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
Hon. John J. McConnell, Jr., Chief Judge

BRIEF FOR APPELLEE, DAVID WORSTER

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INTRODUCTION

This appeal asks a single, straightforward question: whether the Government has met its burden under *New York State Rifle & Pistol Association v. Bruen*, 142 S. Ct. 2111 (2022), and *United States v. Rahimi, 602 U.S. 680 (2024)*, to justify *18 U.S.C. § 922(g)(3)* as consistent with the Nation's historical tradition of firearm regulation. It has not. The district court carefully applied the Supreme Court's originalist framework and correctly concluded that *§ 922(g)(3)*, as applied to David Worster, violates the Second Amendment.

The Government's appeal attempts to recast Bruen and Rahimi as license to uphold categorical, status-based firearm prohibitions untethered from historical tradition. But those cases require the opposite. Under Bruen, the Government must show that the challenged regulation is "consistent with the Nation's historical tradition of firearm regulation." 142 S. Ct. at 2130. *Rahimi* further clarifies that the relevant tradition concerns restrictions imposed on individuals shown to be dangerous through conduct, not those subject to broad disarmament based merely on status or perceived risk. 602 U.S. at 694–95.

As Historian, Clayton E. Cramer[1], writes that tradition does not exist here. The historical record — from colonial brandishing statutes to early Republic surety laws — shows that firearm restrictions were imposed following individualized judicial determinations of dangerous conduct, not by categorically disarming broad groups of people. As historian Clayton E. Cramer's declaration confirms, there is no evidence of any colonial, founding-era, or Reconstruction-era statute that categorically disarmed individuals based solely on their use of intoxicating substances. (Cramer Decl. ¶4(a).). Further, Cramer's declaration confirms, there is not a single founding-era statute disarming people for the mere use of intoxicants, let alone marijuana — a substance legal under Rhode Island law and

[1] To further assist the Court in assessing the historical tradition relevant to § 922(g)(3), Appellee submits the **Declaration of historian Clayton E. Cramer**, attached in the Supplemental Appendix. Mr. Cramer is a published historian and recognized authority on early American firearms regulation, with particular expertise in the interplay between firearms, intoxicants, and militia practices in the eighteenth and nineteenth centuries. His declaration — supported by primary sources, legislative materials, and contemporaneous accounts — confirms that **no founding-era or Reconstruction-era law disarmed individuals based solely on their use of intoxicating substances**. Rather, as Mr. Cramer explains, regulations of the period targeted *dangerous conduct in the moment*, such as carrying a firearm *while actively intoxicated*, and required individualized determinations of dangerousness before disarmament. The historical record thus refutes the Government's position and demonstrates that § 922(g)(3) — a categorical, status-based prohibition — is a modern departure from the original understanding of the Second Amendment.

widely used medicinally across the United States. (Cramer Decl. ¶¶4(a), 6, 27-29.)"

Moreover, modern appellate decisions overwhelmingly reject the Government's position. The Fifth Circuit in *United States v. Daniels*, 77 F.4th 337 (5th Cir. 2023), held that habitual marijuana users "are not categorically dangerous" and that § 922(g)(3) "imposes a burden inconsistent with this Nation's historical tradition." Id. at 340–41. Courts across the country — including the Third, Fifth, Eighth, Tenth, and Eleventh Circuits — have reached similar conclusions, holding that § 922(g)(3) cannot be constitutionally applied to individuals like Worster, who was not shown to be intoxicated while allegedly possessing a firearm nor was adjudicated dangerous thereby. See, e.g., *United States v. Connelly*, 117 F.4th 269 (5th Cir. 2024); *Fla. Comm'r of Agriculture v. Att'y Gen.,* 148 F.4th 1307 (11th Cir. 2025); *United States v. Cooper*, 127 F.4th 1092 (8th Cir. 2025).

This case falls squarely within that line. The Government seized a medical marijuana in Mr. Worster's name. It does not say or show that Mr. Worster was anything but sober at any time it alleges him to be in possession of a firearm. Moreover, it must be recalled that while the Government speaks of two mature marijuana plants at the residence, neither was seized or tested to so establish. The Government's assertion of affirmative knowledge is simply unsupported by the

record. The Government offered no evidence of Mr. Worster's dangerousness as a supposed user of marijuana— and the district court found none — nor that he posed a danger to himself or others. The Government's analogies to founding-era law are inapt, its reliance on dicta misplaced, and its invitation to revert to means–end balancing foreclosed by Bruen and Rahimi. The district court's judgment should therefore be affirmed.

STATEMENT OF THE ISSUES

Whether *18 U.S.C. § 922(g)(3)*, which categorically prohibits unlawful users of controlled substances from possessing firearms, violates the Second Amendment as applied to a registered medical marijuana patient who is alleged to have possessed a firearm while sober and has never been adjudicated dangerous, where the Government cannot demonstrate that the statute is consistent with the Nation's historical tradition of firearm regulation as required by *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022), and *United States v. Rahimi*, 602 U.S. 680 (2024).

STATEMENT OF THE CASE

Nature of the Case

This appeal concerns the constitutionality of *18 U.S.C. § 922(g)(3)*, which prohibits unlawful users of controlled substances from possessing firearms. The

Government appeals the district court's dismissal of Count Two of the indictment, which charged David Worster under § 922(g)(3) based on his medical marijuana use. The district court held that the Government failed to demonstrate that § 922(g)(3), as applied to Mr. Worster, is consistent with the Nation's historical tradition of firearm regulation as required by *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022), and *United States v. Rahimi*, 602 U.S. 680 (2024).

The Charges

Mr. Worster was charged in a multi-count indictment. Count One charged him under *18 U.S.C. § 922(g)(1)* with being a convicted felon in possession of a firearm. Count Two charged him under *§ 922(g)(3)* with possessing a firearm while being an unlawful user of marijuana, a controlled substance. The Government asserts that Mr. Worster is a registered medical marijuana patient under Rhode Island law. This contention will be accepted for purposes of the issues on appeal only.

District Court Proceedings

Mr. Worster moved to dismiss both counts, challenging them under the Second Amendment framework established in Bruen and Rahimi. The district court denied the motion to dismiss Count One under *§ 922(g)(1)* but granted the motion as to Count Two under *§ 922(g)(3)*. The district court carefully applied the Supreme Court's originalist framework and concluded that the Government had not met its burden of showing that § 922(g)(3) is consistent with the historical tradition of firearm regulation when applied to medical marijuana users.

The district court found no evidence that Mr. Worster posed a danger to himself or others thereby, nor that he had ever threatened anyone or committed an act of violence, or that he was intoxicated when he was alleged to have possessed a firearm. The court concluded that § 922(g)(3), as applied to Mr. Worster—a registered medical marijuana patient who possessed a firearm while sober—violated the Second Amendment.

Procedural Posture

The district court denied Mr. Worster's motion to dismiss Count Three, which charges him under *18 U.S.C. § 922(g)(1)* for possessing a firearm as a convicted felon. That ruling is not before this Court. The Government appeals only the

district court's dismissal of Count Four under § 922(g)(3), which prohibits unlawful users of controlled substances from possessing firearms. This appeal therefore requires the Court to evaluate whether § 922(g)(3) independently satisfies the constitutional requirements established in Bruen, regardless of whether § 922(g)(1) might apply to Mr. Worster.

SUMMARY OF ARGUMENT

The government appeals the district court's dismissal of Count Four, which charges Mr. Worster under *18 U.S.C. § 922(g)(3)* for being an unlawful user of marijuana. The district court correctly held that at the motion to dismiss stage, the government failed to establish that § 922(g)(3) as applied to medical marijuana users survives the constitutional test established in *New York State Rifle & Pistol Ass'n v. Bruen, 597 U.S. 1 (2022),* and refined in United *States v. Rahimi, 602 U.S. 680 (2024).*

This Court is not reviewing whether Mr. Worster may be prosecuted under § 922(g)(1), which prohibits convicted felons from possessing firearms. The district court denied dismissal of that count, and it is not before this Court. The government must independently justify § 922(g)(3)—the prohibition based on marijuana use—by demonstrating that disarming medical marijuana users is

consistent with the Nation's historical tradition of firearm regulation. It cannot do so by pointing to Mr. Worster's prior convictions. Each prohibition must rest on its own historical foundation.

The government offers two historical analogues: laws disarming (1) felons and (2) dangerous individuals. Neither justifies § 922(g)(3) as applied here. First, the indictment does not allege Mr. Worster has been convicted of unlawful marijuana possession. Second, the indictment contains no allegations that Mr. Worster's alleged medical marijuana use—as opposed to any other aspect of his history—renders him dangerous. The government's argument reduces to the claim that all marijuana users are categorically dangerous, which the Eleventh Circuit recently rejected in Florida Commissioner of Agriculture v. Attorney General. This Court should affirm the district court's well-reasoned dismissal.

ARGUMENT

I. Under Bruen and Rahimi, the Government Bears — and Has Not Met — Its Burden to Identify a Historical Tradition Supporting § 922(g)(3)

The Supreme Court's decisions in *New York State Rifle & Pistol Association v. Bruen, 142 S. Ct. 2111 (2022)*, and *United States v. Rahimi*, 602 U.S. 680 (2024), govern this case. Those decisions establish a straightforward analytical framework: once a challenger shows that the conduct at issue — here, possession of a firearm — falls within the Second Amendment's plain text, the burden shifts to the Government to demonstrate that its regulation is "consistent with the Nation's historical tradition of firearm regulation." Bruen, 142 S. Ct. at 2130.

A. The Supreme Court Has Rejected Means–End Balancing and Vague "Responsibility" Standards

The Government attempts to justify § 922(g)(3) with generalized assertions about public safety, arguing that marijuana users "pose risks" and that Congress's "policy judgments" deserve deference. But those arguments are precisely the kind the Supreme Court has foreclosed. Once the Second Amendment's text covers the regulated conduct — as it plainly does here — "the Constitution presumptively protects that conduct," and "the government must justify its regulation." Id. at 2130–34.

In *United States v. Diaz*, 116 F.4th 458, 465 (5th Cir. 2024), cert. denied, 145 S. Ct. 2822 (2025) the court held that ultimately, the text of the Second Amendment includes eighteen-to-twenty-year-old individuals among "the people" whose right

to keep and bear arms is protected. The federal government has presented scant evidence that eighteen-to-twenty-year-olds' firearm rights during the founding-era were restricted in a similar manner to the contemporary federal handgun purchase ban, and its 19th century evidence "cannot provide much insight into the meaning of the Second Amendment when it contradicts earlier evidence." Id. at 66, 142 S. Ct. at 2154 (citing Heller, 554 U.S. at 614, 128 S. Ct. at 2810). In sum, 18 U.S.C. §§ 992(b)(1), (c)(1) and their attendant regulations are unconstitutional in light of our Nation's historic tradition of firearm regulation. *Reese v. Bureau of Alcohol, Tobacco, Firearms, & Explosives*, 127 F.4th 583, 600 (5th Cir. 2025).

The Court reaffirmed that principle in Rahimi, striking down § 922(g)(8)'s firearm bans for those subject to domestic violence restraining orders. Rejecting the Government's attempt to disarm people it deemed "irresponsible," the Court held that "responsibility" is "too vague a concept to define the scope of the Second Amendment." 602 U.S. at 694–95. That reasoning applies with full force here: the Government's argument that marijuana users are insufficiently "responsible" cannot sustain a prohibition that finds no footing in historical tradition.

B. The Government Must Show a Relevant Historical Tradition — and Has Not Done So

Under Bruen, the Government must identify "well-established and representative historical analogue[s]" that are "relevantly similar" to § 922(g)(3). 142 S. Ct. at 2132–33. The comparison must focus on both the "burden on the right of armed self-defense" and the "justification for that burden." Id. at 2133. If the Government cannot demonstrate that the challenged law is analogous to historical regulations, the statute fails.

The Government has not met that burden. As historian Clayton Cramer's comprehensive review of colonial and founding-era sources confirms, there is no founding-era law disarming persons for the mere use of intoxicants. (Cramer Decl. ¶¶4(a), 6, 7.) Nor does it identify any 18th- or 19th-century law imposing a categorical, lifetime prohibition on firearm possession based solely on substance use. (Id. ¶30.) The absence of such laws is not an accident—it reflects a historical tradition fundamentally inconsistent with § 922(g)(3)."

This historical silence is particularly telling because intoxicant use was well known in early America. Alcohol consumption in the founding era reached 3.7 gallons of hard liquor per capita annually—more than twice modern rates—and opium and cannabis were widely available for medicinal and other uses. (Cramer Decl. ¶¶16-17, 27-29.) Cannabis was cultivated for industrial and medicinal purposes for centuries, and opiates like laudanum were sold without restriction. (Id. ¶¶28-29.) Yet no one suggested that those who used them should be disarmed.

The fact that early legislatures knew of intoxicants and their effects — yet chose not to disarm their users — speaks volumes about the historical tradition. (Id. ¶4(c).)" See also *United States v. Daniels*, 77 F.4th 337, 341 (5th Cir. 2023).

II. THE GOVERNMENT CANNOT BOOTSTRAP SECTION 922(g)(3) BY POINTING TO PRIOR CONVICTIONS

The government's brief reveals the fatal flaw in its position. It argues that Mr. Worster is dangerous based on the combination of his prior convictions and his marijuana use. Gov't Br. at 12, 15. But this Court is not reviewing whether his prior convictions justify disarmament under § 922(g)(1)—the district court already denied dismissal of that count, and that ruling stands. The question is whether § 922(g)(3) independently satisfies Bruen when applied to medical marijuana users.

The government cannot have it both ways. If prior felony convictions justify disarmament, that is what § 922(g)(1) does. The government must separately justify § 922(g)(3)—the prohibition based on marijuana use—through historical analogues to disarming marijuana users specifically. It cannot point to Mr. Worster's conviction history to save a different statutory prohibition that disarms based on different conduct.

This independent-justification requirement prevents the government from categorically expanding firearms prohibitions without historical support. Under the government's logic, once any person has any criminal history, Congress could prohibit them from possessing firearms based on any conduct it chooses to criminalize, without ever showing historical precedent for that specific prohibition. This would effectively read Bruen's historical requirement out of the Constitution for anyone with a criminal record.

The Eleventh Circuit correctly rejected this bootstrapping approach in Florida Commissioner of Agriculture v. Attorney General, No. 22-13893, slip op. at 19-20 (11th Cir. Aug. 20, 2025). Eleventh Circuit: In Fla. Comm'r of Agriculture v. Attorney General, the court vacated dismissal of a challenge to § 922(g)(3), holding the government failed to establish at the pleading stage that disarming medical marijuana users is consistent with the nation's historical tradition of firearm regulation. That holding applies with equal momentum here. The government's ability to prosecute Mr. Worster under § 922(g)(1) does not relieve it of independently justifying § 922(g)(3) under Bruen's historical test.

The Government devotes substantial space to recounting Mr. Worster's criminal record — describing him as "a felon many times over" and invoking offenses from more than a decade ago — in an effort to cast him as irredeemably

dangerous. But that approach cannot substitute for the constitutional analysis *Bruen* and *Rahimi* require. This Court is not reviewing the constitutionality of § 922(g)(1), which addresses firearm possession by convicted felons. The district court denied Mr. Worster's motion to dismiss that count, and that ruling is not before this Court. The question here is whether Congress may, consistent with the Second Amendment, disarm a person based solely on his marijuana use — and whether a historical tradition supports such a status-based prohibition. The Government's recitation of past convictions is beside the point because none of those convictions involved the misuse of firearms while under the influence of marijuana, none involved adjudications of dangerousness, and most occurred years before the conduct charged here. Under *Bruen*, a person's prior record cannot relieve the Government of its obligation to demonstrate a historical analogue for § 922(g)(3) itself. If it could, Congress could disarm any disfavored group without historical support simply by pointing to unrelated prior conduct — a result that would render *Bruen*'s historical inquiry meaningless.

The Government's historical argument also suffers from a more fundamental flaw: it is largely new to this appeal. The memorandum it filed in opposition to Mr. Worster's motion to dismiss in the district court bore little resemblance to the sprawling, post-founding-era survey and extensive string-citing it now offers. There, the Government relied primarily on *Heller*'s "law-abiding, responsible

citizen" language and a handful of generalized public-safety assertions. It did not meaningfully engage with the *Bruen* framework, offer detailed analogues, or even attempt the kind of sweeping historical analysis it now presents for the first time on appeal. That shift is telling. If the Government believed the founding-era tradition it now invokes actually supported § 922(g)(3), it had every incentive to make that case to the district court. Its failure to do so underscores the weakness of its position — and in any event, this Court "does not ordinarily consider arguments raised for the first time on appeal." *See, e.g., United States v. Slade*, 980 F.3d 506, 517 (1st Cir. 2020). The Government's new historical narrative cannot cure its failure to carry its burden when it mattered most.

Although the Government's failure to identify a founding-era analogue is itself dispositive under *Bruen*, it has attempted to salvage § 922(g)(3) by recasting this case as one about Mr. Worster's supposed "dangerousness." That rhetorical pivot underscores the weakness of its position. Having come up empty on history, the Government now seeks to justify disarmament not by what the founding generation regulated, but by who it thinks Mr. Worster is. That is precisely the type of generalized, character-based reasoning the Supreme Court rejected in *Rahimi*. The question is not whether Mr. Worster has a record the Government dislikes; it is whether the conduct at issue here — sober possession of a firearm by a medical-marijuana patient — fits within the historical tradition of

disarmament recognized at the founding. It does not. And even if the Court were to consider the Government's "dangerousness" theory on its own terms, that argument fares no better.

III. The Government Has Not Shown That Mr. Worster's Conduct Demonstrates Dangerousness of the Kind Historically Required to Justify Disarmament

The Government's fallback argument is that Mr. Worster's prior convictions — including offenses from his youth involving narcotics, firearm possession, and even the possession of firecrackers later characterized as "destructive devices" — render him inherently dangerous and thus justify disarmament under § 922(g)(3). That contention misunderstands both the factual record and the constitutional standard. It also collapses the carefully drawn boundaries *Bruen* and *Rahimi* impose on the Government's burden.

First, the Government's dangerousness argument is legally misplaced because the question before this Court is not whether Mr. Worster may be disarmed *at all* under § 922(g)(1) — a separate provision, which the district court declined to dismiss and which is not before this Court — but whether Congress may, consistent with the Second Amendment, disarm him *on the basis of marijuana use alone*. Past conduct may be relevant to other statutory prohibitions, but it does not

relieve the Government of its obligation to identify a founding-era analogue for § 922(g)(3) itself. *Rahimi* makes clear that each restriction must be justified on its own historical terms, not by cumulative risk assessments untethered to the challenged statute.

Second, even if prior conduct were relevant, the Government has not shown the kind of dangerousness that historically justified disarmament. The record contains no evidence that Mr. Worster ever used marijuana while armed, brandished a weapon under the influence, threatened or harmed anyone, or otherwise misused firearms in connection with intoxicants. Whatever may be said about youthful offenses long in the past, the conduct charged here — mere possession of a firearm while sober and holding a medical marijuana card — bears no resemblance to the individualized, conduct-based findings of dangerousness that justified disarmament in the founding era. That historical tradition focused on those who posed a present threat through violent acts, insurrection, or judicially determined breaches of the peace, not those whose prior convictions made them disfavored in the government's eyes.

Finally, the Government's attempt to transform the Second Amendment into a lifetime "character test" is inconsistent with the Supreme Court's decisions. The right to keep and bear arms is not conditioned on spotless virtue. It turns on

whether the Government can show that disarming a particular category of persons — here, state-lawful marijuana users — aligns with the Nation's historical tradition of firearm regulation. Because the Government has not and cannot make that showing, its appeal to generalized "dangerousness" fails as a matter of constitutional law.

IV. The Historical Record Demonstrates That Disarmament Required Dangerous Conduct, Not Mere Status

The historical evidence — from colonial statutes to Reconstruction-era laws — confirms that firearm restrictions were imposed only in response to dangerous conduct and required individualized determinations. No historical tradition supports the categorical disarmament of otherwise law-abiding individuals based solely on substance use.

A. Founding-Era Laws Targeted Dangerous Conduct, Not Substance Use

The Government relies heavily on historical laws prohibiting intoxicated persons from carrying firearms. But these laws regulated conduct — such as brandishing a weapon while drunk — rather than imposing blanket disarmament based on status. Historian Clayton E. Cramer, in his declaration submitted with this brief, confirms that historical regulations concerning intoxicants "were narrowly tailored to conduct—typically prohibiting carrying firearms while actively intoxicated—and did not extend to status-based disarmament." (Cramer Decl.

¶4(b).) Indeed, Dr. Cramer's research identified only one pre-Fourteenth Amendment law restricting firearms and intoxication: a mid-19th-century Kansas statute prohibiting carrying a weapon while currently intoxicated. (Id. ¶27.) That law was narrowly tailored, temporary, and aimed at immediate risk—the polar opposite of § 922(g)(3)'s categorical, perpetual ban."

Historical practice corroborates this point. Militia musters — often mandatory for all able-bodied men — routinely featured heavy alcohol consumption, yet there is no record of disarmament resulting from such use. Contemporary accounts document officers treating troops to "pailfuls" of sweetened rum and water, with attendees "getting drunk" or becoming "gloriously drunk in their country's service." (Cramer Decl. ¶¶9-15.) One 1840 Wisconsin muster report noted that militia members "all got so drunk they couldn't muster at all in the evening." (Id. ¶11.) Yet these armed, intoxicated citizens faced no categorical disarmament. The contrast with § 922(g)(3) could not be starker."

B. Early Legislatures Did Not Disarm Users of Marijuana, Opiates, or Other Substances

The Government's historical evidence is further undermined by the fact that marijuana, opiates, and cocaine were widely available and unregulated through the 18th and 19th centuries. Cannabis "was cultivated in the United States for centuries, apparently without general knowledge of its intoxicating properties,"

and was used medicinally throughout the 19th century, "easily available without a prescription." (Cramer Decl. ¶27 (citing National Commission on Marihuana and Drug Abuse (1972)).) Federal marijuana prohibition did not begin until 1937—nearly 150 years after ratification and 70 years after incorporation. (Id. ¶28.) Similarly, opiates like laudanum were widely available and commonly used to treat various medical conditions throughout the founding era and 19th century. (Id. ¶29.) The founding generation lived amid widespread intoxicant availability yet never imposed status-based firearm prohibitions."

As the Fifth Circuit observed, the absence of any disarmament laws despite widespread intoxicant use demonstrates that such a restriction is inconsistent with the historical understanding of the Second Amendment. Daniels, 77 F.4th at 341.

C. The Only Pre-Fourteenth Amendment Law on Intoxication and Firearms Was Narrow and Temporary

Cramer identifies only one pre-Fourteenth Amendment law restricting firearms and intoxication — a mid-19th-century Kansas statute prohibiting carrying a weapon while currently intoxicated. (Cramer Decl. ¶ __.) That law was narrowly tailored, temporary, and aimed at immediate risk — not at permanently disarming people based on status. By contrast, § 922(g)(3) imposes a sweeping, indefinite prohibition on anyone who "is an unlawful user" of a controlled substance, regardless of their sobriety or risk level. That breadth is fatal under Bruen.

D. Quantity Is No Substitute for Constitutional Quality

Faced with the absence of founding-era examples disarming individuals for substance use, the Government turns to breadth rather than depth. Its brief devotes pages to lengthy string cites and a state-by-state survey of historical regulations, presenting volume as if it were substance. But *Bruen* rejects precisely this approach. The Court emphasized that the Government must point to "well-established and representative" historical analogues that are "relevantly similar" to the challenged regulation — not to a scattershot assortment of vaguely related laws. 142 S. Ct. at 2133. The historical inquiry is one of *quality*, not *quantity.*

The sheer breadth of the Government's survey underscores, rather than cures, the weakness of its position. Nearly all of the statutes it cites postdate ratification by decades, regulate conduct rather than status, or impose temporary restrictions on carrying while intoxicated — not categorical, indefinite disarmament based solely on substance use. Many are isolated municipal ordinances or Reconstruction-era measures that fall far outside the period that *Bruen* identifies as most probative of constitutional meaning. A pile of late-arising, dissimilar regulations does not become a "historical tradition" simply because it is long.

Indeed, the Supreme Court warned against precisely this tactic in *Bruen*, cautioning courts not to "tally" scattered enactments or to rely on "outlier" or "idiosyncratic" laws to justify modern restrictions. Id. at 2132–33. If a true

tradition of disarming substance users existed, the Government would have no need to overwhelm the Court with dozens of peripheral examples. Its overabundance of citations is not a sign of strength but of scarcity: it reflects the absence of any clear, consistent, and representative founding-era analogue for § 922(g)(3). That absence is fatal under *Bruen* and *Rahimi*.

E. Mischaracterized Colonial Statutes Do Not Support the Government's Position

Finally, the Government misinterprets several colonial statutes as disarming intoxicated persons. Cramer's expert analysis refutes these claims. The 1679 Rhode Island statute the Government cites prohibited sports, games, and "tippling" on Sundays—it was a Sabbath-keeping law, not a firearms regulation. (Cramer Decl. ¶¶19-20.) The 1663 Massachusetts statute prohibiting "drinking health's" and shooting guns was not an intoxication law at all. As Dr. Cramer explains, "drinking health's" referred to Royalist toasting rituals—the statute targeted political partisanship (Puritans banning Royalist practices) three years after the Restoration, not intoxication. (Id. ¶¶21-24.) Moreover, the term "gun" in that period typically meant cannon, not small arms. (Id. ¶¶25-26.) None of these laws-imposed firearm prohibitions based on substance use." In sum, the historical record is clear: early American firearm regulations addressed immediate threats posed by dangerous conduct, not the mere status of substance use. As Dr. Cramer

concludes, "disarmament was reserved for those adjudged dangerous through their conduct—such as insurrectionists, violent offenders, or those under judicial surety orders—not for individuals engaged in otherwise lawful, non-dangerous activity." (Cramer Decl. ¶4(d).) Section 922(g)(3)—a modern, categorical, status-based prohibition—represents a 20th-century innovation inconsistent with the Nation's historical tradition. (Id. ¶4(e).) It fails under Bruen and Rahimi."

Historical Disarmament Laws and Dangerous Conduct

Similarly, "going armed" laws, which originated in the 13th century and persisted into the colonial and founding eras, prohibited individuals from carrying weapons in a manner that terrorized others. These laws were conduct-based and focused on preventing harm rather than categorically disarming individuals based on their status. The Court in Rahimi emphasized that these laws reflect a regulatory tradition of addressing specific threats to public safety (Fooks v. State, 490 Md. 458 (2025) [1].

Colonial and 19th-Century Legislative Practices

Colonial statutes and 19th-century legislative practices further illustrate the focus on dangerous conduct in firearm regulations. For instance, colonial laws often disarmed individuals who actively supported enemy forces or engaged in conduct that threatened the community's safety. These laws were not blanket prohibitions based on status but were tailored to address specific threats posed by individuals'

actions. The Court in Bruen and Rahimi highlighted the importance of this historical tradition in assessing the constitutionality of modern firearm regulations (*Fooks v. State*, 490 Md. 458 (2025).

In the 19th century, firearm regulations continued to target dangerous conduct. For example, laws disarming individuals convicted of violent crimes or those who posed a clear threat to public safety were consistent with the principle of addressing specific dangers. These practices align with the framework established in Bruen, which requires modern regulations to be consistent with historical traditions of firearm regulation (*State v. Thacker*, 261 N.E.3d 977 (2024).

Application to *18 U.S.C.A. § 922 (g)(3)*

The prohibition under *18 U.S.C.A. § 922 (g)(3)* disarms individuals based on their status as unlawful users of or addicts to controlled substances, without requiring evidence of dangerous conduct. This broad status-based disarmament contrasts with the historical tradition of targeting individuals based on specific threats or dangerous behavior. The Supreme Court in Bruen and Rahimi emphasized that categorical disarmament laws must be tailored to address the danger posed by the class of individuals disarmed. The framework outlined in State v. Thacker further supports this principle, stating that disarmament laws predicated on dangerousness must reasonably presume the class to be dangerous and tailor the

duration of disarmament to the danger posed (*State v. Thacker*, 261 N.E.3d 977 (2024)).

Moreover, the Court in Rahimi clarified that modern regulations must be "relevantly similar" to historical laws in balancing the rights of individuals with public safety concerns. The lack of historical analogues for disarming individuals based solely on their status as substance users undermines the constitutionality of § 922(g)(3) under the Bruen framework (*Fooks v. State*, 490 Md. 458 (2025)).

Supreme Court Guidance on Historical Analogues

The Supreme Court's decisions in Bruen and Rahimi provide critical guidance for evaluating the constitutionality of firearm regulations. In Bruen, the Court rejected the use of means-end scrutiny and emphasized that regulations must be consistent with the nation's historical tradition of firearm regulation. The Court in Rahimi further clarified that historical analogues need not be identical but must be "relevantly similar" in addressing the balance struck by the founding generation. This approach underscores the importance of tailoring disarmament laws to address specific dangers rather than broadly targeting individuals based on status (*Fooks v. State*, 490 Md. 458 (2025)).

The historical tradition of disarmament laws targeting dangerous conduct rather than status provides a strong basis for challenging the constitutionality of 18 U.S.C.A. § 922 (g)(3). By emphasizing the need for regulations to be grounded in

historical practices and tailored to address specific threats, the Supreme Court's decisions in Bruen and Rahimi support arguments against status-based disarmament laws that lack historical analogues.

V. The Government's Proposed Analogues Fail as a Matter of History and Law

Because the Government cannot identify a founding-era law disarming individuals based solely on substance use—and Dr. Cramer's comprehensive research confirms none exist (Cramer Decl. ¶¶6-7, 30)—it resorts to a scattershot collection of vaguely related historical examples — including surety laws, vagrancy statutes, disarmament of disloyal persons, restrictions on armed intoxication, and laws concerning mental illness. None of these is "relevantly similar" to § 922(g)(3) as Bruen requires. 142 S. Ct. at 2133. Each either regulated conduct rather than status, required an individualized finding of dangerousness, or addressed distinct concerns that have no bearing here.

A. Surety Laws Required Proof of Dangerousness and Imposed Only Narrow, Temporary Burdens

The Government's reliance on 19th-century surety laws is misplaced. These statutes allowed a magistrate to require an individual to post a peace bond only

after a sworn complaint demonstrated a reasonable basis to fear injury or breach of the peace. Bruen describes these measures as "reactive" and "limited." 142 S. Ct. at 2148. They were triggered by specific conduct, not mere membership in a disfavored class.

Moreover, surety laws imposed conditional, temporary burdens — they did not impose a blanket prohibition on firearm possession. If the accused posted bond or if the complaint was unfounded, the individual remained free to possess arms. Section 922(g)(3), by contrast, imposes a categorical, indefinite ban on all individuals who fall within a broad "unlawful user" category, regardless of conduct or dangerousness. That is the antithesis of a surety regime.

B. Vagrancy and "Dangerous Persons" Laws Are Historically and Constitutionally Irrelevant

The Government's invocation of early vagrancy and "dangerous persons" statutes fare no better. Those laws targeted public order offenses — such as idleness, begging, or loitering — rather than substance use. They were not firearm regulations, nor were they intended to define the scope of the Second Amendment. Worse, many of these laws are now regarded as constitutionally suspect. The Supreme Court has condemned vagrancy laws as "too precarious for

a rule of law." *Papachristou v. City of Jacksonville*, 405 U.S. 156, 171 (1972). They cannot serve as analogues for a modern federal firearms prohibition. Even if they could, these laws again demonstrate the constitutional defect in § 922(g)(3): they targeted conduct that disrupted the public order, not broad classes of people based on status or lifestyle. The historical tradition consistently required individualized findings of dangerous conduct, not categorical status-based prohibitions. (Cramer Decl. ¶4(d).) Marijuana users like Mr. Worster — who are otherwise law-abiding, sober at the time of possession, and pose no threat — do not fall within that historical category.

C. Laws Disarming Disloyal or Insurrectionary Individuals Addressed Political Allegiance, Not Private Conduct

The Government also points to Revolutionary-era statutes disarming those who refused loyalty oaths or who supported hostile foreign powers. These laws were exceptional measures enacted during wartime and targeted treasonous conduct. See *Range v. Att'y Gen.*, 69 F.4th 96, 105 (3d Cir. 2023) (en banc) ("Such laws targeted individuals who posed a concrete threat to the Republic itself, not those who simply engaged in disfavored conduct.").

Marijuana users bear no resemblance to those historical targets. They are not traitors, insurgents, or foreign agents. To analogize a sober, law-abiding citizen like Mr. Worster to a person actively waging war against the state is to stretch

historical reasoning beyond recognition. That analogy fails under Bruen's "relevantly similar" standard.

D. Intoxication Statutes Targeted Dangerous Conduct in the Moment — Not Status

The Government also mischaracterizes laws regulating armed intoxication. As historian Clayton Cramer's declaration explains, such statutes prohibited carrying a weapon while currently intoxicated or engaging in threatening behavior while drunk. (Cramer Decl. ¶¶4(b), 27.) They were narrow, situational, and temporary—"limitations only on being currently intoxicated and armed," not "lifetime prohibitions on firearms ownership because of past intoxication or addiction." (Id. ¶6.) The distinction is critical: historical laws addressed immediate danger from intoxicated conduct; § 922(g)(3) imposes perpetual disarmament based on status alone, even when the person is sober and poses no threat."

Section 922(g)(3) is categorically different. It disarms individuals even when they are sober, law-abiding, and pose no risk — and even when their substance use is legal under state law. A person like Mr. Worster, who was not intoxicated when he possessed his firearm, would not have been disarmed under any historical intoxication law. That disconnect underscores § 922(g)(3)'s incompatibility with historical tradition.

E. Mental Illness Laws Required Judicial Adjudication and Were Not Categorical

Finally, the Government analogizes § 922(g)(3) to laws disarming "lunatics" or the mentally incompetent. But those laws were fundamentally different: they required a judicial or quasi-judicial determination that the person was incapable of managing their affairs or posed a danger to others. See *United States v. Yancey*, 621 F.3d 681, 684 (7th Cir. 2010). And they did not permanently strip individuals of rights — firearms rights could be restored upon recovery.

By contrast, § 922(g)(3) imposes a broad, automatic disarmament based on substance use alone, without any adjudication, individualized finding, or opportunity for restoration. The analogy fails.

The government's reliance on historical analogues such as surety laws, vagrancy statutes, and laws concerning disloyalty, intoxication, and mental illness to justify 18 U.S.C.A. § 922 (g)(3) is problematic under the Second Amendment's historical tradition framework. These analogues fail to support § 922(g)(3) because they primarily regulated conduct rather than status, required individualized findings of dangerousness, or addressed distinct concerns unrelated to substance use.

Surety Laws and Their Limitations

Surety laws, often cited as historical analogues, targeted specific individuals based on conduct that posed a threat to public safety. These laws required an evidentiary showing of dangerousness and provided procedural safeguards, such as the opportunity for the accused to respond to allegations before being required to post a bond. For example, the Rahimi Court noted that surety laws restricted firearm possession only after a complaint by someone with reasonable cause to fear harm, and the accused could contest the allegations before a magistrate (*State v. Romero*, --- P.3d ---- (2025)). This individualized approach contrasts sharply with § 922(g)(3), which imposes a categorical ban on firearm possession by unlawful users of controlled substances without requiring any specific finding of dangerousness or procedural safeguards. The Fifth Circuit in United States v. Daniels emphasized this distinction, noting that surety laws presumed a right to carry firearms unless specific conduct justified restrictions, whereas § 922(g)(3) broadly prohibits possession based on status as a substance user (*State v. Woods*, 23 N.W.3d 258 (2025)).

Vagrancy Statutes and Disloyalty Laws

Historical vagrancy statutes and disloyalty laws similarly fail to provide relevant support for § 922(g)(3). These laws were often aimed at addressing societal disruptions or threats to public order, such as disarming individuals deemed disloyal during wartime. However, they were tied to specific contexts and did not

establish a broad tradition of disarming individuals based solely on their status. For instance, disloyalty laws targeted individuals who posed a direct threat to the government or public safety, rather than categorically disarming groups based on generalized assumptions of risk (*Commonwealth v. Randolph*, --- A.3d ---- (2025)). The categorical nature of § 922(g)(3), which applies to all unlawful users of controlled substances without regard to individual circumstances, lacks the tailored approach seen in these historical laws.

Intoxication and Mental Illness Regulations

Laws addressing intoxication and mental illness historically focused on conduct rather than status. For example, early regulations prohibited carrying firearms while intoxicated or engaging in threatening behavior, but they did not categorically ban firearm possession by individuals who consumed alcohol or suffered from mental illness. The Watkins court noted that while evidence of laws specifically prohibiting the use of intoxicants and firearms is limited, such laws were part of a broader tradition of disarming dangerous individuals based on conduct (*Watkins v. Commonwealth*, 83 Va.App. 456 (2025)). Similarly, laws disarming individuals with mental illness were justified by compelling interests in preventing violence and suicide, but they required findings of dangerousness or institutional commitment (*Interest of N.S.,* 13 N.W.3d 811 (2024)). These

conduct-based restrictions differ significantly from § 922(g)(3)'s status-based prohibition, which does not require a temporal or behavioral nexus between substance use and firearm possession.

Distinct Concerns Underlying Historical Analogues

The historical analogues cited by the government often addressed concerns distinct from those underlying § 922(g)(3). For example, surety laws aimed to prevent breaches of the peace, while vagrancy statutes targeted societal disruptions caused by transient individuals. These laws were not designed to address the risks associated with substance use, nor did they establish a tradition of categorically disarming individuals based on their status as substance users. The Fifth Circuit in Daniels highlighted this distinction, noting that historical laws regulated conduct such as carrying weapons while intoxicated but did not impose blanket prohibitions on firearm possession by regular drinkers or substance users (*State v. Woods*, 23 N.W.3d 258 (2025)).

Lack of Historical Support for Status-Based Disarmament

The categorical disarmament imposed by § 922(g)(3) lacks historical support. Courts have repeatedly emphasized that historical firearm regulations targeted conduct rather than status. For example, the Rahimi Court concluded that historical surety and going armed laws were conduct-based and required specific

findings of dangerousness (*State v. Romero,* --- P.3d ---- (2025)). Similarly, the Supreme Court in Bruen rejected broad analogies to historical laws that did not impose comparable burdens on the right to armed self-defense (State v. Thacker, 261 N.E.3d 977 (2024))[6]. The absence of a historical tradition of disarming individuals based solely on their status as substance users undermines the government's reliance on these analogues to justify § 922(g)(3).

In sum, the government's proposed historical analogues fail to support § 922(g)(3) under the Second Amendment's historical tradition framework. These laws primarily regulated conduct, required individualized findings of dangerousness, or addressed distinct concerns unrelated to substance use, making them insufficiently analogous to the categorical status-based prohibition imposed by § 922(g)(3).

V. The Growing Appellate Consensus Confirms That § 922(g)(3) Is Unconstitutional as Applied

In the wake of Bruen and Rahimi, a robust consensus has emerged among the federal courts of appeals: § 922(g)(3) cannot constitutionally be applied to individuals like David Worster. Across circuits and ideological lines, courts have concluded that the statute lacks a historical analogue, sweeps far more broadly than historical regulations, and violates the Second Amendment when applied to non-dangerous individuals.

* Fifth Circuit: In *United States v. Daniels*, the court held that habitual marijuana users "are not categorically dangerous" and that § 922(g)(3) imposes a "burden inconsistent with this Nation's historical tradition." 177 F.4th 337 (5th Cir. 2023)

* Fifth Circuit (en banc): In *United States v. Connelly*, the court reaffirmed that "status alone is insufficient" and that the government must "show that disarmament is justified by a relevant historical analogue." 117 F.4th 269, 274 (5th Cir. 2024).

* Eighth Circuit: *United States v. Cooper* concluded that "intoxication has been prevalent throughout our nation's history, but earlier generations addressed that problem by restricting when and how firearms could be used, not by taking them away." 127 F.4th 1092, 1097 (8th Cir. 2025).

* Tenth Circuit: In *United States v. Cordova Perez*, the court rejected the government's analogies and held § 922(g)(3) unconstitutional as applied to a marijuana user who possessed a firearm while sober and law-abiding. 145 F.4th 800, 808 (10th Cir. 2025).

* Eleventh Circuit: *Fla. Comm'r of Agriculture v. Attorney General* held that § 922(g)(3) violates the Second Amendment rights of law-abiding medical marijuana users absent evidence of dangerousness at the pleading stage. 148 F.4th 1307, 1314–15 (11th Cir. 2025) Like the defendants in Daniels, Cooper, and Cordova Perez, he possessed a firearm while sober and has never misused one in

his status as a supposed illegal user of marijuana. The Government's appeal would require this Court to reject a growing national consensus — and with it, the Supreme Court's clear directives.

Mr. Worster stands firmly within the Second Amendment's protective core. Courts in the Fifth, Eighth, Tenth, and Eleventh Circuits have addressed related issues, with some finding § 922(g)(3) unconstitutional in specific contexts.

Fifth Circuit: United States v. Daniels

In *United States v. Daniels*, 124 F.4th 967 (5th Cir. 2025), the Fifth Circuit held that § 922(g)(3), which prohibits firearm possession by unlawful users of controlled substances, was unconstitutional as applied to an individual who occasionally used marijuana but was otherwise law-abiding. The court emphasized that the government failed to demonstrate a historical tradition of disarming individuals based solely on substance use. It distinguished between laws regulating firearm use while intoxicated and modern statutes imposing blanket prohibitions on firearm possession by individuals with any history of substance use. The court noted that founding-era laws targeted conduct, not status, and that § 922(g)(3) lacked a sufficient temporal nexus between the disqualifying conduct and the firearm prohibition (*State v. Woods*, 23 N.W.3d 258 (2025)).

Eighth Circuit: *United States v. Jackson*

The Eighth Circuit upheld § 922(g)(1) (the felon-in-possession statute) in United States v. Jackson, 110 F.4th 1120 (8th Cir. 2024), but its reasoning indirectly supports challenges to § 922(g)(3). The court acknowledged that legislatures historically disarmed individuals deemed dangerous but emphasized that such disarmament must be based on a reasonable presumption of danger. This reasoning aligns with the argument that § 922(g)(3) is unconstitutional when applied to individuals who are not dangerous, as mere substance use does not inherently indicate a threat to public safety ..

Tenth Circuit: *Vincent v. Garland.* In *Vincent v. Garland*, 80 F.4th 1197 (10th Cir. 2023), vacated on other grounds, the Tenth Circuit upheld § 922(g)(1) but recognized the necessity of historical analysis under Bruen. The court's approach underscores the importance of demonstrating a historical tradition of firearm regulation consistent with the challenged statute. This framework supports arguments that § 922(g)(3) lacks historical analogues for disarming individuals based solely on substance use without evidence of dangerousness.

Eleventh Circuit: United States v. Dubois

The Eleventh Circuit in United States v. Dubois, 94 F.4th 1284 (11th Cir. 2024), upheld § 922(g)(1) by relying on dicta from Heller regarding the presumptive lawfulness of felon disarmament. However, the court did not address § 922(g)(3) directly. Its reasoning highlights the need for courts to engage in a detailed

historical analysis, as required by Bruen, rather than relying on broad dicta. This supports challenges to § 922(g)(3) where the government fails to provide historical evidence justifying the statute's application to non-dangerous individuals.

Application of Bruen and Rahimi Frameworks

The Supreme Court's decisions in Bruen and Rahimi provide a strong framework for challenging § 922(g)(3). Under Bruen, courts must first determine whether the Second Amendment's plain text covers the individual's conduct. If so, the government bears the burden of demonstrating that the regulation is consistent with the nation's historical tradition of firearm regulation. In Rahimi, the Court clarified that historical analogues must address the same concerns and impose similar burdens as the challenged regulation. These decisions emphasize that disarmament must be narrowly tailored to address specific dangers, not based on broad categorizations like substance..

State-Level Decisions and Analogous Challenges

State courts have also addressed related issues, often finding that firearm prohibitions must be tied to dangerousness. For example, in *State v. Thacker* , 2024-Ohio-5835, the Ohio Court of Appeals held that disarming an individual based on a nonviolent juvenile adjudication violated the Second Amendment. The court emphasized that the historical tradition of disarmament targeted individuals

who posed a clear threat of violence, not those disarmed based on status alone (*State v. Thacker,* 261 N.E.3d 977 (2024))[2]. Similarly, in State v. Woods , 23 N.W.3d 258 (Iowa 2025), the Iowa Supreme Court upheld a statute prohibiting firearm possession while committing a crime but distinguished such conduct-based regulations from status-based prohibitions like § 922(g)(3) (*State v. Woods,* 23 N.W.3d 258 (2025)).

These cases collectively demonstrate that § 922(g)(3) faces significant constitutional challenges when applied to law-abiding, sober individuals who are not adjudicated as dangerous. Courts increasingly require the government to justify firearm prohibitions with historical evidence and to ensure that such regulations are narrowly tailored to address specific dangers.

VI. This Case Exemplifies the Constitutional Problem

The facts of this case illustrate the constitutional flaw in § 922(g)(3). Mr. Worster is a registered medical marijuana patient under Rhode Island law. He possessed a firearm while sober. The Government does not allege — and the district court did not find — that he has ever threatened anyone, committed an act of violence, or misused a firearm. (Gov't App. __.) Nor does the record suggest that he was intoxicated at the time of possession or that his firearm ownership posed any danger. (Id.)

Yet under § 922(g)(3), he faces a categorical, lifetime prohibition based solely on his status. That approach is incompatible with the Second Amendment's text, history, and tradition. The district court correctly recognized this and faithfully applied Bruen and Rahimi. Its judgment should be affirmed.

CONCLUSION

The Government has failed to meet its burden under Bruen and Rahimi. It offers no founding-era analogue for categorically disarming individuals based on marijuana use. It points to no historical tradition of status-based firearm prohibitions divorced from dangerous conduct. And it provides no evidence that Mr. Worster—a registered medical marijuana patient who possessed a firearm while sober—poses any threat warranting disarmament.

The historical record is clear. Colonial America and the early Republic addressed firearm risks through narrow, conduct-based regulations targeting immediate dangers: brandishing weapons while intoxicated, disturbing the peace, or credibly threatening violence. Those regulations required individualized showings of dangerousness and imposed temporary restrictions, not categorical lifetime bans. Section 922(g)(3) bears no resemblance to that tradition. It sweeps broadly, permanently disarming millions of Americans based solely on their status as marijuana users—many of whom, like Mr. Worster, use marijuana legally under state law for medical purposes.

Five federal courts of appeals have now recognized what the district court correctly held here: § 922(g)(3) cannot survive Bruen's historical test when applied to individuals who possess firearms while sober and have never been adjudicated dangerous. This Court should join that consensus.

The facts of this case make the constitutional defect especially stark. Mr. Worster was not intoxicated when he possessed his firearm. He has never threatened anyone, committed an act of violence, or misused a firearm. No court has found him dangerous. Yet under § 922(g)(3), he faces a categorical, perpetual ban on exercising a fundamental constitutional right—not because of what he did, but because of his status as a medical marijuana user under Rhode Island law.

That is precisely the sort of broad, status-based disarmament that our constitutional tradition has never tolerated. The Government cannot salvage § 922(g)(3) by pointing to Mr. Worster's prior convictions—Count One under § 922(g)(1) is not before this Court. Each prohibition must rest on its own historical foundation, and the Government offers none for § 922(g)(3) as applied here.

The district court faithfully applied the Supreme Court's originalist framework and correctly dismissed Count Two. This Court should affirm.

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Respectfully submitted,

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Certificate of Compliance

Pursuant to Federal Rule of Appellate Procedure 32(g), I certify that this brief complies with the type-volume limitation of Rule 32(a)(7)(B) because it contains approximately 8744 words, excluding the parts of the brief exempted by Rule 32(f).

This brief also complies with the typeface and style requirements of Rule 32(a)(5) and (6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font.

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Certificate of Service

I hereby certify that on October 6, 2025, I caused the foregoing Reply Brief for Appellee David Worster to be filed electronically with the Clerk of the Court for the United States Court of Appeals for the First Circuit by using the CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

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