IN THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 25-1229

UNITED STATES OF AMERICA,
Appellant,
v.
DAVID WORSTER; ALEXZANDRIA CARL,
Defendants-Appellees.

No. 25-1398

UNITED STATES OF AMERICA,
Appellant,
v.
ALEXZANDRIA CARL,
Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

OPENING BRIEF FOR THE UNITED STATES

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JURISDICTIONAL STATEMENT

The district court (McConnell, C.J.) had subject matter jurisdiction because the defendants were charged with federal offenses. 18 U.S.C. § 3231. In a memorandum and order docketed on February 5, 2025, the district court granted the defendants' motions to dismiss Counts 4 and 5 of the indictment, both of which set forth charges brought under 18 U.S.C. § 922(g)(3). [G.Add.1-16].[1] The government filed a timely notice of appeal on March 6, 2025. [R.A.161-62].

In the district court's February 5th memorandum and order, the court also granted defendant Carl's motion to dismiss Counts 6 and 7 of the indictment, which set forth charges brought under 18 U.S.C. §§ 922(a)(6), and 924(a)(1)(A), respectively. [G.Add.16]. The government moved for reconsideration of the dismissal of Counts 6 and 7 on February 13, 2025. [R.A.142-55]. On March 24, 2025, the district court entered an order denying the government's motion for reconsideration. [G.Add.17-20]. On April 22, 2025, the government filed a timely notice of appeal from the order dismissing Counts 6 and 7 and the order denying reconsideration. [R.A.173-74].

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[1] The government cites to the record as follows: "[G.Add.__]" refers to material in the government's addendum and "[R.A.__]" refers to material in the government's record appendix. For the Court's convenience, the government has included in the addendum a list of the historical sources cited in the brief along with hyperlinks to where they can be found online.

This Court has jurisdiction over both of the government's appeals pursuant to 18 U.S.C. § 3731. On May 28, 2025, this Court consolidated the two appeals for briefing and oral argument.

STATEMENT OF THE ISSUES

1. Whether the district court erred in holding that section 922(g)(3) of Title 18, which prohibits the possession of firearms by unlawful users of, or persons addicted to, controlled substances, violates the defendants' Second Amendment rights despite the existence of historical analogues supporting the temporary disarmament of groups of individuals like the defendants, who pose a special danger of misusing firearms.

2. Whether the district court erred in dismissing charges against defendant Carl for false statements in violation of sections 922(a)(6) and 924(a)(1)(A) of Title 18 by incorrectly applying a *Bruen* analysis to charges that prohibit lying to the government rather than the possession of firearms.

STATEMENT OF THE CASE

A. Relevant Factual Background[2]

In August 2021, the U.S. Customs and Border Protection Agency intercepted two packages addressed to defendant David Worster ("Worster") that contained firearm suppressor components. [G.Add.3; R.A.23-27]. Based in part on false descriptions provided in the accompanying customs documents, agents executed a search at the home of defendant's girlfriend, Alexzandria Carl ("Carl"), where Worster was living at the time. [G.Add.4; R.A.23-27, 28]. There the agents discovered a firearm as well as firearm parts, paraphernalia, and ammunition. [G.Add.4; R.A.28]. They also found a medical marijuana card in Worster's name, two mature marijuana plants, and a "'small bag of dried marijuana.'" [G.Add.4]. Worster had a prior criminal history that included both cocaine-trafficking and firearms violations. [G.Add.4 & n.2; R.A.22, 90-92].

When Carl had purchased the rifle the agents had found at her house, she indicated on the associated paperwork that she did not use marijuana. [G.Add.4]. But Carl later admitted to law enforcement agents that she "'had been using marijuana since the age of twelve' and 'smoked once or twice a week[.]'" [G.Add.4].

[2] Because there was no dispute about the operative facts for purposes of the defendants' motions to dismiss, the district court's decision was procedurally appropriate. *United States v. Musso*, 914 F.3d 26, 29-30 (1st Cir. 2019).

B. Indictment

On November 3, 2021, the grand jury issued an indictment charging Worster with firearms-related crimes under 18 U.S.C. § 922, including felon-in-possession under 18 U.S.C. § 922(g)(1), and being an unlawful user of a controlled substance in possession of a firearm under § 922(g)(3). [G.Add.4; R.A.31-32, 33]. In addition to also charging Carl with a violation of § 922(g)(3), the indictment charged her with two counts of making false statements in connection with a firearm purchase, in violation of § 922(a)(6) (false statement in acquisition of firearm), and § 924(a)(1)(A) (false statement to federally licensed gun dealer) (collectively, the "False Statement" charges or statutes). [R.A.33-34].

C. Motions to Dismiss

On October 3, 2024, Worster moved to dismiss the felon-in-possession (§ 922(g)(1)) and unlawful-controlled-substance-user-in-possession (§ 922(g)(3)) charges in the indictment (Counts 3 and 4, respectively), as violations of the Second Amendment, U.S. CONST. amend. II, in light of *New York Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022). [R.A.36-60]. Both defendants challenged the application of § 922(g)(3) as applied to their circumstances [R.A.54-58, 61-67, 99, 102, 108], and Carl attacked the False Statement charges as rising or falling with the constitutionality of § 922(g)(3): "The alleged false statement was immaterial because neither a "yes" or a "no" answer to the drug use question

would change the immutable fact that Ms. Carl is legally permitted to possess a firearm." [R.A.65-66].

In opposing Worster's and Carl's motions to dismiss the § 922(g)(3) counts, the government discussed the charges in view of *Bruen*'s two-part analytical framework. [R.A.73-83, 85-88, 111-21]. The government first argued that the conduct proscribed by § 922(g)(3) fell outside the Second Amendment's scope. [R.A.77-78, 112-13, 114-15]. Next, assuming that the Second Amendment applied to Worster and Carl, the government analyzed § 922(g)(3) in light of *Bruen* by discussing appropriate "historical analogies," *see Bruen*, 597 U.S. at 27-28, [R.A.81-88, 116-21], including laws restricting the right of habitual drug users or alcoholics to carry firearms. [R.A.85-86 & nn.3-4, 118-20 & n.4].

The government responded to Carl's argument that the False Statement charges were unconstitutional by arguing that, because § 922(g)(3) was constitutional, the False Statement statutes were constitutional as well. [R.A.121]. The government also explained that, under *Bruen*, to determine whether a government regulation violates the Second Amendment, courts must first "determine whether the 'Second Amendment's plain text covers [the] individual's conduct." [R.A.112] (quoting *Bruen*, 597 U.S. at 24). The government observed that if it "demonstrate[d] that a law regulates activity 'falling outside the scope of

the right [to bear arms] as originally understood,' the activity is not constitutionally protected." [R.A.112] (quoting *Bruen*, 597 U.S. at 18).

Even though Carl had not separately analyzed the constitutionality of the False Statement charges under *Bruen* [R.A.65-66], the government argued that so-called "free-standing *Bruen* challenges to these sections have failed," and incorporated a list of cases that had examined and rejected such challenges to the False Statement statutes. [R.A.121, 126-29]. The government pointed out that, to its knowledge, no court had agreed with the contention that the False Statement statutes were unconstitutional under *Bruen*. [R.A.121].

D. District Court's Decision

The district court granted defendants' motion to dismiss on February 5, 2025. [G.Add.1-16]. Addressing the § 922(g)(3) charges, the court first concluded that the first part of the *Bruen* framework—whether the text of the Second Amendment applied to the conduct in question—had been satisfied because Carl and Worster were among "the people" the Second Amendment was intended to protect. [G.Add.11-12]. Next, focusing on whether the government had met its burden under the second prong of *Bruen* by demonstrating that § 922(g)(3) was "consistent with the principles underpinning our historical tradition of regulating firearms" [G.Add.12] (citing *Bruen*, 597 U.S. at 24), the court held that the government's historical proof had fallen short. [G.Add.14-16]. "[L]aws disarming

mentally ill people and drug addicts—particularly those from states not in existence at the Founding," did not amount to persuasive evidence. [G.Add.15]. The court also discounted the relevance of historical intoxication statutes, which also dated only to the late nineteenth century, as persuasive historical analogues. [G.Add.15]. The court concluded that § 922(g)(3) placed too great a Second Amendment burden on users of controlled substances like Carl and Worster. [G.Add.15-16].

The court then summarily dismissed the False Statement charges against Carl because it concluded that their viability depended entirely on the status of her § 922(g)(3) charge, which the court had already declared unconstitutional. [G.Add.16]. The court did not analyze whether lying—the conduct prohibited by the False Statement statutes—fell within the scope of the Second Amendment to begin with; instead, it concluded that the False Statement statutes "necessarily" fell within the amendment's scope because they imposed conditions on purchasing firearms. [G.Add.16]. Completely disregarding the lists of cases the government had included with its written submission, the court faulted the government for failing to provide historical analogues to the False Statement statutes. [G.Add.16].

E. Motion to Reconsider

On February 13, 2025, the government filed a timely motion to reconsider the court's dismissal of the False Statement charges. [R.A.142-55]. The government recapped Carl's "derivative" argument—that because § 922(g)(3) violated the Second Amendment, any false statements she had made were immaterial under § 922(a)(6). [R.A.150]. The government pointed out that Carl had developed no constitutional arguments about those charges that would have required a detailed response under *Bruen*. [R.A.145 & n.4, 146-47].

The government then discussed how the court had misapplied the first prong of *Bruen* by simply assuming that the False Statement statutes "necessarily affected" protected Second Amendment conduct. [R.A.147]. The government explained that, in fact, the conduct implicated by the False Statement statutes did not fall within the scope of the Second Amendment. [R.A.147-50]. Based on well-established law, Carl was not entitled to lie to the government regardless of § 922(g)(3)'s constitutionality. [R.A.150-53, 164-65].

The district court denied reconsideration on March 24, 2025. [G.Add.17-20]. The court concluded that the relevant section of the government's original opposition memorandum was not sufficient to preserve the argument that the government made in its motion for reconsideration. [G.Add.18-19]. Even though the court acknowledged that the government's "new" arguments "may have merit,"

the court refused to consider them: "[R]eimposing charges based on arguments that the government did not make the first time would produce a far greater error of law—and of justice—than any that the government now wants to correct." [G.Add.19-20].

SUMMARY OF ARGUMENT

1. Section § 922(g)(3) temporarily disarms individuals from possessing firearms for as long as they remain habitual users of controlled substances like marijuana. Under the Supreme Court's framework in *Bruen*, § 922(g)(3) is "relevantly similar" to historical vagrancy laws, civil-commitment laws, and surety laws—all of which, at the time of the nation's founding, restricted the rights of people who habitually abused alcohol. Taken together, this historical trio exemplifies our country's longstanding tradition of temporarily disarming groups of individuals who pose a special danger of misusing firearms, a tradition into which § 922(g)(3)'s prohibitions fit quite comfortably. The rationale for the modern prohibition flows from the same principal as the historical ones: Habitual users of controlled substances are at least as "risky" a group when allowed to possess firearms as are habitual drunkards. And temporary disarmament, the burden that § 922(g)(3) imposes on the defendants' right to bear arms, is less onerous than the burdens imposed on habitual drunkards by § 922(g)(3)'s historical analogues.

The constitutionality of § 922(g)(3) is further supported by events that ensued after the Second Amendment's ratification. Unlike the use of alcohol, the use of marijuana and other controlled substances was not at all widespread at the time of the founding. There was thus no need for legislatures to address the dangers created by a combination of drugs and firearms until the late nineteenth and early twentieth century, when illegal drug use became both more common and more problematic.

Because our founding fathers had no reason to confront the problems created by marijuana and other controlled substances, the constitutionality of § 922(g)(3) deserves a "nuanced" analysis, one that views the modern prohibition in light of the general principles derived from the statute's historical analogues. It's indisputable that the combination of guns and drugs endanger public safety in a variety of ways, not only because of drugs' medical effects but also because of the crime and violence associated with them. The temporary disarmament of a discrete group of individuals for purposes of public safety is a constitutionally legitimate legislative remedy well supported by law as well as common sense; cases reaching a contrary result apply a rigid rather than "nuanced" view of relevant historical analogues. The fact that Congress has also created an independent statutory mechanism, 18 U.S.C. § 925(c), enabling habitual users to have their right to bear arms restored when they no longer pose a danger to the

public, underscores the limited nature of § 922(g)(3)'s prohibition. The district court therefore erred in holding that prosecuting the defendants for violating 18 U.S.C. § 922(g)(3) would violate their Second Amendment rights.

2. When defendant Carl purchased a firearm, she falsely represented to the government that she did not use marijuana. Although Carl's misstatements violated the truth-telling obligations imposed by 18 U.S.C. §§ 922(a)(6) and 924(a)(1)(A), the district court held that the false statements were immaterial. The court reasoned that Carl could not be penalized for her lies because it violated the Second Amendment to prohibit her, as a habitual user of controlled substances, from possessing a firearm. Refusing to reconsider its ruling, the district court brushed aside the government's contention that, in reaching this conclusion, the court had misapplied the *Bruen* framework. Even though the government pointed out that the no court had held §§ 922(a)(6) or 924(A)(1)(A) unconstitutional under *Bruen*, and even though the district court conceded that the government's position might have merit, the court explained that it would serve the interest of justice to nevertheless dismiss the charges against Carl.

The district court's holding ignores the well-established principle that an individual has no right to lie to the government even if the government's request for information is unconstitutional. By simply assuming without analysis that making false statements in connection with the purchase of firearms is conduct

protected by the Second Amendment, the district overlooked the necessary first part of *Bruen*'s two-part framework. As both district and appellate court cases have repeatedly held, however, the act of lying in connection with the purchase of firearms is *not* constitutionally protected conduct. Because the plain text of the Second Amendment does not cover the conduct in question, under *Bruen* the burden never shifted to the government to demonstrate that §§ 922(a)(6) and 924(a)(1)(A) are consistent with this nation's tradition of firearm regulation. The district court's misapplication of *Bruen* amounted to a manifest error of law and therefore represents an abuse of discretion.

ARGUMENT

I. Prosecuting Worster And Carl For Violations Of 18 U.S.C. § 922(g)(3) Does Not Violate Their Second Amendment Rights

A. Standard of Review

The district court's dismissal of the § 922(g)(3) counts in the indictment based on alleged violations of the Second Amendment raises a pure question of constitutional law subject to plenary review on appeal. *United States v. Stokes*, 124 F.3d 39, 42 (1st Cir. 1997); *see also, e.g.*, *United States v. Carter*, 752 F.3d 8, 12 (1st Cir. 2014) (claim that federal statute violates the Second Amendment is reviewed de novo).

B. Statutory and Precedential Framework

1. *Federal Marijuana Regulation*

Unlike alcohol, drugs were not widely used as intoxicants in the United States until the late nineteenth and early twentieth centuries. *See infra* pp. 28-31. Marijuana is no exception. *See infra* pp. 30-31. Prohibitions on narcotics and marijuana use accordingly did not emerge until around the 1880s and the early twentieth century, respectively. *See infra* pp. 29-32.

In 1970, Congress established a comprehensive federal system to regulate the trafficking of drugs that are subject to abuse. *See* Controlled Substances Act, Pub. L. 91-513, § 101, 84 Stat. 1236, 1242 (1970) (codified at 21 U.S.C. § 801). The Act classifies substances that have a "potential for abuse" in five schedules; Schedule I drugs, which include marijuana,[3] have "a high potential for abuse," no "currently accepted medical use in treatment in the United States," and lack "accepted safety for use" under medical supervision. 21 U.S.C. § 812(b)(1)-(5). Possessing *any* quantity of marijuana remains a federal crime regardless of whether a state has decriminalized it. *United States v. Pavao*, 134 F.4th 649, 656-57 (1st Cir. 2025).

[3] *See* Pub. L. No. 91-513, § 202(c), 84 Stat. 1236, 1249 (Schedule I(c)(10), codified at 21 U.S.C. § 812(c)).

2. *State Marijuana Regulation*

Although Rhode Island has legalized possession of up to one ounce of marijuana for recreational use, *State v. Li*, 297 A.3d 908, 921-22 & nn.11-12 (R.I. 2023), *cert. denied sub nom. Li v. Rhode Island,* 144 S. Ct. 1057 (2024), the state's action "did not alter or otherwise change marijuana's status as contraband because it did not declassify marijuana as a controlled substance, regardless of quantity." *Id.* at 923. Rhode Island permits the use of marijuana for medical purposes, but only in limited circumstances and when certified by a physician. *See* R.I. Gen. Laws §§ 21-28.6-1 to 21-28.6-19.

3. *The Gun Control Act of 1968*

Federal law has long restricted certain categories of individuals from possessing firearms. As relevant here, 18 U.S.C. § 922(g)(3) prohibits any person who "is an unlawful user of or addicted to" a controlled substance from possessing firearms. Congress enacted that provision's precursor as part of the Gun Control Act of 1968, Pub. L. No. 90-618, 82 Stat. 1213 (codified, *inter alia*, at 18 U.S.C. §§ 921-928). To address the "skyrocketing" rise in crime and gun violence and "to reduce the likelihood that [firearms would] fall into the hands of the lawless or those who might misuse them[,]" S. Rep. No. 89-1866, at 1 (1966), Congress sought to restrict "individuals who[,] by their previous conduct or mental condition or irresponsibility[,] have shown themselves incapable of handling a dangerous

weapon in the midst of an open society[,]" from accessing firearms. 114 Cong. Rec. 21,809-10 (1968) (statement of Rep. Tenzer). The Gun Control Act's restrictions accord with the legislative goal of "keep[ing] firearms out of the hands of presumptively risky people" such as felons, the mentally ill, fugitives from justice, and unlawful drug users. *Dickerson v. New Banner Inst., Inc.*, 460 U.S. 103, 112 n.6 (1983).

4. *The* Bruen/Rahimi *Framework*

In the past two decades, the Supreme Court has clarified our understanding of the Second Amendment.[4] The Court has made clear that the Second Amendment protects the right of "law abiding, responsible citizens" to keep firearms in their homes for self-defense, not "to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose." *District of Columbia v. Heller*, 554 U.S. 570, 626, 635 (2008). Although the Court considers some firearms regulations to be "presumptively lawful," all firearms regulations

[4] This Court has reviewed the evolution of the Supreme Court's Second Amendment analysis and applied the revised analytical framework in several recent decisions, including *Capen v. Campbell*, 134 F.4th 660, 665, 669-74 (1st Cir. 2025), *United States v. Langston*, 110 F.4th 408, 417-20 (1st Cir.), *cert. denied*, 145 S. Ct. 581 (2024), and *Ocean State Tactical, LLC v. Rhode Island*, 95 F.4th 38, 43-52 (1st Cir. 2024), *cert. denied*, __ S. Ct. __, 2025 WL 1549866 (June 2, 2025).

must submit to the two-part analysis set out in *Bruen* and, more recently, in *United States v Rahimi*, 602 U.S. 680 (2024).[5]

Under the first step of *Bruen*'s framework, "[w]hen the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct." *Bruen*, 597 U.S. at 17. Once it is clear that the conduct falls within the amendment's scope, the government must justify regulation of the conduct by "demonstrat[ing] that regulation is consistent with this Nation's historical tradition of firearm regulation." *Id.*

In "determining whether a historical regulation is a proper analogue for a distinctly modern firearm regulation," *Bruen* directs courts to assess "whether the two regulations are 'relevantly similar.'" *Id.* at 28-29 (citation omitted). This involves considering "how and why the regulations burden a law-abiding citizen's right to armed self-defense." *Id.* at 29. In other words, do the "modern and historical regulations impose a comparable burden on the right of armed self-defense[,] and . . . [are those respective] burden[s] comparably justified[?]" *Id.* Only after the government makes the regulatory showing "may a court conclude

[5] "Presumptively lawful" firearms regulations include "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." *Heller*, 554 U.S. at 626-27 & n.26; *McDonald v. City of Chicago*, 561 U.S. 742, 786 (2010); *Bruen*, 597 U.S. at 30; *Bruen*, 597 U.S. at 81 (Kavanaugh, J., concurring); *Rahimi*, 602 U.S. at 699; *see, e.g.*, *Langston*, 110 F.4th at 419-20.

that the individual's conduct falls outside the Second Amendment's 'unqualified command.'" *Id.* at 17.

Importantly, *Bruen* recognized that "[t]he regulatory challenges posed by firearms today are not always the same as those that preoccupied the Founders in 1791 or the Reconstruction generation in 1868." *Id.* at 27; *see also, e.g.*, *Ocean State Tactical*, 95 F.4th at 50-51, 52. Thus, when considering "modern regulations that were unimaginable at the founding," the historical inquiry "will often involve reasoning by analogy[.]" *Bruen*, 597 U.S. at 28; *Ocean State Tactical*, 95 F.4th at 44-45, 49. In so doing, courts should consider "whether the challenged regulation is consistent with the principles that underpin our regulatory tradition." *Rahimi*, 602 U.S. at 692. Although "the new law" must be "'relevantly similar' to laws that our tradition is understood to permit," *id.* (citation omitted), "a 'historical *twin*'" "is not required." *Id.* at 701 (citation omitted); *see also, e.g.*, *Ocean State Tactical*, 95 F.4th at 50-52 (discussing and applying *Bruen*, and observing that Second Amendment does not prohibit firearms regulation that accommodates ramifications of new technology and societal concerns that the founders could not have confronted).

Additionally, a court may rely upon a combination of different historical firearm regulations to support the validity of a modern-day firearm prohibition. For example, in upholding 18 U.S.C. § 922(g)(8) under the Second Amendment,

the *Rahimi* Court relied upon both "surety" laws (which authorized magistrates to require individuals suspected of future misbehavior to post a bond), and "going-armed" laws (which supplied a mechanism for punishing those who had menaced others with firearms). *See Rahimi*, 602 U.S. at 690, 693-98. "Taken together," these sets of historical statutes "confirm" that "[w]hen an individual poses a clear threat of physical violence to another, the threatening individual may be disarmed." *Id.* at 698.

Rahimi illustrates that, under *Bruen*, [m]odern regulations must rest on historical 'principles' but need not squeeze into narrower historical 'mold[s].'" *United States v. Harris*, __ F.4th __, 2025 WL 1922605, at *2 (3d Cir. July 14 , 2025) (quoting *Rahimi*, 602 U.S. at 692 (majority opinion), and *id.* at 740 (Barrett, J., concurring)). "[A] test that demands overly specific analogues" would present "serious problems[,]" including "assum[ing] that founding-era legislatures maximally exercised their power to regulate," and "forc[ing] 21st-century regulations to follow late-18th-century policy choices." *Rahimi*, 602 U.S. at 739-40 (Barrett, J., concurring); *accord Ocean State Tactical*, 95 F.4th at 50 ("It defies reason to say that legislatures can only ban a weapon if they ban it at (or around) the time of its introduction, before its danger becomes manifest."). Courts that require the government to demonstrate "relevant similarity" at too granular a level run the risk of creating the sort of "regulatory straitjacket" that *Bruen* frowns upon.

See Bruen, 597 U.S. at 30. By the same token, of course, "a court must be careful not to read a principle at such a high level of generality that it waters down the right." *Rahimi*, 602 U.S at 740 (Barrett, J., concurring) (observing that the *Rahimi* court "settle[d] on just the right level of generality.").

C. Section 922(g)(3) is constitutional as applied to these defendants.

In *Rahimi*, the Supreme Court recognized that our nation's tradition of firearm regulation permits the "temporary disarmament" of persons who pose a "clear" danger of "misusing firearms." 602 U.S. at 690, 698, 699. *Rahimi* involved one element of that tradition: "prohibition[s] on the possession of firearms by those found by a court to present a threat to others." *Id.* at 698. The case at bar involves another element of this same tradition of temporary disarmament: "laws banning the possession of guns by categories of persons thought by a legislature to present a special danger of misuse," with the length of the deprivation limited to the duration of that danger. *Id*. at 698-99.

As the government argued to the district court [R.A.85-88 & nn.3-4, 116-21 & nn.3-5] (discussing laws depriving "presumptively risky" people of firearms), "founding-era legislatures categorically disarmed groups whom they judged to be a threat to the public safety"—including loyalists, rebels, and persons convicted of certain crimes. *Kanter v. Barr*, 919 F.3d 437, 458 (7th Cir. 2019) (Barrett, J., dissenting), *overruled on other grounds by*, *Bruen*, 597 U.S. 1 (2022); *see also id.*

at 454-58 (Barrett, J., dissenting) (discussing historical and scholarly sources). After the country's founding, American legislatures continued to enact laws that restricted the possession of arms by groups such as persons of unsound mind[6] and vagrants[7]. And in *Heller*, this Court described bans on the possession of firearms by "felons and the mentally ill" as "presumptively lawful regulatory measures." 554 U.S. at 626-27 & n.26.

The Court should review any modern firearm restriction using the usual tools of Second Amendment interpretation: "pre-ratification history, post-ratification history, and precedent." *Rahimi*, 602 U.S. at 719 (Kavanaugh, J., concurring). Application of these tools of constitutional interpretation to § 922(g)(3) reveals that it completely complies with the Second Amendment. The statute targets habitual users of unlawful drugs, a discrete category of persons who

[6] *See* Act of Feb. 4, 1881, ch. 3285, No. 67, § 1, 1881 Fla. Laws 87; Act of Mar. 5, 1883, ch. 105, § 1, 1883 Kan. Sess. Laws 159; Act of Feb. 17, 1899, ch. 1, § 52, 1899 N.C. Pub. Laws 3, 20-21.

[7] *See* Act of Aug. 1, 1878, ch. 38, § 2, 1878 N.H. Laws 170; Act of Nov. 26, 1878, No. 14, § 3, 1878 Vt. Acts & Resolves 29, 30; Act of Mar. 4, 1879, ch. 188, § 4, 1879 Wis. Sess. Laws 273, 274; Act of Mar. 12, 1879, ch. 198, § 2, 1879 N.C. Sess. Laws 355; Act of Mar. 27, 1879, ch. 59, § 4, 1879 Conn. Pub. Acts 393, 394; Act of Mar. 27, 1879, ch. 155, § 8, 16 Del. Laws 223, 225 (1879); Act of Apr. 30, 1879, No. 31, § 2, 1879 Pa. Laws 33, 34; Act of June 12, 1879, § 2, 1879 Ohio Laws 192; Act of Apr. 9, 1880, ch. 806, § 3, 1880 R.I. Acts & Resolves 110; Act of Apr. 24, 1880, ch. 257, § 4, 1880 Mass. Acts 231, 232; Act of May 5, 1880, ch. 176, § 4, 1880 N.Y. Laws, Vol. 2, at 296, 297; Miss. Rev. Code ch. 77, § 2964 (1880); Act of May 3, 1890, ch. 43, § 4, 1890 Iowa Acts 68, 68-69.

pose a clear danger of misusing firearms. Moreover, the statute bars their possession of firearms only temporarily; anyone who stops habitually using illegal drugs can resume possessing firearms. As discussed below, founding-era history, post-ratification history, and precedent all support the congressional judgment underlying this firearm restriction.

1. ***Founding-era laws restricting the rights of drunkards are appropriate historical analogues to § 922(g)(3).***

Because "[c]onstitutional rights are enshrined with the scope they were understood to have when the people adopted them," *Heller*, 554 U.S. at 634-35, the most important historical evidence of the Second Amendment's meaning dates to the founding era. *See Rahimi*, 602 U.S. at 719-23 (Kavanaugh, J., concurring). An examination of the historical record reveals that § 922(g)(3) is both closely analogous to, and less restrictive than, founding-era laws which, in various ways, restricted the rights of "drunkards," *i.e.*, persons who habitually abused alcohol. Three types of historical laws—vagrancy laws, civil-commitment laws, and surety laws—are relevant to the analysis. As in *Rahimi*, 602 U.S. at 698, these three sets of laws can be "taken together" to confirm a historical tradition of temporarily

disarming groups of individuals whose likely misuse of firearms poses a special danger to public safety.[8]

The first group of historical analogues involves legislative attempts to use vagrancy laws to grapple with the problems caused by habitual abusers of alcohol. Laws prohibiting vagrancy "have been a fixture of Anglo-American law at least since the time of the Norman Conquest." *City of Chicago* v. *Morales*, 527 U.S. 41, 103 (1999) (Thomas, J., dissenting) (collecting sources). During the eighteenth century, many American legislatures classified "common drunkards" as vagrants, a designation that subjected such individuals to imprisonment or confinement in workhouses.[9] States continued to enact such laws throughout the nineteenth

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[8] Despite its reliance on an analysis of history, *Bruen*'s framework presents a pure question of constitutional interpretation. *See, e.g.*, *Zherka v. Bondi*, 140 F.4th 68, 74 (2d Cir. 2025) (Parties' dispute over whether certain historical analogues establish a history and tradition of firearms regulation under *Bruen* "raises only questions of constitutional interpretation[.]"). In performing its *Bruen* analysis, this Court may therefore properly consider historical analogues in addition to those cited to the district court below. *See Pavao*, 134 F.4th at 656 ("[A] reviewing court is free to consider authorities regarding a properly preserved argument even if those authorities are proffered for the first time on appeal . . . .") (citations omitted); *cf. Mendoza v. Bondi*, 133 F.4th 139, 145 (1st Cir. 2025) (considering petitioner's argument, which was "at most an additional argument in support of that [preserved] claim") (citing *Yee v. City of Escondido*, 503 U.S. 519, 534-35 (1992)).

[9] *See* Act of June 29, 1699, ch. 8, § 2, 1 *Acts & Resolves, Pub. & Priv., of the Province of Mass. Bay (1692-1714)* 378 (Boston, Wright & Potter 1869); Act of May 14, 1718, ch. 15, 2 *Laws of New Hampshire (1702-1745)* 266 (Albert Stillman Batchellor ed., 1913); Act of Oct. 1727, *Pub. Recs. of the Colony of Conn., from*

Footnote continued…

century, including during the period surrounding the adoption of the Fourteenth Amendment.[10] As one prominent nineteenth-century criminal-law treatise recognized, multiple States had enacted "statutes against being a common drunkard." 2 Joel Prentiss Bishop, *Commentaries on the Criminal Law* § 267 (Boston, Little, Brown & Co. 1858). And toward the end of the century, the Supreme Court described the "restraint" of "habitual drunkards" as a well-established aspect of the States' power to protect "public safety, health, and morals." *Lawton* v. *Steele*, 152 U.S. 133, 136 (1894).

Second, some legislatures addressed alcohol abuse through civil-commitment statutes rather than criminal vagrancy laws. Over the course of the nineteenth century, Congress (legislating for the District of Columbia) and multiple States enacted laws providing for "habitual drunkards" to be committed to asylums

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May, 1727, to May, 1735, Inclusive 127, 128-29 (photo reprt. 1968) (Charles J. Hoadly ed., Hartford, Lockwood & Brainard 1873); Act of June 10, 1799, §§ 1, 3, *Laws of the State of New-Jersey* 473, 473-74 (1821).

[10] *See* Act of Feb. 22, 1825, ch. 297, § 4, 1825 Me. Pub. Acts 1032, 1034; Act of Mar. 15, 1865, ch. 562, §§ 1-2, 1865 R.I. Acts & Resolves 197; Act of Dec. 15, 1865, No. 107, 1865-1866 Ala. Acts 116; Act of June 2, 1871, No. 1209, § 2, 1871 Pa. Laws 1301, 1301-02; Act of Feb. 14, 1872, pt. I, tit. 15, ch. 2 § 13,647, 2 *Codes and Stat. of Cal.* 1288 (Theodore H. Hittell ed., 1876); Act of Mar. 7, 1873, ch. 114, § 1, 1873 Nev. Stat. 189, 189-90; Act of Feb. 18, 1876, § 378, *Compiled Laws of the Terr. of Utah* 647 (1876); Act of Feb. 22, 1881, § 1, 1881 Mont. Terr. Laws 81, 81-82; Act of Feb. 4, 1885, § 1, 1884-1885 *Gen. Laws of Terr. of Idaho* 200; Act to Establish a Penal Code, tit. 17, § 1014, Ariz. Terr. Rev. Stat. 679, 753-54 (1887).

or placed under guardianship in the same manner as "'lunatics.'" *Kendall* v. *Ewert*, 259 U.S. 139, 146 (1922) (citation omitted).[11]

Finally, surety laws represented a third method of dealing with the social impact of chronic alcoholism. Surety laws originated more than a millennium ago and were "[w]ell entrenched in the common law." *Rahimi*, 602 U.S. at 695. Under those laws, magistrates could compel certain persons who posed a risk of future misbehavior to post bond. *See id.* A person who failed to post bond would be jailed, while a person who posted bond but then misbehaved would forfeit the bond. *See id.* Importantly for present purposes, surety laws traditionally extended

[11] *See, e.g.*, Act of Apr. 12, 1827, § 1, *reprinted in Laws of the Terr. of Mich. (1806-1830)*, Vol. 2, at 584-85 (Lansing, Mich., W.S. George & Co. 1874); Ark. Rev. Stat., ch. 78, § 1, at 455, 456 (William M. Ball & Sam C. Roane eds., 1838) (codifying Act of Feb. 20, 1838); Minn. Terr. Rev. Stat. ch. 67, § 12, at 278 (1851); Act of Mar. 3, 1853, ch. 89, § 1, 1853 N.J. Acts 237; Act of Feb. 7, 1856, ch. 38, § 1, 1855-1856 N.M. Terr. Laws 94 (1856); Act of Mar. 27, 1857, ch. 184, §§ 9-10, 1857 N.Y. Laws, Vol. 1, at 429, 431; Act of Mar. 5, 1860, ch. 386, §§ 6-7, 1860 Md. Laws 601, 603-04; Ga. Code, pt. 2, tit. 2, ch. 3, art. 2, § 1803, at 358 (R.H. Clark et al. eds., 1861); Act of Feb. 1, 1866, No. 11, § 10, 1866 Pa. Laws 8, 10; Act of Mar. 2, 1868, ch. 60, § 5, *Gen. Stat. of Kan.* 552, 553 (John M. Price et al. eds., 1868); Act of Mar. 17, 1870, ch. 131, § 1, 1870 Wis. Gen. Laws 197; Act of Apr. 1, 1870, ch. 426, § 2, 1869-1870 Cal. Stat. 585, 585-86; Act of Jan. 5, 1871, § 1, 68 *Ohio Gen. & Loc. Laws & Joint Resols.* 6 (1871); Act of Feb. 21, 1872, § 1, 1872 Ill. Laws 477; Act of Mar. 28, 1872, ch. 996, §§ 10-11, 1872 Ky. Acts, Vol. 2, at 521, 523-524; Act of Apr. 17, 1873, ch. 57, §§ 1-3, 1873 Miss. Laws 61, 61-62; Act of July 25, 1874, ch. 113, § 1, 1874 Conn. Pub. Acts 256; Act of Mar. 30, 1876, ch. 40, § 8, 19 Stat. 10 (D.C.); Act of Aug. 18, 1876, ch. 112, § 147, 1876 Tex. Gen. Laws 175, 188; Act of June 18, 1885, ch. 339, §§ 1-3, 1885 Mass. Acts 790; Act of May 1, 1890, ch. 42, § 1, 1890 Iowa Acts 67; Act of July 8, 1890, No. 100, § 1, 1890 La. Acts 116.

to "common drunkards." 4 William Blackstone, *Commentaries on the Laws of England* 256 (10th ed. 1787). American justice-of-the-peace manuals from the founding era explained that magistrates could require "common drunkards" to post bond for good behavior.[12]

Section 922(g)(3) is "'relevantly similar'" to these three sets of historical laws in both "why and how" the modern statute burdens arms-bearing conduct. *Rahimi*, 602 U.S. at 698 (citation omitted). As to the "why," the historical and modern statutes share a common justification. Like its historical precursors, which addressed the risks posed by individuals "in the habit of getting drunk," *State* v. *Pratt*, 34 Vt. 323, 324 (1861) (defining "habitual drunkard"),[13] § 922(g)(3) addresses the risks to public safety posed by persons who habitually use

[12] *See* Eliphalet Ladd, *Burn's Abridgement, or the American Justice* 405-06 (2d ed. 1792) (N.H.) (magistrate had discretion to require surety bond "of all those whom he shall have just cause to suspect to be dangerous, quarrelsome or scandalous . . . [including] common drunkards") (spelling cleaned up); to the same effect see also James Parker, *Conductor Generalis* 422 (Woodbridge, N.J., James Parker prtg. 1764) (N.J.); James Parker, *Conductor Generalis* 348 (New York, N.Y., Hugh Gaine prtg. 1788) (N.Y.); James Parker, *Conductor Generalis* 347-48 (Philadelphia, Pa., Robert Campbell prtg. 1792) (Pa.); *see also Harris*, 2025 WL 1922605, at *3, *6, *7 (collecting sources).

[13] *See also* 9 Am. & Eng. Encyc. L. 813-15 (David S. Garland & Lucius P. McGehee eds., Northport, N.Y., Edward Thompson Co. 2d ed. 1898) (defining "habitual drunkard").

intoxicating substances.[14] If anything, § 922(g)(3) rests on an even stronger justification than historical laws regulating the conduct of drunkards because of the unique dangers posed by habitual users of unlawful controlled substances. *See infra* pp. 33-38.

Next under the *Bruen*/*Rahimi* framework is a review of the "how"—whether the historical and modern statutes impose comparable burdens on individual rights. Here, too, the burden that § 922(g)(3) imposes fits within our nation's regulatory tradition because the restriction it creates is simply one of temporary disarmament. Vagrancy and civil-commitment laws, on the other hand, subjected drunkards to confinement in prisons, workhouses, or asylums. As *Rahimi* reasoned, "if imprisonment was permissible to respond" to a problem at the founding, "then the lesser restriction of temporary disarmament" will often also be permissible to respond to a similar problem today. 602 U.S. at 699; *see also id.* at 772 (Thomas, J., dissenting) ("imprisonment . . . involved disarmament"). Surety laws imposed the same sort of temporary restrictions on drunkards' rights; as *Rahimi* concluded,

[14] This Court has long defined § 922(g)(3) to include habitual users of controlled substances. *See, e.g.*, *United States* v. *Marceau*, 554 F.3d 24, 30 (1st Cir. 2009) ("[A]n 'unlawful user' is one who engages in regular use [of a controlled substance] over a long period of time proximate to or contemporaneous with the possession of the firearm.") (cleaned up); *United States v. Caparotta*, 676 F.3d 213, 216 (1st Cir. 2012) (same); *United States v. Tanco-Baez*, 942 F.3d 7, 15 (1st Cir. 2019); *United States v. Espinoza-Roque*, 26 F.4th 32, 35 (1st Cir. 2022) (same).

the burden imposed by surety laws is comparable to the burden of "temporary disarmament." *Id.* at 699; *see also Harris*, 2025 WL 1922605, at *6 (temporary disarmament imposed by § 922(g)(3) is less burdensome than imprisonment).

Section 922(g)(3), moreover, provides more robust procedural protections to habitual drug users in possession of firearms than its analogous forebears did to habitual drunkards. *See Rahimi*, 602 U.S. at 696-97 (treating procedural protection as an aspect of the burden imposed on the right to bear arms). Founding-era vagrancy laws allowed a justice of the peace to determine in a summary criminal proceeding whether the defendant was a drunkard. See *District of Columbia v. Clawans*, 300 U.S. 617, 624 & n.1 (1937). Civil-commitment and surety laws directed that civil proceedings be used to adjudicate a defendant's status. *See, e.g.*, *Rahimi*, 602 U.S. at 695-98. In comparison, under § 922(g)(3), Worster and Carl have the right to a full criminal trial in which the government bears the burden of proving to a jury, beyond a reasonable doubt, that each of them was a habitual user of an unlawful drug when they possessed a firearm. *See, e.g., Tanco-Baez*, 942 F.3d at 15; *cf. United States v. Rehlander*, 666 F.3d 45, 47-50 (1st Cir. 2012) (to avoid violating Second Amendment in connection with application of Maine statute, Court interpreted § 922(g)(4) to prohibit firearm possession by mentally ill person only after that person was adjudicated mentally ill in an adversary proceeding).

In sum, § 922(g)(3) regulates a category of persons—habitual drug users who seek to possess firearms—that is closely analogous to that of habitual drunkards, a group of presumptively risky persons subject to similar or even more onerous restrictions during the founding era. That "relevantly similar" history suffices to establish the statute's constitutionality.

2. *Post-ratification history confirms § 922(g)(3)'s validity under* Bruen.

In cases of uncertainty about the Second Amendment's original meaning, post-ratification history can play an "important" role in elucidating the scope of constitutional rights. *See Rahimi*, 602 U.S. at 723 (Kavanaugh, J., concurring). Here, to the extent that the consultation of post-ratification history is necessary, that history confirms that § 922(g)(3)'s restriction on habitual drug users' possession of arms is constitutionally defensible. *See Ocean State Tactical*, 95 F.4th at 51.

The unlawful use of controlled substances was unprecedented at the country's founding. *See United States v. Alaniz*, 69 F.4th 1124, 1129 (9th Cir. 2023) (upholding under *Bruen* sentencing enhancement for possessing dangerous weapon during drug offense and observing that illegal drug trafficking "is a largely modern crime."); *United States* v. *Daniels*, 77 F.4th 337, 343 (5th Cir. 2023) (early Americans "were not familiar" with the widespread use of illegal drugs or with "the modern drug trade."), *vacated on other grounds by*, 144 S. Ct. 2707 (2024).

Unlike alcohol, drugs were not widely used as intoxicants in the United States until the late nineteenth and early twentieth centuries. *See, e.g.*, David F. Musto, *The American Experience with Stimulants and Opiates*, *in* 2 Nat'l Inst. of Just., *Persp. on Crime & Just.: 1997-1998 Lecture Series* 51, 63-67 (1998); David F. Musto, *Introduction to Part II: Opiates, Cocaine, Cannabis, and Other Drugs*, *in Drugs in America: A Documentary History* 188-92 (David F. Musto ed., 2002) ("Musto, *Drugs in America*, at __"); Erik Grant Luna, *Our Vietnam: The Prohibition Apocalypse*, 46 DePaul L. Rev. 483, 487 (1997) (Despite the medical use of narcotics, "narcotics addiction was a negligible phenomenon in the eighteenth and nineteenth centuries.").[15]

[15] The fact that founding-era laws addressed firearm use by persons intoxicated by alcohol does *not* demonstrate that concerns about unlawful drug users existed at the time of the founding as well. With certain exceptions, alcohol has been legal throughout American history; indeed, the Controlled Substances Act excludes from the definition of controlled substances "distilled spirits, wine, [and] malt beverages." 21 U.S.C. § 802(6). Except for the Prohibition era, alcohol use has generally not presented the same societal concerns about criminal association as do the purchase and use (not to mention trafficking) of unlawful drugs. *See, e.g.*, Changdae Baek, Note, *Ending the Federal Cannabis Prohibition: Lessons Learned from the History of Alcohol Regulations, Twenty-First Amendment, and Dormant Commerce Clause Jurisprudence*, 71 Case W. Res. L. Rev. 1323, 1334 (2021) (concerning relationship between alcohol prohibition and organized crime); *United States v. Carter*, 750 F.3d 462, 467-70 (4th Cir. 2014) (discussing studies demonstrating the "strong link" between drug use, including use of marijuana, and violence); *see also infra* pp. 33-38. Thus, although alcohol-related historical statutes provide relevant historical analogues supporting § 922(g)(3)'s constitutionality, differences in the scope of these laws are readily explained by distinct concerns posed by the use of *unlawful* substances.

This is true for marijuana as well. There are "almost no accounts or reports" of "cannabis being used as an intoxicant during the period when the plant was widely cultivated as an agricultural commodity." John Rublowsky, *The Stoned Age: A History of Drugs in America* 98 (1974); *see also id.* at 100 (suggesting that widespread consumption of alcohol was one reason cannabis was not in wide use as an intoxicant); *Harris*, 2025 WL 1922605, at *10 (Krause, J., concurring) (noting that habitual marijuana use was "virtually nonexistent" at the founding and collecting sources). Nor is there evidence that enslaved persons used cannabis as an intoxicant, despite its use in Africa. Elizabeth Kelly Gray, *Habit Forming: Drug Addiction in America, 1776-1914* 73 (2023). It was not until the early twentieth century that people began smoking marijuana recreationally, *Harris*, 2025 WL 1922605, at *10 (Krause, J., concurring), and, even by the 1930s, Americans lacked "any lengthy or broad experience" with marijuana, Musto, *Drugs in America*, *supra* p. 29, at 192. Legislative prohibitions on the use of marijuana did not emerge until the early twentieth century. *See* U.S. Pub. Health Serv., *State Laws Relating to the Control of Narcotic Drugs and the Treatment of Drug Addiction* 1-9 (1931) ("*State Laws*"); *see also Harris*, 2025 WL 1922605, at *11 (Krause, J. concurring).

Because the use of unlawful drugs was not widespread at the founding, there was no need for a firearm prohibition like § 922(g)(3) in that era. *Cf. Ocean State*

Tactical, 95 F.4th at 44. But predictably, as illegal drug use became more societally problematic, legislative regulation of the relevant conduct increased. American society began to appreciate the harmful effects of drug use in the late nineteenth century, and legislatures had begun to regulate drugs by the early twentieth century.[16] Prohibitions on the use of narcotics and marijuana emerged around the 1880s and the early twentieth century, respectively. *See State Laws*, *supra* p. 30, at 1-9 (describing development of state-level laws); *see also* Bonnie & Whitebread, *supra* note 16, at 985-86 (reviewing state legislative response before 1914), and 1010 (noting Utah passed first state prohibition on cannabis sale or possession in 1915); *Harris*, 2025 WL 1922605, at *11 (Krause, J., concurring).

Around the same time, legislatures also started addressing the risks posed by the combination of drugs and guns. *See* pp. 33-38, *infra*. In the 1920s and 1930s, legislatures started to prohibit drug addicts or drug users from possessing, carrying, or purchasing handguns.[17] In 1932, Congress prohibited the sale of pistols to drug

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[16] *See* Richard J. Bonnie & Charles H. Whitebread, II, *The Forbidden Fruit and the Tree of Knowledge: An Inquiry into the Legal History of American Marijuana Prohibition*, 56 Va. L. Rev. 971, 985-87 (1970) ("Bonnie & Whitebread").

[17] *See* Act of Apr. 29, 1925, ch. 284, § 4, 1925 Mass. Acts 323, 324; Act of Mar. 30, 1927, ch. 321, § 7, 1927 N.J. Acts 742, 745; Act of June 11, 1931, No. 158, § 8, 1931 Pa. Laws 497, 499; Act of June 19, 1931, ch. 1098, § 2, 1931 Cal. Stat. 2316, 2316-17; Act of Feb. 21, 1935, ch. 63, § 6, 1935 Ind. Acts 159, 161; Act of Mar. 14, 1935, ch. 208, § 8, 1935 S.D. Sess. Laws 355, 356; Act of Mar. 23, 1935, ch. 172, § 8, 1935 Wash. Sess. Laws 599, 601; Act of Apr. 6, 1936, No. 82, § 8,

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addicts in the District of Columbia. *See* Act of July 8, 1932, § 7, 47 Stat. 650, 652 (D.C.). And in 1968, Congress enacted § 922(g)(3) as part of the Gun Control Act, thereby disarming drug users and addicts nationwide. *See* Pub. L. No. 90-618, § 102, 82 Stat. 1213, 1220 (1968). Today, at least 32 States and territories have laws restricting the possession of firearms by drug users or addicts.[18]

As this history demonstrates, the practice of disarming drug users is as old as legislative recognition of the drug problem itself. As this history also demonstrates, however, legislatures had no reason to disarm drug users during the founding era. Consequently a more nuanced approach is now required, *see Ocean State Tactical*, 95 F.4th at 44, one which applies a general principle forming part of

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1936 Ala. Laws 51, 52; Act of July 8, 1936, No. 14, § 2, 1936 P.R. Acts & Resols. 3d Spec. Sess. 128.

[18] *See* Ala. Code § 13A-11-72(b); Ark. Code Ann. § 5-73-309(7)(A); Cal. Penal Code § 29800(a)(1); Colo. Rev. Stat. § 18-12-203(1)(f); Del. Code Ann. tit. 11, § 1448(a)(3); D.C. Code § 7-2502.03(a)(4)(A); Fla. Stat. § 790.06(2)(e) & -(f); Ga. Code Ann. § 16-11-129(b)(2)(I) & -(J); 10 Guam Code Ann. § 60109.1(b)(5) & -(6); Haw. Rev. Stat. § 134-7(c)(1); Idaho Code § 18-3302(11)(e); 720 Ill. Comp. Stat. 5/24-3.1(a)(3); Ind. Code §§ 35-47-1-7(5), 35-47-2-3(g), 35-47-2-5(b); Kan. Stat. Ann. § 21-6301(a)(10); Ky. Rev. Stat. Ann. § 237.110(4)(d); Md. Code Ann., Public Safety § 5-133(b)(7); Mass. Gen. Laws ch. 140, § 131(d)(iii)(A); Minn. Stat. § 624.713(10)(iii); Mo. Rev. Stat. § 571.070.1(2); Nev. Rev. Stat. § 202.360(1)(f); N.J. Stat. Ann. § 2C:58-3.c.(3); N.Y. Penal Law § 400.00.1(e); N.C. Gen. Stat. § 14-415.12(b)(5); 6 N. Mar. I. Code § 10610(a)(3); Ohio Rev. Code Ann. § 2923.13(A)(4); P.R. Laws Ann. tit. 25, § 462a(a)(3); R.I. Gen. Laws § 11-47-6; S.C. Code Ann. § 16-23-30(A)(1); S.D. Codified Laws § 23-7-7.1(3); Utah Code Ann. § 76-10-503(1)(b)(iv); V.I. Code Ann. tit. 23, § 456a(a)(3); W. Va. Code § 61-7-7(a)(3).

the Second Amendment's original meaning to a problem whose societal impact the Founders did not have reason to confront. To the modern scourge of illegal drugs (a problem that was not apparent in colonial times), § 922(g)(3) simply applies a generally accepted historical principle: Legislatures may temporarily restrict the possession of firearms by certain categories of persons who pose a clear danger of misuse. To the extent that this Court consults post-ratification history, therefore, that history provides further support for § 922(g)(3)'s validity.

3. ***Like their historical analogues, habitual drug users pose a clear danger of misusing firearms.***

There can be no doubt that, like other groups whom legislatures have historically barred from using firearms, habitual drug users constitute a category of people that the legislature has the right to temporarily disarm in order to maintain public safety. As federal courts have repeatedly recognized, "drugs and guns are a dangerous combination." *Smith* v. *United States*, 508 U.S. 223, 240 (1993), *overruled on other grounds by*, *Bailey v. United States*, 516 U.S. 137 (1995).[19]

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[19] *See also, e.g., Rosemond* v. *United States*, 572 U.S. 65, 75 (2014) (18 U.S.C. § 924(c) punishes the conjunction of firearms and drug trafficking offenses "on the ground that together they pose an extreme risk of harm"); *Muscarello* v. *United States*, 524 U.S. 125, 132 (1998) (purpose of § 924(c) is "to combat the 'dangerous combination' of 'drugs and guns'") (citation omitted); *Richards* v. *Wisconsin*, 520 U.S. 385, 391 n.2 (1997) ("This Court has encountered before the links between drugs and violence[.]"); *see also Carter*, 750 F.3d at 466-70 (discussing research supporting strong link between drug use, including marijuana use, and violence); *Wilson v. Lynch*, 835 F.3d 1083, 1093-94 (9th Cir. 2016) (same); *United States v.*

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Armed drug users endanger society in multiple ways. First, habitual drug users have a demonstrated propensity to violate the criminal law. Simple possession of a controlled substance, including marijuana, is a crime, *see* 21 U.S.C. § 844(a); 21 C.F.R. § 1308.11(d)(23), and a habitual drug user is in the habit of committing that crime. Habitual criminals pose a substantially greater danger of misusing firearms than do the "ordinary, law-abiding citizens" on which *Bruen* focused. *See* 597 U.S. at 9.

Second, habitual drug users can pose a danger of misusing firearms because of "drug-induced changes in physiological functions, cognitive ability, and mood[.]" *Harmelin* v. *Michigan*, 501 U.S. 957, 1002 (1991) (Kennedy, J., concurring in part and concurring in the judgment). As the facts of many cases make clear, the physiological, cognitive, and mood-based effects of many illegal drugs—such as cocaine, methamphetamine, heroin, phencyclidine (PCP), and fentanyl—present grave risks of firearm misuse.[20] Similarly, studies indicate that

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Carter, 669 F.3d 411, 418-21 & n.* (4th Cir. 2012) (collecting authorities, and outlining how government can establish risk of danger arising from mix of firearms with marijuana and other drugs, whether the defendant is a drug trafficker or simply a drug user); *United States v. Luciano*, 329 F.3d 1, 6 (1st Cir. 2003) (discussing links between firearms and drug trafficking); *United States v. Green*, 887 F.2d 25, 27 (1st Cir. 1989) (per curiam) ("This circuit and others have recognized that in drug trafficking firearms have become 'tools of the trade[.]'").

[20] *See, e.g.*, *Ochoa* v. *City of Mesa*, 26 F.4th 1050, 1057 (9th Cir. 2022) (plaintiff had "engaged in a domestic dispute that allegedly involved a gun while possibly

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the effects of marijuana intoxication include an altered "perception of time," "decreased short-term memory," and "impaired perception and motor skills." Nat'l Acads. of Scis,, Eng'g, & Med., *The Health Effects of Cannabis and Cannabinoids: The Current State of Evidence and Recommendations for Research* 53 (2017).[21] At higher doses, marijuana can cause "panic attacks, paranoid thoughts, and hallucinations." *Id.* Frequent marijuana use can prolong the consequences of its side effects, and the marijuana available for current consumption, which is "far more potent than it was several decades ago," may magnify the drug's risks as well. *Harris*, 2025 WL 1922605, at *12, *13 (Krause, J., concurring).

Third, because drug users often "commit crime[s] in order to obtain money to buy drugs," *Harmelin*, 501 U.S. at 1002 (Kennedy, J., concurring in part and

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under the influence of heroin or meth"); *Avena* v. *Chappell*, 932 F.3d 1237, 1240-41, 1243-44 (9th Cir. 2019) (petitioner shot two people to death during carjacking that occurred while he was under influence of PCP; court discusses PCP intoxication syndrome); *cf. Hill* v. *Mitchell*, 400 F.3d 308, 312 (6th Cir. 2005) (petitioner stabbed mother to death; opinion discusses evidence of cocaine psychosis, and impact of petitioner's cocaine addiction on the murder).

[21] *See also, e.g., Wilson*, 835 F.3d at 1093-94 (collecting sources); *United States v. Yancey*, 621 F.3d 681, 686 (7th Cir. 2010) (same); *Carter*, 750 F.3d at 467-69 (same); *United States v. McDaniel*, No. 22-cr-0176, 2024 WL 2513641, at *7 (E.D. Wis. May 24, 2024) (same); *Harris*, 2025 WL 1922605, at *12-13 (Krause, J., concurring) (collecting and discussing studies on deleterious effects of marijuana use).

concurring in the judgment), they pose a danger of using firearms to facilitate those crimes. Even before § 922(g)(3)'s enactment, the President and Congress recognize[d] that drug use often motivates crime.[22] This Court also "recognize[s] that drug abuse is at the root of many crimes." *United States v. Fields*, 858 F.3d 24, 29 (1st Cir. 2017). And both the Supreme Court's and this Court's opinions are replete with examples of crimes prompted by drug habits.[23]

Fourth, "violent crime may occur as part of the drug business or culture." *Harmelin*, 501 U.S. at 1002 (Kennedy, J., concurring in part and concurring in the judgment). "'[F]irearms are common tools of the drug trade. . . The illegal drug

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[22] See H.R. Doc. No. 89-407, at 7 (1966) (presidential message) ("Drug addiction . . . drives its victims to commit untold crimes to secure the means to support their addiction."); H.R. Rep. No. 89-1486, at 8 (1966) ("Narcotic addicts in their desperation to obtain drugs often turn to crime in order to obtain money to feed their addiction."); S. Rep. No. 89-1667, at 13 (1966) (many drug users "are driven almost inevitably to commit criminal acts in order to obtain money with which to purchase illegal drugs").

[23] See, *e.g.*, *Ramirez* v. *Collier*, 595 U.S. 411, 458 (2022) (Thomas, J., dissenting) ("brutal slaying of a working father during a robbery spree to supply a drug habit"); *Andrus* v. *Texas*, 590 U.S. 806, 807 (2020) (per curiam) (committed crimes to "fund a spiraling drug addiction"); *Smith* v. *Texas*, 543 U.S. 37, 41 (2004) (per curiam) ("regularly stole money from family members to support a drug addiction"); *Bell* v. *Cone*, 535 U.S. 685, 703 (2002) ("committed robberies" in an "apparent effort to fund [a] growing drug habit"); *Burford* v. *United States*, 532 U.S. 59, 62 (2001) ("robberies" "motivated by her drug addiction"); *United States v. Maldonado-Peña*, 4 F.4th 1, 35, 51 (1st Cir. 2021) (government witnesses were drug addicts who sold drugs to finance their drug habit); *United States v. Palmer*, 203 F.3d 55, 57 (1st Cir. 2000) (defendant robbed convenience stores to get money to feed his drug habit).

industry is, to put it mildly, a dangerous, violent business. . . .'" *United States v. Basilici*, 138 F.4th 590, 599 (1st Cir. 2025) (citation omitted). Firearms increase the likelihood and lethality of drug violence. *See Smith*, 508 U.S. at 239 ("'[The] introduction [of firearms] into the scene of drug transactions dramatically heightens the danger to society.'") (citation omitted); *Harris*, 2025 WL 1922605, at *1 ("Guns and drugs can be a lethal cocktail."); *United States v. Castillo*, 979 F.2d 8, 10 (1st Cir. 1992) (observing that sentencing enhancement "'reflects the increased danger of violence when drug traffickers possess weapons'" regardless of whether perpetrator intended to use the weapon in course of drug offense) (citation omitted); *United States v. Lagasse*, 87 F.3d 18, 22 (1st Cir. 1996) (similar). Again, case law brims with examples.[24]

Finally, the risk of danger to the police increases when drug users are armed. "'[D]ue to the illegal nature of their activities, drug users and addicts would be more likely than other citizens to have hostile run-ins with law enforcement

[24] *See, e.g.*, *Rahimi*, 602 U.S. at 687 ("The first [shooting] . . . arose from Rahimi's dealing in illegal drugs."); *Brumfield v. Cain*, 576 U.S. 305, 327 (2015) (Thomas, J., dissenting) ("fatal shooting of a fellow drug dealer in a deal gone bad"); *Rosemond*, 572 U.S. at 67 (shooting arising from "a drug deal gone bad"); *United States v. McKinney*, 5 F.4th 104, 109 (1st Cir. 2021) (defendant recruited drug addicts to work for him, including having them buy firearms for the drug-trafficking conspiracy); *United States v. Rodriguez-Reyes*, 714 F.3d 1, 8 (1st Cir. 2013) ("There was extensive testimony that . . . [defendants] each discharged firearms with the purpose of protecting La Recta from threats to their business and/or expanding their drug operations.").

officers,'" and such encounters "'threaten the safety'" of the officers "'when guns are involved.'" *Carter*, 750 F.3d at 469 (citation omitted); *see also Michigan* v. *Summers*, 452 U.S. 692, 702 (1981) ("[T]he execution of a warrant to search for narcotics is the kind of transaction that may give rise to sudden violence[.]"). The grave risks that law enforcement officers face from confrontations with habitual drug users are thus greatly enhanced when the habitual users are armed.

4. *Section 922(g)(3) complies with constitutional constraints on legislatures' regulatory authority.*

Section 922(g)(3) is appropriately tailored to prevent the misuse of firearms by illegal drug users without exceeding the scope of Congress's authority under the Second Amendment. The statute applies only to habitual or regular users of illegal drugs, not to those who merely use drugs occasionally. *See, e.g., Marceau*, 554 F.3d at 30 ("[A]n 'unlawful user' is one who engages in regular use [of a controlled substance] over a long period of time proximate to or contemporaneous with the possession of the firearm."); *cf. Ludwick* v. *Commonwealth*, 18 Pa. 172, 174 (1851) ("Occasional acts of drunkenness * * * do not make one an habitual drunkard."). And because the statute applies only to a person who "*is* an unlawful user or addicted to any controlled substance," 18 U.S.C. § 922(g)(3) (emphasis added), the statutory restriction lasts only as long as the person's habitual drug use continues. *See, e.g., Carter*, 669 F.3d at 419 (§ 922(g)(3) does not permanently disarm individuals, but "only applies to persons who are *currently* unlawful users

or addicts."); *Harris*, 2025 WL 1922605, at *6 (burden imposed by § 922(g)(3) is temporary). The habitual drug user, in other words, always has the option of restoring his own right to keep and bear arms by simply forgoing the habitual use of unlawful drugs.[25] By the same token, however, if an individual lacks the motivation or will to comply with § 922(g)(3) because of addiction or other factors, that fact alone provides powerful evidence of society's interest in restricting his access to firearms.

Further, § 922(g)(3) imposes a limited burden on a discrete category of individuals. Like 18 U.S.C. § 922(g)(8), the statute upheld in *Rahimi*, and unlike the broadly applicable licensing schemes invalidated in *Bruen* and *Heller*, § 922(g)(3) "does not broadly restrict arms use by the public generally." *Rahimi*, 602 U.S. at 698. Although § 922(g)(3) imposes a significant restriction on a category of people—namely, habitual users of illegal drugs—the restriction results in "temporary" disarmament, just like the restriction imposed by § 922(g)(8). *See id.* at 699. And because § 922(g)(3) leaves the duration of the arms restriction up to the individual's control, *see supra* pp. 38-39 & n.25, in that sense the statute

[25] *See, e.g.*, *Carter*, 669 F.3d at 419 ("[I]t is significant that § 922(g)(3) enables a drug user who places a high value on the right to bear arms to regain that right by parting ways with illicit drug use."); *United States v. Espinoza-Melgar*, 687 F. Supp. 3d 1196, 1207 (D. Utah 2023) ("[Defendant] ultimately controls his right to possess a gun. . . . [G]iven the relative leniency of the possession ban created by § 922(g)(3)[, defendant] is prohibited from possessing firearms only while he is an unlawful drug user, not for the remainder of his life.").

imposes a less onerous burden than § 922(g)(8), which leaves the duration of the disarmament up to a court rather than to the individual. *See Rahimi*, 602 U.S. at 699*; see also Yancey*, 621 F.3d at 686-87 (characterizing § 922(g)(3) as "far less onerous" because it lets individual determine duration of drug use);[26] *cf. Ocean State Tactical*, 95 F.4th at 49 (statute at issue imposed more modest burden than its historical analogue).[27]

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[26] The district court in this case discounted the government's reliance on *Yancey* because that case was decided before *Bruen*. [G.Add.14-15]. But although *Yancey* predated *Bruen*, it relied on the history-and-tradition test that *Bruen* approved, not on the levels-of-scrutiny approach that *Bruen* rejected. *See Yancey*, 621 F.3d at 683-86 (drawing analogies to historical laws imposing categorical restrictions). District courts in the Seventh Circuit have accordingly continued to follow *Yancey* even after *Bruen*. See, *e.g.*, *United States* v. *Swiger*, No. 22-cr-38, 2024 WL 4651054, at *3 (N.D. Ind. Nov. 1, 2024); *United States* v. *Holcomb*, No. 24-cr-15, 2024 WL 4710612, at *10-12 (E.D. Wis. Aug. 22, 2024), *R. & R. adopted*, No. 24-cr-15, 2024 WL 4432801 (E.D Wis. Oct. 7, 2024); *United States* v. *Overholser*, No. 22-cr-35, 2023 WL 4145343, at *2 (N.D. Ind. June 23, 2023), *appeal dismissed*, No. 23-2468, 2024 WL 2745786 (7th Cir. May 29, 2024); *United States* v. *Posey*, 655 F. Supp. 3d 762, 773 (N.D. Ind. 2023).

[27] To the extent § 922(g)(3) raises constitutional concerns in cases at the margin, the Attorney General is authorized to grant relief from a firearms disability if the applicant shows that "the circumstances regarding the disability, and the applicant's record and reputation, are such that the applicant will not be likely to act in a manner dangerous to public safety," and if "the granting of the relief would not be contrary to the public interest." 18 U.S.C. § 925(c). If the Attorney General denies relief, the applicant may seek judicial review in federal district court. *See id.*; *see also Harris*, 2025 WL 1922605, at * 6. The Attorney General recently revitalized the § 925(c) process. *See Zherka*, 140 F.4th at 93 n.60; *Withdrawing the Attorney General's Delegation of Authority*, 90 Fed. Reg. 13,080 (Mar. 20, 2025).

5. *The analytical approaches used by other federal circuit courts are flawed.*

The circuits that have thus far declared § 922(g)(3) violative of the Second Amendment in many of its applications have done so by evaluating the government's proposed historical analogues under an exacting standard that hews closer to the concept of "historical twin" than either *Bruen* or *Rahimi* intended. *See Rahimi*, 602 U.S. at 739-40 (Barrett, J., concurring); *see also, e.g., Ocean State Tactical*, 95 F.4th at 44, 52 (stressing need for more nuanced approach under *Bruen* when American society had not confronted the concern at bar).

In rejecting the government's position in this case, the district court relied heavily on *United States v. Connelly*, 117 F.4th 269 (5th Cir. 2024). [G.Add.12, 15, 16]. In *Connelly*, the Fifth Circuit found "no historical justification for disarming a sober citizen not presently under an impairing influence." *Id.* at 276. Under *Connelly's* approach, the government generally may apply § 922(g)(3) only to individuals who were "intoxicated at the time" they possessed firearms. *Id.* at 272. The court left open the possibility that the government could "[p]erhaps" apply the statute in a case where the drugs were "so powerful" that they left someone "permanently impaired in a way comparable to severe mental illness." *Id.* at 277.

But as demonstrated above, and as the government argued to the district court here [R.A.85-87, 116-20], history shows that legislatures may temporarily

restrict the possession of arms by "categories of persons" who "present a special danger of misuse." *Rahimi*, 602 U.S. at 698 (citing *Heller*, 554 U.S. at 626); *see also Langston*, 110 F.4th at 418. Importantly, illegal drug users present such a danger even when they are not intoxicated. As discussed *supra* pp. 33-38, as a group *habitual* drug users are likely to become intoxicated or impaired repeatedly in the near future; they are breaking the law by using controlled substances; they often commit crimes to fund their drug habits; they engage in violence as part of the drug trade; and they have hostile run-ins with the police.

Even focusing only on the risk that illegal drug users will misuse firearms while intoxicated, *Connelly*'s analysis is unsound. As a practical matter, drug users who are under impairing influences are unlikely to put away their firearms until they regain their sobriety. To the contrary, intoxication can prompt drug users to engage in violence. *See, e.g.*, *Carter*, 750 F.3d at 467; *Wilson*, 835 F.3d at 1093-94.

Connelly's analysis also conflicts with the historical evidence marshaled above. For example, although the district court noted that some founding-era laws imposed restrictions only when individuals were actively under the influence of alcohol or a mental illness [*see* G.Add.15, 16], other statutes from that era restricted the rights of drunkards, even during sober intervals, based on their habitual use of alcohol. *See supra* pp. 21-28. And for about as long as legislatures

have regulated drugs, they have prohibited the possession of arms by habitual drug users and addicts, not simply by persons actively under the influence of drugs. *See supra* pp. 28-32.

Like the Fifth Circuit, the Eighth Circuit has also invalidated § 922(g)(3) in a wide range of applications by taking too myopic a view of what constitutes a "relevantly similar" historical analogue. In *United States* v. *Cooper*, 127 F.4th 1092 (8th Cir.), *petition for cert. filed*, No. 24-1247 (U.S. June 6, 2025), that court concluded that "[n]othing in our tradition allows disarmament simply because [a defendant] belongs to a category of people, drug users, that Congress has categorically deemed dangerous." *Id.* at 1096. In the *Cooper* court's view, the Second Amendment instead requires some form of "individualized assessment." *Id.* Under *Cooper*'s analysis, the government may charge an individual with violating § 922(g)(3) only if it can make a case-by-case showing that drug use caused the defendant to "pose a credible threat to the physical safety of others," to act like someone who is "mentally ill," or to "induce terror." *Id.; see also United States* v. *Baxter*, 127 F.4th 1087, 1090-92 (8th Cir. 2025); *Harris*, 2025 WL 1922605, at *8-9 (remanding for parties to present evidence about how defendant's

"drug use affected his mental state and riskiness" so that district court could make a "probabilistic judgment[] of danger.").[28]

* * *

For these reasons, the district court erred in concluding that 18 U.S.C. § 922(g)(3) violated the Second Amendment as applied to these defendants. The court's decision should be reversed.

[28] It bears emphasizing that the practical impact of these circuits' reasoning will likely be to invalidate § 922(g)(3) in the majority of its applications. The statutory subsection is one of § 922(g)'s most frequently applied provisions. Since the creation of the federal background-check system in 1998, § 922(g)(3) has resulted in more denials of firearms transactions than any provision apart from § 922(g)(1) (felons) and § 922(g)(2) (fugitives). *See* FBI Crim. Just. Info. Servs. Div., U.S. Dep't of Just., *Federal Denials—Reasons Why the NICS Section Denies, November 30, 1998 – April 30, 2025*.

II. The District Court Erred As A Matter Of Law In Dismissing The "False Statement" Charges Because Their Application To Defendant Carl Does Not Violate The Second Amendment.

A. Standards of Review

This Court "review[s] the denial of a motion for reconsideration for abuse of discretion," *United States v. Allen*, 573 F.3d 42, 53 (1st Cir. 2009) (citation omitted), and material errors of law necessarily reflect an abuse of discretion, *see, e.g.*, *Aceituno v. United States*, 132 F.4th 563, 569 (1st Cir.), *petition for cert. filed*, No. 24-7393 (U.S. June 10, 2025). Reconsideration is appropriate when "a movant shows a manifest error of law or newly discovered evidence." *Ruiz Rivera v. Pfizer Pharm. LLC*, 521 F.3d 76, 81-82 (1st Cir. 2008) (internal citation omitted). The Court "review[s] the constitutionality of federal statutes de novo." *United States v. Diggins*, 36 F.4th 302, 306 (1st Cir. 2022). And, as noted *supra* p. 12, a district court's dismissal of counts in an indictment receives plenary review as well.

B. Relevant Background

The district court incorrectly held that the government had failed to satisfy its burden of showing that §§ 922(a)(6) and 924(a)(1)(A), the False Statement charges, are consistent with *Bruen*. [G.Add.16]. Without considering whether the plain text of the Second Amendment protects the making of false statements, *see Bruen*, 597 U.S. at 17, 24, the district court held that the False Statement statutes

were subject to *Bruen*'s *entire* analytical framework because they "necessarily" affected protected Second Amendment conduct. [G.Add.16]. Proceeding to the second part of *Bruen*'s framework, the court then blamed the government for failing to provide the court with "historical analogues" establishing that the False Statement statutes were consistent with the country's "historical tradition of firearm regulation." [G.Add.16] (quoting *Bruen*, 597 U.S. at 1).

In reaching its conclusions, the district court ignored the first step of the *Bruen* analysis. Contrary to the overwhelming case law provided by the government in its opposition, the court incorrectly concluding that the False Statements counts could not proceed independently of the constitutionality of the § 922(g)(3) counts. In dismissing the False Statement counts, the district court thus committed a manifest error of law.

When the government pointed out the court's errors in its motion for reconsideration [R.A.144-54], the district court criticized the government for not developing those arguments more fully in its original opposition memorandum.[29]

[29] The district court faulted the government because one of the cases it cited was not directly on point. [G.Add.18 & n.1]. But given the plethora of cases that *were* on point, that should not result in waiver. *See Metavante Corp. v. Emigrant Sav. Bank*, 619 F.3d 748, 773 n.20 (7th Cir. 2010) (fact that defendant "cited some inapposite cases and did not cite or address [a particular circuit case in the district court]" "does not work a waiver."). Moreover, the district court did not address its own failure to adhere to *Bruen*'s two-part framework, a framework that the government had clearly set forth in its opposition memorandum. [R.A.112-14].

[G.Add. 17-19]. The court recognized that the government's position might "have merit," but refused to address the merits because it had already dismissed the charges that "threat[ened] . . . the loss" of Carl's "liberty." [G.Add.20]. Reimposing the charges based on what the court viewed as new arguments "would produce a far greater error of law—and justice—than any that the government now wants to correct." [G.Add.20].

The court's clear misapplication of *Bruen* and its concomitant refusal to reinstate constitutionally sound criminal charges represents an abuse of discretion that this Court should reverse.

C. The argument that the government made in responding to Carl's motion to dismiss sufficiently preserved the issue for reconsideration.

The government sufficiently presented the issue of whether the False Statement charges could survive a "free-standing" challenge under *Bruen* to justify reconsideration on the merits. The government noted that "free-standing *Bruen* challenges" to §§ 922(a)(6) and 924(a)(1)(A) had uniformly failed. [R.A.121]. It provided the court with lists of cases "that have examined and rejected free-standing *Bruen* challenges" to each of these statutes, and indicated that it had not located any decisions involving either statute in which a *Bruen* challenge had been successful. [R.A.121, 126-29].

Moreover, the government addressed the arguments that Carl focused on in her motion to dismiss. Carl originally argued that her false statements were not "material" under § 922(a)(6) because § 922(g)(3) itself was unconstitutional [R.A.65-66]—which the government termed a "derivative" argument [R.A.111, 121]. Carl's original motion to dismiss never separately analyzed the False Statement statutes under *Bruen* or cited any post-*Bruen* cases supporting her position [R.A.65-66], and her reply memorandum did not discuss the False Statement charges at all.[30] [R.A.130-41]. Had Carl contended that the False Statement statutes' failure to survive a free-standing *Bruen* challenge provided an independent basis for dismissal, the government could have been expected to respond with a more fully developed argument to the contrary. *Cf. United States v. Guerrero*, 19 F.4th 547, 552 (1st Cir. 2021) (The government's arguments were preserved even though the government first made them in its motion to reconsider:

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[30] Carl herself characterized her argument as entirely derivative—rising or falling with the constitutionality of § 922(g)(3):

> Counts 6 and 7, making a false statement to a licensed firearm dealer, who was required to record such information, should also be dismissed because the false statement was immaterial and irrelevant, given Ms. Carl's entitlement to possess the firearm in question, because of the unconstitutionality of §922(g)(3);
>
> The alleged false statement was immaterial because neither a "yes" or a "no" answer to the drug use question would change the immutable fact that Ms. Carl is legally permitted to possess a firearm.

[R.A.66] (item numbers omitted).

"While the government has the burden of justifying the warrantless search, 'it need not . . . anticipate[ ] every possible suppression theory, or . . . adduce[] evidence to rebut legal arguments never articulated in defendant's suppression motion.'") (citation omitted).

Nevertheless, having found in researching the issue that the post-*Bruen* case law uniformly rejected free-standing *Bruen* challenges to the False Statement statutes, the government made the point anyway (albeit summarily). [R.A.121]. More importantly, the government provided ample case support demonstrating that courts applying the *Bruen* framework had repeatedly found that the False Statement statutes survive a Second Amendment challenge without regard to the constitutionality of the firearm prohibition. [R.A.121, 127, 129]. Under these circumstances, the government sufficiently outlined its position on the False Statement charges in its original opposition memorandum to preserve its position for reconsideration and appellate review.

D. The district court abused its discretion by failing to address its manifest error of law.

The district court's denial of the motion to reconsider constitutes a manifest error of law. That error provides an independent basis for this Court to consider the merits of the government's argument on reconsideration even assuming that the Court has found preservation of the issue in the government's original opposition to be insufficient.

In the circumstances of this case, it was incumbent upon the district court to properly address and correct its misapplication of *Bruen* once the government had raised and explicated the error in its motion for reconsideration. The government's motion thoroughly analyzed the constitutionality of the False Statement statutes and clearly demonstrated the manifest error of law that the district court had made in bypassing the first part of the *Bruen* analysis and analyzing the False Statement charges solely under the *Bruen*'s second prong.

Although a district court enjoys substantial discretion in evaluating a motion for reconsideration, its discretion is "'not unbridled,'" and "a manifest error of law may outstrip the boundaries of even that wide discretion." *Merit Const. Alliance v. City of Quincy*, 759 F.3d 122, 132 (1st Cir. 2014) (citation omitted). Under such circumstances, a motion for reconsideration should be granted. *See id.* (reversing denial of reconsideration because of manifest error); *Max's Seafood Café ex rel. Lou-Ann, Inc. v. Quinteros*, 176 F.3d 669, 678-79 (3d Cir. 1999) (reversing denial of motion to consider after court's original order resulted in clear error of law); *cf. Smith v. Clark Cnty. Sch. Dist.*, 727 F.3d 950, 955 (9th Cir. 2013) (district court acted properly in granting motion to reconsider after party demonstrated that district court had failed to apply correct legal framework in its original order).

In this case, the district court abused its discretion by failing to reexamine its decision even after the government pointed out the court's manifest error of law in

its application of *Bruen*. The government had outlined that framework in its original opposition memorandum and applied it to Carl's § 922(g)(3) charge [R.A.112-21], and the district court had itself applied the *Bruen* analysis to both §§ 922(g)(1) and 922(g)(3). [G.Add.7-15]. Despite this, the court simply assumed without analysis that the False Statement statutes were subject to the second part of the *Bruen* framework because they "necessarily affected" the right to bear arms. [G.Add.16].

"Necessarily affected" is not part of *Bruen*'s framework. On the other hand, the plain text of the Second Amendment is. By leapfrogging straight over the text of the Second Amendment to the second part of *Bruen*'s two-part framework, the court immediately shifted the burden of providing historical analogues to the government. The government had no such burden, however, because the False Statement statutes could never have survived step one of the *Bruen* framework, properly applied. *See infra* pp. 53-58. In failing to apply *Bruen*'s framework correctly, the district court committed a manifest legal error.

The government pointed out the court's error in its motion to reconsider, which thoroughly presented the issue based on the cases the government had supplied to the court in its original opposition memorandum. Nonetheless, the district court refused to reexamine its reasoning even though it conceded that the government's argument might "have merit." [G.Add.20]. Instead of addressing

whether a manifest error might exist, the court denied reconsideration because it believed it was more important to dismiss the charges that "threat[ened] . . . the loss" of Carl's "liberty." [G.Add.20]. That is not a legally sound basis for determining whether otherwise constitutionally valid criminal charges, lodged by an untainted grand jury and free from any allegation of government misconduct, should proceed to trial. *See United States v. Stokes*, 124 F.3d 39, 44 (1st Cir. 1997) ("Because the public maintains an abiding interest in the administration of criminal justice, dismissing an indictment is an extraordinary step."); *United States v. Anzalone*, 923 F.3d 1, 6 (1st Cir. 2019) (The "'law frowns on the exoneration of a defendant for reasons unrelated to his guilt or innocence[.]'") (citation omitted).

The district court's refusal to reconsider its misapplication of the *Bruen* framework even after the government pointed out the flaws in the court's decision amounts to a disregard of *Bruen* as controlling precedent, and therefore represents a manifest error of law. *See, e.g., Salmon v. Lang*, 57 F.4th 296, 326 (1st Cir. 2022) (defining "manifest error" in the context of motion to reconsider). This Court should therefore consider the merits of the government's argument on reconsideration.

E. The False Statement statutes do not violate the Second Amendment.

1. *The False Statement statutes prohibit conduct not covered by the "plain text" of the Second Amendment.*

The district court's dismissal of the False Statement charges flies in the face of the "governing principle . . . that a claim of unconstitutionality will not be heard to excuse a voluntary, deliberate and calculated course of fraud and deceit." *Dennis v. United States*, 384 U.S. 855, 867 (1966). A defendant may not escape the consequences of his fraud "by urging that his conduct be excused because the statute which he sought to evade is unconstitutional." *Id.* The Supreme Court's "cases . . . without exception . . . [have] allowed sanctions for false statements . . . even in instances where the perjurer complained that the Government exceeded its constitutional powers in making the inquiry." *United States v. Mandujano*, 425 U.S. 564, 577 (1976) (collecting cases); *see also, e.g.*, *United States v. Knox*, 396 U.S. 77, 79 (1969) (reversing dismissal of indictment for false statement on wagering form even after the relevant provision of the wagering tax law was held invalid); *Bryson v. United States*, 396 U.S. 64, 72 (1969) (rejecting challenge to false statement conviction based upon alleged invalidity of underlying statutory authority); *United States v. Patnaik*, 125 F.4th 1223, 1228-30 (9th Cir. 2025) (applying principle in prosecution for fraudulent statement on a visa application,

and rejecting defendant's argument that falsehood could not be prosecuted because government's request for information was unconstitutional).

The principal purpose of the Gun Control Act of 1968 "was to curb crime by keeping 'firearms out of the hands of those not legally entitled to possess them because of age, criminal background, or incompetency.'" *Huddleston v. United States*, 415 U.S. 814, 824 (1974) (citation omitted). The False Statement statutes help effectuate the Act's purposes by enabling the government to determine whether the potential purchaser of a firearm is someone Congress wants to prohibit from obtaining a weapon.[31] *See id.* at 824-26; *Hightower v. City of Boston*, 693 F.3d 61, 75 (1st Cir. 2012) (discussing purpose of § 922(a)(6) and similar state statutes, and observing that "[t]he prohibition of the inclusion of false information in a license application is necessary to the functioning of the licensing scheme."). *Heller* explicitly characterized laws like these, which "impos[e] conditions and qualifications on the commercial sale of arms," as "presumptively lawful regulatory measures." *Heller*, 554 U.S. at 626-27 & n.26.

[31] In pertinent part, § 922(a)(6) prohibits a person from knowingly making "any false or fictitious oral or written statement . . . intended or likely to deceive" a firearms dealer "with respect to any fact material to the lawfulness of the sale . . . ." Similarly, § 924(a)(1)(A) criminalizes "knowingly mak[ing] any false statement or representation" with respect to the information that a licensed firearms dealer is required to keep in its records under Chapter 44 of Title 18.

The constitutionality of the False Statement statutes is plain under *Bruen*. As *Bruen* makes clear, any constitutional analysis of a statute under the Second Amendment must begin with the text of the Amendment itself: "*When the Second Amendment's plain text covers an individual's conduct*, the Constitution presumptively protects that conduct." *Bruen*, 597 U.S. at 24 (emphasis added). Thus, here, unless the making of false statements in the course of acquiring a firearm is covered by the "plain text" of the Second Amendment, the district court should never have proceeded to the second part of *Bruen*'s framework. *United States v. Scheidt*, 103 F.4th 1281, 1284 (7th Cir. 2024) (no need to proceed with historical analysis when statute could not survive first part of *Bruen* analysis).

Scheidt, which involved a challenge to the constitutionality of § 922(a)(6), is squarely on point. In that case, the defendant argued that the district court erred "when it failed to undertake the *Bruen*-mandated historical analysis[.]" *Id.* The Seventh Circuit held that the conduct covered by § 922(a)(6) fell outside the Second Amendment's scope and that therefore the district court correctly concluded that a historical analysis was unnecessary:

> We . . . do not see this as a Second Amendment case. Ordinary information providing requirements, like those imposed by ATF Form 4473 and enforced through criminal statutes like § 922(a)(6), do not "infringe" the right to keep and bear arms. Completing ATF form 4473, and adhering to its attendant truth-telling requirement, is conduct that is outside the scope of the Second Amendment's protections, not requiring application of *Bruen*'s historical analysis

> framework. . . . Only in the most indirect way—and even then, too indirectly—does § 922(a)(6) implicate the right to bear arms. * * *
>
> Scheidt urges us to see ATF Form 4473 as akin to a condition precedent that imposes an unconstitutional barrier to individual gun possession. We decline. Neither the Form nor the requirement to complete it impose any sort of unconstitutional condition under the Second Amendment. Rather, ATF Form 4473 helps screen for purchasers who run afoul of regulations informing who may lawfully possess a firearm and what kind of firearm that person may possess. *The plain text of the Second Amendment does not cover Scheidt's conduct, so there is no need to conduct a historical analysis of gun registration forms.*

Id. (citations omitted; emphasis added). As the Seventh Circuit observed in another case involving § 922(a)(6), "[t]he power to collect accurate information is of a different character—and stands on a firmer footing—than the power to prohibit particular people from owning guns." *United States v. Holden*, 70 F.4th 1015, 1017 (7th Cir.), *cert. denied*, 144 S. Ct. 400 (2023); *accord Hightower*, 793 F.3d at 73-75.

In the same vein, and like the district court in this case, the defendant in *United States v. Manney* asserted that § 922(a)(6)'s regulation of firearm purchases "inhibited her ability to acquire arms[.]" 114 F.4th 1048, 1052 (9th Cir. 2024), *cert. denied*, 145 S. Ct. 1151 (2025). The court declined to read the Second Amendment's text so expansively. "Under [the defendant's] characterizations of § 922(a)(6), "*any* regulation related to the process of purchasing firearms would be covered by the Second Amendment's plain text, regardless of the conduct the

statute regulates." *Id.* (emphasis original). Noting that *Bruen* required the scope of the Second Amendment to be tied to the *specific* conduct the regulation prohibits, *id.*, the Ninth Circuit held that the making of false statements is not constitutionally protected:

> [W]e find that § 922(a)(6) prohibits making false statements. The statute only relates to firearms insofar as it regulates statements made in connection with firearm acquisitions and information "material to the lawfulness of the sale." But the regulated *conduct* is unrelated to the possession of a firearm. In other words, the statute regulates statements made by the individual purchasing a firearm to ensure that a purchaser is not lying to a firearms dealer about who is purchasing the firearm. The fact that the information a purchaser provides may trigger a separate statute that may bar the purchase of a firearm does not transform § 922(a)(6) into a statute regulating the possession of firearms.

Id. at 1053 (footnote omitted); *see also id.* at 1053 n.6 (agreeing with *Scheidt*'s conclusion that the conduct falls outside the scope of Second Amendment protections). "Because the Second Amendment does not protect an individual's false statements, the conduct § 922(a)(6) regulates falls outside the scope of the Second Amendment's plain text, and our analysis ends here." *Id.* at 1053.[32] *Accord Hightower*, 693 F.3d at 74 (it does not violate Second Amendment to

[32] As discussed in the government's motion to reconsider [R.A.147-50 & n.7], the cases the government originally cited to the district court reached comparable holdings with respect to both § 922(g)(6) and § 924(a)(1)(A).

revoke a firearms license based on applicant's provision of false information on the license application).

Because neither §§ 922(a)(6) nor 924(a)(1)(A) proscribes conduct protected by the Second Amendment, the lower court manifestly erred in holding that the government had to demonstrate that the False Statement statutes were consistent with the nation's historical tradition of firearms regulation. *See, e.g.*, *Scheidt*, 103 F.4th at 1284 (the "truth-telling requirement" of § 922(a)(6) does "not requir[e] application of *Bruen*'s historical analysis framework" because such conduct falls outside the scope of the Second Amendment's protections); *United States v. Reilly*, No. 23-cr-85, 2023 WL 5352296, at *3 (E.D. Okla. Aug. 21, 2023) ("[D]istrict courts appear to have uniformly stopped at the first prong of the *Bruen* test regarding a challenge to § 922(a)(6) and have not sought a historical analogue."), *appeal filed*, No. 24-7047 (10th Cir. June 4, 2024). The government was not required to supply historical analogues here. In clearly failing to apply *Bruen* correctly, the district court committed legal error, and in refusing to reconsider its decision despite its manifest error, the court abused its discretion.

2. ***Carl can be prosecuted for her misrepresentations regardless of whether § 922(g)(3) is constitutional.***

Carl argued to the district court that any false statements she might have made were "immaterial" in view of § 922(g)(3)'s unconstitutionality. [R.A.65-66]. She reasoned that the false statements are "immaterial because neither a 'yes' or a

'no' answer to the drug use question would change the immutable fact that Ms. Carl is legally permitted to possess a firearm." [R.A.66]. In other words, Carl believed her criminal liability under the False Statement statutes to be entirely derivative of her liability under § 922(g)(3). That reasoning is fallacious and the district court's adoption of it is legally erroneous.

Based on the "governing principle" that a defendant cannot escape the consequences of his fraud by claiming that "the statute which he sought to evade is unconstitutional," *Dennis*, 384 U.S. at 867, every appellate court to decide the issue has firmly rejected the argument that the possible unconstitutionality of a firearm prohibition under *Bruen* renders a defendant's false statement "immaterial" under § 922(a)(6). As the Seventh Circuit noted in *Holden*, "[t]he word 'material' in § 922(a)(6) does not create a privilege to lie, when the answer is material to a statute, whether or not that statute has an independent constitutional problem." 70 F.4th at 1017. In fact, the defendant's act of lying to obtain a firearm may "impl[y] a risk that the weapon will be misused." *Id.*;[33] *see, also, e.g., Manney*, 114 F.4th at

[33] Truthful answers on a firearm application may lead to the discovery of an additional reason to prohibit the purchase, a reason independent of the challenged firearm prohibition. *See Holden*, 70 F.4th at 1018; *accord Hightower*, 693 F.3d at 76 ("An accurate answer to the question is important to allowing the licensing authority to investigate further and make an informed decision on the licensing application."). An applicant's truthful answers can therefore be "material to the propriety of a firearms sale" in a variety of ways. *Holden*, 70 F.4th at 1018.

1053-54 (a false statement regarding the actual purchaser of a firearm is material under § 922(a)(6) "even if the actual purchaser could legally possess a firearm."); *United States v. Combs*, No. 23-5153, 2023 WL 9785711, at *1 (6th Cir. Sept. 12, 2023) (unpublished) (prosecution under § 922(a)(6) could proceed: "a false statement statute is not impacted by the constitutionality of the underlying statute").[34]

As these cases make clear, Carl cannot escape the consequences of her false statements by arguing that they are immaterial, and the district court erred by concluding otherwise.

[34] As discussed in the government's motion to reconsider, the cases the government set forth in connection with its original opposition memorandum rejected the materiality argument. [R.A.15-53 & n.9].

CONCLUSION

For these reasons, the government respectfully requests that the Court reverse the district court's dismissal of Counts 4-7, reinstate those counts, and remand the case for further proceedings.

Respectfully submitted,

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/s/ Lauren S. Zurier
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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation in Fed. R. App. P. 32(a)(7)(B) because, as permitted by this Court's order entered on July 11, 2025, it contains 14,977 words excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

2. This brief complies with the typeface rule in Fed. R. App. P. 32(a)(5) and the type style rule in Fed. R. App. P. 32(a)(6) because it uses a proportionally spaced, serif typeface (*i.e.*, Times New Roman) in 14-point font.

/s/ Lauren S. Zurier
LAUREN S. ZURIER
Assistant U.S. Attorney
Dated: July 21, 2025

CERTIFICATE OF SERVICE

I, Lauren S. Zurier, Assistant U.S. Attorney, hereby certify that, on July 21, 2025, I electronically served a copy of the foregoing document on the following registered participants of the CM/ECF system:

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IN THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

UNITED STATES, Appellant, v. DAVID WORSTER; ALEXZANDRIA CARL, Defendants-Appellees.	)	No. 25-1229
UNITED STATES, Appellant, v. ALEXZANDRIA CARL, Defendants-Appellee.	)	No. 25-1398

ADDENDUM

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impact the plaintiffs and similarly situated individuals and families in numerous ways, some of which—in the context of balancing equities and the public interest—are unnecessarily destabilizing and disruptive.

[23, 24] The defendants have "no interest in enforcing an unconstitutional law, [and] the public interest is harmed by the enforcement of laws repugnant to the United States Constitution." *Tirrell v. Edelblut*, No. 24-CV-251-LM-TSM, 747 F.Supp.3d 310, 318–19 (D.N.H. Aug. 22, 2024) (McCafferty, C.J.) (quotations omitted) (quoting *Siembra Finca Carmen, LLC v. Sec'y of Dep't of Agric. of P.R.*, 437 F. Supp. 3d 119, 137 (D.P.R. 2020)).

[25] "When the President takes measures incompatible with the expressed or implied will of Congress, his power is at its lowest ebb, for then he can rely only upon his own constitutional powers minus any constitutional powers of Congress over the matter." *Youngstown*, 343 U.S. at 637-38, 72 S.Ct. 863 (Jackson, J., concurring). The ultimate lawfulness of the Executive Order will surely be determined by the Supreme Court. This is as it should be. As the Executive Order appears to this court to violate both constitutional and statutory law, the defendants have no interest in executing it during the resolution of the litigation.

Conclusion. The motion is granted. The court enjoins the defendants from enforcing the Executive Order in any manner with respect to the plaintiffs, and with respect to any individual or entity in any other matter or instance within the jurisdiction of this court, during the pendency of this litigation.

SO ORDERED.

UNITED STATES of America

v.

David WORSTER; and Alexzandria Carl, Defendants.

C.A. No. 21-cr-111-JJM-PAS

United States District Court,
D. Rhode Island.

Signed February 5, 2025

Background: Defendants were charged with multiple firearms offenses, including felon in possession of a firearm, user of controlled substance in possession of a firearm, false statement in acquisition of a firearm, and false statement to federally licensed gun dealer. Defendants filed motions to dismiss parts of their indictment for failing to charge a constitutionally permissible offense in light of *Bruen*.

Holdings: The District Court, John J. McConnell, Jr., Chief Judge, held that:

(1) Second Amendment protections applied to defendants;

(2) statute prohibiting possession of a firearm by a felon did not violate Second Amendment right to bear arms as applied to defendant;

(3) statute prohibiting possession of a firearm by unlawful user of controlled substance violated defendant's Second Amendment right to bear arms as applied to defendant; and

(4) statutes prohibiting false statement in acquisition of a firearm and false statement to federally licensed gun dealer violated Second Amendment right to bear arms as applied to defendant.

Motions granted in part and denied in part.

1. Indictments and Charging Instruments ⚿912

When a defendant challenges an indictment's sufficiency, what counts are the charging paper's allegations, which are assumed to be true.

2. Indictments and Charging Instruments ⚿984

Defendant can seek dismissal of indictment on grounds that statute authorizing charges is unconstitutional.

3. Constitutional Law ⚿656

To succeed on facial constitutional challenge to statute, defendant must show that statute lacks any plainly legitimate sweep.

4. Constitutional Law ⚿657

To succeed on an as-applied constitutional challenge, defendant must only show that statute is unconstitutional as applied to circumstances of their case.

5. Weapons ⚿107(2)

Defendants charged with felon in possession of a firearm and user of controlled substance in possession of a firearm were part of "the people" who had right to keep and bear arms under Second Amendment, and, therefore, Second Amendment protections applied to defendants charged with violating statutes prohibiting firearm possession by felons and users of controlled substances; "the people" included felons and controlled substance users, and Supreme Court and Circuit Court precedent established strong presumption that Second Amendment rights belonged to all Americans and protected those charged under those firearms possession statutes. U.S. Const. Amend. 2; 18 U.S.C.A. § 922(g)(1), (3).

6. Weapons ⚿106(3), 174

Statute prohibiting possession of a firearm by a felon did not violate Second Amendment right to bear arms as applied to defendant under Supreme Court's decision in *Bruen*; nation's history and tradition indicated that right to bear arms did not extend to people who presented a danger to the public, and while not all underlying felonies justified ban on possession of firearms, defendant previously had been convicted on separate occasions of drug trafficking, illegal firearm possession, and illegal possession of explosive devices, indicating defendant presented danger to public. U.S. Const. Amend. 2; 18 U.S.C.A. § 922(g)(1).

7. Courts ⚿96(4)

Until Court of Appeals revokes binding precedent, district court within circuit is hard put to ignore that precedent unless it has unmistakably been cast into disrepute by supervening authority.

8. Weapons ⚿106(3), 183

Statute prohibiting possession of a firearm by unlawful user of controlled substance violated defendant's Second Amendment right to bear arms as applied to defendant under Supreme Court's decision in *Bruen*; while nation's history and tradition suggested it was permissible to ban a person from carrying a weapon while under the influence of intoxicants, such bans had never extended to mere possession of weapon, and in defendant's case, although marijuana plants and dried marijuana were found in defendant's home during search that uncovered firearm, there was no evidence defendant was intoxicated at time of his arrest for firearm possession. U.S. Const. Amend. 2; 18 U.S.C.A. § 922(g)(3).

9. Weapons ⚿106(3), 183

Statute prohibiting possession of a firearm by unlawful user of controlled substance violated Second Amendment right to bear arms as applied to defendant under Supreme Court's decision in *Bruen*;

while nation's history and tradition suggested it was permissible to ban a person from carrying a weapon while under the influence of intoxicants, such bans had never extended to mere possession of weapon, and in defendant's case, defendant had no criminal history, used marijuana once or twice a week, and was not intoxicated at time of her arrest for firearm possession. U.S. Const. Amend. 2; 18 U.S.C.A. § 922(g)(3).

10. Weapons ⚿106(3), 153

Statutes prohibiting false statement in acquisition of a firearm and false statement to federally licensed gun dealer violated Second Amendment right to bear arms as applied to defendant under Supreme Court's decision in *Bruen*; Second Amendment presumptively covered defendant's conduct of purchasing firearm, and government provided no evidence that nation had history and tradition of putting conditions on purchasing firearms. U.S. Const. Amend. 2; 18 U.S.C.A. §§ 922(a)(6), 924(a)(1)(A).

West Codenotes

Unconstitutional as Applied

18 U.S.C.A. §§ 922(a)(6), (g)(3), 924(a)(1)(A)

Milind M. Shah, Kevin Love Hubbard, DOJ-United States Attorney's Office, Providence, RI, for United States of America.

George J. West, Providence, RI, for Defendant David Worster.

MEMORANDUM AND ORDER

JOHN J. MCCONNELL, JR., United States District Court Chief Judge.

Defendants David Worster and Alexzandria Carl each move to dismiss parts of their indictments for failing to charge a constitutionally permissible offense. (ECF Nos. 89, 91.) They contend that the constitutional sea change wrought by *New York State Rifle and Pistol Association v. Bruen*, 597 U.S. 1, 142 S.Ct. 2111, 213 L.Ed.2d 387 (2022), makes several counts unlawful.

Mr. Worster claims that charges under 18 U.S.C. § 922(g)(1) and § 922(g)(3), which respectively forbid felons and users of controlled substances from possessing firearms, violate the Second Amendment as applied to him. Like Mr. Worster, Ms. Carl argues that a charge under § 922(g)(3) violates the Second Amendment as applied to her. From that, she also contends that derivative charges related to false statements made while purchasing a firearm must be dismissed.

For the reasons below, Mr. Worster's Motion (ECF No. 89) is GRANTED IN PART and DENIED IN PART. Ms. Carl's Motion (ECF No. 91) is GRANTED.

I. BACKGROUND

[1] This case arises from a United States Customs and Border Protection search. In August 2021, CBP intercepted two packages containing suppressor components: one addressed to a post-office box in Mr. Worster's name and the other addressed to Ms. Carl's home, where Mr. Worster resided at the time.[1] (ECF No. 92 at 3.)

1. At this early stage, these "facts" are only allegations by the government. Recall that when a defendant challenges an indictment's sufficiency, "what counts" are "the charging paper's allegations, which we must assume are true." *United States v. Guerrier*, 669 F.3d 1, 3–4 (1st Cir. 2011). The indictment's allegations are constitutionally sufficient—insofar

Law enforcement officers then executed a search at Ms. Carl's residence, where they uncovered "a firearm manufactured outside Rhode Island, a variety of firearm parts and paraphernalia, numerous rounds of ammunition manufactured outside Rhode Island," as well as "a medical marijuana card" in Mr. Worster's name, "a small marijuana grow with two mature marijuana plants, and a small bag of dried marijuana." (ECF No. 92 at 3.) In an interview with law enforcement, Ms. Carl said that she "had been using marijuana since the age of twelve" and "smoked once or twice a week," but "indicated that she did not use marijuana" on a form she filled out when buying a rifle found at the residence. (ECF No. 96 at 2.)

Mr. Worster has a prior criminal history. In June 2009, he pleaded guilty to several Massachusetts state-law offenses: (1) trafficking a controlled substance, specifically between 14 and 28 grams of cocaine, (2) possession of a firearm, (3) possession of ammunition, (4), possession of an explosive device, and (5) a second count of possession of an explosive device.[2] (ECF No. 92-1 at 2–4.) The same year, he also pleaded guilty to (1) possession of a firearm, (2) sale of an illegal large capacity firearm magazine, (3) possession of ammunition, (4) possession with intent to distribute cocaine, and (5) a second count of possession with intent to distribute cocaine.[3] *Id.*

After the search of Ms. Carl's residence, a grand jury indicted Mr. Worster on four charges:

- Count I: Unlawful importation of a firearm in violation of 18 U.S.C. §§ 922(*l*) and 924(a)(1);
- Count II: Unlawful importation of a firearm in violation of 18 U.S.C. §§ 922(*l*) and 924(a)(1);
- Count III: Felon in possession of firearm and ammunition in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2); and
- Count IV: Marijuana user in possession of firearm and ammunition in violation of 18 U.S.C. §§ 922(g)(3) and 924(a)(2).

(ECF No. 17-1 at 1–3.) The grand jury also indicted Ms. Carl on three charges:

- Count V: Marijuana user in possession of firearm and ammunition in violation of 18 U.S.C. §§ 922(g)(3) and 924(a)(2);
- Count VI: False statement in acquisition of firearm in violation of 18 U.S.C. §§ 922(a)(6) and 924(a)(2); and
- Count VII: False statement to federally licensed gun dealer in violation of 18 U.S.C. § 924(a)(1)(A).

(ECF No. 17-2 at 2.) Mr. Worster moves to dismiss two of the four counts against him, Counts III and IV, and Ms. Carl moves to dismiss all counts against her:

as the indictment properly "parrot[s] the language" of federal statutes, *United States v. Resendiz-Ponce*, 549 U.S. 102, 109, 127 S.Ct. 782, 166 L.Ed.2d 591 (2007)—but factually threadbare. The Court thus must draw from the Complaint and the parties' briefs to provide enough detail to conduct the as-applied constitutional review that Mr. Worster and Ms. Carl seek.

2. Mr. Worster's trafficking controlled substances offense "was vacated and dismissed with prejudice" on December 13, 2018, "but the other convictions remained intact." (ECF No. 92 at 2.)

3. In its brief, the government also described Mr. Worster as having pleaded guilty to the unlicensed sale of ammunition (ECF No. 92 at 2), but that is incorrect. That charge was dismissed, with a *nolle prosequi* entered. (ECF No. 92-1 at 3.)

Counts V, VI, and VII. (ECF No. 89; No. 91.)

II. LEGAL STANDARD

Federal Rule of Criminal Procedure 12 allows parties to "raise by pretrial motion any defense, objection, or request that the court can determine without a trial on the merits." Fed. R. Crim. P. 12(b)(1).

[2, 3] A defendant can seek the dismissal of an indictment on the grounds that the statute authorizing the charges is unconstitutional. *See*, *e.g.*, *United States v. Carter*, 752 F.3d 8, 12 (1st Cir. 2014). Their constitutional attack on the statute can come in two forms: a facial challenge or an as-applied challenge. To succeed on a facial challenge, the defendant must show "that the statute lacks any 'plainly legitimate sweep.' " *Hightower v. City of Boston*, 693 F.3d 61, 77 (1st Cir. 2012) (quoting *United States v. Stevens*, 559 U.S. 460, 472, 130 S.Ct. 1577, 176 L.Ed.2d 435 (2010)). In other words, every application of the statute must be unconstitutional for a successful facial challenge.

[4] But to succeed on an as-applied challenge, the defendant must only show that the statute is unconstitutional as applied to the circumstances of their case. *Id.* at 71–72. Mr. Worster and Ms. Carl bring as-applied challenges to several sections of §§ 922 and 924. (ECF No. 89; No. 91.) These challenges "are the basic building blocks of constitutional adjudication." Richard H. Fallon, Jr., *As-Applied and Facial Challenges and Third-Party Standing*, 113 Harv. L. Rev. 1321, 1328 (2000).

III. DISCUSSION

A. Legal Landscape of the Second Amendment

The Second Amendment states, "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.

1. *Heller* and *McDonald*

In 2008, the Supreme Court held for the first time in 219 years that the Second Amendment protects the rights of individuals to keep and bear arms. *District of Columbia v. Heller*, 554 U.S. 570, 128 S.Ct. 2783, 171 L.Ed.2d 637 (2008). The plaintiff, a D.C. special police officer, challenged a prohibition on handguns by claiming a Second Amendment right to possess them in his home without registering or licensing them. *Id.* at 575–76, 128 S.Ct. 2783. The Court explained that the prefatory words "[a] well regulated Militia, being necessary to the security of a free State," did not confine the Amendment's protection to those connected to military or law enforcement. *Id.* at 627–28, 128 S.Ct. 2783. Instead, the Court held, the Amendment protected the right of the unaffiliated individual to protect himself. *Id.* at 628–29, 128 S.Ct. 2783.

But the right established in *Heller* was not without context or limitation. Instead, the individual's right was for the use of handguns "for self-defense in the home." *Id.* at 636, 128 S.Ct. 2783. The Amendment was not adopted, the majority made clear, "to protect the right of citizens to carry arms for any sort of confrontation." *Id.* at 595, 128 S.Ct. 2783. Instead, the right was understood historically to be tied to "the right of having and using arms for self-preservation and defence." *Id.* at 594, 128 S.Ct. 2783. The Court also cautioned that nothing in *Heller* was intended to confer a right to "keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose." *Id.* at 626, 128 S.Ct. 2783.

In short, *Heller*'s holding was relatively narrow. Relevant here, the Court specifically eschewed "cast[ing] doubt on long-

standing 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, 128 S.Ct. 2783.

That *Heller* was specifically concerned with protecting an individual's right to exercise self-defense in their home was confirmed two years later in *McDonald v. City of Chicago*, 561 U.S. 742, 749–50, 130 S.Ct. 3020, 177 L.Ed.2d 894 (2010). There, the Court held that the Second Amendment applied to the states through the Fourteenth Amendment. *McDonald* was decided by a Court almost identical with the one issuing the *Heller* opinion. The five-justice majority remained the same and, in the minority, retiring Justice David H. Souter had been replaced by Justice Sonia M. Sotomayor.

McDonald granted certiorari on the single question of "[w]hether the Second Amendment right to keep and bear arms is incorporated as against the States by the Fourteenth Amendment's Privileges or Immunities or Due Process Clauses." *McDonald v. Chicago*, No. 08-1521, 2009 WL 1640363, at *1 (June 9, 2009) (Petition for Writ of Certiorari). In answering "Yes," the Court did not address the scope of *Heller* but merely considered whether its holding bound the states. The plaintiffs had asserted only a right to be free from state restriction on the ability to "keep handguns in their homes for self-defense," *McDonald*, 561 U.S. at 750, 130 S.Ct. 3020, and that is all that was decided. The discussion of incorporation itself reflected the Court's long-held view that the application of incorporated rights to the states is identical with the Federal Government. *Id.* at 765, 130 S.Ct. 3020.

McDonald described *Heller* as holding "that the Second Amendment protects the right to keep and bear arms for the purpose of self-defense." *Id.* at 749–50, 130 S.Ct. 3020. In other words, the *Heller* Court "stressed" that "the right was also valued because the possession of firearms was thought to be essential for self-defense. As we put it, self-defense was 'the central component of the right itself.' " *McDonald*, 561 U.S. at 787, 130 S.Ct. 3020 (quoting *Heller*, 554 U.S. at 599, 128 S.Ct. 2783) (emphasis in original). More than a decade passed before the Court addressed the scope of *Heller*—and thus the scope of the Second Amendment.

2. The post-*Heller* consensus

In the interim, the Circuit Courts of Appeals were busy applying *Heller*. They were near-unanimous on two things. First, they agreed that *Heller* conferred maximum protection only with respect to the exercise of self-defense in the home. Second, as to the world outside the home, *Heller* determined that intermediate scrutiny was appropriate, requiring only that those statutes be "substantially related" to a compelling government interest and that there be a reasonable fit between that interest and the means outlined in the statute to advance it.

The First Circuit applied *Heller* first in *Gould v. Morgan*, 907 F.3d 659 (1st Cir. 2018), reviewing a challenge to a state licensing statute as implemented by the cities of Boston and Brookline. *Id.* at 662. The plaintiffs sought the right to carry firearms generally. *Id.* at 664. While allowing unrestricted possession in the home, the licenses issued for public carry were restricted at the discretion of the municipality, which made determinations based on the purported purpose of carrying the firearm, such as an individualized need for self-defense, employment, hunting, or target practice. *Id.*

The question posed in *Gould* was precisely that later answered—differently—in *Bruen*: "Does the Second Amendment protect the right to carry a firearm outside the home for self-defense?" *Id.* at 666. In answering the question in the negative, the First Circuit employed the same construct adopted by its sister Circuits. *Id.* at 668–69. This construct used a two-step analysis that determined first "whether the challenged law burdens conduct that falls within the scope of the Second Amendment's guarantee." *Id.* This first step was "a backward-looking inquiry, which seeks to determine whether the regulated conduct 'was understood to be within the scope of the right at the time of ratification.' " *Id.* at 669 (quoting *United States v. Chester*, 628 F.3d 673, 680 (4th Cir. 2010)). The second step, if the desired conduct falls outside the "core" and some regulation is therefore permitted, was to decide what level of scrutiny must be brought to bear upon the regulation. *Id.* The Circuit Courts of Appeals, including the First Circuit, again acting in harmony, determined that intermediate scrutiny was appropriate. *Gould*, 907 F.3d at 668–69; *see* supra n.13 (collecting cases from other Circuits).

3. *Bruen*

But in *Bruen*, the Supreme Court bluntly cast aside the reasoned analysis of all these Circuit Courts of Appeals. While acknowledging that "the Courts of Appeals have coalesced around a 'two-step' framework for analyzing Second Amendment challenges that combines history with means-end scrutiny," *Bruen*, 597 U.S. at 17, 142 S.Ct. 2111, the high court nonetheless "decline[d] to adopt that two-part approach." *Id.* In its place, the Court raised a presumptive umbrella of protection whenever "the Second Amendment's plain text covers an individual's conduct." *Id.* Rather than looking at the scope of the right to determine whether a statute such as § 922 is constitutional (and then applying a means-end analysis), the focus is on the restriction to determine whether it is "part of the historical tradition that delimits the outer bounds of the right to keep and bear arms." *Id.* at 19, 142 S.Ct. 2111.

Although *Bruen* did not purport to define the parameters of lawful purposes, it stressed that "individual self-defense is 'the central component' of the Second Amendment right." *Id.* at 29, 142 S.Ct. 2111 (quoting *McDonald*, 561 U.S. at 767, 130 S.Ct. 3020). The *Bruen* opinion opened with the declaration that "[W]e ... now hold, consistent with *Heller* and *McDonald*, that the Second and Fourteenth Amendments protect an individual's right to carry a handgun for self-defense outside the home." *Id.* at 10, 142 S.Ct. 2111.

In dissent, Justice Breyer noted that the majority's "near-exclusive reliance on history is not only unnecessary," but also "deeply impractical." *Id.* at 107, 142 S.Ct. 2111 (Breyer, J., dissenting). After all, courts are "staffed by lawyers, not historians," and legal experts "typically have little experience answering contested historical questions or applying those answers to resolve contemporary problems." *Id.* The majority's approach, he worried, raised far more questions than answers. For instance:

> Do lower courts have the research resources necessary to conduct exhaustive historical analyses in every Second Amendment case? What historical regulations and decisions qualify as representative analogues to modern laws? How will judges determine which historians have the better view of close historical questions? Will the meaning of the Second Amendment change if or when new historical evidence becomes available? And, most importantly, will the Court's approach permit judges to reach the outcomes they prefer and then

cloak those outcomes in the language of history?

Id. (Breyer, J., dissenting).

4. The post-*Bruen* "discord"

Since *Bruen*, Justice Breyer's concerns have largely proven prescient. That is especially obvious at the Nation's district courts, who have found themselves on the beachhead of this constitutional sea change. *See, e.g.*, *United States v. Bullock*, 679 F. Supp. 3d 501, 519–29 (S.D. Miss. 2023) (Reeves, J.) (critiquing *Bruen*), *rev'd*, 123 F.4th 183 (5th Cir. 2024). Three problems are particularly clear.

The first is methodological: courts and lawyers generally lack the necessary expertise and resources to answer the complex historical questions *Bruen* raises. The *Bruen* standard "requires original historical research into somewhat obscure statutory and common law authority from the eighteenth century by attorneys with no background or expertise in such research." *United States v. Nutter*, 624 F. Supp. 3d 636, 640 n.6 (S.D. W. Va. 2022).

And that research is often unaided either by expert opinion or amicus briefs. *Bullock*, 679 F. Supp. 3d at 519–20. The lack of expert opinions is unlike other complex areas of the law, like antitrust or toxic torts, where "the parties each submit detailed expert reports supporting their positions." *Id.* at 520. And though the lack of amicus briefs at the district level is "understandable," it has downstream effects: "the appellate courts do the best with the briefs they have," but ultimately "all that matters is the Supreme Court's historical review, conducted de novo as a legal rather than a factual question, with dozens of amicus briefs never before seen by another court." *Id.* at 522. It is obvious, then, that *Bruen*'s "history-and-tradition test is burdensome," particularly "to courts with heavier caseloads and fewer resources" than the Supreme Court. *United States v. Rahimi*, 602 U.S. 680, 742–43, 144 S.Ct. 1889, 219 L.Ed.2d 351 (2024) (Jackson, J., concurring); *see also id.* at 739, 144 S.Ct. 1889 (Barrett, J., concurring) ("Courts have struggled with this use of history in the wake of *Bruen*.").

The second problem is workability: the *Bruen* test lends itself to ambiguity and inconsistency. Since *Bruen*, diverging results have appeared in a variety of criminal and civil Second Amendment contexts. *Compare United States v. Harrison*, 654 F. Supp. 3d 1191, 1222 (W.D. Okla. 2023) (holding that 18 U.S.C. § 922(g)(3) violates Second Amendment), *with United States v. Le*, 669 F. Supp. 3d 754, 760 (S.D. Iowa 2023) (upholding statute); *compare Herrera v. Raoul*, 670 F. Supp. 3d 665, 669 (N.D. Ill. 2023) (holding that an Illinois law prohibiting assault weapons was enforceable), *with Barnett v. Raoul*, 671 F. Supp. 3d 928, 948 (S.D. Ill. 2023) (holding that the same law was unenforceable under the Second Amendment), *vacated by Bevis v. City of Naperville*, 85 F.4th 1175, 1203 (7th Cir. 2023).

This is true not only at the district courts but also the appellate courts. *Compare United States v. Jackson*, 69 F.4th 495, 501 (8th Cir. 2023) (upholding § 922(g)(1)), *with Range v. Att'y Gen.*, 124 F.4th 218, 232 (3d Cir. 2024) (en banc) (holding § 922(g)(1) unconstitutional as applied). Justice Jackson put it best: this "discord is striking when compared to the relative harmony that had developed prior to *Bruen*." *Rahimi*, 602 U.S. at 743, 144 S.Ct. 1889 (Jackson, J., concurring).

The third problem is the most fundamental: *Bruen* requires judges to embrace the past—or one version of it, at least—at

the expense of the present.[4] It gives pride of place to a historical tradition of firearm regulation that was often, by modern standards, at odds with our Constitution. In seventeenth-century England and the American colonies, for instance, many were disarmed based on their religion, which served as a quick-and-easy litmus-test for dangerousness. *See, e.g.*, *Kanter v. Barr*, 919 F.3d 437, 456–58 (7th Cir. 2019) (Barrett, J., dissenting) (collecting sources explaining why Catholics were disarmed en masse), *overruled by Bruen*, 597 U.S. 1, 142 S.Ct. 2111.

Similarly, enslaved people, free Black Americans, and Native Americans were all thought to pose "immediate threats to public safety and stability," and so were categorically "disarmed as a matter of course" both before and after the Founding. *Id.* at 458. These sorts of regulations would not survive constitutional muster today, but now, they help define what is permissible under the Second Amendment. *See Binderup v. Att'y Gen.*, 836 F.3d 336, 368 (3d Cir. 2016) (Hardiman, J., concurring) (noting that historical "complete bans on gun ownership by free blacks, slaves, Native Americans, and those of mixed race" would each today "be plainly unconstitutional"), *overruled by Bruen*, 597 U.S. 1, 142 S.Ct. 2111.

Not only were these regulations often constitutionally repugnant in substance, but also in origin. After all, another "glaring flaw in any analysis of the United States' historical tradition of firearm regulation ... is that no such analysis could account for what [the tradition] would have been if women and nonwhite people had been able to vote for the representatives who determined these regulations." *State v. Philpotts*, 194 N.E.3d 371, 373 (Ohio 2022) (Brunner, J., dissenting). It is hard to imagine that any woman, Black American, or Native American took part in drafting or passing any regulations from the relevant timeframe. *See* Joy Milligan & Bertrall L. Ross II, *We (Who Are Not) The People: Interpreting the Undemocratic Const.*, 102 Tex. L. Rev. 305, 306 (2023). In other words, "the people" who crafted firearms regulations and whom the Second Amendment originally protected were hardly the whole Nation. *See* Thurgood Marshall, *Reflections on the Bicentennial of the U.S. Const.*, 101 Harv. L. Rev. 1, 2 (1987) ("When the Founding Fathers used this phrase ["We the people"] in 1787, they did not have in mind the majority of America's citizens.")

Bruen's "myopic focus on history and tradition," one rife with prejudice, also "fails to give full consideration to the real and present stakes of the problems facing our society today." *Rahimi*, 602 U.S. at 706, 144 S.Ct. 1889 (Sotomayor, J., concurring). The price to the present is threefold. Legislatures, "seeking to implement meaningful reform for their constituents while simultaneously respecting the Second Amendment, are hobbled without a clear, workable test for assessing the constitutionality of their proposals." *Id.* at 747, 144 S.Ct. 1889 (Jackson, J., concurring). Courts, who are "currently at sea when it comes to evaluating firearms legislation, need a solid anchor for grounding their constitutional pronouncements." *Id.* And most importantly, the public "deserve clar-

4. It is far from settled that the Founding generation thought about the relationship between the judiciary and the Second Amendment in the way we now must. One scholar has compellingly argued that the Second Amendment "was not written for judges or with legal remedies in mind" and that *Heller* and *Bruen* thus presuppose "an anachronistic approach to rights that the Founding generation did not share." *See* Jonathan Gienapp, *Against Constitutionalism Originalism* 51–52 (2024).

ity" when the judiciary "interprets our Constitution," but they do not get it. *Id.*

Some look at the lay of the land and conclude that the Second Amendment's "history is consistent with common sense." *Kanter*, 919 F.3d at 451 (Barrett, J., dissenting). Perhaps, but it is becoming clearer and clearer that *Bruen* is not.

5. *Rahimi*

Recognizing the manifold issues *Bruen* poses, the Supreme Court tried to correct course in *United States v. Rahimi*, 602 U.S. 680, 691, 144 S.Ct. 1889, 219 L.Ed.2d 351 (2024).

The case arose from a sordid set of facts. Following an argument with his girlfriend, Zachary Rahimi "grabbed her by the wrist, dragged her back to his car, and shoved her in, causing her to strike her head against the dashboard." *Id.* at 686, 144 S.Ct. 1889. Then realizing that a bystander saw the whole thing, he retrieved a gun from under the passenger seat. *Id.* In the meantime, his girlfriend escaped; Rahimi, in turn, fired shots as she fled. *Id.* She sought and successfully obtained a restraining order finding that he had committed family violence. *Id.* Months later, after several more instances where Rahimi terrorized his community with a gun, the police obtained a warrant to search his residence. *Id.* at 687–88, 144 S.Ct. 1889. There, "they discovered a pistol, a rifle, ammunition—and a copy of the restraining order." *Id.* at 688, 144 S.Ct. 1889.

Rahimi was then indicted on one count of possessing a firearm while subject to a domestic violence restraining order, in violation of § 18 U.S.C. § 922(g)(8). *Id.* He pleaded guilty while maintaining a Second Amendment challenge on appeal. Following *Bruen*, the Fifth Circuit sided with Rahimi, vacating his conviction and holding that § 922(g)(8) violated the Second Amendment as understood by *Bruen*. *United States v. Rahimi*, 61 F.4th 443, 460–61 (5th Cir. 2023).

The Supreme Court reversed in an 8-1 decision. Suggesting that "some courts have misunderstood the methodology" of the Court's recent Second Amendment cases, it sought to clear things up.[5] 602 U.S. at 692, 144 S.Ct. 1889. *Heller*, *McDonald*, and *Bruen*, the majority wrote, "were not meant to suggest a law trapped in amber." *Id.* at 691, 144 S.Ct. 1889. Instead, the historical analysis "involves considering whether the challenged regulation is consistent with the principles that underpin our regulatory tradition." *Id.* at 692, 144 S.Ct. 1889. More specifically, the court must "ascertain whether the new law is 'relevantly similar' to laws that our tradition is understood to permit, 'applying faithfully the balance struck by the founding generation to modern circumstances.' " *Id.* (quoting *Bruen*, 597 U.S. at 29, 142 S.Ct. 2111) (cleaned up). "Why and how the regulation burdens the right are central to this inquiry." *Id.* To be square with the Second Amendment, the challenged law "must comport" with its underlying principles, "but it need not be a 'dead ringer' or a 'historical twin.' " *Id.* (quoting *Bruen*, 597 U.S. at 30, 142 S.Ct. 2111).

The majority's attempt to clarify the analysis, however, became muddied down with six separate writings, so whether *Rahimi* has cleared up the confusion is yet to

5. The Court's choice of language here is telling. Rather than owning up to *Bruen*'s shortcomings, it chose to lay the blame at the feet of the hundreds of judges who have tried to apply it. But given the widespread confusion following *Bruen*, perhaps the Court should shoulder some responsibility too. After all, as the ancient Athenian general Pericles supposedly remarked, "Having knowledge but lacking the power to express it clearly is no better than never having any ideas at all."

be seen.[6] In any event, it is against that backdrop that the Court proceeds.

B. Whether the Second Amendment applies to Mr. Worster and Ms. Carl

[5] To determine whether Mr. Worster and Ms. Carl can mount Second Amendment challenges to their indictments, the Court must first determine whether it applies to them.

Recall that the Second Amendment establishes "the right of the people to keep and bear arms." U.S. Const. Amend. II. The government argues that possession of firearms "by felons and unlawful users of controlled substances falls outside the scope of the Second Amendment's right to bear arms." (ECF No. 92 at 10.) The upshot of its argument is that Mr. Worster and Ms. Carl are no longer part of "the people" protected by the Second Amendment.

There is a "divergence of opinion in the federal courts" on this question. *United States v. Pierret-Mercedes*, 731 F. Supp. 3d 284, 292 (D.P.R. 2024); *United States v. Bartucci*, 658 F. Supp. 3d 794, 800–03 (E.D. Cal. 2023) (collecting cases). Some courts take a conduct-based approach, where the inquiry turns largely on whether the proposed conduct falls within the Second Amendment. Others take a status-based approach, considering whether the challenger is part of "the people" whom the Second Amendment protects. Still others take a mixed approach, considering both and then some.

The Court will follow the second approach, focusing primarily on whether the challengers are part of "the people" protected by the Second Amendment. That is the case for three reasons.

The first is constitutional text. Other individual constitutional rights given to "the people" do not fall away simply because of their criminal history—or in Ms. Carl's case, simply because she has been accused of a crime. For instance, do felons and alleged marijuana users lose their First Amendment right to assemble peaceably? *See* U.S. Const. Amend I (protecting "the right of the people peaceably to assemble"). Or to be protected against unreasonable searches and seizures? *See* U.S. Const. Amend IV (protecting "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures"). Of course not.[7] The government offers no good reason to treat the Second Amendment's text any differently in this respect.

Second, the Supreme Court's interpretation of the Second Amendment confirms that Mr. Worster and Ms. Carl still fall within its reach. To support its argument, the government largely relies on language from several Supreme Court decisions referencing the right to bear arms as only belonging to "law-abiding, responsible citizens." (ECF No. 92 at 10–11.) Read in a vacuum, that language from *Heller* favors the government's position. But "the language of an opinion is not always to be parsed as though we were dealing with language of a statute." *Nat'l Pork Produc-*

6. Chief Justice Roberts wrote the opinion, in which Justices Alito, Sotomayor, Kagan, Gorsuch, Kavanaugh, Barrett, and Jackson joined. 602 U.S. at 680, 144 S.Ct. 1889. Justice Sotomayor filed a concurring opinion, in which Justice Kagan joined. *Id.* Justices Gorsuch, Kavanaugh, Barrett, and Jackson each filed separate "solo" concurrences. *Id.* Justice Thomas, the author of *Bruen*, filed a dissent. *Id.*

7. True, prisoners' rights are more limited while incarcerated, but felons "are not categorically barred from First Amendment or Fourth Amendment protection because of their status." *Range*, 124 F.4th at 226.

ers Council v. Ross, 598 U.S. 356, 373–74, 143 S.Ct. 1142, 215 L.Ed.2d 336 (2023) (quoting *Reiter v. Sonotone Corp.*, 442 U.S. 330, 341, 99 S.Ct. 2326, 60 L.Ed.2d 931 (1979)). Instead, the Supreme Court has recently "emphasize[d]" that its "opinions dispose of discrete cases and controversies and they must be read with a careful eye to context." *Ross*, 598 U.S. at 374, 143 S.Ct. 1142.

Those cases' contexts are revealing. In *Heller, McDonald*, and *Bruen*, the plaintiffs' criminal histories were not at issue, so the Court's references to "law-abiding, responsible citizens" were dicta. And as the Third Circuit recently observed, "*Heller* said more" on the meaning of "the people." *Range*, 124 F.4th at 226. *Heller* explained that the phrase "unambiguously refers to all members of the political community, not an unspecified subset," so there is a "strong presumption" that the Second Amendment right "belongs to all Americans." 554 U.S. at 580–81, 128 S.Ct. 2783.

Rahimi reinforces this reading of the text. In holding that § 922(g)(8) was constitutional as applied to the defendant, the Court rejected the government's contention that he could be "disarmed simply because he is not 'responsible,' " because it was "unclear what such a rule would entail." 602 U.S. at 701, 144 S.Ct. 1889. Further, the Court reiterated that *Heller* and *Bruen* "said nothing about the status of citizens who were not 'responsible.' " *Id.* at 702, 144 S.Ct. 1889.

Third, there is a growing Circuit consensus that the Second Amendment still protects those charged under § 922(g). *See, e.g.*, *United States v. Connelly*, 117 F.4th 269, 274 (5th Cir. 2024) ("Marijuana user or not, Paola is a member of our political community and thus has a presumptive right to bear arms."); *United States v. Williams*, 113 F.4th 637, 649 (6th Cir. 2024) ("Nothing in the Second Amendment's text draws a distinction among the political community between felons and non-felons—or, for that matter, any distinction at all."); *Range*, 124 F.4th at 228 ("We reject the Government's contention that felons are not among 'the people' protected by the Second Amendment.") (cleaned up).

True, other district courts in this Circuit have reached different conclusions on this question, holding those charged under § 922(g) fall outside the Second Amendment's scope. *See, e.g.*, *United States v. Fulcar*, 701 F. Supp. 3d 49, 55–56 (D. Mass. 2023) (collecting cases). But that approach cannot be squared with clear constitutional text, recent Supreme Court precedent, and persuasive—and increasingly pervasive—Circuit reasoning.

To be clear: the fact that the Second Amendment applies to Mr. Worster and Ms. Carl is the start—not the end—of the analysis. Mr. Worster and Ms. Carl are members of "the people" claiming the right to possess a gun—to "keep and bear arms." U.S. Const. Amend. II. Sections 922(g)(1) and (g)(3) necessarily burden that right by restricting their firearm possession. *Bruen*, 597 U.S. at 24, 142 S.Ct. 2111 ("When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct.") The question becomes whether the government can justify the regulations by showing they are consistent with the principles underpinning our historical tradition of regulating firearms. *Bruen*, 597 U.S. at 24, 142 S.Ct. 2111.

C. Mr. Worster's challenges

Mr. Worster raises challenges to Counts III and IV of his indictment, which respectively implicate § 922(g)(1), banning felons from possessing firearms, and § 922(g)(3), banning users of illegal substances from

possessing firearms. The Court addresses these challenges individually and in turn.

1. Count III: Felon in possession

[6, 7] Before conducting the "history and tradition" analysis, the Court must start with precedent. Neither *Bruen* nor *Rahimi* reversed binding First Circuit precedent affirming the constitutionality of § 922(g)(1). And "until a court of appeals revokes a binding precedent, a district court within the circuit is hard put to ignore that precedent unless it has unmistakably been cast into disrepute by supervening authority." *Eulitt v. Maine, Dep't of Educ.*, 386 F.3d 344, 349 (1st Cir. 2004), *abrogation on other grounds recognized by Carson as Next Friend of O.C. v. Makin*, 596 U.S. 767, 142 S.Ct. 1987, 213 L.Ed.2d 286 (2022).

The relevant First Circuit precedent is *United States v. Torres-Rosario*, 658 F.3d 110 (1st Cir. 2011). There, the First Circuit upheld a conviction under § 922(g)(1) after *Heller* and *McDonald*, explaining that those decisions did not "cast doubt on such longstanding regulatory measures as prohibition on the possession of firearms by felons." *Id.* at 112–13 (quoting *McDonald*, 561 U.S. at 786, 130 S.Ct. 3020). District courts in this Circuit have concluded that *Bruen* did not overrule *Torres-Rosario*. *See, e.g.*, *United States v. Johnson*, No. 23-cr-10043-ADB, 2024 WL 199885, at *2–*4 (D. Mass, Jan. 18, 2024); *Fulcar*, 701 F. Supp. 3d at 53–55.

The Court agrees for several reasons. First, *Bruen* considered the constitutionality of New York's licensing scheme for the public carrying of firearms, not the constitutionality of § 922(g)(1); in *Torres-Rosario*, the First Circuit expressly dealt with § 922(g)(1). Second, the "First Circuit relied upon the Supreme Court's emphasis in *Heller* and *McDonald* that such decisions did not cast doubt" on § 922(g)(1). *Fulcar*, 701 F. Supp. 3d at 54. "*Bruen* left these assurances undisturbed, instead abrogating the application of means-end scrutiny." *Id.* Third, as the *Fulcar* court observed, "the concurrences and the dissent in *Bruen* indicate that at least six of the Justices at the time (and five of the current Justices) read the majority opinion as maintaining the status quo as to the constitutionality of felon in possession laws like § 922(g)(1)." *Id.* (counting the votes).

For now, that is sufficient to settle Mr. Worster's challenge to Count III. After all, in *Torres-Rosario*, the First Circuit "acknowledged the possibility of as-applied challenges to § 922(g)(1), but found that such cases would be limited to those in which the underlying felony is 'so tame and technical as to be insufficient to justify the ban.' " *Johnson*, No. 23-cr-10043-ADB, 2024 WL 199885, at *4 (quoting *Torres-Rosario*, 658 F.3d at 113). Mr. Worster's criminal history, however, falls outside the scope of that exception. His criminal record includes multiple drug-related crimes, multiple firearm-related crimes, and two counts of possessing an explosive device—far from "tame and technical." (ECF No. 92-2 at 2–4.) So, his as-applied challenge necessarily fails under *Torres-Rosario*.

For the same reasons, Mr. Worster's as-applied challenge to § 922(g)(1) would also fail under *Bruen*. Courts have consistently upheld application of § 922(g)(1) to individuals whose past felonies related to firearms and weapons. *See, e.g.*, *United States v. Bullock*, 123 F.4th 183, 185 (5th Cir. 2024) ("Bullock previously misused a firearm to harm others when he shot one individual, fired into a crowd of others, and in the process killed an innocent passerby. A ban on his ability to possess a firearm 'fits neatly' within our Nation's historical tradition of firearm regulation."); *United States v. Williams*, 113 F.4th 637, 662 (6th Cir. 2024) ("Because Williams's criminal record shows that he's dangerous, his as-

applied challenge fails."). On the other hand, the one circuit to invalidate § 922(g)(1) as applied did so when the challenger was only "convicted of food-stamp fraud" nearly thirty years prior and the record contained "no evidence that [the challenger] poses a physical danger to others." *Range*, 124 F.4th at 232.

That all makes good sense. The historical record demonstrates "that legislatures have the power to prohibit dangerous people from possessing guns." *Kanter*, 919 F.3d at 451 (Barrett, J., dissenting) (collecting sources); *see also Folajtar v. Att'y Gen.*, 980 F.3d 897, 912 (3d Cir. 2020) (Bibas, J., dissenting) ("The historical touchstone is danger[.]"). For instance, "[d]ebates from the Pennsylvania, Massachusetts, and New Hampshire ratifying conventions, which were considered 'highly influential' by the Supreme Court in *Heller* . . . confirm that the common law right to keep and bear arms did not extend to those who were likely to commit violent offenses." *Binderup*, 836 F.3d at 368 (Hardiman, J., concurring). "So, the best evidence we have indicates that the right to keep and bear arms was understood to exclude those who presented a danger to the public." *Id.*

Given repeated judicial determinations that Mr. Worster presented a danger to the public, as shown by criminal convictions on separate occasions for drug trafficking, illegal firearm possession, and illegal possession of explosive devices, § 922(g)(1)'s application to him fits neatly within the Nation's history and tradition.[8]

The Court will thus deny Mr. Worster's motion to dismiss Count III.

2. Count IV: Unlawful user in possession

[8] But the same historical test leads to a different conclusion about the constitutionality of § 922(g)(3) as applied to Mr. Worster. The government provides no binding constitutional decision from the First Circuit restricting this Court's analysis. So, the question becomes "whether the challenged regulation is consistent with the principles that underpin our regulatory tradition." *Rahimi*, 602 U.S. at 692, 144 S.Ct. 1889.

Section 922(g)(3) is a sweeping law. It provides that "[i]t shall be unlawful for any person . . . who is an unlawful user of or addicted to any controlled substance . . . [to] possess in or affecting commerce, any firearm or ammunition." 18 U.S.C. § 922(g)(3). On its face, it bans all possession of firearms for an undefined set of controlled substance users, even while they are not actively intoxicated. Still, the First Circuit has poured some substance into the statute: "To establish the 'unlawful user' element of this offense, the government must prove beyond a reasonable doubt that (1) the defendant used controlled substances regularly, (2) that the use took place over a long period of time, and (3) that the use was proximate to or contemporaneous with his possession of a firearm." *United States v. Tanco-Baez*, 942 F.3d 7, 15 (1st Cir. 2019).

To meet its burden, the government primarily relies on *United States v. Posey*, 655 F. Supp. 3d 762, 773 (N.D. Ind. 2023). *Posey* rejected an as-applied challenge to § 922(g)(3) based on the complicated effects of a presidential pardon, and it rejected a facial challenge by relying on

8. Looming in the background of the dangerousness inquiry is what Judge Carlton Reeves has identified in *Bullock* as "the problem of individual adjudication." 679 F. Supp. 3d at 531–34. This Court need not draw the exact line of what felonies constitute dangerous ones, but it can say with confidence that Mr. Worster's criminal history puts him on the opposite side of the line as the challenger in *Range*, for instance. *Range*, 124 F.4th at 232.

United States v. Yancey, 621 F.3d 681 (7th Cir. 2010), a pre-*Bruen* case. But *Yancey, Posey*, and the laws provided by the government seem largely irrelevant to the *Bruen* inquiry. After all, "when it comes to interpreting the Constitution, not all history is created equal." *Bruen*, 597 U.S. at 34, 142 S.Ct. 2111. The closer to the Founding, the better, because that was when the scope of the right was set. *Id.* Many of the supposedly "entrenched" laws disarming mentally ill people and drug addicts—particularly those from states not in existence at the Founding, like California, Colorado, Hawaii, Minnesota, Montana, Nevada—are thus unhelpful here. (ECF No. 92 at 18 n.4.)

The strongest evidence the government provides are the historical intoxication laws. (ECF No. 92 at 18.) But these laws largely seem to be from the late nineteenth century, so they offer little assistance in determining the scope of the right when it was adopted in 1791. (ECF No. 92 at 18 n.3). And even taking these laws as an important part of the Nation's tradition, all they seem to show is that "some laws banned *carrying* weapons while under the influence, none barred gun *possession* by regular drinkers." *United States v. Connelly*, 117 F.4th 269, 280 (5th Cir. 2024) (analyzing similar laws). Even under the First Circuit's narrower interpretation of § 922(g)(3), requiring "proximate" or "contemporaneous" drug use and firearm possession, the Court struggles to see an on-point historic analogue. *See, e.g.*, *United States v. Daniels*, 124 F.4th 967, 975 (5th Cir. 2025) ("And even if the government had persuaded the jury that Daniels was frequently intoxicated, here, as in *Connelly*, the government offers no Founding-era law or practice of disarming ordinary citizens 'even if their intoxication was routine.' ") So, while § 922(g)(3) and these laws "may address a comparable problem," preventing intoxicated people from carrying weapons, "they do not impose a comparable burden on the right holder." *Id.*

All that the government alleged was that Mr. Worster had a medical marijuana card in his name, "a small marijuana grow with two mature marijuana plants, and a small bag of dried marijuana" at the time of the search. (ECF No. 92 at 3.) That tells the Court little about his drug use, and, most importantly for the constitutional analysis, nothing suggests he was intoxicated at the time of his arrest. But "under the government's reasoning, Congress could (if it wanted to) ban gun possession by anyone who has multiple alcoholic drinks a week from possessing guns based on the intoxicated carry laws." *Id.* at 282. *Bruen* and *Rahimi* "cannot stretch that far," and § 922(g)(3) imposes a "far greater burden" on Mr. Worster's Second Amendment rights "than our history and tradition of firearms regulation can support." *Id.*

Because the government has not met its burden under *Bruen*, the Court will grant Mr. Worster's motion to dismiss Count IV.

D. Ms. Carl's challenges

That leaves Ms. Carl's challenges. Like Mr. Worster, she alleges that § 922(g)(3) is unconstitutional as applied to her. And from that, she argues that her false statement charges should be dismissed because her answers to the drug user questions were "immaterial to the lawfulness of the sale." (ECF No. 91 at 5.) The Court addresses these arguments in turn.

1. Count V: Unlawful user in possession

[9] The Court need not recount the government's position about § 922(g)(3) here, because it is materially the same as explained above. *See, e.g.*, ECF No. 96 at 8–9 (making the same arguments about *Posey* and *Yancey*).

Again, the government has failed to meet its burden, and the case is even

clearer for Ms. Carl. The Court finds the Fifth Circuit's decision in *United States v. Connelly* to be on all fours. 117 F.4th 269. After surveying both Founding-era laws and post-Reconstruction laws about the relationship between guns and alcohol, the court held that "history and tradition surrounding intoxication laws may address a problem comparable to § 922(g)(3), but do not impose a comparable burden in doing so." *Id.* at 279–82. Put differently, "they pass the 'why' but not the 'how' test" under *Bruen*, because they impose significantly greater temporal limits on firearm possession. *Id.* at 281–82 ("Taken together, the statutes provide support for banning the carry of firearms while actively intoxicated. Section 922(g)(3) goes much further: it bans all possession, and it does so for an undefined set of 'user[s],' even while they are not intoxicated.")

To boot, Ms. Carl is closely situated to the defendant who raised a successful as-applied challenge in *Connelly.* Like her, Ms. Worster has no criminal history and stated that she uses marijuana once or twice a week (ECF No. 96 at 2). And like in *Connelly*, the Court does not "know how much she used at those times or when she last used, and there is no evidence that she was intoxicated at the time she was arrested." 117 F.4th at 282. So "by regulating [Ms. Worster] based on habitual or occasional drug use, § 922(g)(3) imposes a far greater burden on her Second Amendment rights than our history and tradition of firearms regulation can support." *Id.*

Because the government has not met its burden under *Bruen*, the Court thus grants Ms. Carl's motion to dismiss Count V.

2. Count VI and Count VII: Derivative charges

[10] That leaves Count VI and Count VII, arising from false statements about drug use that Ms. Carl made while buying a firearm in violation of § 922(a)(6) and § 924(a)(1)(A). The government argues that because Ms. Carl "advances no [substantive] arguments concern[ing] Sections 922(a)(6) and 924(a)(1)(A)," her motion should fail. (ECF No. 96 at 11.)

The government has it backward. If the defendant challenges a regulation that affects protected Second Amendment conduct—as these statutes necessarily do by putting conditions on purchasing firearms—the government bears the burden of showing that it is consistent with the Nation's history and tradition. *Bruen* is crystal-clear on this point:

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

597 U.S. at 1, 142 S.Ct. 2111 (emphasis added). Puzzlingly, the government here provides no historical analogues, only citations to other cases affirming the statutes' constitutionality. But a mere volume of cases is not enough. *See, e.g.*, *Heller*, 554 U.S. at 624 n.24, 128 S.Ct. 2783 (rejecting decisions of "hundreds of judges").

Because the government has not met its burden under *Bruen*, the Court thus dismisses Counts VI and VII.

IV. CONCLUSION

Mr. Worster's Motion (ECF No. 89) is DENIED as to Count III but GRANTED as to Count IV. Ms. Carl's Motion (ECF No. 91) is GRANTED in full.

IT IS SO ORDERED.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA, v. DAVID WORSTER; and ALEXZANDRIA CARL, Defendants.	C.A. No. 21-cr-111-JJM-PAS

ORDER

The Court previously dismissed all three charges against Alexzandria Carl because the government failed to meet its burden under *New York State Rifle & Pistol Association v. Bruen*, 597 U.S. 1 (2022). (ECF No. 99.) The government now moves for reconsideration of the Court's order dismissing Counts VI and VII, related to false statements that Ms. Carl allegedly made while purchasing a firearm. (ECF No. 101.)

The First Circuit has made clear that motions to reconsider "are not to be used as a vehicle for a party to undo its own procedural failures [or to] allow a party to advance arguments that could and should have been presented to the district court prior to judgment." *United States v. Allen*, 573 F.3d 42, 53 (1st Cir. 2009) (cleaned up). Instead, they "are appropriate only in a limited number of circumstances: if the moving party presents newly discovered evidence, if there has been an intervening change in the law, or if the movant can demonstrate that the original decision was based on a manifest error of law or was clearly unjust." *Id.* The government argues

that the Court's previous decision related to Counts VI and VII falls into the third category. (ECF No. 101-1 at 3–4.)

But "a motion to reconsider is not a second chance for the losing party to make its strongest case or to dress up arguments that previously failed." *United States v. Huff*, 782 F.3d 1221, 1224 (10th Cir. 2015) (cleaned up). That is what the government wants here. In its response to Ms. Carl's original motion, it devoted only about three-fourths of a single page to Counts VI and VII. (ECF No. 96 at 11.) Other than relying on the strength of its § 922(g)(3) argument, all the government did was note that "free-standing *Bruen* challenges" to the false statement statutes "have failed." (ECF No. 96 at 11.) It did not provide a single reason; it just attached two lists of related cases. (ECF No. 96-2; No. 96-3.)

That is why the Court takes issue with the government's characterization of its first brief as a "discussion" of the "decisions cited in its original opposition memorandum." (ECF No. 101-1 at 4 n.5.) *Black's Law Dictionary* defines "discussion" as "the act of exchanging views on something; a debate." Discussion, *Black's Law Dictionary* (12th ed. 2024). Attaching lists of cases and saying that those cases are "incorporated therein" hardly qualifies. (ECF No. 96 at 11.) That is especially true when those cases come in postures of varying relevance to this one.[1]

[1] Consider the first two cases cited in Exhibit 96-2, listing cases discussing § 922(a)(6). *See United States v. DeBorba*, 713 F. Supp. 3d 1042, 1067 (W.D. Wash. 2024) (assessing a § 922(a)(6) challenge as it relates to immigration laws); *United States v. Edwards*, 5:23-cr-200-MHH-HNJ, 2023 WL 8113789, at *3 (N.D. Ala. Nov. 22, 2023) (explaining that, because a constitutional challenge to § 922(g)(1) failed due to binding Eleventh Circuit precedent, the related challenge to § 922(a)(6) also failed because "the second flows from the first").

As the First Circuit has explained, "Judges are not mind-readers, so parties must spell out their issues clearly, highlighting the relevant facts and analyzing on-point authority." *Rodriguez v. Mun. of San Juan*, 659 F.3d 168 (1st Cir. 2011) (cleaned up). The government is not exempt.

To excuse itself, it mainly argues that Ms. Carl "never challenged" the constitutionality of the false statement statutes under the Second Amendment. (ECF No. 101-1 at 2.) That is demonstrably false. *See, e.g.*, ECF No. 91 at 1–2 ("It is [Ms. Carl's] position that the Government's action against her is in derogation of her Second Amendment right to bear arms, and that the three counts against her should be dismissed."); *id.* at 5 ("If Ms. Carl were to have answered the drug use question 'yes', she likely would have been deprived of her right to purchase a gun, erasing a right which had been granted to her by the Constitution.") The arguments were brief but logical and complete, and she twice made clear that her challenges to the false statement statutes, while connected to her challenges to § 922(g)(3), were also constitutional. All that is to say that the government was on notice that constitutional questions loomed over Counts VI and VII, too. Against this backdrop, it is particularly puzzling that the government had the wherewithal to mention *Bruen* but not to develop any arguments it now brings.

To summarize: Ms. Carl brought a constitutional challenge to the false statement statutes. The government failed to argue that the Second Amendment does not apply to those charges and, alternatively, that the false statement statutes satisfy *Bruen*. The Court agreed with Ms. Carl, dismissing all charges against her

based on *Bruen*. Now unsatisfied with the result, the government comes bearing a twelve-page motion and a ten-page reply with fresh, fleshed-out arguments responding to the Court's decision. These new arguments may have merit, but the Court will not give the government a second bite at the apple when its first did not even break the skin. That is all the more true because the Court's prior order removed any threat of the loss of Ms. Carl's liberty. Doubling back, re-reviewing the case, and reimposing charges based on arguments that the government did not make the first time would produce a far greater error of law—and of justice—than any that the government now wants to correct. *Allen*, 573 F.3d at 52.

The government's Motion to Reconsider (ECF No. 101) is DENIED.

IT IS SO ORDERED.

s/John J. McConnell, Jr.

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John J. McConnell, Jr.
Chief Judge
United States District Court

Date: March 24, 2025

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