024) (quotations omitted). In this case, two Florida medical marijuana users who wish to purchase guns and one gun owner who wishes to participate in Florida’s medical marijuana program brought a pre-enforcement action seeking declaratory relief that 18 U.S.C. § 922(d)(3) and (g)(3), which prohibit unlawful drug users from possessing or being sold firearms, are unconstitutional as applied to them. The district court, applying the framework first established in *District of Columbia v. Heller*, 554 U.S. 570 (2008), and built on in *New York State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1 (2022), dismissed the complaint. After assuming that plaintiffs were among “the people” protected by the Second Amendment, the district court conducted *Bruen*’s history-and-tradition test to determine if the challenged statutes were similar to historical gun regulations. The district court concluded that the laws and regulations at issue in this case

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were consistent with this Nation’s historical tradition of firearms regulation and therefore did not violate the Second Amendment.

After holding oral argument, we held this case in abeyance pending the Supreme Court’s decision in *Rahimi* and ordered supplemental briefing on *Rahimi*’s effect on this case. After careful review, we hold that the district court erred in concluding that the plaintiffs did not state a claim for relief. We reach this conclusion because, when viewed in the light most favorable to the plaintiffs, the allegations in the operative complaint do not lead to the inference that the plaintiffs are comparatively similar to either felons or dangerous individuals—the two historical analogues the Federal Government offers in its attempt to meet its burden. We therefore vacate the district court’s order and remand for further proceedings consistent with this opinion.

I. Background

Vera Cooper, Nicole Hansell, Neill Franklin, (collectively “Appellants”) and the Florida Commissioner of Agriculture¹ instituted this action in the Northern District of Florida to challenge the constitutionality of prohibiting medical marijuana users from purchasing and possessing firearms. Specifically, they challenged the constitutionality of 18 U.S.C. § 922(d)(3) and (g)(3)²

¹ The Florida Commissioner of Agriculture was dismissed on appeal as a party in this matter.

² 18 U.S.C. § 922(d)(3) provides:

It shall be unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or

as well as the Bureau of Alcohol, Tobacco, Firearms, and Explosives's ("ATF") implementation of these statutes through 27 C.F.R. § 478.11 and Form OMB No. 1140-0020 (also known as ATF Form 4473, hereinafter "Form 4473"). The challenged statutes and regulations prohibit "unlawful users"³ of controlled substances

having reasonable cause to believe that such person, including as a juvenile . . . is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. [§] 802)) [.]

Section 922(g)(3) provides:

It shall be unlawful for any person . . . who is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. [§] 802)) . . . to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

Section 102 of the Controlled Substances Act defines "controlled substance" as "a drug or other substance, or immediate precursor, included in schedule I, II, III, IV, or V of part B of this subchapter" but "does not include distilled spirits, wine, malt beverages, or tobacco, as those terms are defined or used in subtitle E of the Internal Revenue Code of 1986." 21 U.S.C. § 802(6).

³ 27 C.F.R. § 478.11 states that "any person who is a current user of a controlled substance," including marijuana, is an "[u]nlawful user." Although § 478.11 does not explicitly define what constitutes a "current user," it does provide that:

Such use is not limited to the use of drugs on a particular day, or within a matter of days or weeks before, but rather that the unlawful use has occurred recently enough to indicate that the

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from being sold or possessing firearms. Marijuana is one such controlled substance, and it is currently categorized as a Schedule I drug. 21 C.F.R. § 1308.11(d)(23).⁴ A Schedule I drug is one that (1) has a high potential for abuse; (2) has no currently accepted medical use in treatment in the United States; and (3) lacks accepted safety use under medical supervision.⁵ 21 U.S.C. § 812(b)(1).

individual is actively engaged in such conduct. A person may be an unlawful current user of a controlled substance even though the substance is not being used at the precise time the person seeks to acquire a firearm or receives or possesses a firearm. An inference of current use may be drawn from evidence of a recent use or possession of a controlled substance or a pattern of use or possession that reasonably covers the present time, e.g., a conviction for use or possession of a controlled substance within the past year; multiple arrests for such offenses within the past 5 years if the most recent arrest occurred within the past year; or persons found through a drug test to use a controlled substance unlawfully, provided that the test was administered within the past year.

Id.

⁴ 21 C.F.R. § 1308.11(d)(23) uses the alternative spelling of “marihuana.” Our opinion uses the more common spelling, “marijuana.”

⁵ The Drug Enforcement Agency recently proposed a rule that would reclassify marijuana as a Schedule III drug. Schedules of Controlled Substances: Rescheduling of Marijuana, 89 Fed. Reg. 44597-01 (proposed May 21, 2024). Federal law classifies Schedule III controlled drugs as drugs that (1) have a potential for abuse less than drugs in schedules I and II; (2) have a currently accepted medical use in treatment in the United States; and (3) abuse of which may lead to moderate or low physical dependence or high psychological dependence. 21 U.S.C. § 812(b)(3). Because that proposed regulation is not yet in effect, it plays no role in our analysis. *See infra* note 17.

The operative First Amended Complaint (“FAC”) alleged that Franklin is a Florida resident and retired law enforcement officer who is the lawful owner of a firearm. A physician determined that Franklin was eligible to use marijuana for medical purposes under Florida (not federal) law because he had a qualifying medical condition. He wants to partake in Florida’s medical marijuana program but will not participate “on the sole basis that doing so would subject him to” prosecution under the challenged federal statutes and regulations.

Cooper and Hansell are Florida residents who use medical marijuana in accordance with Florida (not federal) law, and they attempted to purchase firearms. In so doing, they were required to fill out Form 4473, which contains a question asking would-be purchasers if they are “an unlawful user of, or addicted to, marijuana . . . or any other controlled substance.”⁶ Because Cooper and Hansell answered this question in the affirmative, the gun stores denied their purchases. Cooper and Hansell both wish to purchase a firearm for their personal protection.

Since 2015, Congress has included a budget rider amendment (commonly referred to as the “Rohrabacher-Farr Amendment”) in its appropriations bills that precludes the Department of Justice from using any appropriated funds to

⁶ The FAC explains that Form 4473 also warns that marijuana use “remains unlawful under Federal law regardless of whether it has been legalized or decriminalized for medicinal or recreational purposes in the state where” the prospective firearm purchaser resides.

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prevent states from implementing their medical marijuana programs. According to the FAC, Cooper and Hansell “act in reliance upon the Rohrabacher-Farr Amendment” and “only engage in activity they are legally permitted to take and that they know will not expose them to punishment or liability under state or federal law.”⁷

Notably, the FAC does not contain any allegations regarding the frequency of Cooper’s and Hansell’s medicinal marijuana use or the amount of marijuana they consume at any given time. Nor does it contain any allegations related to what marijuana-related side effects, if any, Cooper and Hansell experience. The FAC does not indicate whether they have lost any level of control over their use of marijuana, or whether marijuana impairs regulation of their behavior when they are not using. Indeed, all the FAC alleges regarding their current marijuana use is that they “participate[] in the state medical marijuana program” because of the “benefits [they] obtain[] from such medical use” as well as their reliance on not being criminally prosecuted for their use. In short, nothing in the FAC indicates that Cooper or Hansell have committed any felony or been convicted of any crime (felony or misdemeanor), let

⁷ Under Florida law, medical marijuana patients must comply with several legal requirements. These include not using marijuana in public, not cultivating marijuana, purchasing marijuana only through approved channels, and presenting patient identification to law enforcement on request. *See* Fla. Stat. § 381.986(12)(c), (d), & (e).

alone that their medical marijuana use makes them dangerous. *But see infra* note 16.

The FAC brought four counts against the Attorney General of the United States and the ATF Director (hereinafter the “Federal Government”). Counts I and II brought claims for declaratory and injunctive relief that the challenged statutes and regulations violate the Second Amendment as applied to Cooper, Hansell, Franklin, and other Florida medical marijuana users.⁸ Counts III and IV also brought claims for declaratory and injunctive relief that the prosecution of Cooper, Hansell, Franklin, or any other medical marijuana user would violate the Rohrabacher-Farr Amendment.

The Federal Government moved to dismiss the FAC, arguing *inter alia* that Counts I and II fail as a matter of law because the challenged statutes and regulations are constitutional as applied to all unlawful users of a controlled substance, and because the FAC failed to state a claim with respect to Counts III and IV, the Rohrabacher-Farr Amendment claims.⁹

⁸ “In an as-applied challenge, a plaintiff seeks to vindicate only her own constitutional rights.” *McGuire v. Marshall*, 50 F.4th 986, 1003 (11th Cir. 2022). “In evaluating an as-applied challenge, [we] address[] whether a statute is unconstitutional on the facts of a particular case or in its application to a particular party.” *Id.* (quotation omitted).

⁹ The Federal Government also argued that Hansell and Cooper were the only plaintiffs with Article III standing in this case and that their standing was limited to Counts I and II—the Second Amendment claims—only. Because Counts I and II are the only claims before us on appeal, and because the district court correctly concluded that Hansell and Cooper have Article III standing, we do not elaborate on this issue. *See Babbitt v. United Farm Workers Nat’l*

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The district court granted the Federal Government’s motion to dismiss. In doing so, it declined to decide whether—based on the Supreme Court’s reference in *Heller* to “law-abiding, responsible citizens” enjoying Second Amendment rights, 554 U.S. at 635—medical marijuana users fell outside of the scope of the Second Amendment because they were not “law-abiding” citizens. Instead, assuming that medical marijuana users were “included in ‘the people’ the Second Amendment protects,” the district court proceeded to analyze whether laws precluding medical marijuana users from possessing firearms were consistent with this Nation’s historical tradition. Applying analogous reasoning as employed in *Bruen*, the district court determined that prohibiting medical marijuana users from possessing firearms was consistent with the Nation’s historical tradition of keeping guns out of the hands of individuals who (1) engage in criminal conduct; and (2) are deemed dangerous, like alcoholics and the mentally ill—the two historical analogues offered by the Federal Government.¹⁰ Accordingly, the district court found that the challenged statutes and regulations as applied to medical marijuana users did not violate the Second

Union, 442 U.S. 289, 298 (1979) (“When contesting the constitutionality of a criminal statute, it is not necessary that the plaintiff first expose himself to actual arrest or prosecution to be entitled to challenge the statute that he claims deters the exercise of his constitutional rights.” (alterations adopted) (quotations omitted)).

¹⁰ In discussing the historical analogue of keeping drugs out of the hands of dangerous individuals, the district court equated medical marijuana users with “habitual drug users.”

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Amendment, and it dismissed Counts I and II of the FAC.¹¹ Plaintiffs timely appealed.

II. Standard of Review

“We review *de novo* the district court’s grant of a Rule 12(b)(6) motion to dismiss for failure to state a claim, accepting the complaint’s allegations as true and construing them in the light most favorable to the plaintiff.” *Chaparro v. Carnival Corp.*, 693 F.3d 1333, 1335 (11th Cir. 2012) (quotations omitted). In this case, that review involves considering the constitutionality of a statute, which we also consider *de novo*. *United States v. Jimenez-Shilon*, 34 F.4th 1042, 1043 (11th Cir. 2022).

III. Discussion

On appeal, Appellants argue that the district court erred by concluding that they had not stated a claim that the challenged statutes and regulations violate their Second Amendment rights. Appellants assert that the district court should not have accepted the Federal Government’s offered analogues because nothing in the FAC indicates they are engaging in felonious conduct and they cannot fairly be labeled as dangerous individuals based solely on their general use of marijuana for medicinal purposes. Accordingly, they argue that the Federal Government has not met its “burden of showing that disarming state-law compliant medical

¹¹ The district court also dismissed Counts III and IV for failing to state a claim, but as discussed in note 9, plaintiffs do not appeal the dismissal of these counts.

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marijuana users comports with the history and tradition of the Second Amendment” at the motion to dismiss stage.

Upon review, we find that the district court erred in granting the Federal Government’s motion to dismiss because it did not view the FAC’s allegations in the light most favorable to Appellants. When viewed in this light, Appellants cannot be fairly compared with felons or those the government deems dangerous. Thus, the government failed to meet its burden—at the motion to dismiss stage—to establish that disarming medical marijuana users is consistent with this Nation’s history and tradition of firearm regulation.

A. Second Amendment Framework

We begin our analysis by laying out the applicable legal framework for assessing Second Amendment challenges.

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.” U.S. Const. amend. II. In a groundbreaking decision striking down a D.C. law that prohibited private possession of handguns, the Supreme Court in *Heller* noted that there is “a strong presumption that the Second Amendment right . . . belongs to all Americans.” 554 U.S. at 581. The Court held “on the basis of both text and history, that the Second Amendment conferred an individual right to keep and bear arms.” *Id.* at 595. But *Heller* left many questions unanswered. Indeed, *Heller* recognized that it did not “clarify the entire field” while nevertheless guaranteeing the right for “law-

abiding, responsible citizens.” *Id.* at 635. *Heller* emphasized, however, that “[l]ike most rights, the right secured by the Second Amendment is not unlimited.” *Id.* at 626. And as relevant to our instant case, *Heller* 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.*

Following *Heller*, the courts of appeals coalesced around a two-step test for Second Amendment challenges. *Bruen*, 597 U.S. at 18. First, courts determined whether the law at issue regulated activity within the scope of the Second Amendment’s original historical meaning. Second, if it did, courts applied means-end scrutiny to test the law’s validity at the second step. *Id.* at 19.

Later, in *Bruen*, the Supreme Court scrapped the means-end scrutiny test and explained that, under *Heller*, a historical inquiry governs Second Amendment challenges. *Id.* Accordingly, the Supreme Court adopted a different two-part test from that which the circuits were applying. First, courts must determine whether “the Second Amendment’s plain text covers an individual’s conduct.” *Id.* at 24. That “textual analysis focuse[s] on the normal and ordinary meaning of the Second Amendment’s language.” *Id.* at 20 (quotations omitted). And the normal and ordinary meaning of the Second Amendment “guarantee[s] the individual right to possess and carry weapons in case of confrontation” because “the right to ‘bear arms’ refers to the right to ‘wear, bear, or carry . . . upon the person or in the clothing or in a pocket, for the purpose . . . of being armed and ready for offensive or defensive

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action in a case of conflict with another person.” *Id.* at 32 (ellipses in original) (quoting *Heller*, 554 U.S. at 584). If an individual’s conduct is covered by the Second Amendment, then “the Constitution presumptively protects that conduct.” *Id.* at 24.

At the second step, the Government is required to “justify its regulation by demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation.” *Id.* *Bruen* explained that in some cases this historical inquiry “will be fairly straightforward.” *Id.* at 26. 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.* Similarly, “if earlier generations addressed the societal problem, but did so through materially different means, that also could be evidence that [the] modern regulation is unconstitutional.” *Id.* at 26–27. But when courts are confronted with laws and regulations that implicate “unprecedented societal concerns or dramatic technological changes,” the “historical inquiry that courts must conduct will often involve reasoning by analogy.” *Id.* at 27–28. This analogical reasoning “requires a determination of whether the two regulations are relevantly similar.” *Id.* at 29 (quotations omitted).

In determining whether two regulations are relevantly similar, *Bruen* held that courts should assess “*how* and *why* the regulations burden a law-abiding citizen’s right to armed self-

defense.” *Id.* (emphasis added). “Therefore, whether modern and historical regulations impose a comparable burden on the right of armed self-defense and whether that burden is comparably justified are central considerations when engaging in an analogical inquiry.” *Id.* (quotations and emphasis omitted). However, this reasoning “is neither a regulatory straightjacket nor a regulatory blank check.” *Id.* at 30. Courts must be careful to not “uphold every modern law that remotely resembles a historical analogue, because doing so risks endorsing outliers that our ancestors would never have accepted.” *Id.* (alteration adopted) (quotations omitted). “On the other hand, analogical reasoning requires only that the government identify a well-established and representative historical *analogue*, not a historical *twin*.” *Id.* (italics in original). Thus, a modern-day regulation need not be a “dead ringer for historical precursors” to pass constitutional muster. *Id.*

Most recently in *Rahimi*, the Supreme Court reaffirmed the test it adopted in *Bruen* but provided some clarification that while the government “bears the burden to justify its regulation,” some courts have “misunderstood the methodology of [its] recent Second Amendment cases.” 602 U.S. at 691 (quotation omitted). *Rahimi* emphasized that *Bruen* and its predecessors “were not meant to suggest a [regulatory] law trapped in amber” and that “the Second Amendment permits more than just those regulations identical to ones that could be found in 1791.” *Id.* at 691–92. Accordingly, the Court reemphasized that “[w]hy and how the regulation burdens the [Second Amendment] right are central to [a court’s] inquiry.” *Id.* at 692 (emphasis added).

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With the above framework in mind, we now apply the steps required by *Bruen* (as clarified by *Rahimi*) to the instant case.

B. Application of the Framework

1. Step One of the Bruen Framework

Bruen's first step requires us to determine whether "the Second Amendment's plain text covers [Cooper's and Hansell's] conduct."¹² *Bruen*, 597 U.S. at 17. The Supreme Court has said this text "guarantee[s] the individual right to possess and carry weapons in case of confrontation." *Id.* at 32 (quoting *Heller*, 554 U.S. at 592). Accordingly, we determine that Cooper's and Hansell's conduct of attempting to purchase and possess firearms for self-defense purposes is clearly covered by the Second Amendment's plain text.

The Federal Government does not argue that Cooper's and Hansell's *conduct* is not covered by the plain text of the Second

¹² We note that according to the FAC, Cooper and Hansell are the only Appellants who are currently unlawful users of marijuana, whereas Franklin is a gun owner who wants to participate in Florida's medical marijuana program. Because the Federal Government's offered historical analogues focus on "unlawful drug use" and the effects such use has on a user's criminal status and mental state, our discussion likewise focuses on Cooper's and Hansell's alleged conduct.

Similarly, throughout this opinion, our discussion focuses on the constitutionality of 18 U.S.C. § 922(g)(3), which prohibits unlawful users of controlled substances from possessing firearms. But our analysis applies with equal force to 18 U.S.C. § 922(d)(3), which prohibits sales of firearms to unlawful users of controlled substances, and all implementing regulations for both statutes, which disarm plaintiffs because of their marijuana use.

Amendment. Instead, it appears to argue that Cooper and Hansell are not among “the people” protected by the Second Amendment because their use of medical marijuana violates federal law. This illegal use of marijuana, the Federal Government asserts, makes Cooper and Hansell akin to felons because through their use they have shown they are not “law-abiding, responsible citizens,” and felons have historically been excluded from the right to bear arms. *See United States v. Dubois*, 139 F.4th 887, 890–94 (11th Cir. 2025) (reaffirming the constitutionality of 18 U.S.C. § 922(g)(1), which prohibits convicted felons from possessing firearms).

The district court declined to decide whether Cooper’s and Hansell’s use of medical marijuana excluded them from “the people” who fall within the Second Amendment’s protection. Instead, the district court assumed that “the people” includes Cooper and Hansell. We, however, reject the Federal Government’s argument for two reasons. First, while there is a history and tradition in this Nation of disarming convicted felons, nothing in the FAC indicates that Cooper and Hansell have ever been convicted of any crime, let alone a felony. Nor are there any allegations that they are engaging in felonious conduct. The only crime that the FAC plausibly alleges Cooper and Hansell have committed at this stage is simple possession of a controlled substance, which is a misdemeanor.¹³ The parties do not cite, and

¹³ The Controlled Substances Act provides that a first-time offender convicted of possession of a controlled substance “may be sentenced to a term of imprisonment of not more than 1 year.” 21 U.S.C. § 844(a). And federal law defines “felony” as “an offense punishable by a maximum term of

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we are not aware of, any authority for the proposition that misdemeanants are not among the people who enjoy the right to bear arms as protected by the Second Amendment. We decline to hold so now.¹⁴

Second, following *Rahimi*, we reject the Federal Government’s argument that Cooper and Hansell are not among “the people” because they are not “law-abiding” or “responsible.” In *Rahimi*, the Supreme Court explicitly “reject[ed] the Government’s contention that Rahimi may be disarmed simply because he [was] not ‘responsible.’” *Rahimi*, 602 U.S. at 701. In doing so, the Court explained that “[r]esponsible’ is a vague term” and that it was “unclear what such a rule would entail.” *Id. Rahimi*

imprisonment of more than one year.” 18 U.S.C. § 3156(a)(3). Moreover, under Florida law, a person who possesses marijuana according to the state’s medical marijuana laws cannot be criminally prosecuted under Florida’s other controlled substances laws. *See* Fla. Stat. § 381.986(14). Accordingly, based on the allegations in the FAC, Cooper and Hansell are at most committing a federal misdemeanor when they possess marijuana.

¹⁴ Indeed, in *Kanter v. Barr*, then-Judge Barrett observed that when considering constitutional rights, courts typically do not consider whether some individuals categorically fall inside or outside the scope of a particular right. *See Kanter v. Barr*, 919 F.3d 437, 451–53 (7th Cir. 2019) (Barrett, J., dissenting). Instead, “the deprivation [of a right] occurs because of state action, and state action determines the scope of the loss (subject, of course, to any applicable constitutional constraints).” *Id.* at 452–53. A “state can disarm certain people . . . but if it refrains from doing so, their rights remain constitutionally protected. In other words, a person convicted of a qualifying crime does not automatically lose his right to keep and bear arms but instead becomes *eligible* to lose it.” *Id.* at 453.

clarified that *Heller*'s and *Bruen*'s use of the term "responsible" was simply "to describe the class of ordinary citizens who undoubtedly enjoy the Second Amendment right" and "said nothing about the status of citizens who were not 'responsible.'" *Id.* at 701–02; *see also id.* at 772–73 (Thomas, J., dissenting) (noting that "[n]ot a single Member of the Court adopt[ed] the Government's theory" that Congress could "disarm anyone who is not 'responsible' and 'law-abiding'"). Accordingly, at the first step of the *Bruen* framework, we conclude that the Second Amendment's plain text covers Cooper and Hansell and their conduct. *See Bruen*, 597 U.S. at 17.

2. Step Two of the Bruen Framework

We next turn to the second step of the *Bruen* framework, determining whether the Federal Government has "justif[ied] its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." *Bruen*, 597 U.S. at 24. The district court determined that the Federal Government had met its burden because disarming unlawful users of a controlled substance, including medical marijuana users, was analogous to regulations disarming: (1) "those engaged in criminal activity"; and (2) "those whose status or behavior would make it dangerous for them to possess firearms" like the mentally ill, drug addicts, alcoholics, and the intoxicated.

Appellants argue the district court's determination was in error because, based on the allegations in the FAC, they cannot be considered relevantly similar to either felons who have historically been disarmed or people who present a special danger. The

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Federal Government argues that the district court correctly determined it had met its burden because in its view, all unlawful drug users—regardless of the substance they use or the manner in which they use it—are comparable to those who (1) engage in criminal conduct; and (2) are dangerous as a class. Upon review, we agree with Appellants.

We begin our step two inquiry by examining the Federal Government’s first offered historical analogue, the Nation’s history and tradition of disarming “those engaged in criminal conduct.” Rehashing its argument from step one, the Federal Government asserts that Cooper and Hansell have failed to refute the analogy between laws disarming convicted felons and the challenged statutes and regulations that disarm unlawful drug users. This historical analogue, however, does not share the same “how”—that is, the “burden on the right of armed self-defense”—as 18 U.S.C. § 922(g)(3) applied to Cooper and Hansell, for two reasons. *Bruen*, 597 U.S. at 29.

First, as discussed above, at most the FAC alleges that Cooper and Hansell are committing a misdemeanor, not a felony, by using marijuana for medicinal purposes. The Federal Government has not pointed to any historical tradition of disarming those engaged in misdemeanor conduct. Because 18 U.S.C. § 922(g)(3) applied to Cooper and Hansell disarms people who are not felons, the statute “regulates arms-bearing . . . to an extent beyond what was done at the founding,” which demonstrates that 18 U.S.C. § 922(g)(3) is “not . . . compatible with

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the [Second Amendment] right” in this case. *Rahimi*, 602 U.S. at 692.

Second, felon dispossession laws require an individual to be convicted of a felony before they lose their Second Amendment right. But the FAC does not allege Cooper or Hansell have been convicted of any crime, felony or misdemeanor. The manner in which felon dispossession laws operate to strip individuals of their Second Amendment right—following a judicial determination as to their guilt in committing a felony—is starkly different from how the challenged statutes and regulations apply to Cooper and Hansell, two individuals who have never faced a judicial determination of guilt for any crime. Put another way, because Cooper and Hansell have never faced a judicial determination of guilt for any crime, they would not have been disarmed under the government’s first offered historical analogue—but they are disarmed by 18 U.S.C. § 922(g)(3). Thus, 18 U.S.C. § 922(g)(3), as applied to Cooper and Hansell, imposes a greater “burden on the right of armed self-defense” than the Federal Government’s first historical analogue, not one that is “comparable.” *Bruen*, 597 U.S. at 29.

Accordingly, we determine that based on the allegations in the FAC, Cooper and Hansell are not relevantly similar to felons who have historically been disarmed. *See id.*; *Rahimi*, 602 U.S. at 692. Thus, we reject the Federal Government’s first offered analogue at the motion to dismiss stage.

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The Federal Government’s second analogue is that the Nation has a long history and tradition of disarming individuals it fairly deems as dangerous, including the mentally ill, drug addicts, alcoholics, and the intoxicated. It argues that *Rahimi* makes clear that Congress may disarm those who pose a real danger to the public and that, as unlawful users of a controlled substance, medical marijuana users fit firmly within this category of dangerous individuals because they may mishandle firearms, commit crimes to obtain drugs, or even engage in violent crime as part of the illegal drug trade. Accordingly, it asserts that the challenged laws and regulations “bear[] at least as close a resemblance to the historical laws as the modern prohibition that *Rahimi* upheld” and that we should therefore uphold the district court’s determination that these laws are constitutional as applied to all medical marijuana users. But the Federal Government has again failed to meet its burden at this point in the litigation to show that its “dangerousness” analogue imposes a comparable burden on the Second Amendment right—the same “how”—as 18 U.S.C. § 922(g)(3) applied to Cooper and Hansell: based on the allegations in the FAC, Cooper and Hansell cannot fairly be labeled as dangerous people solely due to their medicinal marijuana use. See *Rahimi*, 602 U.S. at 692 (“Why and *how* the regulation burdens the [Second Amendment] right are central to this inquiry.” (emphasis added)).

As discussed above, the FAC contains no allegations regarding either the frequency of use or effects that consumption of marijuana has on Cooper and Hansell—or other medical

marijuana users. The FAC’s only allegation about the nature of Cooper’s and Hansell’s use is that they use marijuana only as permitted by Florida law. And while the district court labeled them as “habitual drug users,” presumably akin to addicts, the FAC says no such thing, stating simply that Cooper and Hansell use marijuana for the medical benefits they receive and in reliance on the fact that they will not be criminally prosecuted for their medicinal use. Viewing these allegations in the light most favorable to Cooper and Hansell, it appears they use rational thought in making their decision to use marijuana and would stop their marijuana use if they were placed at risk of criminal prosecution. Accordingly, Cooper’s and Hansell’s mental state is a far cry from that of addicts and alcoholics whose actions are controlled by their need to use alcohol or drugs. *See United States v. Yancey*, 621 F.3d 681, 682, 685 (7th Cir. 2010) (affirming the constitutionality of 18 U.S.C. § 922(g)(3) as applied to a criminal defendant who “had been smoking marijuana daily” for two years, reasoning that “habitual drug users” like the defendant were “more likely to have difficulty exercising self-control”).

Similarly, the Federal Government’s argument that medical marijuana users pose a risk of committing violent crimes to obtain marijuana finds no support in the FAC. True, federal law prohibits using or carrying a firearm “during and in relation to any crime of violence or drug trafficking crime.” 18 U.S.C. § 924(c). And “[o]ur tradition of firearm regulation allows the Government to disarm individuals who present a credible threat to the physical safety of others.” *Rahimi*, 602 U.S. at 700. But this tradition “distinguishes

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citizens who have been found to pose a credible threat . . . from those who have not.” *Id.* Nothing in the FAC indicates that Cooper and Hansell are engaged in any drug market aside from the Florida medical marijuana market, which is highly regulated and requires dispensaries to comply with State law as enforced by the Florida Department of Agriculture and Consumer Services. *See* Fla. Stat. § 381.986. Nor is there any indication in the FAC that Cooper and Hansell “pose a credible threat” to the public safety of others based solely on their use of medical marijuana. *See Rahimi*, 602 U.S. at 700.

Accordingly, we determine that the factual allegations, construed in the light most favorable to Cooper and Hansell, do not lead to an inference that they, because they are medical-marijuana users, can fairly be labeled as dangerous. Our determination means that Cooper and Hansell would not be disarmed under the Federal Government’s second offered historical analogue, but they are disarmed by 18 U.S.C. § 922(g)(3). Thus, because 18 U.S.C. § 922(g)(3), as applied to Cooper and Hansell, imposes a greater burden on the Second Amendment right than the Federal Government’s second offered analogue, we reject the analogue at the motion to dismiss stage. *See Bruen*, 597 U.S. at 29 (“[W]hether modern and historical regulations *impose a comparable burden on the right of armed self-defense* and whether that burden is comparably justified are *central* considerations when engaging in an analogical inquiry.” (first emphasis added, second emphasis in original) (quotation omitted)).

Because both of the Federal Government’s historical analogues fail at the motion to dismiss stage, we conclude it has failed to meet its burden of establishing that the challenged laws and regulations as applied to medical marijuana users are consistent with this Nation’s history and tradition of firearm regulation. Thus, the Appellants have plausibly alleged that the challenged statutes and regulations violate the Second Amendment as applied to them.¹⁵

Our conclusion comports with sister circuit precedent. *See United States v. Connelly*, 117 F.4th 269, 272 (5th Cir. 2024). In *Connelly*, the Fifth Circuit considered whether 18 U.S.C. § 922(g)(3) was constitutional as applied to a “non-violent, marijuana smoking gunowner.” *Id.* The Fifth Circuit held that the defendant’s “§ 922(g)(3) charge is inconsistent with our history and tradition of firearms regulations.” *Id.* at 283. In so holding, the Fifth Circuit held that the defendant “is a member of our political community and thus has a presumptive right to bear arms.” *Id.* at 274. The Fifth Circuit then rejected the Federal Government’s analogies between 18 U.S.C. § 922(g)(3) as applied to the defendant and laws

¹⁵ Recall that Appellants are bringing an as-applied challenge to the constitutionality of the challenged statutes and regulations. And “because a factual, as-applied challenge asserts that a statute cannot be constitutionally applied in particular circumstances, it necessarily requires the development of a factual record for the court to consider.” *Schultz v. Alabama*, 42 F.4th 1298, 1319 (11th Cir. 2022) (quotations omitted). “This is because an as-applied challenge addresses whether a statute is unconstitutional on the facts of a particular case or to a particular party.” *Id.* (quotations omitted).

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that disarmed mentally ill, dangerous, or intoxicated individuals. *Id.* at 274–82. So do we. Accordingly, we join the Fifth Circuit and vacate and remand this case. *See also United States v. VanOchten*, ___ F.4th ___, 2025 WL 2268042, at *6–8 (6th Cir. Aug. 8, 2025) (holding that 18 U.S.C. § 922(g)(3) can be constitutionally applied to “dangerous individuals” and leaving open the opportunity for “drug users” to “prove that they are not actually dangerous” in future cases); *United States v. Harris*, 144 F.4th 154, 164–65 (3d Cir. 2025) (holding that 18 U.S.C. § 922(g)(3) “constitutionally restricts the gun rights of drug users *only as long as they present a special danger of misusing firearms*” and remanding for more fact-finding (emphasis added) (quotation omitted)); *United States v. Cooper*, 127 F.4th 1092, 1096 (8th Cir. 2025) (holding that a prosecution under 18 U.S.C. § 922(g)(3) violates the defendant’s Second Amendment rights unless the defendant “act[ed] like someone who is both mentally ill and dangerous,” “induce[d] terror,” or “pose[d] a credible threat to the physical safety of others with a firearm” and remanding for further fact-finding (quotations omitted)).

IV. Conclusion

Based on Appellants’ factual allegations, Appellants cannot be considered relevantly similar to either felons or dangerous individuals based solely on their medical marijuana use. Accordingly, the Federal Government has failed, at the motion to dismiss stage, to establish that disarming Appellants is consistent

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with this Nation’s history and tradition of firearm regulation.¹⁶ Thus, we vacate the district court’s order and remand for further proceedings consistent with this opinion.

VACATED AND REMANDED.¹⁷

¹⁶ The Federal Government very well may prove at a later stage of litigation, after development of a factual record, that Appellants can fairly be considered relevantly similar to felons or dangerous individuals who can categorically be disarmed. Indeed, as Appellants concede on appeal (but, as discussed, not in the FAC), they may be fairly deemed as dangerous during the times they are high and thus have limitations placed on their right to use firearms while in such a mental state. *See Rahimi*, 602 U.S. at 691 (“At the founding, the bearing of arms was subject to regulations ranging from rules about firearm storage to restrictions on gun use by drunken New Year’s Eve revelers.”). But at the current stage of litigation, it cannot be determined whether they use marijuana to such an extent that it has a continuous effect on their psychological and physical well-being.

¹⁷ If the Drug Enforcement Agency’s proposed rule reclassifying marijuana as a Schedule III controlled substance is finalized, *see supra* note 5, the district court should determine what effect that final rule has on its Article III jurisdiction.

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

NICOLE FRIED, et al.,

Plaintiffs,

v.

Case No. 4:22-cv-164-AW-MAF

MERRICK GARLAND, et al.,

Defendants.

_____ /

ORDER OF DISMISSAL

Federal law prohibits certain people from possessing firearms. 18 U.S.C. § 922(g). Among them are convicted felons, fugitives from justice, and—relevant here—anyone “who is an unlawful user of or addicted to any controlled substance.” *Id.* As the parties agree, Florida’s medical marijuana users are “unlawful user[s] of . . . [a] controlled substance,” so this law makes it a crime for them to possess firearms. The primary issue in this case is whether the Second Amendment allows this result.

I.

A.

In 2016, Florida stopped criminalizing the medical use of marijuana. Many people refer to this change as Florida’s “legalizing” medical marijuana, but Florida did no such thing. It couldn’t. “Under the Supremacy Clause of the Constitution, state laws cannot permit what federal law prohibits,” *United States v. McIntosh*, 833

F.3d 1163, 1179 n.5 (9th Cir. 2016), and federal law still prohibits possession of marijuana—for medical purposes or otherwise, *see* 21 U.S.C. §§ 841(a), 844(a); *see also* 21 U.S.C. § 812, Sch. I(c)(10), § 812(b)(1)(B). Indeed, federal law “designates marijuana as contraband for *any* purpose” and “prohibit[s] entirely [its] possession.” *Gonzales v. Raich*, 545 U.S. 1, 24, 27 (2005).¹

So while Florida (like many states) has decided *it* will no longer criminalize medical marijuana, the simple fact is that “[a]nyone in any state who possesses, distributes, or manufactures marijuana for medical or recreational purposes . . . is committing a federal crime.” *McIntosh*, 833 F.3d at 1179 n.5.

As anyone driving by Florida’s many marijuana dispensaries can see, though, federal law is not always enforced. In fact, through a series of appropriations riders—frequently called the Rohrabacher-Farr Amendment—“Congress has prohibited the Department of Justice from ‘spending funds to prevent states’ implementation of their own medical marijuana laws.”” *See Standing Akimbo, LLC v. United States*, 141 S. Ct. 2236, 2237 (2021) (Thomas, J., respecting the denial of certiorari) (quoting *McIntosh*, 833 F.3d at 1175-77)). So Congress has precluded the Department of Justice (for now) from prosecuting crimes that Congress (for now)

¹ There is an exception, not relevant here, for “use of the drug as part of a Food and Drug Administration preapproved research study.” *Gonzales v. Raich*, 545 U.S. 1, 14 (2005).

chooses to maintain on the books. *Cf. id.* at 2236-37 (Thomas, J.) (explaining that “the Federal Government’s current approach is a half-in, half-out regime that simultaneously tolerates and forbids local use of marijuana”).

Three Plaintiffs want to participate in Florida’s medical marijuana system while possessing guns. But as things stand, their use of medical marijuana—their “unlawful use[] . . . of a controlled substance”—makes any gun possession a felony, punishable by up to 15 years in prison. *See* 18 U.S.C. § 924(a)(8). That is the situation Plaintiffs challenge. They contend that this violates their Second Amendment right to keep and bear arms. And they contend a federal firearms prosecution would violate the Rohrabacher-Farr Amendment.

B.

Plaintiffs are Florida Commissioner of Agriculture Nicole Fried (the “Commissioner”), and three individuals who want to use medical marijuana and possess guns. The Commissioner oversees the issuance of Florida’s concealed carry licenses and separately oversees the agriculture-related aspects of Florida’s medical marijuana program. ECF No. 12 (Am. Compl.) ¶¶ 25-27. Plaintiffs Vera Cooper and Nicole Hansell currently participate in Florida’s medical marijuana program. *Id.* ¶¶ 29-30, 32-33. They want to purchase firearms for personal protection, and they unsuccessfully tried to do so. *Id.* ¶¶ 31, 33-34. After they acknowledged on ATF forms that each was “an unlawful user of, or addicted to, marijuana . . . or any other

controlled substance,” they were unable to buy guns. *Id.* Plaintiff Neill Franklin is a Florida resident and gun owner. *Id.* ¶¶ 35-37. He has a qualifying medical condition and would like to participate in Florida’s medical marijuana program. *Id.* But he is not using marijuana because his gun ownership would expose him to prosecution under the federal laws Plaintiffs challenge. *Id.* ¶ 37.

Defendants are Attorney General Merrick Garland; Director of the Bureau of Alcohol, Tobacco Firearms, and Explosives (“ATF”) Steven Dettelbach; and the United States. *See* Am. Compl.² The United States and ATF enforce the criminal laws at issue, and ATF promulgated the regulation defining “[u]nlawful user.” ECF No. 14 at 15.³ ATF also created the form mentioned above. *Id.* (citing Form 4473). The form asks if the transferee is “an unlawful user of . . . marijuana,” and it warns that “[t]he use or possession of marijuana remains unlawful under Federal law regardless of whether it has been legalized or decriminalized for medicinal or recreational purposes in the state where you reside.” ECF No. 12-2 at 2.

Plaintiffs bring four counts. Counts I and II seek declaratory and injunctive relief based on the Second Amendment. Plaintiffs specifically challenge 18 U.S.C. § 922(g)(3) and (d)(3), ATF Form 4473, and 27 C.F.R. § 478.11, which together

² The First Amended Complaint named Gary M. Restaino, who was then the Acting ATF Director. Steven Dettelbach has since become director and is automatically substituted as a defendant. Fed. R. Civ. P. 25(d).

³ All page citations are to the CM/ECF page numbers.

prohibit the purchase or possession of firearms by medical marijuana users. Section 922(g)(3) prohibits unlawful drug users from possessing firearms. And § 922(d)(3) prohibits selling them firearms.

Counts III and IV seek declaratory and injunctive relief based on the Rohrabacher-Farr Amendment. That provision prohibits the Department of Justice from using appropriated funds “to prevent [States] from implementing their own laws that authorize the use, distribution, possession, or cultivation of medical marijuana.” Consolidated Appropriations Act, 2022, Pub. L. No. 117-103, § 531, 136 Stat. 49 (2022).⁴

Defendants moved to dismiss, ECF No. 13, contending that Plaintiffs lack standing and have not stated a claim for relief, ECF No. 14 at 12. Plaintiffs responded, ECF No. 15, and the court held a hearing. Having carefully considered the parties’ arguments, I now grant the motion to dismiss. As explained below, I conclude that Plaintiffs have standing but that their claims fail on the merits.

II.

“Because standing to sue implicates jurisdiction, a court must satisfy itself that the plaintiff has standing before proceeding to consider the merits of her claim,

⁴ This provision expired on September 30, 2022, but its substance remains effective under a new continuing resolution. *See* Continuing Appropriations and Ukraine Supplemental Appropriations Act, 2023, Pub. L. No. 117-180, 136 Stat. 2114 (effective September 30, 2022) (generally providing continued funding subject to same restrictions).

no matter how weighty or interesting.” *Lewis v. Governor of Ala.*, 944 F.3d 1287, 1296 (11th Cir. 2019) (en banc). To have standing, “[t]he plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision.” *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016) (citing *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992)). At this stage, Plaintiffs “must ‘clearly allege facts demonstrating’ each element” of standing. *Id.* (cleaned up) (quoting *Warth v. Seldin*, 422 U.S. 490, 518 (1975)). And they must show the elements of standing for each separate claim. *Davis v. Fed. Election Comm’n*, 554 U.S. 724, 734 (2008),

The government concedes that Cooper and Hansell have standing for their Second Amendment claim. I nonetheless examine the issue because federal courts must independently ensure they have jurisdiction. *Summers v. Earth Island Inst.*, 555 U.S. 488, 499 (2009).

Plaintiffs allege that Cooper and Hansell could not buy firearms because they are “unlawful users” of marijuana. *Id.* ¶¶ 30-31, 33-34. They also allege that Defendants enforce the laws that keep Cooper and Hansell from purchasing firearms. *Id.* This is enough to plead injuries fairly traceable to Defendants’ actions. And a favorable decision would redress those injuries by allowing Cooper and Hansell to purchase and possess firearms. Cooper and Hansell have standing as to this claim.

Because “the presence of one party with standing is sufficient to satisfy Article III’s case-or-controversy requirement,” *Rumsfeld v. F. for Acad. & Institutional Rts., Inc.*, 547 U.S. 47, 52 n.2 (2006), I need not address the remaining Plaintiffs’ standing. Still, the government argues (and with some force) that the Commissioner lacks standing because she alleged no cognizable injury. ECF No. 14 at 22-24; ECF No. 16 at 7-10. And it insists I should determine the Commissioner’s standing now because the scope of available relief depends on who brings the claim. *See* ECF No. 16 at 7-8 (arguing that “the scope of any injunction may be narrower if no state official is a plaintiff”). But a court can tailor the scope of the relief at the remedy phase, if necessary. *See Democratic Exec. Comm. of Fla. v. Lee*, 915 F.3d 1312, 1327 (11th Cir. 2019). For now, it is enough that at least one plaintiff has standing for the Second Amendment claim.

At least one Plaintiff also has standing for the Rohrabacher-Farr Amendment claim, notwithstanding the government’s contrary argument. The Amended Complaint alleges that Franklin wants to participate in Florida’s medical marijuana program but will not do so because, as a gun owner, his using marijuana could lead to his criminal prosecution. Am. Compl. ¶¶ 37, 81. That suffices as an injury. *See Holder v. Humanitarian L. Project*, 561 U.S. 1, 15-16 (2010) (finding that threat of prosecution qualified as injury for Article III purposes and that the “Government has not argued to this Court that plaintiffs will not be prosecuted if they do what they

say they wish to do”). And it is fairly traceable to Defendants’ conduct. After all, Defendants’ spending to enforce the law is what would cause Franklin’s claimed injury. Finally, enjoining Defendants from spending to enforce the challenged regulation would redress Franklin’s injury. He could participate in Florida’s program without facing prosecution (at least for now) under § 922(g)(3).⁵

Franklin’s standing for the Rohrabacher-Farr Amendment claim makes it unnecessary to address others’ standing as to that claim. The bottom line is that as to each claim, there is at least one plaintiff with standing. So on to the merits.

III.

A.

The Second Amendment guarantees the individual right to possess firearms. *District of Columbia v. Heller*, 554 U.S. 570, 592 (2008). Judges, scholars, and others have long debated the extent of this right, and many questions remain unresolved. But the Supreme Court recently clarified that the government cannot

⁵ Accepting *United States v. McIntosh*, 833 F.3d 1163, 1172-73 (9th Cir. 2016), the government has not contested the court’s authority to enjoin potential violations of the Rohrabacher-Farr Amendment. Nor has the government raised any no-private-cause-of-action defense. *Cf. Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 327 (2015) (“What our cases demonstrate is that, ‘in a proper case, relief may be given in a court of equity to prevent an injurious act by a public officer.’” (cleaned up) (quoting *Carroll v. Safford*, 44 U.S. 441, 463 (1845))). The government correctly notes that § 1983 relief is not permissible against federal defendants, ECF No. 14 at 46, but Plaintiffs have abandoned their reliance on § 1983, ECF No. 15 at 33.

restrict the Second Amendment right unless “the regulation is consistent with this Nation’s historical tradition of firearm regulation.” *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 142 S. Ct. 2111, 2126 (2022). It is not enough to “simply posit that the regulation promotes an important interest.” *Id.*

Plaintiffs’ basic Second Amendment theory is straightforward: they contend that keeping guns from medical marijuana users is not consistent with any historical tradition of firearm regulation. The government’s twofold response is equally straightforward. The government first contends that we need not explore historical traditions because the Second Amendment protects only “law-abiding, responsible citizens”—not federal drug offenders. ECF No. 14 at 26 (quoting *Heller*, 554 U.S. at 635); *see also id.* at 27 (“[P]ersons within Sections 922(d)(3) and (g)(3)’s prohibitions are not ‘law-abiding’ citizens within the scope of the Second Amendment right defined in *Heller* and *Bruen*.”). It separately contends that if Plaintiffs fall within the Second Amendment’s scope, the challenged laws pass constitutional muster because keeping guns from drug users *is* consistent with traditional firearm regulation. *Id.* at 31-43. It points to what it says is a tradition of keeping guns from those who engage in criminal activity and from those whose behavior would make their having guns dangerous. *Id.* at 31-32.

As to the government’s first point, it is true that the Supreme Court has noted the Second Amendment’s protection of “law-abiding, responsible citizens.” *Heller*,

554 U.S. at 635.⁶ Earlier this year, it reiterated that the Second Amendment “protect[s] the right of an ordinary, law-abiding citizen” to keep firearms. *Bruen*, 142 S. Ct. at 2122. And at the same time, it suggested that States could, consistent with the Second Amendment, require licensure and background checks or safety courses to ensure “that those bearing arms in the jurisdiction are, in fact, ‘law-abiding, responsible citizens.’” *Id.* at 2138 n.9 (quoting *Heller*, 554 U.S. at 635); *see also United States v. Rozier*, 598 F.3d 768, 771 (11th Cir. 2010) (noting (pre-*Bruen*) that a felon’s “Second Amendment right to bear arms is not weighed in the same manner as that of a law-abiding citizen, such as the appellant in *Heller*”). It also made a point to note that the petitioners there—“two ordinary, law-abiding, adult citizens”—were unquestionably “part of ‘the people’ whom the Second Amendment protects.” *Bruen*, 142 S. Ct. at 2134.

All of this makes it difficult to dismiss the idea that *non*-law-abiding citizens have no Second Amendment rights. But the government’s argument on this point ultimately leads to the same place as its other argument: if there is a history and tradition of keeping guns from those engaged in criminal conduct, then the laws here are constitutional whether the Second Amendment right “belongs to all Americans,”

⁶ The Eleventh Circuit has concluded that “to the extent that this portion of *Heller* limits the Court’s opinion to possession of firearms by law-abiding and qualified individuals, it is not dicta.” *United States v. Rozier*, 598 F.3d 768, 771 n.6 (11th Cir. 2010) (emphasis removed).

Heller, 554 U.S. at 581, or just to “ordinary, law-abiding citizens,” *Bruen*, 142 S. Ct. at 2122. So I will assume for now that Plaintiffs are included in “the people” the Second Amendment protects.⁷

I return, then, to the question of whether laws precluding medical marijuana users from possessing firearms is “consistent with this Nation’s historical tradition.” *Id.* at 2126. This “historical inquiry . . . involve[s] reasoning by analogy.” *Id.* at 2132. And “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.* (quoting C. Sunstein, *On Analogical Reasoning*, 106 Harv. L. Rev. 741, 773 (1993)). Put differently, if there is a tradition of regulation that is relevantly similar to the challenged laws, Plaintiffs have not stated a plausible Second Amendment claim.

Although *Bruen* does not “provide an exhaustive survey of the features that render regulations relevantly similar under the Second Amendment,” it offers some

⁷ In *Kanter v. Barr*, then-Judge Barrett described the “competing ways of approaching the constitutionality of gun dispossession laws.” 919 F.3d 437, 451 (7th Cir. 2019) (Barrett, J., dissenting). She noted that one view is that certain groups (like violent felons) “fall entirely outside the Second Amendment’s scope,” but that another view is “that all people have the right to keep and bear arms but that history and tradition support Congress’s power to strip certain groups of that right.” *Id.* at 451-52. Although she expressed a preference for the latter view, she observed that both “approaches will typically yield the same result; one 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 452.

instruction. *Id.* at 2132-33. There are two “*central*” considerations: “whether modern and historical regulations impose a comparable burden on the right of armed self-defense and whether that burden is comparably justified.” *Id.* at 2133.

The government offers two historical analogues. ECF No. 14 at 31-32. It contends that laws have traditionally kept guns from those engaged in criminal activity and from “those whose status or behavior would make it dangerous for them to possess firearms.” *Id.* Plaintiffs do not take issue with the existence of these historical traditions; they argue instead that these traditions do not justify the laws as applied to them. ECF No. 15 at 15; *see also* Am. Compl. ¶ 53.

I.

As to the first, Plaintiffs do not dispute that there is a tradition of disarming those engaged in criminal conduct. In *Heller*, the Court made clear that nothing in its opinion “should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons,” 554 U.S. at 626, and as noted above, the Court repeatedly described protections of “law-abiding citizens.” *See also United States v. Skoien*, 614 F.3d 638, 640 (7th Cir. 2010) (noting that “*Heller* identified as a ‘highly influential’ ‘precursor’ to the Second Amendment the Address and Reasons of Dissent of the Minority of the Convention of the State of Pennsylvania to Their Constituents[, which] report asserted that citizens have a personal right to bear arms ‘unless for crimes committed, or real danger of public injury’” (citations omitted)).

Plaintiffs’ primary argument as to this tradition is that they are not really engaged in criminal conduct, at least not in the usual sense. They say their marijuana use is “both criminal and legally protected at the same time.” ECF No. 15 at 13. They acknowledge (as they must) that federal law criminalizes all marijuana possession—including theirs. They thus make no argument that they are not “unlawful user[s]” for purposes of § 922(g). But they say the Rohrabacher-Farr Amendment precludes their prosecution, making their use akin to lawful conduct.

This argument does not get far. Regardless of whether Plaintiffs are prosecuted (or whether Congress allocates funds for their prosecution), possession of marijuana remains a federal crime. The Rohrabacher-Farr Amendment at best precludes prosecution now; it does not forever bless Plaintiffs’ actions:

To be clear, [the Amendment] does not provide immunity from prosecution for federal marijuana offenses. . . . Congress currently restricts the government from spending certain funds to prosecute certain individuals. But Congress could restore funding tomorrow, a year from now, or four years from now, and the government could then prosecute individuals who committed offenses while the government lacked funding.

McIntosh, 833 F.3d at 1179 n.5. Perhaps future prosecution is unlikely, but either way, the Rohrabacher-Farr Amendment does not make marijuana users law-abiding citizens.⁸

⁸ Plaintiffs take issue with their being “lump[ed]” in with other illegal drug users. ECF No. 15 at 12. And they ask rhetorically what the purpose of the

Plaintiffs also argue that even if they are not technically “law abiding,” the government “would have to show an analogous situation in or around 1791 or 1868 where a person who only took actions for which they could not be criminally punished would be considered not ‘law-abiding.’” ECF No. 15 at 14. This argument fails not only because Plaintiffs *can* be prosecuted under the law (if not right now), but also because it demands too much specificity in the historical tradition. The government need only “identify a well-established and representative historical *analogue*, not a historical *twin*.” *Bruen*, 142 S. Ct. at 2133.

Requiring an analogue with the specificity Plaintiffs demand would arguably prevent the government from restricting *any* illegal drug users from possessing guns. Plaintiffs disclaim any argument that their theory would protect recreational marijuana users (or other illegal drug users), but the enforcement regime for recreational marijuana is unique too. *See* ECF No. 15-1. And if the slim likelihood of federal prosecution for medical marijuana precludes an analogy to historical regulation, then the slim likelihood of federal prosecution for recreational users

Rohrabacher-Farr Amendment is if not to allow medical marijuana users “to participate in their state medical marijuana program, so long as they comply with state law.” *Id.* at 13 n.5. Their frustration is perhaps understandable, but it is legally irrelevant. The Rohrabacher-Farr Amendment’s purpose presumably is to help (to some extent) people like the Plaintiffs. But Congress did so without removing the criminal prohibitions against all marijuana possession. The result—before and after the Rohrabacher-Farr Amendment—is that Plaintiffs’ marijuana possession is a federal crime.

would seem to do the same. *Cf.* ECF No. 15 at 19 (Plaintiffs’ arguing that prohibiting gun possession “due simply to their medical use of a product that was historically legal and currently does not subject them to state or federal arrest or prosecution” is not “consistent with the Nation’s historical tradition of firearm regulation” (marks and citation omitted)). Because medical marijuana users violate current federal law in the same way that recreational marijuana users do, the historical tradition of keeping guns from law violators applies the same way to both.

I need not explore the outer bounds of this principle. I need not, for example, conclude that *any* unlawful conduct—no matter how trivial—could justify a prohibition on firearms. Regardless of how marijuana laws are now enforced, the fact remains that Congress considered marijuana possession serious business. It determined that marijuana is harmful, with “a high potential for abuse.” 21 U.S.C. § 812(b)(1)(A); *see also* ECF No. 14 at 16. Even today, basic possession can lead to a prison sentence of up to a year, and distribution (or possession with intent to distribute) can lead to far more. 21 U.S.C. §§ 844(a); 841(b).

Next, the “modern and historical regulations” keeping guns from those acting unlawfully are comparably justified. *Bruen*, 142 S. Ct. at 2133. Both further the government’s longstanding goal of keeping firearms in the hands of law-abiding citizens. And the regulations “impose a comparable burden on the [Second Amendment] right”—in fact, the modern regulation is arguably less onerous than

the historical tradition of disarming those who engage in criminal activity. *Id.* The tradition of disarming criminals usually meant permanently restricting their Second Amendment rights. By contrast, the modern regulation restricts people from purchasing or possessing a firearm only while “a current user of a controlled substance.” 27 C.F.R. § 478.11; *see also* § 922(g)(3) (purchase), § 922(d)(3) (possession).⁹ This does not categorically ban marijuana users from exercising their Second Amendment rights; the burden exists only as long as marijuana users fit the regulation’s definition of a “current user.” This is enough to find the regulations “relevantly similar” and foreclose Plaintiffs’ Second Amendment claim.

2.

The government offers a second historical analogue: the tradition of keeping firearms from “those whose possession of firearms the government deems dangerous.” ECF No. 14 at 33. As the government notes, Plaintiffs do not take issue with this general proposition. *Id.* at 33 n.10 (citing Am. Compl. ¶¶ 10, 18). As before, though, Plaintiffs argue that their situation is simply not analogous; they argue specifically that they are not dangerous—at least when not under the influence.

⁹ A federal regulation defines “unlawful user” to include anyone “who is a current user” of marijuana. 27 C.F.R. § 478.11. “A person may be an unlawful current user of a controlled substance even though the substance is not being used at the precise time the person seeks to acquire a firearm or receives or possesses a firearm.” *Id.* What matters is whether “the unlawful use has occurred recently enough to indicate that the individual is actively engaged in such conduct.” *Id.*

(Plaintiffs concede the government may restrict gun possession when they are under the influence, ECF No. 15 at 19 (citing Am. Compl. ¶ 54), a proposition consistent with historical tradition.)

The government points to the history of restricting gun possession of the intoxicated. ECF No. 14 at 35-37. It cites a 1655 Virginia statute, a 1771 New York statute, and several state statutes from the era following ratification of the Fourteenth Amendment. *Id.* at 35-36. Some of these statutes burdened individuals by restricting their ability to carry a gun while intoxicated. *Id.* Others prohibited individuals from firing a gun while intoxicated. *Id.*

The manner in which the modern restriction burdens Second Amendment rights is comparable to how the intoxication statutes burdened those rights. While impaired, the intoxicated could not carry or use firearms (depending on the state statute). Likewise, while an active drug user, one cannot possess firearms. *See* 27 C.F.R. § 478.11. As already explained, unlawful drug users can regain their Second Amendment rights by simply ending their drug use.

The burdens that the challenged regulation and the historical restrictions placed on individuals' Second Amendment rights are also comparably justified. Defendants explain that the government implemented the challenged regulation because "unlawful drug use (including marijuana use) causes significant mental and physical impairments that make it dangerous for a person to possess firearms." ECF

No. 14 at 38; *see also United States v. Yancey*, 621 F.3d 681, 683 (7th Cir. 2010) (“Congress enacted the exclusions in § 922(g) to keep guns out of the hands of presumptively risky people.”).¹⁰

Laws keeping guns from the mentally ill likewise flow from the historical tradition of keeping guns from those in whose hands they could be dangerous. Plaintiffs recoil at being compared to the mentally ill, ECF No. 15 at 1, but one does not have to label marijuana users mentally ill to recognize that both categories of people can be dangerous when armed. Although the prohibition reaches those habitually using marijuana (even if not currently under the influence), habitual drug users are analogous to other groups the government has historically found too dangerous to have guns.

At bottom, the historical tradition of keeping guns from those the government fairly views as dangerous—like alcoholics and the mentally ill—is sufficiently analogous to modern laws keeping guns from habitual users of controlled substances. This provides another justification for upholding the challenged laws.

¹⁰ The government cites *United States v. Daniels*, --- F. Supp. 3d ---, 2022 WL 2654232, at *4 (S.D. Miss. July 8, 2022), a recent decision upholding § 922(g)(3) against a similar Second Amendment challenge. ECF No. 14 at 30-31. *Daniels* found “the analysis in *Yancey* demonstrates the historical attestation demanded by the *Bruen* framework,” and “show[s] that analogous statutes which purport to disarm persons considered a risk to society—whether felons or alcoholics—were known to the American legal tradition.” 2022 WL 2654232, at *4.

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The challenged laws are consistent with the history and tradition of this Nation's firearm regulation. *See Bruen*, 142 S. Ct. at 2126. Plaintiffs therefore have failed to plausibly allege a Second Amendment claim, and Counts I and II must be dismissed.

B.

Plaintiffs' remaining claims concern the Rohrabacher-Farr Amendment. Am. Compl. ¶¶ 135-140 (Count III), 141-146 (Count IV). As explained above, the Amendment prohibits DOJ from using appropriated funds to prevent states from implementing their medical marijuana programs. Plaintiffs allege that Defendants' spending (or threatened spending) to enforce the challenged laws prevents Franklin and those like him from participating in Florida's medical marijuana program. Am. Compl. ¶ 137. They seek an order precluding use of funds to prosecute medical marijuana users for firearm possession.

The Rohrabacher-Farr Amendment states:

None of the funds made available under this Act to the Department of Justice may be used, with respect to [Florida and other states with medical marijuana laws] to prevent any of them from implementing their own laws that authorize the use, distribution, possession, or cultivation of medical marijuana.

Consolidated Appropriations Act, 2022, § 531, 136 Stat. at 150-51. And the parties agree that based on the text, the rider "prohibits DOJ from spending money on

actions that prevent the Medical Marijuana States’ giving practical effect to their state laws that authorize the use, distribution, possession, or cultivation of medical marijuana.” *McIntosh*, 833 F.3d at 1176; *see also United States v. Bilodeau*, 24 F.4th 705, 712-13 (1st Cir. 2022).

Relying on the Amendment’s text and the interpretation above, the government argues that Plaintiffs cannot succeed because there are no allegations that Defendants’ spending precludes (or would preclude) Florida from giving practical effect to its medical marijuana laws. ECF No. 14 at 43-46; ECF No. 16 at 18-19. The government further explains that spending to enforce § 922(d)(3) and (g)(3) wouldn’t prevent Florida from giving practical effect to its medical marijuana laws because prosecution under those provisions does not stop Floridians from using medical marijuana. ECF No. 14 at 43-44. I agree that the Rohrabacher-Farr Amendment’s language precludes Plaintiffs’ claim.

To see why Plaintiffs have not stated a claim, it helps to consider how the rider fits into the “the overall statutory scheme for marijuana regulation, namely the [Controlled Substances Act] and the State Medical Marijuana Laws.” *McIntosh*, 833 F.3d at 1176. At best, the Amendment limits the DOJ’s ability to prosecute individuals under the Controlled Substances Act. That is because the actions that the CSA criminalizes—using, distributing, possessing, or cultivating marijuana—are the actions State medical marijuana laws purport to “authorize.” *See* 21 U.S.C.

§§ 841(a), 844(a); *see also* Consolidated Appropriations Act, 2022, § 531, 136 Stat. at 150-51 (no funds used to “prevent [states] from implementing their own laws that authorize the use, distribution, possession, or cultivation of medical marijuana”). Prosecuting users for the precise conduct the state wishes to allow would arguably “prevent” states from “implementing” their programs. *See McIntosh*, 833 F.3d at 1177. But prosecuting users for committing other crimes—even if it has some ancillary effect—is not preventing implementation.

To be sure, potential prosecution under § 922(g)(3) might give pause to those, like Franklin, who own firearms but would like to use marijuana. But this ancillary deterrent effect does not keep Florida from implementing its medical marijuana laws.¹¹ Plaintiffs have therefore not plausibly alleged that Defendants’ enforcement of § 922(d)(3) and (g)(3) would violate the Rohrabacher-Farr Amendment. So Counts III and IV must be dismissed.¹²

¹¹ The government points to *In re Great Lakes Cultivation, LLC*, 2022 WL 3569586, at *5-8 (E.D. Mich. Aug. 18, 2022), in which the district court upheld the dismissal of a medical marijuana business’s bankruptcy case because the bankruptcy trustee couldn’t lawfully administer the business’s assets. *Great Lakes Cultivation* rejected the business’s argument that dismissing the bankruptcy case amounted to a violation of the Rohrabacher-Farr Amendment. It found based on the rider’s plain language, “[n]othing about a motion to dismiss a bankruptcy case, even a motion filed by the United States Trustee, prevents states from implementing state laws to legalize medical marijuana.” *Id.* at *8. I find this nonbinding authority persuasive.

¹² To the extent Plaintiffs’ Rohrabacher-Farr claim relates to the ATF’s use of the form or to enforcement against gun dealers, the result is the same.

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CONCLUSION

As a matter of law, enforcement of the challenged laws does not violate the Second Amendment or the Rohrabacher-Farr Amendment. The government's motion to dismiss (ECF No. 13) is GRANTED, and Plaintiffs' claims are DISMISSED. I need not reach the government's alternative request for summary judgment, and I have not considered the scholarly articles and other materials the government submitted in support of that alternative request.

The clerk will enter a judgment that says, "Plaintiffs' claims are dismissed on the merits for failure to state a claim." The clerk will then close the file.

SO ORDERED on November 4, 2022.

s/ Allen Winsor
United States District Judge