

No.

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**In the Supreme Court of the United States**

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EDLANDO M. WATSON,  
PETITIONER,

*v.*

THE UNITED STATES OF AMERICA,  
RESPONDENT.

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

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**PETITION FOR A WRIT OF CERTIORARI**

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## **QUESTION PRESENTED**

Whether 18 U.S.C. § 922(g)(1), the federal statute that prohibits anyone who has been convicted of “a crime punishable by imprisonment for a term exceeding one year” from possessing a firearm, violates the Second Amendment as applied to Petitioner, whose prior felonies consist solely of nonviolent drug offenses.

## **PARTIES TO THE PROCEEDING**

Petitioner (defendant-appellant below) is Edlando Watson. Respondent (plaintiff-appellee below) is the United States of America.

## **STATEMENT OF RELATED PROCEEDINGS**

United States District Court (E.D. Wis.):

*United States v. Watson*, No. 23-cr-109  
(Aug. 13, 2024)

United States Court of Appeals (7th Cir):

*United States v. Watson*, No. 24-2432  
(April 2, 2026)

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## **PETITION FOR A WRIT OF CERTIORARI**

Petitioner Edlando M. Watson respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit.

### **OPINIONS BELOW**

The opinion of the court of appeals (App., *infra*, 1a–29a) is reported at 171 F.4th 1012. The judgment of the district court (App., *infra*, 30a–40a) is unreported. The order of the district court (App., *infra*, 41a–57a) is available at 2023 WL 6623774.

### **JURISDICTION**

The judgment of the court of appeals was entered on April 2, 2026. On May 27, 2026, Justice Barrett extended the time within which to file a petition for a writ of certiorari up to and including July 31, 2026. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

The Second Amendment of the United States Constitution 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.

Section 922(g)(1) of Title 18 of the U.S. Code provides: “It shall be unlawful for any person ... who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year ... 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.”

## INTRODUCTION

The Seventh Circuit upheld 18 U.S.C. § 922(g)(1) as applied to Petitioner Edlando Watson even though it identified no historical law under which a person convicted of his predicate offense—possession with intent to distribute cocaine—would have been disarmed. Hence the question presented: where the historical record does not reveal a founding-era tradition of permanently disarming all felons, what historical principle, if any, justifies applying 18 U.S.C. § 922(g)(1) to a person convicted of a nonviolent drug felony?

In the absence of founding-era evidence supporting permanent disarmament of all felons, the Seventh Circuit relied on laws disarming minority groups and founding-era punishments that imposed death on “felons,” whatever that term was understood to mean at the Founding. App. 17a–25a. From those traditions, the panel derived a general principle that legislatures may disarm persons they regard as “dangerous.” App. 25a. It then took the further step of holding, based largely on its own “common sense,” that individuals with prior drug-trafficking convictions are categorically dangerous. App. 26a.

The panel’s multiple wrong turns cannot be squared with the trajectory of this Court’s Second Amendment jurisprudence. If lower courts may invoke an abstract concept of “dangerousness” untethered from a specific historical tradition, and then define who is dangerous using judicial “common sense,” the Second Amendment inquiry will become shapeless. That is the exact opposite of what *Bruen*

and *Rahimi* prescribed. *Hemani*, too, emphasized that a modern firearm regulation must align with a “well-established historical analogue” in both “why” and “how”—and clarified that even if dangerousness may in some circumstances justify disarmament, more than “say-so” is required before labeling an entire class of persons that way. *Id.* at 1687, 1693.

*Hemani*, of course, left several inquiries for another day, including the full slate of “features that may render a modern law ‘relevantly similar’ to historical ones,” and the precise meaning of dangerousness under the Second Amendment. *Id.* at 1686. Those questions continue to pose substantial difficulties for lower courts, including the Seventh Circuit, which acknowledged that it was “trying [its] best to navigate” them. App. 16a. This case is an excellent vehicle for providing needed guidance. Petitioner preserved his as-applied challenge to § 922(g)(1) at every stage of this litigation, and the Seventh Circuit addressed his challenge on the merits in holding that his prior drug conviction renders him categorically dangerous. App. 16a. This Court should grant certiorari and reverse.

## STATEMENT OF THE CASE

### **I. Petitioner’s § 922(g)(1) Conviction Rests on Nonviolent Drug Offenses.**

In the fall of 2022, law enforcement received a tip that Petitioner Edlando Watson, a convicted felon, was storing firearms in a rental unit in Grand Chute, Wisconsin. *See* App. 3a. Officers executed a search warrant for the unit and recovered five guns, two of

which were linked to Petitioner through DNA. *See* R. 16 at 5.<sup>1</sup>

A federal grand jury returned a one-count indictment on June 6, 2023, charging Petitioner with being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1). *See* R. 1. The charge was based on Petitioner’s decade-old convictions for possession with intent to distribute cocaine base in violation of 21 U.S.C. § 841(a)(1), and possession of a firearm while being an unlawful user of marijuana in violation of 18 U.S.C. § 922(g)(3). *See* R. 1; R. 11 at 2.

On August 9, 2023, Petitioner moved to dismiss the indictment on Second Amendment grounds, arguing that § 922(g)(1) is unconstitutional as applied to him. *See* R. 11. Relying on the framework this Court established a year earlier in *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1 (2022), Petitioner argued that the government could not show a historical tradition of disarming nonviolent felons based solely on their status as felons. *See* R. 11 at 10 (citing Conrad Kahn, *Challenging the Federal Prohibition on Gun Possession by Nonviolent Felons*, 55 S. Tex. L. Rev. 113, 127 (2013) (“[T]he federal felon-firearm prohibition only dates back to 1938, and nonviolent felons were not prevented from possessing firearms until the enactment of the 1968 [Gun Control Act]”), and *Kanter v. Barr*, 919 F.3d at 454 (7th Cir. 2019) (Barrett, J., dissenting) (“[A]t least thus far, scholars have not been able to identify any such laws” barring non violent offenders from possessing firearms)).

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<sup>1</sup> References to “R. \_\_” are to the district court record, Case No. 23-CR-00109. References to “C.A. R. \_\_” are to the court of appeals record, Case No. 24-2432.

The district court denied the motion on October 11, 2023. *See* App. 41a. Relying principally on the Eighth Circuit’s decision in *United States v. Jackson*, 69 F.4th 495 (8th Cir. 2023), the court concluded that modern felon-in-possession laws are sufficiently analogous to early English and revolutionary-era laws disarming groups then regarded as “dangerous,” including Native Americans and religious minorities. App. 49a–55a. The court also found persuasive the D.C. Circuit’s decision in *Medina v. Whitaker*, 913 F.3d 152 (D.C. Cir. 2019), which pointed out that because felons were subjected to the death penalty at the Founding, “it is difficult to conclude that the public, in 1791, would have understood someone facing death and estate forfeiture to be within the scope of those entitled to possess arms.” App. 53a. Finally, the court held that § 922(g)(1) was constitutional as applied to Petitioner, citing what it described as the “well-recognized connection between drug trafficking and guns.” App. 56a.

Petitioner entered a conditional guilty plea on May 2, 2024, reserving his right to appeal the denial of his motion to dismiss. *See* R. 47. The district court imposed a sentence of 65 months’ imprisonment followed by three years of supervised release. App. 31a–32a.

## **II. *Rahimi* Upheld § 922(g)(8), Which Targets Domestic Abusers and Requires a Judicial Finding of Individual Dangerousness.**

While Petitioner’s Seventh Circuit appeal was pending, this Court decided *United States v. Rahimi*, 602 U.S. 680 (2024), holding that 18 U.S.C. § 922(g)(8)—which applies to persons judicially found



to pose a threat to others—is facially constitutional. In reaching that conclusion, the Court reaffirmed that the government bears the burden of justifying a firearm restriction. *Id.* at 691. It further explained that modern firearm regulations need not be “dead ringers” or “historical twins” of founding era laws, but must be analogous in light of the “principles” underlying this Nation’s historical tradition of firearm regulation. *Id.* at 692. Applying that framework, the Court upheld § 922(g)(8) by analogizing it to founding-era surety and going-armed laws, both of which “involved judicial determinations of whether a particular defendant likely would threaten or had threatened another.” *Id.* at 698–99. Section 922(g)(8), the Court concluded, is “relevantly similar” to those historical regimes “in both why and how it burdens the Second Amendment right.” *Id.*

### **III. The Seventh Circuit Upheld § 922(g)(1) as Applied to Petitioner Based on Flawed Analogies and a Presumption of Dangerousness.**

After *Rahimi* issued, Petitioner briefed his Seventh Circuit appeal under that decision’s clarified framework and argued that it reinforced his as-applied challenge. He emphasized that *Rahimi* confirmed the government bears the burden of justifying § 922(g)(1) by identifying historical analogues, and that the government had not met that burden in his case. *See* C.A. R. 9 at 25. *Rahimi*, moreover, upheld § 922(g)(8) only because that provision applies to individuals found by a court to pose a credible threat to the physical safety of others, with specific founding-era laws burdening that right

in the same way and for the same reasons. Section 922(g)(1) is fundamentally different: it disarms Petitioner based solely on the existence of nonviolent drug predicate convictions, without any judicial finding that he is dangerous or any historical analogue disarming nonviolent felons as a class. *See* C.A. R. 9 at 26–28.

The Seventh Circuit affirmed on April 2, 2026.<sup>2</sup> *See* App. 1a. Chief Judge Brennan, acknowledging the “challenges” of the history-and-tradition analysis and referring to the “guidance we have,” identified the same two historical traditions on which the district court had relied to uphold § 922(g)(1) as applied to Petitioner: first, the categorical disarmament of groups the legislature deemed “dangerous”—including slaves and Native Americans—and second, the principle that the “greater includes the lesser,” or that because legislatures at the Founding could impose the death penalty for serious crimes, they could also impose the lesser restriction of disarmament. App. 16a–25a.

Rather than connect the “why” or “how” of those traditions to the “why” or “how” of Petitioner’s conviction under § 922(g)(1), however, the panel took a step back and invoked “common sense.” App. 25a. It asserted, without citation to anything in § 922, that “Congress reasonably determined that a felony drug conviction is a ‘dangerous’ crime.” App. 25a.

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<sup>2</sup> Because *Hemani* was pending at the time, the panel did not consider Petitioner’s § 922(g)(3) conviction (for being an unlawful user of marijuana) as part of its Second Amendment analysis. *See* App. 27a–28a. *Hemani* has since confirmed that the only predicate meaningfully at issue here is Petitioner’s cocaine-distribution conviction.

The panel went on to suggest that “[f]ederal caselaw well substantiates that drugs and guns together are dangerous.” App. 25a. But it cited only cases involving conduct in which firearms were actually used, or at heightened risk of being used, during the course of a drug crime. *See Muscarello v. United States*, 524 U.S. 125, 126, 132 (1998) (analyzing 18 U.S.C. § 924(c)(1), which imposes mandatory prison time upon a person who “uses or carries a firearm” “during and in relation to” a “drug trafficking crime”); *Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, 605 U.S. 280, 287 (2025) (describing Mexico’s “gun violence problem” and explaining that cartels use firearms “to commit serious crimes—drug dealing, kidnapping, murder, and others”); *Richards v. Wisconsin*, 520 U.S. 385, 391 n.2 (1997) (making vague reference to the “link[] between drugs and violence” in a case evaluating the propriety of a no-knock entry in a felony drug investigation). The panel also invoked 18 U.S.C. § 924(c), which punishes firearm use during a drug crime, and U.S.S.G. § 2D1.1(b)(1), which enhances sentences on the same basis. App. 26a. The panel thus concluded that “[a] dealer of illegal drugs is more than just irresponsible; he is a threat to the physical safety of society.” App. 26a.

Toward the end of its opinion, the panel observed that felon disarmament is not necessarily “permanent” because 18 U.S.C. § 925(c) permits an individual to apply to the Attorney General for relief upon a showing that he “will not be likely to act in a manner dangerous to public safety” and that relief “would not be contrary to the public interest.” App. 28a. The court acknowledged, however, that this process has been effectively unavailable for decades

after Congress barred the Bureau of Alcohol, Tobacco, Firearms, and Explosives (“ATF”) from using appropriated funds to process such applications, *see United States v. Bean*, 537 U.S. 71, 74–75 (2002), with the Attorney General only recently taking preliminary steps to restore that process. App. 28a–29a.

#### **IV. *Hemani* Rejected The Government’s Presumption That Anyone Who Uses Marijuana Is Dangerous.**

Shortly after the Seventh Circuit issued its opinion, this Court decided *United States v. Hemani*, holding § 922(g)(3) unconstitutional as applied to an individual who is an “unlawful user” of marijuana. 146 S. Ct. 1677 (2026). Reiterating that, under *Bruen* and *Rahimi*, “the more a modern law diverges from traditional laws in purpose and operation, the less likely it is to survive review,” this Court concluded that the government’s historical analogies fell short because the laws it invoked “targeted different kinds of people, did so for different purposes, and operated in different ways.” *Id.* at 1686.

This Court further emphasized that the government had made no showing that Hemani posed a threat to others. *Id.* at 1689. Indeed, the government disclaimed any need to make such a showing, urging instead a categorical presumption that anyone who uses marijuana is violent and dangerous. *Id.* at 1693. This Court rejected that “expansive” theory, criticizing the government’s position that “[i]t makes no difference [] if he keeps a firearm only in his home for self-defense, never misuses a gun while intoxicated, and never poses a danger to himself or others as a result of his marijuana use.” *Id.* at 1693–

94. Granting the government such sweeping authority to label any group “dangerous,” this Court explained, would threaten to swallow the Second Amendment whole. *Id.* at 1693 (citing *Kanter v. Barr*, 919 F.3d 437, 465 (7th Cir. 2019) (Barrett, J., dissenting)).

## **REASONS FOR GRANTING THE PETITION**

The Seventh Circuit identified two historical traditions that do not actually match § 922(g)(1), and made unsupported, “common sense” assumptions about dangerousness. Those errors in methodology arise in the context of a clear circuit split over whether defendants may bring as-applied challenges under § 922(g)(1) at all. This Court should grant certiorari to confirm that such challenges are cognizable and to reverse the Seventh Circuit’s misapplication of Second Amendment precedent to one of the most prosecuted statutes in the federal criminal code.

### **I. The Seventh Circuit’s Decision Is Incorrect Because It Rests on Faulty Historical Analogies.**

#### **A. Reliance on the Disarmament of Groups Now Protected by the Fourteenth Amendment Cannot Justify § 922(g)(1).**

The Seventh Circuit’s first tradition rests on some of the most ignominious chapters in Anglo-American law. The panel recounted how English sovereigns disarmed Catholics, political dissidents, and the Welsh, and then turned to colonial and early American laws disarming enslaved persons, Native Americans, and free Black people. App. 17a–21a.

From these laws, the panel distilled the principle that “legislatures deemed groups ‘dangerous’ and categorically disarmed them.” App. 16a–17a. And from that idea, the panel leaped to the conclusion that Congress could deem drug dealers “dangerous” and disarm Petitioner. App. 22a, 26a.

It cannot be the case that a modern regulation is justified by historical laws that disarmed people specifically because of characteristics that are now protected under the Fourteenth Amendment. The laws targeting enslaved persons, free Black individuals, and Native Americans were not, in any meaningful sense, premised on individualized or even group-based dangerousness. They were premised on racial subjugation. *See, e.g., Kanter v. Barr*, 919 F.3d at 454 (7th Cir. 2019) (Barrett, J., dissenting) (noting “fear that these groups would use guns to revolt” or “rebel” (internal citation and quotation marks omitted)). Justice Kavanaugh, concurring in *Rahimi*, recognized that “in using pre-ratification history, courts must exercise care to rely only on the history that the Constitution actually incorporated and not on the history that the Constitution left behind.” 602 U.S. at 723.

That is precisely what the Seventh Circuit’s opinion fails to do. The panel did not merely cite these laws in passing. It built its entire analytical framework on them. The court detailed how the colonies restricted the sale of firearms to “Indians as a class,” and how “[b]lack people in Mississippi were prohibited from owning guns with no exceptions.” App. 20a–21a. It then drew “two important conclusions” from this history. App. 20a–21a. The first was that, although “[m]any of these laws would violate the Fourteenth Amendment,” their “import

cannot be ignored” because “[t]hese laws reflect the boundaries of the legislature’s power to enact class-wide disarmament laws consistent with the Second Amendment.” App. 22a. The second was that “the legislature may determine that classes of people are dangerous.” App. 22a.

The Seventh Circuit thus converted exclusionary enactments into a general license to disarm any group the legislature chooses to characterize as “dangerous.” In doing so, it overlooked Justice Kavanaugh’s warning that “pre-ratification history can be probative of what the Constitution does *not* mean,” because “[t]he Framers drafted and approved many provisions of the Constitution precisely to depart from rather than adhere to certain pre-ratification laws, practices, or understandings.” *Rahimi*, 602 U.S. at 720 (Kavanaugh, J., concurring). The discriminatory disarmament of minority groups is exactly the kind of history this Court should make clear cannot supply the meaning of the Second Amendment.

**B. Even Accepting a Tradition of  
Disarming Groups Deemed  
“Dangerous,” the Historical Analogy  
Fails Because the “Why” Does Not  
Match.**

Under *Bruen*, *Rahimi*, and *Hemani*, the central inquiry is whether a modern regulation and its asserted historical analogues are “relevantly similar” in both “why” and “how.” *Bruen*, 597 U.S. at 29; *Rahimi*, 602 U.S. at 692; *Hemani*, 146 S. Ct. at 1686. The “why” asks whether the modern and historical regulations address comparable problems for comparable reasons. The “how” asks whether they

impose comparable burdens on the right. The more a modern law “diverges from traditional laws in purpose and operation, the less likely it is to survive review.” *Hemani*, 146 S. Ct. at 1686.

In *Rahimi*, this Court demonstrated what a proper match looks like. Section 922(g)(8) survived constitutional scrutiny because it applied to individuals “found by a court to pose a credible threat to the physical safety of another,” and the historical surety and going-armed laws burdened the right for relevantly similar reasons—they, too, “involved judicial determinations of whether a particular defendant likely would threaten or had threatened another.” 602 U.S. at 698–99, 702. In short, both laws imposed firearm-related restrictions only after a particularized determination that a specific person presented a likely risk of physical danger. *Id.* at 698–99.

The “why” behind the historical tradition invoked by the Seventh Circuit—disarming groups deemed “dangerous”—does not match the “why” of § 922(g)(1). The old traditions were rooted in a narrow concern: rebellion against the sovereign, insurrection against the political order, or organized violence against the community.<sup>3</sup> *United States v. Duarte*, 137 F.4th 743, 797 (9th Cir. 2025) (VanDyke, J., concurring in part and dissenting in part) (citing Jamie G. McWilliam, *Refining the Dangerousness Standard in Felon Disarmament*, 108 Minn. L. Rev. Headnotes 315, 324–

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<sup>3</sup> The Fifth Circuit in *Rahimi* also pointed out that such laws “may well have been targeted at groups excluded from the political community—i.e., written out of ‘the people’ altogether—as much as they were about curtailing violence or ensuring the security of the state.” *United States v. Rahimi*, 61 F.4th 443, 457 (5th Cir. 2023).



25 (2024)). Section 922(g)(1) is worlds apart from that tradition. It punishes the simple fact of possession combined with the fact of a prior conviction for any “crime punishable by imprisonment for a term exceeding one year.” 18 U.S.C. § 922(g)(1). The statute makes no distinction between violent and nonviolent predicate offenses—let alone offenses posing a risk to the sovereign or governing political order. Section 922(g)(1) sweeps in food-stamp fraud, after all.

### **C. The “Greater Includes the Lesser” Rationale Is Also Flawed.**

Unwilling to rest its holding solely on the first regime, the Seventh Circuit turned to a second: the principle that because founding-era legislatures could impose the death penalty for “felonies,” they could also impose the lesser restriction of disarmament. App. 23a–25a.

As an initial matter, a “felony” at the Founding “was a good deal narrower than now.” *Lange v. California*, 594 U.S. 295, 311 (2021); *see also Tennessee v. Garner*, 471 U.S. 1, 14 (1985). Many offenses that are classified as felonies today—including drug offenses like Petitioner’s—were not criminal at all at the Founding, let alone punishable by death. *Garner*, 471 U.S. at 14. Thus, even on its own terms, the greater-includes-the-lesser theory cannot apply to Petitioner because the “greater” punishment (death for cocaine distribution) was never available in the first place.

The theory is flawed on another level. As then-Judge Barrett recognized in *Kanter*, the historical support for the premise that all felonies were punishable by death is “shaky.” 919 F.3d at 458

(Barrett, J., dissenting). “During the period leading up to the founding, the connection between felonies and capital punishment started to fray.” *Id.* at 459. The colonies “further limited the scope of crimes eligible for the death penalty relative to the English Common Law,” and even for those crimes that were capital, “[t]he colonies carried out the death penalty ‘pretty sparingly.’” *Duarte*, 137 F.4th at 788 (VanDyke, J., concurring in part and dissenting in part); *Folajtar v. Att’y Gen.*, 980 F.3d 897, 920 (3d Cir. 2020) (Bibas, J., dissenting). If the claimed “greater” capital punishment of all felonies “was in fact a historical fiction,” then the greater-includes-the-lesser rationale cannot work. *Duarte*, 137 F.4th at 790 (VanDyke, J., concurring in part and dissenting in part).

And even if legislatures at the Founding could have imposed death for all felonies, the greater-includes-the-lesser reasoning leads to absurd results when applied to other constitutional rights. “[W]e wouldn’t say that the state can deprive felons of the right to free speech because felons lost that right via execution at the time of the founding.” *Kanter*, 919 F.3d at 461–62 (Barrett, J., dissenting). “No one suggests that [someone with a felony conviction] has no right to a jury trial or [to] be free from unreasonable searches and seizures.” *United States v. Williams*, 113 F.4th 637, 658 (6th Cir. 2024). “The obvious point that the dead enjoy no rights does not tell us what the founding era generation would have understood about the rights of felons who lived, discharged their sentences, and returned to society.” *Kanter*, 919 F.3d at 462 (Barrett, J., dissenting).

The Seventh Circuit noted that *Rahimi* employed a version of the greater-includes-the-lesser reasoning when it observed that “the lesser restriction of

temporary disarmament that Section 922(g)(8) imposes is also permissible” because going-armed laws imposed the greater punishment of imprisonment. 602 U.S. at 699; App. 25a. But as the Second Circuit explained in *Zherka v. Bondi*, 140 F.4th 68 (2d Cir. 2025), this Court was merely “point[ing] out that specific early weapons regulations (the ‘going armed’ laws) imposed more severe penalties than the disarmament statutes at issue in that case.” *Id.* at 83. This Court was not sanctioning “blanket reliance on eighteenth century capital punishment practice to validate any lesser deprivation later imposed on felons.” *Id.*

#### **D. Combining Insufficient Historical Analogies Does Not a Sufficient Historical Tradition Make.**

Confronted with two traditions that provide weak support for Section 922(g)(1), the panel stacked them together in the apparent hope that their combined weight would be sufficient. *See* App. 27a (concluding that “[t]aken together,’ these traditions support disarming those with dangerous felonies (quoting *United States v. Dubois*, 139 F.4th 887, 894 (11th Cir. 2025) (Pryor, C.J., concurring),)).

But under *Bruen*, *Rahimi*, and *Hemani*, identifying numerous insufficient historical examples does not a sufficient historical tradition make. The government’s burden is to demonstrate that the challenged regulation is “relevantly similar” to historical laws in both purpose and operation—that is, to identify a coherent historical practice whose “why” and “how” actually track the modern statute. The Seventh Circuit identified no such practice. Instead, it

cited one tradition (disarming groups deemed “dangerous”) that fails to match § 922(g)(1)’s justification as applied to Petitioner, and a second tradition (capital punishment for “felons”) that fails to match both justification and burden.

In repeatedly emphasizing that “why and how the regulation burdens the right are central to th[e] inquiry,” *Rahimi*, 602 U.S. at 692 (citing *Bruen*, 597 U.S. at 29), this Court has never suggested that the “why” can be cherry-picked from one tradition, and the “how” from another. Instead, this Court has explained that the laws should be considered “relevantly similar” only if they address a comparable problem for comparable reasons and place a comparable burden on the right holder. *Id.*; *Bruen*, 597 U.S. at 27–30. These metrics should not be independent boxes that can be checked by reference to entirely different historical regimes; they must cohere in a single analogy that demonstrates the modern law is “consistent with the principles that underpin our regulatory tradition.” *Rahimi*, 602 U.S. at 692; *see also id.* at 771–72 (Thomas, J., dissenting) (criticizing approach that “takes pieces from” various historical analogues to support a statute’s constitutionality, when the proper question is “whether a single historical law has both a comparable burden and justification as § 922(g)(8), not whether several laws can be cobbled together to qualify.”).

*Hemani* reinforces the point. This Court held that the government’s historical analogues—vagrancy laws, civil-commitment statutes, and surety laws—“targeted different kinds of people, did so for different purposes, and operated in different ways” than § 922(g)(3). 146 S. Ct. at 1687. The government in *Hemani* attempted precisely what the Seventh Circuit

did here: it marshaled multiple historical traditions, each insufficient on its own, and urged the Court to view them as collectively establishing the required analogy. This Court instead evaluated each proffered tradition on its own merits and found each wanting. *Id.* at 1687–95.

The government may respond that this Court in *Rahimi* permitted reliance on “two distinct legal regimes” that shared a common tradition. *Id.* at 694. But this Court did so only because both the surety laws and going-armed laws “specifically addressed firearms violence,” *id.* at 694–95, and both “involved judicial determinations of whether a particular defendant likely would threaten or had threatened another.” *Id.* at 699. These were not disparate traditions stitched together at a high level of abstraction to compensate for each other’s shortcomings. Indeed, as Justice Barrett cautioned in concurrence: “[A] court must be careful not to read a principle at such a high level of generality that it waters down the right.” 602 U.S. at 740 (Barrett, J., concurring).

Allowing the government to point to a tradition of disarming dangerous groups to supply one burden or justification, and the unrelated tradition of capital punishment to fill in the gaps, converts the analogical inquiry into a “regulatory blank check.” *Bruen*, 597 U.S. at 30. It is the kind of analysis that “allow[s] legislatures to creatively fashion new categorical exclusions, thereby effectively gutting the Amendment’s protections in a way that is at war with its original understanding.” *Duarte*, 137 F.4th at 767 (Collins, J., concurring).

This Court should grant certiorari to make explicit what *Bruen*, *Rahimi*, and *Hemani* already strongly

indicate: that the government cannot satisfy its burden by mixing and matching different historical traditions and treating them as collectively adequate. The inquiry demands a coherent historical practice that is, standing alone, relevantly similar to the challenged regulation.

## **II. Under the Second Amendment, Assumptions About Dangerousness Should Not Be Allowed to Replace Evidence of It.**

Even if the historical regimes discussed above establish that felons who are dangerous may be disarmed consistent with the Second Amendment, serious questions remain about how courts are to determine who qualifies as dangerous. That is yet another reason this case is a suitable vehicle for review: this Court can clarify that even under § 922(g)(1), the inquiry turns on evidence, not judicial presumptions about entire classes.

### **A. *Hemani* Forbids Reliance on Assumptions to Establish Categorical Dangerousness.**

In *Hemani*, this Court made clear that the government cannot satisfy its burden under the Second Amendment by asking courts to accept, on faith, that the people it seeks to disarm are categorically dangerous. The government argued that § 922(g)(3) disarms unlawful drug users to “protect the public from ‘unusually dangerous’ individuals who will ‘misuse . . . firearms’ to commit ‘violent crime[s].’” 146 S. Ct. at 1689. This Court refused to credit that

assertion, troubled by the government's argument that "none of this turns on how much marijuana Mr. Hemani uses or what effect it has on him." *Id.* at 1693. In sum, the government "asks us to conclude that anyone who regularly uses marijuana is categorically violent and dangerous without any further showing. All based on little more than its current say-so, one at odds with its own regulatory actions." *Id.*

Regarding the purported connection between drugs and violence, moreover, this Court explained that "[w]ithout question, some unlawful users of controlled substances can pose a risk of violence." *Id.* at 1692. But "it is far from obvious that 18 U.S.C. § 922(g)(3) confines its reach to those who are categorically and unusually dangerous." *Id.* The lesson of *Hemani* is therefore clear: the Second Amendment demands more than a casual assumption that an entire class of people is dangerous. Instead, the inquiry requires proof that the defendant's prohibited conduct makes him incapacitated, violent, or otherwise dangerous. *Id.* at 1693.

**B. The Seventh Circuit Assumed, Without Any Evidence, That Drug Offenders Are Categorically Dangerous.**

The same constitutional deficiency that doomed the government's position in *Hemani* dooms its position here. The government argued below that Petitioner's drug-trafficking conviction renders him "sufficiently dangerous to justify disarmament," asserting that "the illegal drug industry is, to put it mildly, a dangerous, violent business" and that "weapons are tools of the narcotics trade." C.A. R. 18 at 40, 42. It also maintained that "[c]ommon sense

suggests, and statistical evidence confirms, that ‘felons are more likely to commit violent crimes’ than are law-abiding individuals.” C.A. R. 18 at 37. Not one of the government’s cited cases, however, established as an empirical matter that drug felons in particular are likely to commit violent crimes. *See* C.A. R. 18 at 37, 42. Nor did the government explain what its “statistics” showed about drug felons specifically. *See* C.A. R. 18 at 37.

The Seventh Circuit nevertheless adopted the government’s assumptions wholesale. The court asserted, without citation to anything in § 922, that “Congress reasonably determined that a felony drug conviction is a ‘dangerous’ crime,” and that the link “makes ‘common sense.’” App. 25a. Thus, “[a] dealer of illegal drugs is more than just irresponsible; he is a threat to the physical safety of society.” App. 26a. The cases the court cited in support, however, all involved situations in which firearms were actually used or at heightened risk of being used in connection with drug crimes. *See Muscarello*, 524 U.S. at 126, 132 (analyzing 18 U.S.C. § 924(c)(1), which imposes mandatory prison time upon a person who uses a firearm during a drug crime); *Smith & Wesson Brands*, 605 U.S. at 287 (explaining that cartels use firearms to commit crimes like drug dealing, kidnapping, and murder); *Richards*, 520 U.S. at 391 n.2 (1997) (referencing the “link[] between drugs and violence” in a case about no-knock warrants). Unlike this case, none of those cases involved a felon who possessed a firearm apart from the drug activity in question.<sup>4</sup>

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<sup>4</sup> The government is likely to emphasize in opposition to this petition certain violent components of Petitioner’s *non-felony*



Just as the government in *Hemani* asked this Court to “conclude that anyone who regularly uses marijuana is categorically violent and dangerous without any further showing,” the government here asked the Seventh Circuit to conclude that anyone with a prior drug-trafficking conviction is categorically violent and dangerous—again, without any further showing. 146 S. Ct. at 1693. The Seventh Circuit obliged, deeming it sufficient that Congress could have determined drug dealing to be dangerous. App. 25a–26a. But, again, *Hemani* teaches that such “common sense” reasoning cannot substitute for the government’s affirmative burden to provide evidence that a regulation is consistent with the Second Amendment’s protections.

### **C. Empirical Data Do Not Support the Assumption That Drug Offenders Are Categorically Dangerous.**

The Seventh Circuit’s assumption that drug dealers are categorically dangerous is especially

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history, including domestic-battery charges. But as Petitioner argued below, that conduct does not support the Section 922(g)(1) conviction, and, as a result, should not be folded into the dangerousness analysis. Permitting the government to defend a § 922(g)(1) conviction by pointing to a defendant’s broader record—including conduct that could have been, but was not, charged under § 922(g)(8) or state felon-in-possession laws—would allow the government to punish a defendant under one statute by invoking the “principles” of an entirely different one. *See United States v. Kimble*, 142 F.4th 308, 318 (5th Cir. 2025) (explicitly rejecting the view that “courts should ‘look beyond’ a defendant’s predicate conviction ‘and assess whether the felon’s history or characteristics make him likely to misuse firearms’” (quoting, *contra*, *Pitsilides v. Barr*, 128 F.4th 203, 211–12 (3d Cir. 2025))).

problematic in light of available data.<sup>5</sup> The Bureau of Justice Statistics in 2021, for example, released data tracking a sample population representing more than 400,000 state prisoners, which showed that, among those rearrested within five years, only 22.6% of drug-convicted releasees were rearrested for a violent crime. *See* Bureau of Justice Statistics, *Recidivism of Prisoners Released in 34 States in 2012: A 5-Year Follow-Up Period (2012–2017)*, at 11 (July 2021). The 2005 cohort data are similar: within five years of release, only 24.8% of prisoners originally committed for drug offenses were arrested for a new violent crime. Bureau of Justice Statistics, *Recidivism of Prisoners Released in 30 States in 2005: Patterns from 2005 to 2010*, at 9 (Apr. 2014). In other words, the overwhelming majority of released drug offenders—roughly three-quarters—are not rearrested for a violent crime, even over a multi-year period. These figures do not support the proposition that drug offenders as a class are categorically dangerous.

The United States Sentencing Commission’s report on “Recidivism of Federal Drug Trafficking Offenders Released in 2010” is similarly telling. The Commission found that when drug-trafficking offenders were rearrested, their most serious new offense was violent only 27.6% of the time. *See id.* at 27 (Jan. 2022). The Commission’s 2016 career-offender report draws a related conclusion: the most serious post-release offense for drug-trafficking-only career offenders was another drug-trafficking offense

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<sup>5</sup> Neither party provided empirical evidence below to prove or disprove drug felons’ categorical dangerousness. Watson presents the following statistics at the certiorari stage out of necessity, to demonstrate why courts must think twice before simply assuming that drug traffickers are categorically violent.

(26.5%)—not a violent crime. *See* U.S. Sent’g Comm’n, Report to the Congress: Career Offender Sentencing Enhancements, at 42 (July 2016).

Also illuminating are the Bureau of Justice Statistics’ findings on the actual use of firearms by drug offenders. A 2016 survey of prison inmates found that state and federal prisoners serving time for drug offenses were far less likely to have possessed a firearm during the offense (8% state, 12% federal) than prisoners serving time for violent offenses (29% state, 36% federal). *See* Bureau of Justice Statistics, Source and Use of Firearms Involved in Crimes: Survey of Prison Inmates, 2016, at 3–4 (Jan. 2019).

These figures undermine the Seventh Circuit’s assumption that drug offenders are “threat[s] to the physical safety of society.” App. 26a. The empirical record shows that the vast majority of drug offenders do not reoffend violently and do not use firearms in their crimes. A legal framework that permits the government to permanently strip a constitutional right from millions of Americans based on a categorical presumption of dangerousness—without any obligation to demonstrate that the class or individual actually poses a threat of violence—cannot be squared with this Court’s repeated insistence that the government bears the burden of justifying firearm restrictions.

The Seventh Circuit’s reliance on its own “common sense” is, at bottom, an invitation to decide Second Amendment cases based on assumptions rather than evidence, and on judicial intuition rather than constitutional analysis.<sup>6</sup> That method is precisely

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<sup>6</sup> The Third and Fifth Circuits have also held—or at least strongly suggested—that § 922(g)(1) is constitutional as applied

what *Hemani* rejected. The government there asked this Court to accept that all regular marijuana users are categorically dangerous. Here, the government asked the Seventh Circuit to accept that all drug traffickers are categorically dangerous. In neither instance did the government offer class-wide evidence that the statute of conviction identifies dangerous persons, or individualized evidence that the particular defendant was dangerous by virtue of that conviction. This Court should grant certiorari to make clear that what is impermissible under § 922(g)(3) after *Hemani* is equally impermissible under § 922(g)(1): neither the government nor the court may invoke “common sense,” *i.e.*, its own say-so, to label an entire class of people “dangerous.”

### **III. Section 925(c) Does Not Cure the Constitutional Problem.**

Toward the end of its opinion, the Seventh Circuit invoked 18 U.S.C. § 925(c) for the proposition that “felon status does not necessarily mean permanent disarmament.” App. 28a. But § 925(c) offers no meaningful answer to Mr. Watson’s as-applied challenge. The statute authorizes the Attorney General to restore a felon’s firearm rights upon a showing that the person “will not be likely to act in a manner dangerous to public safety” and that the public interest supports rearmament. 18 U.S.C. § 925(c). Yet Congress defunded that program in 1992.

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to defendants with drug-trafficking convictions. *See United States v. Walters*, 151 F.4th 122, 134–35 (3d Cir. 2025); *Kimble*, 142 F. 4th at 316–17. But those decisions suffer from the same core flaw present here: they simply assume, without evidentiary support, that drug traffickers are categorically violent.

*See United States v. Williams*, 113 F.4th 637, 661 (6th Cir. 2024). As a result, the remedy “remains practically unavailable.” *Id.* The government should not be permitted to defeat an as-applied challenge by suggesting that the Executive might later devise a constitutional process. *Cf. Lynch v. Arizona*, 578 U.S. 613, 616 (2016) (“[P]otential for future ‘legislative reform’” cannot justify unconstitutional sentence); *United States v. Stevens*, 559 U.S. 460, 480 (2010) (“We would not uphold an unconstitutional statute merely because the Government promised to use it responsibly.”).

#### **IV. The Courts of Appeals Are Split on the Availability of As-Applied Challenges to Section 922(g)(1).**

The Seventh Circuit’s decision contributes to a division in the courts of appeals over the threshold question of whether an individual may raise an as-applied challenge to § 922(g)(1) at all. Until this Court resolves that split, an individual’s ability to invoke the Second Amendment in relation to the statute depends on geography. In some circuits, he may be imprisoned and permanently stripped of a constitutional right without even the opportunity to raise an as-applied claim; in others, he may argue, and prevail, that § 922(g)(1) is unconstitutional as applied to him. This conflict further underscores the need for this Court to weigh in regarding the proper framework for Second Amendment challenges under § 922(g)(1).

In addition to the Seventh Circuit, which entertained Petitioner’s as-applied challenge,<sup>7</sup> the Fifth Circuit has recognized as-applied challenges under § 922(g)(1). In *United States v. Hembree*, 165 F.4th 909 (5th Cir. 2026), the panel held § 922(g)(1) unconstitutional as applied to a defendant whose sole predicate felony was possession of methamphetamine. It emphasized that the government bears a “heavy” burden to show that the challenged law is “relevantly similar to laws that our tradition is understood to permit,” and concluded that the government had failed to carry that burden. *Id.* at 912, 916. The court also refused to treat simple possession as categorically “dangerous” enough to justify permanent disarmament. *Id.* at 917–18; *see also United States v. Martin*, 2026 WL 1180541, at \*1 (5th Cir. Apr. 30, 2026) (following *Hembree* and holding § 922(g)(1) unconstitutional as applied to a defendant whose predicate conviction was also for drug possession).

As-applied challenges are also available in the Third Circuit. In *Range v. Attorney General*, 124 F.4th 218 (3d Cir. 2024) (en banc), the court held § 922(g)(1) unconstitutional as applied to an individual convicted of food-stamp fraud. The court reasoned that the government’s asserted historical traditions were “far too broad” to justify Range’s penalty, emphasizing that “the Founding-era practice of punishing some nonviolent crimes with death does not suggest that the particular (and distinct) punishment at issue here—de facto lifetime disarmament for all felonies

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<sup>7</sup> The panel also “reserve[d] ruling on an as-applied challenge to § 922(g)(1) under the Second Amendment by a felon whose predicate felony offense is not ‘dangerous.’” App. 28a.

and felony-equivalent misdemeanors—is rooted in our Nation’s history and tradition.” *Id.* at 229, 231.

The Sixth Circuit has not yet invalidated § 922(g)(1) as applied to a particular defendant, but it has acknowledged the viability of doing so. In *United States v. Williams*, the court suggested that a person convicted of a felony who can show he poses no danger may fall outside § 922(g)(1)’s constitutional reach. 113 F.4th at 662. The court further observed that the administrative relief mechanism in 18 U.S.C. § 925(c)—through which ATF could restore firearm rights to qualifying felons—“remains practically unavailable” because Congress has historically denied funding for the program. *Id.* at 661.

In the Second, Fourth, Eighth, Ninth, Tenth, and Eleventh Circuits, by contrast, such challenges are categorically unavailable, leaving defendants like Hembree, Martin, and Range permanently disarmed or imprisoned.<sup>8</sup> See *Zherka v. Bondi*, 140 F.4th 68, 74–79, 91–93 (2d Cir. 2025); *United States v. Hunt*, 123 F.4th 697, 700 (4th Cir. 2024); *United States v. Jackson*, 110 F.4th 1120, 1125–26 (8th Cir.), *reh’g en banc denied*, 121 F.4th 656 (8th Cir. 2024); *United States v. Duarte*, 137 F.4th 743, 750–52, 761–62 (9th Cir. 2025) (*en banc*); *Vincent v. Bondi*, 127 F.4th 1263, 1265–66 (10th Cir. 2025); *United States v. Dubois*, 139 F.4th 887, 888–89 (11th Cir. 2025).

The stakes of this conflict cannot be overstated. Section 922(g)(1) is one of the most frequently prosecuted provisions in the federal criminal code. In 2022, convictions under the statute accounted for

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<sup>8</sup> The First Circuit has left for another day “whether as-applied challenges may be properly brought as to § 922(g)(1).” *United States v. Fort*, 176 F.4th 1, 7 (2026).

nearly 12% of all federal criminal cases. *See* Supp. Br. for the Federal Parties, *Garland v. Range*, No. 23-374, at 5-6 (June 24, 2024). And in 2024, approximately 90% of all § 922(g) convictions fell under § 922(g)(1). U.S. Sent’g Comm’n, Quick Facts: 18 U.S.C. § 922(g) Firearms Offenses (Fiscal Year 2024). The circuit split means thousands of individuals may seek as-applied relief while thousands of others are denied even the opportunity to raise such a claim—an intolerable state of affairs in cases involving imprisonment and the loss of a constitutional right.

Apart from the disagreement among the circuits, § 922(g)(1) demands this Court’s attention because it operates on a massive scale to strip millions of Americans of what this Court has called a “fundamental righ[t] necessary to our system of ordered liberty.” *Rahimi*, 602 U.S. at 690; Sarah K. S. Shannon et al., *The Growth, Scope, and Spatial Distribution of People With Felony Records in the United States, 1948–2010*, 54 *Demography* 1795, 1806 (2017) (estimating that 19 million Americans had a felony record as of 2010). The statute’s sweep also compounds the well-recognized problem of overcriminalization in this country; “criminal laws have grown so exuberantly and come to cover so much previously innocent conduct that almost anyone can be arrested for something.” *Nieves v. Bartlett*, 587 U.S. 391, 412 (2019) (Gorsuch, J., concurring in part and dissenting in part). Given the sheer volume of prosecutions under § 922(g)(1), its constitutionality is an important question worthy of this Court’s review.



## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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July 31, 2026

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## **APPENDIX**

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**APPENDIX A — OPINION OF THE UNITED STATES  
COURT OF APPEALS FOR THE SEVENTH CIRCUIT,  
FILED APRIL 2, 2026**

IN THE UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT

No. 24-2432

UNITED STATES OF AMERICA,

*Plaintiff-Appellee,*

v.

EDLANDO M. WATSON,

*Defendant-Appellant.*

Appeal from the United States District Court for the  
Eastern District of Wisconsin.

No. 1:23-cr-00109-WCG-1—**William C. Griesbach**, *Judge*.

ARGUED SEPTEMBER 25, 2025

DECIDED APRIL 2, 2026

Before BRENNAN, *Chief Judge*, and EASTERBROOK and  
SYKES, *Circuit Judges*.

BRENNAN, *Chief Judge*. The Second Amendment protects the right to keep and bear arms for self-defense. This right, Justice Story proclaimed, is “the palladium of the liberties of a republic.”<sup>2</sup> Joseph Story, *Commentaries*

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*on the Constitution of the United States* 620 (4th ed. Boston, Little, Brown & Co. 1873). But the right is not unlimited.

We are asked to decide whether the federal felon in possession of a firearm law, 18 U.S.C. § 922(g)(1), is constitutional as applied to Edlando Watson, who has a prior felony conviction for possessing an illegal drug with intent to distribute it. As applied to Watson, this law is constitutional because his previous felony drug-dealing conviction is inherently dangerous. His disarmament is consistent with the history and tradition of Founding-era laws. But we do not decide whether an individual with a non-dangerous felony can be disarmed.

**I. Background**

Early one morning in May 2022, Laquiesha Washington and her children rode by Uber to a home in Madison, Wisconsin. When they arrived, Washington got out and told the driver she needed to retrieve something from the residence but would be right back. After several minutes, Washington ran out of the door, yelling “pull out, pull out, he’s coming with a gun!” As she jumped into the Uber, three shots rang out. The driver sped away and later flagged down police.

The next day police interviewed Washington. She said “Meek” had fired the shots. Madison Detective Joseph Buccellato recognized the nickname from Meek J’s Masonry, owned by Edlando Watson. Washington gave police Meek’s phone number, which matched the number on file for Watson.

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Buccellato knew Watson lived at a nearby hotel. He secured a search warrant for the hotel room (“hotel warrant”). The hotel warrant authorized police to take a DNA cheek swab from Watson “and any other occupants of [the hotel room] at the time of warrant service.” Police searched the hotel room and found photos of Watson.

About a month later, police arrested Watson. Buccellato then secured a search warrant for Watson’s masonry business (“business warrant”). That warrant authorized police to take a DNA sample from Watson and “any other occupants of [the business] at the time of warrant service.” A sample was taken from Watson at the police station.

The gun used in the shooting had yet to be located. Police spoke with Watson’s ex-girlfriend, Lashundia Pearnell, who revealed that Watson had stashed guns in her storage unit but recently removed them. Then, an anonymous tipster told police that Linda Yarrington, the mother of Watson’s child, was safekeeping Watson’s gun in her storage locker. Police searched her unit and found several handguns and rifles. Male DNA collected off some of the guns matched the sample taken from Watson. Later, in recorded jail telephone calls to Yarrington’s number, a female voice was heard telling Watson that police seized the guns, and Watson asked how police knew which unit to search.

Federal authorities then became involved. A grand jury indicted Watson under § 922(g)(1) as a felon in possession of a firearm. His previous felony convictions

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were for possession of cocaine with intent to distribute, 21 U.S.C. § 841(a)(1), and possession of a firearm by a drug user, 18 U.S.C. § 922(g)(3).

Watson moved to dismiss the indictment on the ground that § 922(g)(1) violates the Second Amendment. The district court denied the motion. He then argued that state police violated the Fourth Amendment by swabbing his cheek at the police station, so his DNA sample linking him to the guns in the storage unit should be suppressed in the federal case. Federal prosecutors defended the validity of the business warrant, but for judicial economy they sought a new warrant (“federal warrant”) to obtain a new DNA sample.

The federal warrant authorized police to swab Watson’s cheek for DNA. Attached to that warrant was a probable cause affidavit detailing the evidence tying Watson to the guns found in the storage unit, including eyewitness accounts, witness statements, and Watson’s own statements. The affidavit did not mention that Watson’s DNA matched the DNA on the guns. Watson again moved to suppress the DNA evidence. He asserted that because federal authorities knew his DNA matched the DNA on the guns, the federal warrant was also unconstitutional.

The district court denied his second motion to suppress. The court reasoned that “[i]f, as Watson contends, state officials previously obtained a sample of his DNA illegally, that should not preclude federal officials from lawfully obtaining a separate sample using a warrant based on

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evidence that is untainted by the previous illegality.” And significant evidence outside of Watson’s DNA tied him to the guns in the locker: “Had Watson’s DNA not already been available in the state case, the Government certainly would have obtained it in its investigation of the charges here.”

Watson pleaded guilty to a single count of possessing firearms as a felon, in violation of §§ 922(g)(1) and 924(a)(8). That plea agreement preserved his right to appeal his Second Amendment and DNA suppression arguments. He timely appeals both.<sup>1</sup>

On appeal of a district court’s ruling of a motion to suppress, legal conclusions are reviewed de novo and factual findings for clear error. *United States v. Correa*, 908 F.3d 208, 214 (7th Cir. 2018). The same is true for Watson’s Second Amendment challenge. *United States v. Viveros-Chavez*, 114 F.4th 618, 622 (7th Cir. 2024).

## II. The Fourth Amendment

Watson reads the business warrant as authorizing his DNA to be taken only at his business. After all, it reads, “[a] DNA buccal sample from Edlando Watson and any *other* occupants” of the business (emphasis added). But state police swabbed his cheek at the police station, which Watson now claims exceeds the scope of the business

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1. The court thanks Ellen A. Matheson, Esq., and Eric G. Pearson, Esq., of Foley & Lardner LLP for their helpful assistance representing Watson in this appeal.



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warrant. He admits federal authorities secured the federal warrant for his DNA. But to Watson, their knowledge that his DNA matched the DNA on the guns makes the federal warrant unlawful, as the bell cannot be unrung.

Evidence collected in violation of the Fourth Amendment may be suppressed under the exclusionary rule. *Mapp v. Ohio*, 367 U.S. 643, 657, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (1961). But evidence lawfully discovered from an independent source is admissible. *Nix v. Williams*, 467 U.S. 431, 443, 104 S.Ct. 2501, 81 L.Ed.2d 377 (1984). This “independent-source” exception applies “[s]o long as a later, lawful seizure is genuinely independent of an earlier, tainted one.” *Murray v. United States*, 487 U.S. 533, 542, 108 S.Ct. 2529, 101 L.Ed.2d 472 (1988).

The affidavit supporting the federal warrant provided more than enough evidence to implicate Watson and lawfully authorize the DNA swab that was taken:

- An eyewitness tied Watson to the shooting.
- Watson’s ex-girlfriend Pearnell said Watson owned guns and recently moved them from her storage unit.
- A tipster told police Watson’s gun was in Yarrington’s unit. Watson and Yarrington knew each other.
- Multiple guns were found in the storage unit; those guns had male DNA on them.

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- Police listened to recorded jail telephone calls in which a female voice was heard telling Watson that police seized the guns, and Watson asked how police knew which unit to search.

The federal warrant—which did not state that Watson’s DNA was on the guns—is thus a lawful means of obtaining Watson’s DNA, “genuinely independent” from any problems with the business warrant.

Compare this case to *United States v. Miller*, 68 F.4th 1065 (7th Cir. 2023). There, police responded to the scene of gunfire and found the defendant shot and holding a key fob to a car. *Id.* at 1066. After giving emergency aid, police pressed the button on the fob. It unlocked a nearby car, riddled with bullet holes, and with a firearm inside. *Id.* at 1067. Police later sought a warrant to search the car and attached a probable cause affidavit that did not mention the key fob. *Id.* The gun found inside was used to prosecute the defendant. *Id.* The defendant claimed pressing the button on the fob violated the Fourth Amendment, but the government argued the warrant provided an independent source. *Id.*

This court held that the independent-source doctrine applied for two reasons. *Id.* at 1070. First, the evidence about the fob did not affect the decision to issue the warrant because “the warrant application did not mention the key fob at all.” *Id.* Second, even though police knew the car belonged to the defendant because the key fob was in his hand and unlocked the nearby car, “[t]he car would have been searched regardless of the identity of its

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owner.” *Id.* It had several bullet holes and a pool of blood near it. *Id.*

This case is like *Miller*. Here, the affidavit attached to the federal warrant did not state that Watson’s DNA was on the guns. So, like the warrant in *Miller*, the DNA evidence “in no way affected the judge who signed the warrant.” *Id.* And, given the extensive evidence tying Watson to the firearms in the storage unit, if state authorities had not already sought to collect Watson’s DNA, federal authorities would likely have done so. Thus, his DNA evidence did not affect “the officers’ decision to apply for the warrant.” *Id.* We therefore reject Watson’s Fourth Amendment challenge.

### **III. The Second Amendment**

At the outset, we highlight that Watson argues § 922(g)(1) violates the Second Amendment as applied to him. This challenge and requested relief does not reach beyond his circumstances. *See Spence v. State of Washington*, 418 U.S. 405, 414, 94 S.Ct. 2727, 41 L.Ed.2d 842 (1974) (A law may be constitutional in some circumstances but “nonetheless unconstitutional as applied to appellant’s activity.”). By contrast, a facial challenge is a claim that § 922(g)(1) is unconstitutional in all its applications, to Watson and all other felons. *See Lukaszczyk v. Cook County*, 137 F.4th 671, 673-74 (7th Cir. 2025). Given the difference between the challenges, the felony crimes that Watson has been convicted of are important to our analysis.

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The Second Amendment protects “the right of the people to keep and bear Arms.” U.S. CONST. amend II. That individual right, however, does not extend to everyone. Illegal aliens may be disarmed. *United States v. Carbajal-Flores*, 143 F.4th 877, 887 (7th Cir. 2025), *cert. denied*, 146 S. Ct. 826, 223 L.Ed.2d 244 (2025). The Supreme Court also rejected a facial challenge to 18 U.S.C. § 922(g)(8) from Zackey Rahimi, a domestic abuser who fired a gun in the air while dining “[w]hen the restaurant declined his friend’s credit card.” *United States v. Rahimi*, 602 U.S. 680, 688, 144 S.Ct. 1889, 219 L.Ed.2d 351 (2024). Rahimi posed “a clear threat of physical violence to another.” *Id.* at 698, 144 S.Ct. 1889. And this court recently held that § 922(g)(3) was constitutional as applied to a habitual user of heroin and crack cocaine. *United States v. Seiwert*, 152 F.4th 854, 859, 872 (7th Cir. 2025).

The question here is whether Watson’s permanent disarmament is consistent with the Second Amendment. We first explain why dicta from *District of Columbia v. Heller*, 554 U.S. 570, 128 S.Ct. 2783, 171 L.Ed.2d 637 (2008), does not resolve that question. Then, we undertake the history and tradition analysis laid out in *New York State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1, 17, 142 S.Ct. 2111, 213 L.Ed.2d 387 (2022).

### A. *Heller* dicta

The government assures us a *Bruen* analysis is unnecessary because *Heller* already foreclosed as applied challenges to § 922(g)(1). To be sure, *Heller* cautioned, “nothing in our opinion should be taken to cast doubt on

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longstanding prohibitions on the possession of firearms by felons.” 554 U.S. at 626, 128 S.Ct. 2783. And *Bruen* and *Rahimi* did not cast doubt on that conclusion. Indeed, they reaffirmed *Heller*’s core holding. So, the government submits, the dicta from *Heller* should bind us and obviate the need to evaluate § 922(g)(1) challenges under *Bruen*.

But this court has already rejected that argument. See *Atkinson v. Garland*, 70 F.4th 1018, 1022 (7th Cir. 2023). *Heller* does not resolve the basket of questions raised in § 922(g)(1) challenges. Further, in *Bruen* the Court “rolled up its sleeves and examined a wealth of laws and commentary spanning several centuries, paying close attention to the enforcement and impact of various regulations.” *Id.* The Court did the same in *Rahimi*, rejecting a facial challenge to § 922(g)(8) based on historical surety laws and “going armed” laws. 602 U.S. at 698, 144 S.Ct. 1889.<sup>2</sup> Recently, this court in *Seiwert* declined to rely on its § 922(g)(3) precedent that did not include a historical analysis. 152 F.4th at 861-62 (“[W]e must take a fresh look employing *Bruen*’s text-and-history framework.”). Thus, just as with *Bruen*, *Rahimi*, and *Seiwert*, the constitutionality of § 922(g)(1) as applied to Watson must be evaluated under the history and tradition analysis.

First, we examine whether Waston’s conduct falls under the plain text of the Second Amendment. Second,

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2. Though *United States v. Gay*, 98 F.4th 843, 846 (7th Cir. 2024), rejected a Second Amendment challenge to § 922(g)(1) based on *Heller*’s dicta, that case predated *Rahimi*.

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we resolve whether § 922(g)(1) as applied to Watson is “consistent with the principles that underpin our [Nation’s] regulatory tradition.” *Rahimi*, 602 U.S. at 692, 144 S.Ct. 1889.

**B. Felons as “the people”**

*Bruen*’s first step asks whether “the Second Amendment’s plain text covers an individual’s conduct.” 597 U.S. at 17, 142 S.Ct. 2111. All agree Watson, at one point, bore an “Arm.” But the government submits that felons are not among “the people” who have the right to bear arms.

*Heller* tells us “the people” “unambiguously refers to all members of the political community, not an unspecified subset.” 554 U.S. at 580, 128 S.Ct. 2783. That aligns with what the Court said earlier in *United States v. Verdugo-Urquidez*: “‘the people’ seems to have been a term of art employed in select parts of the Constitution . . . to 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.” 494 U.S. 259, 265, 110 S.Ct. 1056, 108 L.Ed.2d 222 (1990) (citation modified). Founding-era sources define “people” as “the whole Body of Persons who live in a Country[] or make up a Nation.” N. Bailey, AN UNIVERSAL ETYMOLOGICAL ENGLISH DICTIONARY 601-02 (22d ed. 1770). “Citizen” was also used synonymously with “the people.” See e.g., THE FEDERALIST No. 2, at 10 (John Jay) (Jacob E. Cooke ed. 1961) (“To all general purposes we have uniformly been one people each individual citizen

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everywhere enjoying the same national rights, privileges, and protection.”).<sup>3</sup>

Thus—without providing a conclusive definition—we can say the phrase “the people” at least encompasses citizens, which includes felons. Several circuits agree. *United States v. Duarte*, 137 F.4th 743, 754-55 (9th Cir. 2025) (en banc), *cert. denied*, 2026 WL 135692, at \*1 (2026); *Range v. Att’y Gen. U.S.*, 124 F.4th 218, 228 (3d Cir. 2024) (en banc); *Zherka v. Bondi*, 140 F.4th 68, 77 (2d Cir. 2025), *cert. denied*, 2026 WL 135708, at \*1 (2026); *United States v. Kimble*, 142 F.4th 308, 311 (5th Cir. 2025), *cert. denied*, 2026 WL 135675, at \*1 (2026).

The government points out that felons have historically been denied the right to vote, serve on juries, and hold public office. Because the state can strip those political rights from felons, those individuals are not members of the “political community” as stated in *Heller*. 554 U.S. at 580, 128 S.Ct. 2783. And historical sources link voting with gun ownership: “[T]he Pennsylvania Test Acts . . . stripped citizens of certain civic rights, such as the right to bear arms or sit on juries, but did not deprive them of

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3. *See also* THE FEDERALIST NO. 14 (James Madison) (“Hearken not to the unnatural voice which tells you that the people of America . . . can no longer be fellow citizens of one great, respectable, and flourishing empire.” (citation modified)); *Douglass v. Stephens*, 1 Del. Ch. 465, 467 (1821) (“[T]he people of the United States . . . resist[ed] the . . . British King and Parliament. They united and acted in concert, as one people . . . [T]hey knew that they were practically, as well as legally, fellow-citizens, . . . enjoying every right and privilege indiscriminately with the inhabitants.”).

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fundamental individual rights such as the right of freedom of conscience or the right to publish their sentiments on public matters.” Saul Cornell, “*Don’t Know Much About History*”: *The Current Crisis in Second Amendment Scholarship*, 29 N. KY. L. REV. 657, 679 (2002). If the state has the power to rescind voting rights, so too with gun rights.

Jurists have observed, though, a distinction between collective and individual rights. Voting, serving on juries, and holding office are collective rights, exercised for the benefit for the polity. *Kanter v. Barr*, 919 F.3d 437, 462 (7th Cir. 2019) (Barrett, J., dissenting) (“[T]he right to vote is held by individuals, but they do not exercise it solely for their own sake; rather, they cast votes as part of the collective enterprise of self-governance.”). By contrast, felons were not historically deprived of their individual rights—a felon could attend church or join a protest, and he retained his criminal procedure rights if later accused and tried. *Heller* holds that owning a firearm is an individual right, 554 U.S. at 635, 128 S.Ct. 2783. So, if the individual/collective rights distinction is correct, felons are part of “the people” even though they could not vote.

This question is admittedly difficult. To our knowledge, courts and historians have not resolved it. *Duarte*, 137 F.4th at 752-54 (observing the “conflicting interpretations of history”). So, faced with conflicting historical evidence, we adhere to *Heller*’s language until the Supreme Court tells us differently.



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Felons, then, are part of “the people” as members of our national “political community.” *Heller*, 554 U.S. at 580, 128 S.Ct. 2783. That conclusion aligns us with the other circuits. *Duarte*, 137 F.4th at 754 (“[I]n the face of these conflicting interpretations of history, we adhere to the Supreme Court’s definition of ‘the people,’ which does not exclude felons.”); *Zherka*, 140 F.4th at 77 (“Zherka, notwithstanding his felony conviction, is among ‘the people’ protected by the Second Amendment.”); *United States v. Williams*, 113 F.4th 637, 649 (6th Cir. 2024) (“Williams is a member of the people claiming ‘the right’ to possess a gun”); *United States v. Jackson*, 110 F.4th 1120, 1126 (8th Cir. 2024) (presuming the felons count as “the people”), *cert. denied*, 145 S. Ct. 2708, 221 L.Ed.2d 970 (2025).

We move now to *Bruen*’s second step.

**C. History and tradition**

Because the Constitution presumptively protects Watson’s conduct, the government has the burden to show that § 922(g)(1) is “consistent with this Nation’s historical tradition of firearm regulation.” *Bruen*, 597 U.S. at 17, 142 S.Ct. 2111.

To date, courts and scholars have identified few if any Founding-era felon in possession laws. *See Kanter*, 919 F.3d at 454 (Barrett, J., dissenting). But that is not the end of the matter. A contemporary regulation must only be “relevantly similar” to a historical regulation. *Bruen*, 597 U.S. at 29, 142 S.Ct. 2111. A “dead ringer” or

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“historical *twin*” is unnecessary. *Id.* at 30, 142 S.Ct. 2111. Just so, courts cannot compare restrictions at too high a level of generality—for example, that both serve “public safety”—because, after all, “[e]verything is similar in infinite ways to everything else.” Cass R. Sunstein, *On Analogical Reasoning*, 106 HARV. L. REV. 741, 774 (1993); *see also Rahimi*, 602 U.S. at 740, 144 S.Ct. 1889 (Barrett, J., concurring) (warning against reading a “principle at such a high level of generality that it waters down the right”).

The Supreme Court has not spoken to the appropriate level of generality for this inquiry, as it has in other contexts. *See, e.g., White v. Pauly*, 580 U.S. 73, 79, 137 S.Ct. 548, 196 L.Ed.2d 463 (2017) (per curiam) (in the qualified immunity context, “existing precedent must have placed the statutory or constitutional question beyond debate”); *Harrington v. Richter*, 562 U.S. 86, 103, 131 S.Ct. 770, 178 L.Ed.2d 624 (2011) (in the habeas context, “a state prisoner must show that the state court’s ruling on the claim being presented in federal court was so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement”). But the Court has told us to consider the “[w]hy and how” of the historical and contemporary regulation. *Rahimi*, 602 U.S. at 692, 144 S.Ct. 1889. And the focus is on “the principles underlying the Second Amendment.” *Id.* *Rahimi* also gave us an example of the appropriate level of generality, describing historical surety and going armed laws as restrictions on “individuals . . . threaten[ing] the physical safety of another.” *Id.* at 698, 144 S.Ct. 1889.

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Also important for our inquiry is that more than one kind of historical regulation may justify a single contemporary law. *Rahimi* concluded that surety laws and going armed laws, “[t]aken together,” are relevantly similar to § 922(g)(8). *Id.* This tells us that the government may point to more than one “distinct legal regime” to justify a contemporary regulation. *Id.* at 694, 144 S.Ct. 1889.

The history and tradition analysis is not without its challenges. *Rahimi*, 602 U.S. at 734, 144 S.Ct. 1889 (Kavanaugh, J., concurring) (“The historical approach is not perfect.”). For example, the circuits have relied on laws that disarmed disfavored groups, laws that would certainly be unconstitutional today. It is unclear whether that is permissible. *Id.* at 723, 144 S.Ct. 1889 (“[I]n using preratification history, courts must exercise care to rely only on the history that the Constitution actually incorporated and not on the history that the Constitution left behind.”). And when performing a historical analysis, we are told to consider “the principles that underpin our regulatory tradition.” *Id.* at 692, 144 S.Ct. 1889. But at what level of generality courts should operate is also unclear. See *United States v. Morton*, 123 F.4th 492, 497 n.2 (6th Cir. 2024) (“[D]epending on how broadly a court draws the analogy, a tradition of disarming potentially rebellious groups arguably would not map on to our modern felon-in-possession statute.”).

With the guidance we have, and trying our best to navigate these difficulties, we see two enduring traditions that merit consideration. First, legislatures deemed

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groups “dangerous” and categorically disarmed them. Second, legislatures established as punishment the death penalty for violent felony convictions. The greater power to execute necessarily includes the lesser power to disarm. “Taken together,” these traditions support disarming those with dangerous felonies. *United States v. Dubois*, 139 F.4th 887, 894 (11th Cir. 2025) (Pryor, C.J., concurring), *cert. denied*, 2026 WL 135685, at \*1 (2026).

### **1. Bans on groups legislatures deemed dangerous**

Start with English common-law traditions. Throughout its history, England’s rulers viewed opposition groups—whether religious, political, or ethnic—as rebellious. The best way to quash a rebellion before it began was to disarm dissident groups. For example, Catholics, considered seditious and obedient to the Pope, were forbidden from owning arms. *Carbajal-Flores*, 143 F.4th at 884. “Popish Recusants” had their “Armour, Gunpowder, and Munition” seized by King James I in 1610. 1 STUART ROYAL PROCLAMATIONS: ROYAL PROCLAMATIONS OF KING JAMES 1, 1603-1625, 247-48 (June 2, 1610). After the English Civil War, the Catholic-sympathetic Charles II was restored as King. He and his younger brother, James II, targeted “dangerous and disaffected persons”—those believed to be disloyal, including non-Anglican Protestants. Joseph G.S. Greenlee, *The Historical Justification for Prohibiting Dangerous Persons from Possessing Arms*, 20 WYO. L. REV. 249, 259 (2020). And “[u]nder the auspices of the 1671 Game Act, for example, the Catholic Charles II had ordered general disarmaments of regions home to

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his Protestant enemies.” *Heller*, 554 U.S. at 593, 128 S.Ct. 2783. Later, after the Glorious Revolution and King James II lost his throne, King William III, Prince of Orange, and Queen Mary II targeted Catholics. Those who refused to declare themselves as non-Catholic had their arms seized. Greenlee, *supra*, at 260-61 (collecting examples).

Political dissidents, too, were often disarmed because they either threatened rebellion or did rebel. During Owain Glyndŵr’s 15th century Welsh revolt against the English, King Henry IV imposed harsh conditions on the Welsh people. That included a prohibition on any “Welshmen from henceforth bear[ing] any manner of armour with such city.” 2 Henry IV ch. 12 (1400-01). Later, those opposing the Stuart Kings in the 17th century, Charles II and James II, were disarmed. JOYCE LEE MALCOLM, *TO KEEP AND BEAR ARMS: THE ORIGINS OF AN ANGLO-AMERICAN RIGHT* 31-53 (1994). And after the Glorious Revolution, those Tories previously loyal to the Stuart Kings were disarmed by William and Mary. Greenlee, *supra* at 259.

Additionally, “land and gun ownership were historically linked.” *Carbajal-Flores*, 143 F.4th at 883. The common-law rule was that all “persons may hold lands, except aliens.” *Id.* (quoting *M’lrvine v. Coxe’s Lessee*, 6 U.S. (2 Cranch) 280, 297, 2 L.Ed. 279 (1805)). Landownership related to the idea of allegiance to the English monarchy—one who did not own land felt no attachment to the monarchy’s success. A similar concern “also warranted barring [those without land] from keeping arms.” *Id.* at 883-84.

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This pre-Founding history teaches that English sovereigns categorically disarmed groups thought “to threaten the physical safety of another.” *Rahimi*, 602 U.S. at 698, 144 S.Ct. 1889. Whether rebelling like the Welsh, or perceived as threatening rebellion like the Catholics, such groups threatened public safety and stability—in other words, they were “dangerous.” Though we do not place undue weight on this history, this “unbroken line of common-law precedent” illuminates our inquiry. *Bruen*, 597 U.S. at 35, 142 S.Ct. 2111; *Carbajal-Flores*, 143 F.4th at 883.

Across the Atlantic in pre- and post-Founding America, the tradition of disarming those viewed as dangerous to society continued. “Slaves and Native Americans . . . were thought to pose more immediate threats to public safety and stability and were disarmed as a matter of course.” *Kanter*, 919 F.3d at 458 (Barrett, J., dissenting). States like Virginia, Maryland, and Pennsylvania continued the tradition of disarming Catholics. *Carbajal-Flores*, 143 F.4th at 885; *Range*, 124 F.4th at 258-59 (Krause, J., concurring in the judgment). Loyalists, too, were disarmed because of their perceived threat against the Revolution. *Carbajal-Flores*, 143 F.4th at 886.

Some of these ignominious class-wide bans were categorical restrictions. For example, for black people, there were narrow exceptions extended to “house-keepers” who were free or of mixed race, and all those living on a frontier plantation. Otherwise, black people

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could not carry arms.<sup>4</sup> Many colonies also restricted the sale of firearms and ammunition to Indians as a class.<sup>5</sup>

The trend of class-wide disarmament continued into the mid-1800s. In that timeframe, states faced the growing social problem of homeless, wandering, or destitute people. Dozens of laws were enacted that categorically prohibited tramps from possessing firearms, often without

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4. Collection of All Such Acts of the General Assembly of Virginia, of a Public and Permanent Nature, as Are Now in Force; with a New and Complete Index. To Which are Prefixed the Declaration of Rights, and Constitution, or Form of Government, 187 (The Making of Modern Law: Primary Sources through 1803); An Act Directing the Trial of Slaves Committing Capital Crimes, §§ 14-15, VA. CODE (W. W. Gray 1820); A Law Respecting Slaves, § 4, 1804 LA. TERRITORY ACTS 107, 108 (E. Stout 1804). *See also* An Act to Restrain the Evil Practices Arising from Negroes Keeping Dogs, and to Prohibit Them From Carrying Guns or Offensive Weapons, ch. 81, §§ 1-2, 1806 MD. LAWS 46, 47 (1806 statute exempting free black and mixed race people but not slaves); An Act Prescribing the Rules and Conduct to Be Observed with Respect to Negroes and Other Slaves of This Territory, §§ 19-21, LA STAT (passed 1806 stating, “No slave shall . . . carry any visible or hidden arms, not even with a permission for so doing); *see also* *Zherka*, 140 F.4th at 87-88 (1723 Virginia and 1852 Mississippi statutes).

5. *Duarte*, 137 F.4th at 765 (Collins, J., concurring) (collecting examples); An Order Directed to the Committee (sic) of Scittuate, MASS. GEN. LAWS (William White 1856) (1675 Plymouth Colony order prescribing death penalty for selling weapons to Indians); An Act for Preventing Lending Guns, Ammunition, &c. to the Indians, 1723 Conn. Acts 292, 292 (T. Green) (1723 Connecticut Act); An Act to Prohibit the Selling of Guns, Gunpowder, or Other Warlike Stores, to the Indians, PA. TERRITORY LAWS, 306, 306-7 (B. Franklin 1763) (PA law).

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exception.<sup>6</sup> Ohio's Supreme Court upheld its law disarming tramps, writing that the Second Amendment "was never intended as a warrant for vicious persons to carry weapons with which to terrorize others." *State v. Hogan*, 63 Ohio St. 202, 58 N.E. 572, 575 (1900). States also continued to ban black people from owning any firearms. *Zherka*, 140 F.4th at 88 n.50 (collecting examples). "Black people in Mississippi were prohibited from owning guns with no exceptions." *Id.*

We draw two important conclusions from this history. First, this sad tradition includes laws repugnant by

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6. Act of May 3, 1890, § 4, 1890 IOWA ACTS 68, 68-69 (G. H. Ragsdale) ("Any tramp . . . who shall be found carrying any firearm or other dangerous weapon, shall be punished by imprisonment."); An Act Concerning Tramps, ch. 806, §§ 1-9, 1880 R.I. PUB. LAWS 110, 110-111 (E. L. Freeman & Co.) ("Any tramp who . . . shall be found carrying any firearm . . . shall be punished by imprisonment."); An Act to Punish Tramps, ch. 213, §§ 1-2, 1880 ME. LAWS, 212, 212-213 (Sprague & Son 1880); An Act Concerning Tramps, ch. 155, §§ 6 & 8, 1879 DEL. LAWS 223, 224-225 (The Delawarean Office 1879) ("Any tramp . . . who shall be found carrying any firearm or other dangerous weapon . . . shall be guilty of a misdemeanor, and punished accordingly"); An Act to Define and Suppress Tramps, Bill no. 243, §§ 1-5, 1879 OHIO LAWS 191, 191-192 (Nevins & Myers 1879) ("That any tramp who . . . shall be found carrying any fire-arms . . . be imprisoned"); An Act to Suppress Vagabondage, ch. 188, § 4, 1879 WIS. SESS. LAWS 273, 274 (David Atwood) ("Any tramp who shall . . . carry any fire-arms or other dangerous weapon, shall, on conviction thereof, be punished at hard labor"); An Act to Punish Tramps, ch. 38, § 2, 1878 N.H. LAWS 170, 170 (Josiah B. Sanborn 1878); An Act Relating to Tramps, no. 14, § 3, 1878 VT. ACTS & RESOLVES 29, 30 (J & J.M. Poland 1878).



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today's standards. Many of these laws would violate the Fourteenth Amendment. Yet, for this analysis their import cannot be ignored. These laws reflect the boundaries of the legislature's power to enact class-wide disarmament laws consistent with the Second Amendment. *Duarte*, 137 F.4th at 767 (Collins, J., concurring) (This "historical tradition recognizes some measure of legislative discretion to impose disarmament on particular categories of persons who are thought to present a 'special danger of misuse.'" (citation modified)).

Second, as noted, these disarmament laws sometimes included exceptions, and other times they did not. In some states, a slave could own a gun if he could prove he was an "orderly and peaceable person" or needed the firearm to hunt. *Williams*, 113 F.4th at 656. But other states, particularly in the South, categorically prohibited slaves from owning guns. *See supra* n.4. Consider, too, a Pennsylvania law disarming Catholics, which provided no method to get their guns back.<sup>7</sup> *See also Zherka*, 140 F.4th at 91 (identifying categorical bans). As a result, the legislature may determine that classes of people are dangerous.

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7. An Act for Forming and Regulating the Militia of the Province of Pennsylvania, 627, PA. CONS. STAT. (WM Stanley Ray 1898) (PA Law Passed 1757) ("That all arms, military accoutrements, gunpowder and ammunition of what kind soever, any papist or reputed papist within this province hath or shall have in his house or houses or elsewhere one month after the publication of this act, shall be taken from such papist or reputed papist.").

*Appendix A***2. Greater includes the lesser**

The second tradition concerns the penalty for felonies. At the Founding, a felony charge was “generally connected with that of capital punishment.” 4 WILLIAM BLACKSTONE, COMMENTARIES \*98. *See also Bucklew v. Precythe*, 587 U.S. 119, 129, 139 S.Ct. 1112, 203 L.Ed.2d 521 (2019) (At the Founding, death was “the standard penalty for all serious crimes.”). Execution was the penalty for serious crimes, like treason, murder, arson, burglary, robbery, rape, and larceny. *Dubois*, 139 F.4th at 895 (Pryor, C.J., concurring). And the “death penalty was also a commonplace punishment for criminal recidivism in early America.” Sheherezade C. Malik & D. Paul Holdsworth, *A Survey of the History of the Death Penalty in the United States*, 49 U. RICH. L. REV. 693, 694 (2015). Dictionaries, too, defined “felony” to be a category of crimes punishable by death. *Duarte*, 137 F.4th at 769-70 (Collins, J., concurring) (collecting examples). In short, “relaxed Virginia Anglicans like Thomas Jefferson and James Madison or dour Calvinist New Englanders like Fisher Ames and the Adamses would have likely seen the death penalty not only as historically commonplace but as intrinsically just and . . . divinely prescribed.” JOSEPH A. MELUSKY & KEITH A. PESTO, CRUEL AND UNUSUAL PUNISHMENT: RIGHTS AND LIBERTIES UNDER THE LAW 30 (2003).

This tradition highlights that when the Second Amendment was adopted, legislatures could define a “serious” crime as a felony and impose the death penalty. Crimes involving danger to persons or society (murder, rape, and treason) were often labeled as felonies. If those

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convicted of dangerous crimes received the greatest possible punishment, the legislature may instead impose disarmament, the “lesser restriction.” *Rahimi*, 602 U.S. at 699, 144 S.Ct. 1889.

Some believe this “greater includes the lesser” theory rests on shaky historical footing. *Kanter*, 919 F.3d at 459 (Barrett, J., dissenting) (“During the period leading up to the [F]ounding, the connection between felonies and capital punishment started to fray.”); *Folajtar v. Att’y Gen.*, 980 F.3d 897, 920 (3d Cir. 2020) (Bibas, J., dissenting). But that a legislature rarely imposed the death penalty for felonies does not mean it could not have done so for all felonies, if it wished. After all, we cannot assume “[F]ounding-era legislatures maximally exercised their power to regulate.” *Rahimi*, 602 U.S. at 739-40, 144 S.Ct. 1889 (Barrett, J., concurring). The states’ power to execute is not subject to the “use it or lose it” rule. *Id.* What is more, executions for felony convictions apparently occurred often. “Between 1790 to 1829 . . . the states carried out an estimated 779 executions, and did so for crimes against people (e.g., murder and rape) [and] property (e.g., arson, forgery, and horse stealing).” Hannah Freedman, *The Modern Federal Death Penalty: A Cruel and Unusual Punishment*, 107 CORNELL L. REV. 1689, 1709 (2022). Indeed, the “death penalty was an accepted punishment at the time of the adoption of the Constitution and the Bill of Rights.” *Glossip v. Gross*, 576 U.S. 863, 867, 135 S.Ct. 2726, 192 L.Ed.2d 761 (2015).

This theory has not been conclusively accepted. Yet *Rahimi* does employ it: “The going armed laws provided

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for imprisonment, and if imprisonment was permissible to respond to the use of guns to threaten the physical safety of others, then the lesser restriction of temporary disarmament that Section 922(g)(8) imposes is also permissible.” *Rahimi*, 602 U.S. at 699, 144 S.Ct. 1889. Since *Rahimi*, other circuits have debated the theory. Compare *Duarte*, 137 F.4th at 768, 771 (Collins, J., concurring), with *id.* at 790 (VanDyke, J., concurring). And some circuits have cited this rationale in rejecting all as-applied challenges to § 922(g)(1). *Id.* at 756; *Jackson*, 110 F.4th at 1127; *Dubois*, 139 F.4th at 897 (Pryor, C.J., concurring); *Zherka*, 140 F.4th at 82.

When considered along with the historical disarmament laws, the theory provides some historical support that the legislature had the power to permanently disarm dangerous felons.

**D. Watson’s as-applied challenge**

The categorical disarmament laws “confirm what common sense suggests”: individuals convicted of dangerous felonies pose a risk to society and may be disarmed consistent with the Second Amendment. *Rahimi*, 602 U.S. at 698, 144 S.Ct. 1889. Section 922(g)(1), then, as applied to Watson, fits within that tradition. Exercising its authority like state legislatures at the Founding, Congress reasonably determined that a felony drug conviction is a “dangerous” crime. That link makes “common sense.” *Id.* Federal caselaw well substantiates that drugs and guns together are dangerous. See, e.g., *Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, 605 U.S. 280,

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287, 145 S.Ct. 1556, 221 L.Ed.2d 910 (2025) (Cartels “use the imported firearms to commit serious crimes—drug dealing, kidnapping, murder, and others.”); *Muscarello v. United States*, 524 U.S. 125, 132, 118 S.Ct. 1911, 141 L.Ed.2d 111 (1998) (“the ‘dangerous combination’ of ‘drugs and guns’”); *Richards v. Wisconsin*, 520 U.S. 385, 391 n.2, 117 S.Ct. 1416, 137 L.Ed.2d 615 (1997) (There is a “link[] between drugs and violence.”).

The view that guns and drugs together are dangerous is also reflected in other laws, like 18 U.S.C. § 924(c), which imposes significant prison time for using a firearm during a drug offense. Consider the U.S. Sentencing Guidelines, too, which increase sentences for possessing a firearm during a drug offense. § 2D1.1(b)(1). We also note that the Court in *Rahimi* rejected the argument that a person could be disarmed merely for being irresponsible. 602 U.S. at 701-02, 144 S.Ct. 1889. A dealer of illegal drugs is more than just irresponsible; he is a threat to the physical safety of society.

Congress made the common-sense decision to disarm drug dealers like Watson because they are dangerous. History allows for that. *Kanter*, 919 F.3d at 451 (Barrett, J., dissenting) (“History is consistent with common sense: it demonstrates that legislatures have the power to prohibit dangerous people from possessing guns.”). Watson’s predicate felony drug dealing conviction is sufficient to lawfully disarm him.<sup>8</sup>

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8. The government argues the entirety of Watson’s criminal history, not just his prior felony convictions, shows he is “dangerous” and can thus be disarmed. It is not necessary to

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The historical disarmament laws support disarming Watson and other dangerous felons. And until the Supreme Court provides further guidance, the “greater includes the lesser” theory fortifies that conclusion. These two enduring traditions “taken together,” *see, e.g., Dubois*, 139 F.4th at 897 (Pryor, C.J., concurring), lead us to uphold § 922(g)(1) as applied to dangerous felons based on the recognized power of the states to disarm dangerous felons.

Watson has a second felony conviction for possessing a firearm while being an unlawful user of a controlled substance. § 922(g)(3). Whether that predicate felony may be enough to disarm Watson is a thorny question. On one hand, Congress reasonably could have determined that a prior violation of federal gun laws suggests one will misuse firearms again. *See Seiwert*, 152 F.4th at 866. On the other hand, the Supreme Court may allow as-applied challenges under § 922(g)(3). *See United States v. Hemani*, No. 24-40137, 2025 WL 354982 (5th Cir. Jan. 31, 2025) (per curiam), *cert. granted*, 146 S. Ct. 326, 223 L.Ed.2d 161 (2025). If so, Watson’s § 922(g)(3) conviction, at the time, could have been vacated under an as-applied challenge. His vacated conviction could not have served as a predicate felony under § 922(g)(1).

This appeal does not concern whether Congress may deem non-violent felons “dangerous.” That question has split the courts of appeals. Some have held that

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decide here whether a defendant’s entire profile can or should be considered. Watson’s predicate felony, which provides the basis for Watson’s disarmament under § 922(g)(1), shows him to be dangerous.

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no as-applied challenge can succeed under § 922(g)(1). “[T]here is no need for felony-by-felony litigation regarding the constitutionality of § 922(g)(1).” *Jackson*, 110 F.4th at 1125.<sup>9</sup> That is because historical laws did not always require an individualized determination of dangerousness. *See Dubois*, 139 F.4th at 898 (Pryor, C.J.); *Duarte*, 137 F.4th at 771 (Collins, J., concurring in the judgment); *Zherka*, 140 F.4th at 91 (“Although some of the historical laws created such an exemption structure, not all of them did.”). But other courts have identified successful as-applied challenges. *Range*, 124 F.4th at 228; *Williams*, 113 F.4th at 657; *United States v. Mitchell*, 160 F.4th 169, 194 (5th Cir. 2025) (“[W]e hold that § 922(g)(1) is unconstitutional as applied to Mitchell’s § 922(g)(3) predicate offense.”). We reserve ruling on an as-applied challenge to § 922(g)(1) under the Second Amendment by a felon whose predicate felony offense is not “dangerous.”

Finally, felon status does not necessarily mean permanent disarmament. Under 18 U.S.C. § 925(c), a person may apply to the Attorney General for relief from federal firearm disarmament if the applicant shows he “will not be likely to act in a manner dangerous to public safety” and “the granting of the relief would not be contrary to the public interest.” *Id.* The procedure was effectively disabled after Congress barred the Bureau of Alcohol, Tobacco, Firearms, and Explosives from using funds to evaluate applications. *See United States v. Bean*,

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9. In reaching that conclusion, some courts have relied on their pre-*Bruen* and *Rahimi* precedent. *See United States v. Hunt*, 123 F.4th 697 (4th Cir. 2024); *Vincent v. Bondi*, 127 F.4th 1263 (10th Cir. 2025), *cert. denied*, 2026 WL 568283, at \*1 (2026).

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537 U.S. 71, 74, 123 S.Ct. 584, 154 L.Ed.2d 483 (2002). The current Attorney General has rescinded the delegation of authority to the ATF and has begun to restart the 925(c) process. *Withdrawing the Attorney General's Delegation of Authority*, 90 Fed. Reg. 13080 (Mar. 20, 2025). Though Watson did not apply under § 925(c), other felons may do so.

**IV. Conclusion**

Section 922(g)(1)'s disarmament of dangerous felons is constitutional under the Second Amendment. Watson's predicate felony—possession of cocaine with intent to distribute it—is a dangerous felony. His as-applied challenge therefore fails.

AFFIRMED



**APPENDIX B — JUDGMENT IN A CRIMINAL  
CASE OF THE UNITED STATES DISTRICT  
COURT FOR THE EASTERN DISTRICT OF  
WISCONSIN, FILED AUGUST 13, 2024**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

Case Number: 23-CR-109

USM Number: 07924-090

UNITED STATES OF AMERICA

v.

EDLANDO M. WATSON

Alexander Duros Defendant's Attorney  
Thomas E. Phillip Assistant United States Attorney

**JUDGMENT IN A CRIMINAL CASE**

THE DEFENDANT pled guilty to count one of the  
superseding indictment. The Defendant is adjudicated  
guilty of these offense(s):

| <u>Title &amp;<br/>Section</u>             | <u>Nature &amp;<br/>Offense</u>          | <u>Date<br/>Concluded</u> | <u>Count(s)</u> |
|--------------------------------------------|------------------------------------------|---------------------------|-----------------|
| 18 U.S.C.<br>§§ 922(g)(1)<br>and 924(a)(8) | Possession of<br>a Firearm by a<br>Felon | July 18,<br>2022          | 1               |

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

All remaining counts are dismissed upon 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.

Date Sentence Imposed: August 9, 2024

s/ William C. Griesbach  
United States District Judge

Date Judgment Entered: August 13, 2024

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of sixty-five (65) months as to count one of the superseding indictment.

- ☒ The court makes the following recommendations to the Bureau of Prisons:

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The court recommends defendant's placement at FCI Sandstone in Minnesota or FCI Yezoo City in Mississippi.

- ☒ The defendant is remanded to the custody of the United States Marshal.
- ☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons as notified by the Probation or Pretrial Services Office.

**RETURN**

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
with a certified copy of this judgment.

\_\_\_\_\_  
United States Marshal

\_\_\_\_\_  
By: Deputy United States Marshal

**SUPERVISED RELEASE**

Upon release from imprisonment, you will be on supervised release for a term of three (3) years as to count one of the superseding indictment.

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**MANDATORY CONDITIONS**

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess or use 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. (check if applicable)
  - ☐ The above drug testing condition is suspended based on the court's determination that the defendant poses a low risk of future substance abuse. (check if applicable)
3. ☐ 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*)
4. ☐ You must cooperate in the collection of DNA as directed by the probation officer. (*check if applicable*)
5. ☐ 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

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you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*

6. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

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

**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 shall report to the probation office in the district to which you are released within 72 hours of your release from the custody of the Bureau of Prisons and shall report to the probation officer in a manner and frequency as reasonably directed by the Court or probation officer.
2. You shall not leave the State of Wisconsin without permission of the court or probation officer.
3. You shall answer truthfully all inquiries by the probation officer, subject to your Fifth Amendment

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right against self-incrimination, and follow the reasonable instructions of the probation officer.

4. You shall use your best efforts to support your dependents.
5. You shall use your best efforts to find and hold lawful employment, unless excused by the probation officer for schooling, training, or other acceptable reasons (e.g., childcare, eldercare, disability, age, or serious health condition).
6. You shall notify the probation officer at least ten days prior to any change in your place of residence or employment. When such notification is not possible, you shall notify the probation officer within 72 hours of the change.
7. You shall not knowingly go to places or enter buildings where controlled substances are unlawfully sold, used, distributed, or administered.
8. You shall not associate with any persons known by you to be engaged or planning to be engaged in criminal activity. "Associate," as used here, means reside with or regularly socialize with such person.
9. You shall permit a probation officer to visit you at reasonable times at home and shall permit confiscation of any contraband observed in plain view of the probation officer.

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10. You shall notify the probation officer within 72 hours of being arrested or questioned by a law enforcement officer.
11. You shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.

**SPECIAL CONDITIONS OF SUPERVISION**

1. The defendant shall submit his or her person, property, house, residence, vehicle, office, papers, computers, other electronic communications or data storage devices, or media, to a search conducted by the United States Probation Officer. Failure to submit to a search may be grounds for revocation of release. The defendant shall warn any other occupants that the premises may be subject to searches pursuant to this condition. An officer may conduct a search pursuant to this condition only when reasonable suspicion exists that the offender has violated a condition of their release and that the areas to be searched may contain evidence of this violation. Any search must be conducted at a reasonable time and in a reasonable manner.
2. The defendant is to participate in a program of testing to include not more than six urinalysis tests per month and residential or outpatient treatment for drug and alcohol abuse, as approved by the supervising probation officer, until such time as he or she is released from such program. The defendant

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shall pay the cost of this program under the guidance and supervision of the supervising probation officer. The defendant is to refrain from use of all alcoholic beverages throughout the supervised release term.

**CRIMINAL MONETARY PENALTIES**

The defendant must pay the total criminal monetary penalties under the Schedule of Payments on the attached page.

| <u>Total Special</u><br><u>Assessment</u> | <u>AVAA</u><br><u>Assess-</u><br><u>ment*</u> | JVTA<br>Assess-<br>ment** | Total<br>Fine | Total<br>Restitu-<br>tion |
|-------------------------------------------|-----------------------------------------------|---------------------------|---------------|---------------------------|
| \$100.00                                  | \$                                            | \$                        | \$            | \$                        |

- ☐ 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. However, pursuant to 18 U.S.C. § 3664(i), all non-federal victims must be paid before the United States is paid.



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| PAYEE         | AMOUNT |
|---------------|--------|
|               |        |
|               |        |
|               |        |
|               |        |
| <b>TOTAL:</b> |        |

- ☐ 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.

\* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

\*\* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

*Appendix B***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
- B** ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C** ☐ Payment in equal monthly installments of not less than \$ \_\_\_\_\_ or 10% of the defendant's net earnings, whichever is greater, until paid in full, to commence 30 days after the date of this judgment; or
- D** ☐ Payment in equal monthly installments of not less than \$ \_\_\_\_\_ or 10% of the defendant's net earnings, whichever is greater, until paid in full, to commence 30 days after release from imprisonment to a term of supervision; or
- E** ☐ Payment during the term of supervised release will commence within 30 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. \_\_\_\_\_

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Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during 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

Case Number

Defendant and Co-Defendant Names

*(including defendant number)*

| Total Amount | Joint and<br>Several<br>Amount | Corresponding<br>Payee, if<br>appropriate |
|--------------|--------------------------------|-------------------------------------------|
|--------------|--------------------------------|-------------------------------------------|

☐ The defendant shall pay the cost of prosecution; or  
☐ 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) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVT A assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

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**APPENDIX C — ORDER DENYING MOTION TO  
DISMISS INDICTMENT OF THE UNITED STATES  
DISTRICT COURT FOR THE EASTERN DISTRICT  
OF WISCONSIN, DATED OCTOBER 11, 2023**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

Case No. 23-CR-109

UNITED STATES OF AMERICA,

*Plaintiff,*

v.

EDLANDO M. WATSON,

*Defendant.*

**ORDER DENYING MOTION TO  
DISMISS INDICTMENT**

Defendant Edlando Watson is charged in this court with possession of a firearm by a felon in violation of 18 U.S.C. § 922(g)(1). Watson is a felon because he was convicted of Possession with Intent to Distribute Cocaine Base and Possession of a Firearm by a Drug User in the United States District Court for the Western District of Wisconsin in 2013. Watson is also currently facing charges in the Circuit Court for Dane County for First-Degree Recklessly Endangering Safety for allegedly firing shots at a vehicle occupied by an adult male driver,

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three young children, and the children's mother. This case is currently before the court on Watson's motion to dismiss the indictment on the ground that § 922(g)(1) is unconstitutional under the Second Amendment as applied to him. For the reasons that follow and consistent with almost all of the approximately 200 federal district courts to consider the issue, the court concludes that § 922(g)(1) is not unconstitutional and Watson's motion should therefore be denied.

The Second Amendment provides: "A well regulated militia, being essential to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." In the last fifteen years, the Supreme Court has decided three cases that bear on the issue presented in this case. In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Court held that a District of Columbia prohibition on the possession of a handgun in one's own home violates the operative clause of this Amendment, which recognizes the right of an individual to possess arms that are in common use for defensive purposes. The Court also recognized, however, that "[l]ike most rights, the right secured by the Second Amendment is not unlimited." *Id.* at 626. Although the Court in *Heller* did not undertake an exhaustive historical analysis of the full scope of the Second Amendment, it expressly noted 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, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms." *Id.* at 626-27.

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In *McDonald v. City of Chicago*, 561 U.S. 742 (2010), the Court held that the Second Amendment applied to state and local governments through the Fourteenth Amendment and thus rendered invalid a ban on the possession of handguns by the City of Chicago. The Court reiterated its holding in *Heller* that “individual self-defense is ‘the central component’ of the Second Amendment right.” *Id.* at 767 (quoting *Heller*, 554 U.S. at 599). *McDonald* also repeated the Court’s assurance in *Heller* that the right protected by the Second Amendment was not unlimited and that its holding did not cast doubt on longstanding regulatory measures, such as those prohibiting the possession of firearms by felons. *Id.* at 786. In essence, both *Heller* and *McDonald* “established that the Second Amendment ‘protects a personal right to keep and bear arms for lawful purposes, most notably for self-defense within the home.’” *Atkinson v. Garland*, 70 F.4th 1018, 1020 (7th Cir. 2023) (quoting *McDonald*, 561 U.S. at 780). Both cases also made clear, however, that the right was not unlimited and offered as an example of commonly accepted limitations the “longstanding prohibitions on the possession of firearms by felons and the mentally ill.” *Heller*, 554 U.S. at 626; *see also McDonald*, 561 U.S. at 786. Indeed, in *Heller*, the Court characterized such limitations as “presumptively lawful regulatory measures.” 554 at 627 n.26.

Finally, in *New York State Rifle & Pistol Association v. Bruen*, 142 S. Ct. 2111, 2122 (2022), the Court struck down a New York law that required one who wanted to carry a firearm outside of his home to show “proper cause” to do so and held that “ordinary, law-abiding citizens have

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a Second Amendment right to carry handguns publicly for their self-defense.” Again, the Court explicitly noted that the right to carry a firearm was not unlimited. *Id.* at 2133. And two members of the majority expressly noted *Heller*’s specific reference to prohibitions on the possession of firearms by felons as one of the presumptively lawful limitations on which the majority opinion is not intended to cast doubt. *Id.* at 2162 (Kavanaugh, J., with Roberts, C.J., concurring). A third emphasized that nothing said in *Bruen* “disturbed anything that we said in *Heller* or *McDonald* . . . about restrictions that may be imposed on the possession or carrying of guns.” *Id.* at 2157 (Alito, J., concurring).

Walton’s claim in this case is that *Bruen* compels the conclusion that laws that prohibit felons, at least non-violent felons, from possessing firearms, like § 922(g)(1), are invalid. It is not the specific holding of *Bruen* that compels such a conclusion, he argues, but rather the framework that the Court adopted for deciding such questions. Application of that framework to § 922(g)(1), he contends, mandates the conclusion that the long-standing prohibition of possession of firearms by persons convicted of a felony is unconstitutional at least as applied to him under the facts of this case. In *Atkinson*, a majority of a three-judge panel of the Seventh Circuit vacated the district court’s decision denying a similar motion and remanded the case to allow the district court to undertake the analysis required under the *Bruen* framework in the first instance. *See* 70 F.4th at 1020.

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Prior to *Bruen*, the lower courts had adopted a two-step test for Second Amendment challenges. “The threshold question is whether the regulated activity falls within the scope of the Second Amendment.” *Ezell v. City of Chicago*, 846 F.3d 888, 892 (7th Cir. 2017). If not, “then the regulated activity is categorically unprotected, and the law is not subject to further Second Amendment review.” *Id.* (internal quote omitted). If, however, “the historical evidence is inconclusive or suggests that the regulated activity is not categorically unprotected, then there must be a second inquiry into the strength of the government’s justification for restricting or regulating the exercise of Second Amendment rights.” *Id.* At that point, the court conducted a “means-ends” analysis that required the court to “evaluate the regulatory means the government has chosen and the public-benefits end it seeks to achieve.” *Id.*

In *Bruen*, the Court declined to adopt the lower court’s two-part approach and expressly rejected the “means-end” inquiry those courts had fashioned. Instead, the Court held that “when the Second Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects that conduct.” 142 S. Ct. at 2126. To justify a regulation that restricts such conduct, “the government may not simply posit that the regulation promotes an important government interest.” *Id.* “Rather, the government must demonstrate that the regulation is consistent with this Nation’s historical tradition of firearm regulation. Only if a firearm regulation is consistent with this Nation’s historical tradition may a court conclude that the individual’s conduct falls outside the Second



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Amendment’s unqualified command.” *Id.* (internal quotations omitted).

The Court’s rejection of the “means-end” analysis reflects the majority’s view that the basic right to bear arms could not be dependent on legislative or judicial sufferance. In other words, the mere fact that firearms have the capacity to harm people and the government has a strong interest in protecting people from harm cannot justify depriving law-abiding citizens of the right to bear arms. As the Court noted in *Heller*, “[a] constitutional guarantee subject to future judges’ assessment of its usefulness is no constitutional guarantee at all.” 554 U.S. at 634. Instead, the Court concluded that the Second Amendment’s text and the historical understanding surrounding it constitute the true measure of the contours of the right the constitution was intended to protect.

*Bruen* set forth two approaches for assessing this historical understanding. The first, which the Court described as “fairly straightforward,” involved instances “when a challenged regulation addresses a general societal problem that has persisted since the 18th century.” 142 S. Ct. at 2131. “[T]he lack of a distinctly similar historical regulation addressing that problem,” the Court noted, “is relevant evidence that the challenged regulation is inconsistent with the Second Amendment.” *Id.* “Likewise,” the Court explained, “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.” *Id.*

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The second way in which the required historical analysis was to be performed involved a “more nuanced approach.” *Id.* at 2132. A more nuanced approach was needed, the Court explained, due to the “unprecedented societal concerns” that have arisen or the “dramatic technological changes” that have occurred since the ratification of the Second and Fourteenth Amendments. *Id.* To determine whether a distinctly modern firearms regulation was constitutional, a court was required to reason by analogy from relevantly similar regulations that were in existence at the relevant time. *Id.* And although the *Bruen* Court did not provide an “exhaustive survey of the features that render regulations relevantly similar under the Second Amendment,” it noted that “*Heller* and *McDonald* point toward at least two metrics: how and why the regulations burden a law-abiding citizen’s right to armed self-defense.” *Id.* at 2132-33. “[W]hether modern and historical regulations impose a comparable burden on the right of armed self-defense and whether that burden is comparably justified,” the Court concluded, “are central considerations when engaging in an analogical inquiry.” *Id.* at 2133 (internal quotations omitted). The Court cautioned, however, that “analogical reasoning under the Second Amendment is neither a regulatory straightjacket nor a regulatory blank check.” *Id.* Explaining further, the Court noted:

On the one hand, courts should not “uphold every modern law that remotely resembles a historical analogue,” because doing so “risk[s] endorsing outliers that our ancestors would never have accepted.” *Drummond v. Robinson*,

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9 F.4th 217, 226 (CA3 2021). On the other hand, analogical reasoning requires only that the government identify a well-established and representative historical analogue, not a historical twin. So even if a modern-day regulation is not a dead ringer for historical precursors, it still may be analogous enough to pass constitutional muster.

*Id.*

Watson contends that as an American citizen, he falls within the class of persons whose rights the Second Amendment protects. “Because the plain text of the Second Amendment covers the conduct criminalized by Section 922(g)(1),” he argues, “the burden shifts to the government to ‘justify its regulation by demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation.’” Def.’s Reply Br. at 5, Dkt. No. 21 (quoting *Bruen*, 142 S. Ct. at 2130; *Atkinson*, 70 F.4th at 1020). “The government cannot meet that burden,” he concludes, “because the historical record demonstrates that there is no longstanding tradition of preventing non-violent felons from possessing guns.” *Id.* at 5-6.

As noted above, Watson’s prior felony convictions were for Possession with Intent to Distribute Cocaine Base and Possession of a Firearm by a Prohibited Person. It is true that the government has not offered historic evidence of laws prohibiting persons convicted of drug felonies from possessing guns, but that is hardly surprising. As the Ninth Circuit recently observed, “[i]llegal drug trafficking

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is a largely modern crime . . . animated by unprecedented contemporary concerns regarding drug abuse. . . .” *United States v. Alaniz*, 69 F.4th 1124, 1129 (9th Cir. 2023). As *Bruen* expressly recognized, cases implicating unprecedented societal concerns may require “a more nuanced approach.” *Id.* at 1130 (citing *Bruen*, 142 S. Ct. at 2132). “Like burglary or robbery,” the *Alaniz* court continued, “drug trafficking plainly poses substantial risks of confrontation that can lead to immediate violence.” *Id.* For these reasons, the court rejected the defendant’s argument that *Bruen* rendered the two-level guideline enhancement under U.S.S.G. § 2D1.1(b)(1) for possession of a firearm during a drug trafficking offense unconstitutional.

The Eighth Circuit recently rejected a challenge almost identical to Watson’s in *United States v. Jackson*, 69 F.4th 495 (8th Cir. 2023). The defendant in *Jackson*, like Watson, was previously convicted of a drug trafficking felony. In rejecting the defendant’s argument that § 922(g)(1) was unconstitutional as applied to him, the court noted that “[h]istory shows that the right to keep and bear arms was subject to restrictions that included prohibitions on possession of firearms by certain groups of people.” *Id.* at 502. The court observed that there were two schools of thought as to the basis of such regulations:

A panel of the Third Circuit recently surveyed the history in light of *Bruen* and concluded that legislatures have longstanding authority and discretion to disarm citizens who are not “law-abiding”—i.e., those who are “unwilling

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to obey the government and its laws, whether or not they had demonstrated a propensity for violence.” *Range v. Att’y Gen.*, 53 F.4th 262, 269 (3d Cir. 2022) (per curiam), *vacated, reh’g en banc granted*, 56 F.4th 992 (3d Cir. 2023). Jackson contends that a legislature’s traditional authority is narrower and limited to prohibiting possession of firearms by those who are deemed more dangerous than a typical law-abiding citizen.

*Id.* While it recognized that “the better interpretation of the history may be debatable,” the court concluded that “either reading supports the constitutionality of § 922(g)(1) as applied to Jackson and other convicted felons, because the law ‘is consistent with the Nation’s historical tradition of firearm regulation.’” *Id.* (quoting *Bruen*, 142 S. Ct. at 2130).

To be sure, the historical analogues cited by the court in *Jackson* included categorical prohibitions that would be considered “impermissible today under other constitutional provisions.” *Id.* at 503. These included prohibitions directed at Native Americans, religious minorities, and people who refused to declare an oath of loyalty. *Id.* at 502-03. The court nevertheless found the analogues “relevant here in determining the historical understanding of the right to keep and bear arms.” *Id.* The *Jackson* court noted that based on the same historical prohibitions, the Third Circuit panel in *Range* had “concluded that legislatures traditionally possessed discretion to disqualify categories of people from

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possessing firearms to address a threat purportedly posed by these people ‘to an orderly society and compliance with its legal norms,’ not merely to address a person’s demonstrated propensity for violence.” *Id.* (quoting *Range*, 53 F.4th at 281-82). The *Jackson* court found this conclusion “bolstered by the Supreme Court’s repeated statements in *Bruen* that the Second Amendment protects the right of a ‘law-abiding citizen’ to keep and bear arms.” *Id.* (citing *Bruen*, 142 S. Ct. at 2122, 2125, 2131, 2133-34, 2135 n.8, 2138, 2150, 2156).

If, on the other hand, the historical regulation of firearms is viewed not as a way of disarming citizens who are deemed to be not law-abiding, but instead as an effort to address a risk of dangerousness, the *Jackson* court concluded that the prohibition on possession by convicted felons still passes constitutional muster under historical analysis.” *Id.* at 504. For “[n]ot all persons disarmed under historical precedents—not all Protestants or Catholics in England, not all Native Americans, not all Catholics in Maryland, not all early Americans who declined to swear an oath of loyalty—were violent or dangerous persons.” *Id.* This suggests that even if the dangerousness of the person prohibited was the motivating consideration for the prohibition, there was “no requirement for an individualized determination of dangerousness as to each person in a class of prohibited persons.” *Id.* In sum, the *Jackson* court concluded:

legislatures traditionally employed status-based restrictions to disqualify categories of persons from possessing firearms. Whether

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those actions are best characterized as restrictions on persons who deviated from legal norms or persons who presented an unacceptable risk of dangerousness, Congress acted within the historical tradition when it enacted § 922(g)(1) and the prohibition on possession of firearms by felons. Consistent with the Supreme Court’s assurances that recent decisions on the Second Amendment cast no doubt on the constitutionality of laws prohibiting the possession of firearms by felons, we conclude that the statute is constitutional as applied to Jackson.

*Id.* at 505-06.

The *Jackson* court also cited as support for this conclusion the D.C. Circuit’s pre-*Bruen* decision in *Medina v. Whitaker*, 913 F.3d 152 (D.C. Cir. 2019). In *Medina*, the court began its analysis with the understanding of a felony crime as it would have been understood at the Founding. Citing *Blackstone*, the court noted that “felonies were so connected with capital punishment that it was ‘hard to separate them.’” *Id.* at 158 (quoting 4 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 95 (Harper ed. 1854)). Although the *Medina* court acknowledged that “the penalties for many felony crimes quickly became less severe in the decades following American independence,” it observed that “felonies were—and remain—the most serious category of crime deemed by the legislature to reflect ‘grave misjudgment and maladjustment.’” *Id.* (quoting *Hamilton v. Pallozzi*,

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848 F.3d 614, 626 (4th Cir. 2017)). Given that perspective, the *Medina* court reasoned, “it is difficult to conclude that the public, in 1791, would have understood someone facing death and estate forfeiture to be within the scope of those entitled to possess arms.” *Id.* “A prohibition on firearm ownership, like these other disabilities [forfeiture of right to serve on jury or vote],” the court observed, “is a reasonable consequence of a felony conviction that the legislature is entitled to impose without undertaking the painstaking case-by-case assessment of a felon’s potential rehabilitation.” *Id.* at 160-61.

This court finds *Jackson* and *Medina* persuasive. It is true, as Watson contends, that the government has not established a longstanding tradition of prohibiting felons, *per se*, from possessing firearms. But *Bruen* requires only historical analogues, not “historical twins.” 142 S. Ct. at 2133. In demanding that examples of felon-in-possession laws be on the books when the Second Amendment was ratified, Watson is ignoring *Bruen*’s caution that “even if a modern-day regulation is not a dead ringer for historical precursors, it still may be analogous enough to pass constitutional muster.” 142 S. Ct. at 2133. The same mistake seems to permeate the court’s decision in *United States v. Bullock*, No. 3:18-CR-165-CWR-FKB, 2023 WL 4232309 (S.D. Miss. June 28, 2023), the primary district court case on which Watson relies.

Modern laws prohibiting felons from possessing firearms are analogous but far more reasonable and just than the early English and revolutionary period laws that prohibited religious minorities or Native Americans



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from doing so. The modern laws also reflect the societal changes that have occurred since those earlier times, most notably, the reduction in the severity of penalties for most felonies, including the almost complete elimination of the death penalty; the degree to which firearms are no longer, for many, an essential tool for putting food on the table; and the technological improvements in commonly available firearms, making them far more efficient and dangerous than at the time the Second Amendment was ratified. Given this changed world, laws prohibiting firearm possession by felons are fully consistent with the historical understanding of the Second Amendment. *Bruen*, 142 S. Ct. at 2132 (“Although its meaning is fixed according to the understandings of those who ratified it, the Constitution can, and must, apply to circumstances beyond those the Founders specifically anticipated.”).

Watson contends that regarding the prohibition of firearms by felons as relevantly similar to the historical tradition permitting legislatures to take firearms away from people who were then regarded as dangerous is overbroad. In support of this argument, Watson quotes an observation the Fifth Circuit recently made in invalidating a conviction under 18 U.S.C. § 922(g)(3), which prohibits possession of firearms by persons who are unlawful users of or addicted to controlled substances. In the words of the court,

any ability to implement a “dangerousness principle” is fenced in by at least two strictures in the applicable caselaw. On the one hand, the legislature cannot have unchecked power to

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designate a group of persons as “dangerous” and thereby disarm them. Congress could claim that immigrants, the indigent, or the politically unpopular were presumptively “dangerous” and eliminate their Second Amendment rights without judicial review. That would have no true limiting principle,” and would render the Second Amendment a dead letter.

*United States v. Daniels*, 77 F.4th 337, 353 (5th Cir. 2023) (internal citation omitted).

This argument ignores the fundamental difference between individuals who have willfully chosen to commit “the most serious category of crime deemed by the legislature to reflect grave misjudgment and maladjustment,” *Medina*, 913 F.3d at 158, and those who have not. The limiting principle here, as in most decisions courts are called upon to make, is the recognition of essential differences in the classes or categories to which the law may be applied. To treat immigrants, the indigent, or the politically unpopular as if they were people who had willfully chosen to engage in serious violations of the law would be arbitrary and capricious. Recognizing as much does not render the Second Amendment a dead letter.

As the government’s list of post-*Bruen* district court decisions (Ex. A, Dkt. No. 17-1) demonstrates, this court’s conclusion is not an isolated one. Nearly every district court that has addressed the constitutionality of § 922(g)(1) since *Bruen*—in approximately 200 separate rulings—has concluded that the statute remains

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constitutional. More recent decisions from within this circuit offer thorough discussions of the same issue and provide even more support. *See, e.g., United States v. Agee*, No.1:21-CR-00350-1, 2023 WL 6443924 (N.D. Ill. Oct. 3, 2023); *United States v. Gates*, No 1:22-CR-00397-1, 2023 WL 5748362 (N.D. Ill. Sept. 6, 2023).

Finally, even if the court were to conclude that § 922(g)(1) was overbroad to the extent that it applies to all felons, Watson’s as applied challenge would fail. Although a divided Third Circuit, sitting *en banc*, vacated the previous panel decision referenced above in *Range v. Gardner* and held § 922(g)(1) unconstitutional as applied to the plaintiff in that case, the court emphasized that its decision was “a narrow one,” and applied “only” to the plaintiff in that case whose prior 1995 conviction was for violating a Pennsylvania statute criminalizing the making of a false statement to obtain food stamps. 69 F.4th 96, 106 (3d Cir. 2023). The violation was classified as a misdemeanor, even though it was punishable by up to five years imprisonment. *Id.* at 98. This limited holding provides no support for Watson’s as applied argument here. His 2013 conviction for Possession of Cocaine Base with Intent to Distribute, for which he was sentenced to twenty-seven months in federal prison, is more serious and more recent than Range’s 1995 conviction for the misdemeanor charge of making false statement on a food stamp application, for which he received straight probation. Given the well-recognized connection between drug trafficking and guns, *see United States v. Ramirez*, 45 F.3d 1096, 1103 (7th Cir. 1995) (“this court has recognized that weapons are tools of the narcotics trade”), application

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of § 922(g)(1)'s prohibition in this case is constitutional as applied to Watson even if it may not be sustained in other applications.

Watson's Motion to Dismiss the Indictment on Second Amendment Grounds (Dkt. No. 11) is therefore denied.

**SO ORDERED** at Green Bay, Wisconsin this 11th day of October, 2023.

s/ William C. Griesbach  
William C. Griesbach  
United States District Judge

**APPENDIX D — RELEVANT STATUTORY  
PROVISIONS**

**18 U.S.C. §922. Unlawful acts**

(a) It shall be unlawful –

(1) for any person –

(A) except a licensed importer, licensed manufacturer, or licensed dealer, to engage in the business of importing, manufacturing, or dealing in firearms, or in the course of such business to ship, transport, or receive any firearm in interstate or foreign commerce; or

(B) except a licensed importer or licensed manufacturer, to engage in the business of importing or manufacturing ammunition, or in the course of such business, to ship, transport, or receive any ammunition in interstate or foreign commerce;

(2) for any importer, manufacturer, dealer, or collector licensed under the provisions of this chapter to ship or transport in interstate or foreign commerce any firearm to any person other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, except that –

(A) this paragraph and subsection (b)(3) shall not be held to preclude a licensed importer, licensed manufacturer, licensed dealer, or

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licensed collector from returning a firearm or replacement firearm of the same kind and type to a person from whom it was received; and this paragraph shall not be held to preclude an individual from mailing a firearm owned in compliance with Federal, State, and local law to a licensed importer, licensed manufacturer, licensed dealer, or licensed collector;

(B) this paragraph shall not be held to preclude a licensed importer, licensed manufacturer, or licensed dealer from depositing a firearm for conveyance in the mails to any officer, employee, agent, or watchman who, pursuant to the provisions of section 1715 of this title, is eligible to receive through the mails pistols, revolvers, and other firearms capable of being concealed on the person, for use in connection with his official duty; and

(C) nothing in this paragraph shall be construed as applying in any manner in the District of Columbia, the Commonwealth of Puerto Rico, or any possession of the United States differently than it would apply if the District of Columbia, the Commonwealth of Puerto Rico, or the possession were in fact a State of the United States;

(3) for any person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector to transport into or receive

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in the State where he resides (or if the person is a corporation or other business entity, the State where it maintains a place of business) any firearm purchased or otherwise obtained by such person outside that State, except that this paragraph (A) shall not preclude any person who lawfully acquires a firearm by bequest or intestate succession in a State other than his State of residence from transporting the firearm into or receiving it in that State, if it is lawful for such person to purchase or possess such firearm in that State, (B) shall not apply to the transportation or receipt of a firearm obtained in conformity with subsection (b)(3) of this section, and (C) shall not apply to the transportation of any firearm acquired in any State prior to the effective date of this chapter;

(4) for any person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, to transport in interstate or foreign commerce any destructive device, machinegun (as defined in section 5845 of the Internal Revenue Code of 1986), short-barreled shotgun, or short-barreled rifle, except as specifically authorized by the Attorney General consistent with public safety and necessity;

(5) for any person (other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector) to transfer, sell, trade, give, transport, or deliver any firearm to any

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person (other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector) who the transferor knows or has reasonable cause to believe does not reside in (or if the person is a corporation or other business entity, does not maintain a place of business in) the State in which the transferor resides; except that this paragraph shall not apply to (A) the transfer, transportation, or delivery of a firearm made to carry out a bequest of a firearm to, or an acquisition by intestate succession of a firearm by, a person who is permitted to acquire or possess a firearm under the laws of the State of his residence, and (B) the loan or rental of a firearm to any person for temporary use for lawful sporting purposes;

(6) for any person in connection with the acquisition or attempted acquisition of any firearm or ammunition from a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, knowingly to make any false or fictitious oral or written statement or to furnish or exhibit any false, fictitious, or misrepresented identification, intended or likely to deceive such importer, manufacturer, dealer, or collector with respect to any fact material to the lawfulness of the sale or other disposition of such firearm or ammunition under the provisions of this chapter;

(7) for any person to manufacture or import armor piercing ammunition, unless –



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(A) the manufacture of such ammunition is for the use of the United States, any department or agency of the United States, any State, or any department, agency, or political subdivision of a State;

(B) the manufacture of such ammunition is for the purpose of exportation; or

(C) the manufacture or importation of such ammunition is for the purpose of testing or experimentation and has been authorized by the Attorney General;

(8) for any manufacturer or importer to sell or deliver armor piercing ammunition, unless such sale or delivery –

(A) is for the use of the United States, any department or agency of the United States, any State, or any department, agency, or political subdivision of a State;

(B) is for the purpose of exportation; or

(C) is for the purpose of testing or experimentation and has been authorized by the Attorney General;<sup>1</sup>

(9) for any person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, who does not reside in any

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State to receive any firearms unless such receipt is for lawful sporting purposes.

(b) It shall be unlawful for any licensed importer, licensed manufacturer, licensed dealer, or licensed collector to sell or deliver –

(1) any firearm or ammunition to any individual who the licensee knows or has reasonable cause to believe is less than eighteen years of age, and, if the firearm, or ammunition is other than a shotgun or rifle, or ammunition for a shotgun or rifle, to any individual who the licensee knows or has reasonable cause to believe is less than twenty-one years of age;

(2) any firearm to any person in any State where the purchase or possession by such person of such firearm would be in violation of any State law or any published ordinance applicable at the place of sale, delivery or other disposition, unless the licensee knows or has reasonable cause to believe that the purchase or possession would not be in violation of such State law or such published ordinance;

(3) any firearm to any person who the licensee knows or has reasonable cause to believe does not reside in (or if the person is a corporation or other business entity, does not maintain a place of business in) the State in which the licensee's place of business is located, except that this paragraph

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(A) shall not apply to the sale or delivery of any rifle or shotgun to a resident of a State other than a State in which the licensee's place of business is located if the transferee meets in person with the transferor to accomplish the transfer, and the sale, delivery, and receipt fully comply with the legal conditions of sale in both such States (and any licensed manufacturer, importer or dealer shall be presumed, for purposes of this subparagraph, in the absence of evidence to the contrary, to have had actual knowledge of the State laws and published ordinances of both States), and (B) shall not apply to the loan or rental of a firearm to any person for temporary use for lawful sporting purposes;

(4) to any person any destructive device, machinegun (as defined in section 5845 of the Internal Revenue Code of 1986), short-barreled shotgun, or short-barreled rifle, except as specifically authorized by the Attorney General consistent with public safety and necessity; and

(5) any firearm or armor-piercing ammunition to any person unless the licensee notes in his records, required to be kept pursuant to section 923 of this chapter, the name, age, and place of residence of such person if the person is an individual, or the identity and principal and local places of business of such person if the person is a corporation or other business entity.

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Paragraphs (1), (2), (3), and (4) of this subsection shall not apply to transactions between licensed importers, licensed manufacturers, licensed dealers, and licensed collectors. Paragraph (4) of this subsection shall not apply to a sale or delivery to any research organization designated by the Attorney General.

(c) In any case not otherwise prohibited by this chapter, a licensed importer, licensed manufacturer, or licensed dealer may sell a firearm to a person who does not appear in person at the licensee's business premises (other than another licensed importer, manufacturer, or dealer) only if –

(1) the transferee submits to the transferor a sworn statement in the following form:

“Subject to penalties provided by law, I swear that, in the case of any firearm other than a shotgun or a rifle, I am twenty-one years or more of age, or that, in the case of a shotgun or a rifle, I am eighteen years or more of age; that I am not prohibited by the provisions of chapter 44 of title 18, United States Code, from receiving a firearm in interstate or foreign commerce; and that my receipt of this firearm will not be in violation of any statute of the State and published ordinance applicable to the locality in which I reside. Further, the true title, name, and address of the principal law enforcement officer of the locality to which the firearm will be delivered are  
Signature \_\_\_\_\_ Date \_\_\_\_\_.”

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and containing blank spaces for the attachment of a true copy of any permit or other information required pursuant to such statute or published ordinance;

(2) the transferor has, prior to the shipment or delivery of the firearm, forwarded by registered or certified mail (return receipt requested) a copy of the sworn statement, together with a description of the firearm, in a form prescribed by the Attorney General, to the chief law enforcement officer of the transferee's place of residence, and has received a return receipt evidencing delivery of the statement or has had the statement returned due to the refusal of the named addressee to accept such letter in accordance with United States Post Office Department regulations; and

(3) the transferor has delayed shipment or delivery for a period of at least seven days following receipt of the notification of the acceptance or refusal of delivery of the statement.

A copy of the sworn statement and a copy of the notification to the local law enforcement officer, together with evidence of receipt or rejection of that notification shall be retained by the licensee as a part of the records required to be kept under section 923(g).

(d) It shall be unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any

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person knowing or having reasonable cause to believe that such person –

(1) is under indictment for, or has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

(2) is a fugitive from justice;

(3) 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));

(4) has been adjudicated as a mental defective or has been committed to any mental institution;

(5) who, being an alien –

(A) is illegally or unlawfully in the United States; or

(B) except as provided in subsection (y)(2), has been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26)));

(6) who<sup>2</sup> – has been discharged from the Armed Forces under dishonorable conditions;

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(7) who, having been a citizen of the United States, has renounced his citizenship;

(8) is subject to a court order that restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child, except that this paragraph shall only apply to a court order that –

(A) was issued after a hearing of which such person received actual notice, and at which such person had the opportunity to participate; and

(B)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

(9) has been convicted in any court of a misdemeanor crime of domestic violence.

This subsection shall not apply with respect to the sale or disposition of a firearm or ammunition to a

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licensed importer, licensed manufacturer, licensed dealer, or licensed collector who pursuant to subsection (b) of section 925 of this chapter is not precluded from dealing in firearms or ammunition, or to a person who has been granted relief from disabilities pursuant to subsection (c) of section 925 of this chapter.

(e) It shall be unlawful for any person knowingly to deliver or cause to be delivered to any common or contract carrier for transportation or shipment in interstate or foreign commerce, to persons other than licensed importers, licensed manufacturers, licensed dealers, or licensed collectors, any package or other container in which there is any firearm or ammunition without written notice to the carrier that such firearm or ammunition is being transported or shipped; except that any passenger who owns or legally possesses a firearm or ammunition being transported aboard any common or contract carrier for movement with the passenger in interstate or foreign commerce may deliver said firearm or ammunition into the custody of the pilot, captain, conductor or operator of such common or contract carrier for the duration of the trip without violating any of the provisions of this chapter. No common or contract carrier shall require or cause any label, tag, or other written notice to be placed on the outside of any package, luggage, or other container that such package, luggage, or other container contains a firearm.

(f)(1) It shall be unlawful for any common or contract carrier to transport or deliver in interstate or foreign commerce any firearm or ammunition with knowledge



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or reasonable cause to believe that the shipment, transportation, or receipt thereof would be in violation of the provisions of this chapter.

(2) It shall be unlawful for any common or contract carrier to deliver in interstate or foreign commerce any firearm without obtaining written acknowledgement of receipt from the recipient of the package or other container in which there is a firearm.

(g) It shall be unlawful for any person –

(1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

(2) who is a fugitive from justice;

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

(4) who has been adjudicated as a mental defective or who has been committed to a mental institution;

(5) who, being an alien –

(A) is illegally or unlawfully in the United States; or

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(B) except as provided in subsection (y)(2), has been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26)));

(6) who has been discharged from the Armed Forces under dishonorable conditions;

(7) who, having been a citizen of the United States, has renounced his citizenship;

(8) who is subject to a court order that –

(A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;

(B) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

(C)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

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(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

(9) who has been convicted in any court of a misdemeanor crime of domestic violence,

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.

(h) It shall be unlawful for any individual, who to that individual's knowledge and while being employed for any person described in any paragraph of subsection (g) of this section, in the course of such employment –

(1) to receive, possess, or transport any firearm or ammunition in or affecting interstate or foreign commerce; or

(2) to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

(i) It shall be unlawful for any person to transport or ship in interstate or foreign commerce, any stolen firearm or stolen ammunition, knowing or having reasonable cause to believe that the firearm or ammunition was stolen.

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(j) It shall be unlawful for any person to receive, possess, conceal, store, barter, sell, or dispose of any stolen firearm or stolen ammunition, or pledge or accept as security for a loan any stolen firearm or stolen ammunition, which is moving as, which is a part of, which constitutes, or which has been shipped or transported in, interstate or foreign commerce, either before or after it was stolen, knowing or having reasonable cause to believe that the firearm or ammunition was stolen.

(k) It shall be unlawful for any person knowingly to transport, ship, or receive, in interstate or foreign commerce, any firearm which has had the importer's or manufacturer's serial number removed, obliterated, or altered or to possess or receive any firearm which has had the importer's or manufacturer's serial number removed, obliterated, or altered and has, at any time, been shipped or transported in interstate or foreign commerce.

(l) Except as provided in section 925(d) of this chapter, it shall be unlawful for any person knowingly to import or bring into the United States or any possession thereof any firearm or ammunition; and it shall be unlawful for any person knowingly to receive any firearm or ammunition which has been imported or brought into the United States or any possession thereof in violation of the provisions of this chapter.

(m) It shall be unlawful for any licensed importer, licensed manufacturer, licensed dealer, or licensed collector knowingly to make any false entry in, to fail to make appropriate entry in, or to fail to properly maintain,

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any record which he is required to keep pursuant to section 923 of this chapter or regulations promulgated thereunder.

(n) It shall be unlawful for any person who is under indictment for a crime punishable by imprisonment for a term exceeding one year to ship or transport in interstate or foreign commerce any firearm or ammunition or receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

(o)(1) Except as provided in paragraph (2), it shall be unlawful for any person to transfer or possess a machinegun.

(2) This subsection does not apply with respect to –

(A) a transfer to or by, or possession by or under the authority of, the United States or any department or agency thereof or a State, or a department, agency, or political subdivision thereof; or

(B) any lawful transfer or lawful possession of a machinegun that was lawfully possessed before the date this subsection takes effect.

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**21 U.S.C. §841. Prohibited acts A**

**(a) Unlawful acts**

Except as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally –

(1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance; or

(2) to create, distribute, or dispense, or possess with intent to distribute or dispense, a counterfeit substance.

**(b) Penalties**

Except as otherwise provided in section 849, 859, 860, or 861 of this title, any person who violates subsection (a) of this section shall be sentenced as follows:

(1)(A) In the case of a violation of subsection (a) of this section involving –

(i) 1 kilogram or more of a mixture or substance containing a detectable amount of heroin;

(ii) 5 kilograms or more of a mixture or substance containing a detectable amount of –

(I) coca leaves, except coca leaves and extracts of coca leaves from which cocaine,

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ecgonine, and derivatives of ecgonine or their salts have been removed;

(II) cocaine, its salts, optical and geometric isomers, and salts of isomers;

(III) ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

(IV) any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subclauses (I) through (III);

(iii) 50 grams or more of a mixture or substance described in clause (ii) which contains cocaine base;

(iv) 100 grams or more of phencyclidine (PCP) or 1 kilogram or more of a mixture or substance containing a detectable amount of phencyclidine (PCP);

(v) 10 grams or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

(vi) 400 grams or more of a mixture or substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidiny] propanamide or 100 grams or more of a mixture or substance containing a detectable amount of any analogue of N-phenyl-N-[1-(2-phenylethyl)-4-piperidiny] propanamide;

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(vii) 1000 kilograms or more of a mixture or substance containing a detectable amount of marihuana, or 1,000 or more marihuana plants regardless of weight; or

(viii) 100 grams or more of methamphetamine, its salts, isomers, and salts of its isomers or 1 kilogram or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers;

such person shall be sentenced to a term of imprisonment which may not be less than 10 years or more than life and if death or serious bodily injury results from the use of such substance shall be not less than 20 years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18 or \$4,000,000 if the defendant is an individual or \$10,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment which may not be less than 20 years and not more than life imprisonment and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18 or \$8,000,000 if the defendant is an individual or \$20,000,000 if the defendant is other than an individual, or both. If any person commits a violation of this subparagraph or of section 849, 859, 860, or 861 of this title after two or more prior convictions for a felony drug offense have become



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final, such person shall be sentenced to a mandatory term of life imprisonment without release and fined in accordance with the preceding sentence. Any sentence under this subparagraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least 5 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 10 years in

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*Appendix D***18 U.S.C. §924. Penalties**

(a)(1) Except as otherwise provided in this subsection, subsection (b), (c), or (f) of this section, or in section 929, whoever –

(A) knowingly makes any false statement or representation with respect to the information required by this chapter to be kept in the records of a person licensed under this chapter or in applying for any license or exemption or relief from disability under the provisions of this chapter;

(B) knowingly violates subsection (a)(4), (f), (k), (r), (v), or (w) of section 922;

(C) knowingly imports or brings into the United States or any possession thereof any firearm or ammunition in violation of section 922(1); or

(D) willfully violates any other provision of this chapter,

shall be fined under this title, imprisoned not more than five years, or both.

(2) Whoever knowingly violates subsection (a)(6), (d), (g), (h), (i), (j), or (o) of section 922 shall be fined as provided in this title, imprisoned not more than 10 years, or both.

(3) Any licensed dealer, licensed importer, licensed manufacturer, or licensed collector who knowingly –

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(A) makes any false statement or representation with respect to the information required by the provisions of this chapter to be kept in the records of a person licensed under this chapter, or

(B) violates subsection (m) of section 922, shall be fined under this title, imprisoned not more than one year, or both.

(4) Whoever violates section 922(q) shall be fined under this title, imprisoned for not more than 5 years, or both. Notwithstanding any other provision of law, the term of imprisonment imposed under this paragraph shall not run concurrently with any other term of imprisonment imposed under any other provision of law. Except for the authorization of a term of imprisonment of not more than 5 years made in this paragraph, for the purpose of any other law a violation of section 922(q) shall be deemed to be a misdemeanor.

(5)<sup>1</sup> Whoever knowingly violates subsection (s) or (t) of section 922 shall be fined under this title, imprisoned for not more than 1 year, or both.

(5)(A)(i)<sup>1</sup> A juvenile who violates section 922(x) shall be fined under this title, imprisoned not more than 1 year, or both, except that a juvenile described in clause (ii) shall be sentenced to probation on appropriate conditions and shall not be incarcerated unless the juvenile fails to comply with a condition of probation.

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(ii) A juvenile is described in this clause if –

(I) the offense of which the juvenile is charged is possession of a handgun or ammunition in violation of section 922(x)(2); and

(II) the juvenile has not been convicted in any court of an offense (including an offense under section 922(x) or a similar State law, but not including any other offense consisting of conduct that if engaged in by an adult would not constitute an offense) or adjudicated as a juvenile delinquent for conduct that if engaged in by an adult would constitute an offense.

(B) A person other than a juvenile who knowingly violates section 922(x) –

(i) shall be fined under this title, imprisoned not more than 1 year, or both; and

(ii) if the person sold, delivered, or otherwise transferred a handgun or ammunition to a juvenile knowing or having reasonable cause to know that the juvenile intended to carry or otherwise possess or discharge or otherwise use the handgun or ammunition in the commission of a crime of violence, shall be fined under this title, imprisoned not more than 10 years, or both.