

UNITED STATES COURT OF APPEALS FOR THE
THIRD CIRCUIT

No. 24-1091

EDWARD A. WILLIAMS

v.

ATTORNEY GENERAL UNITED STATES OF AMERICA;
DIRECTOR BUREAU OF ALCOHOL TOBACCO FIREARMS &
EXPLOSIVES; DIRECTOR FEDERAL BUREAU OF
INVESTIGATION; UNITED STATES OF AMERICA,
Appellants

On Appeal from U.S. District Court, E.D. Pa.
Judge John M. Younger, No. 2:17-cv-02641

Before: CHAGARES, *Chief Judge*, HARDIMAN, SHWARTZ,
KRAUSE, RESTREPO, BIBAS, PORTER, MATEY, PHIPPS,
FREEMAN, MONTGOMERY-REEVES, CHUNG, BOVE, and
MASCOTT, *Circuit Judges*.
Argued Feb. 11, 2026
Decided Oct. 13, 2026

OPINION OF THE COURT

MATEY, *Circuit Judge*, filed the Opinion of the Court with whom HARDIMAN, BIBAS, PORTER, PHIPPS, BOVE, and MASCOTT, *Circuit Judges*, join. CHAGARES, *Chief Judge* concurs in part and concurs in the judgment with whom KRAUSE, *Circuit Judge*, joins as to Parts I and II and with whom FREEMAN, *Circuit Judge*, joins as to Parts I and III. FREEMAN, *Circuit Judge*, concurs in part with whom MONTGOMERY-REEVES and CHUNG, *Circuit Judges*, join.

The Second Amendment is a primary protection against tyranny, a strong bulwark securing American liberty, and an indispensable means of defending the public good. So courts testing restrictions on these “most sacred” and “necessary” rights must consider the history and tradition of firearm

regulations with care and rigor.¹ Edward Williams had two convictions for driving under the influence of alcohol in the early 2000s, the second of which (unknown to him) triggered 18 U.S.C. § 922(g)(1), which purports to make it “unlawful” for persons convicted of “a crime punishable by imprisonment for a term exceeding one year” to possess firearms. Seeking to restore his rights, Williams filed for a declaratory judgment to confirm that § 922(g)(1), as applied to him, runs afoul of the Second Amendment. The District Court agreed with Williams, and we will affirm that judgment.

I.

The practice of permanently disarming felons only dates back to the 1960s.² As currently written, 18 U.S.C. § 922(g)(1) applies to anyone convicted of a crime punishable by more than a year of imprisonment.³ Williams fell within this federal bar by driving under the influence in Pennsylvania.

Pennsylvania sets three “levels of impairment” based on alcohol consumption before operating a vehicle: “[g]eneral impairment” involves a blood alcohol concentration (BAC) of 0.08% to less than 0.10%; “[h]igh rate of alcohol,” a BAC of

¹ See James Monroe, *Second Annual Message to Congress* (Nov. 16, 1818).

² See The Federal Firearms Act, Pub. L. No. 75-785, § 2(f), 52 Stat. 1250, 1251 (1938); An Act To Strengthen The Federal Firearms Act, Pub. L. No. 87-342, 75 Stat. 757 (1961).

³ With some narrow exceptions. For instance, “[a]ny [predicate] conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored” cannot support the prohibition. 18 U.S.C. § 921(a)(20). Similarly, 18 U.S.C. § 925(c) creates a recently revived (and still rarely received) administrative restoration process, initiated by filing an application to the Attorney General, who “may grant . . . relief if it is established to his satisfaction 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 that the granting of the relief would not be contrary to the public interest.” See *infra* Part III.B.3.

0.10% to less than 0.16%; and “[h]ighest rate of alcohol,” a BAC of 0.16% or higher. *See* 75 Pa. C.S. § 3802(a)–(c). If a person commits a second DUI offense at the “[h]ighest rate of alcohol,” the crime is punishable by a minimum term of imprisonment of three months and a maximum term of five years. *See id.* §§ 3802(c), 3803(b)(4), 3804(c)(2); 18 Pa. C.S. §§ 106(b)(6), 1104(1).

In 2000, Williams was charged with driving with a BAC of more than 0.10%, that is, a “high rate of alcohol.” He entered Pennsylvania’s Accelerated Rehabilitative Disposition program and attended alcohol and driver safety classes. In 2004, Williams was arrested and, in 2005, convicted for driving at the “[h]ighest rate of alcohol,” a crime that, because of his prior offense, was punishable by up to five years in prison. *See* 75 Pa. C.S. § 3803(b)(4); 18 Pa. C.S. §§ 106(b)(6), 1104(1). But Williams was sentenced to between ninety days and two years, which he served in home confinement.⁴

Williams continued to own and possess firearms during and after his sentence and worked at a gun store where he handled firearms.⁵ Once he finished his sentence, Williams purchased a new firearm without disclosing his DUI conviction.⁶ But in 2015, Williams’s attorney informed him he was prohibited from possessing firearms because of the DUI conviction. So advised, Williams “divested himself of all

⁴ He was also fined, required to attend alcohol and driver’s safety classes, had his license suspended for eighteen months, and had an ignition interlock installed on his vehicle.

⁵ The Bureau of Alcohol, Tobacco, Firearms and Explosives conducted a background check on Williams and cleared him to work at the store.

⁶ In paragraph thirty-two of the Pennsylvania State Police Application/Record of Sale, Williams answered, “no” when asked, “[a]re you charged with, or have you ever been convicted of a crime punishable by imprisonment for a term exceeding one year? This is the maximum sentence that you ‘could have received,’ not the actual sentence you did receive.” App. 18.

firearms” and “refrained from purchasing, possessing and utilizing firearms.” Williams Response Br. 7–8; App. 57.

Williams then sought a declaration that § 922(g)(1) was unconstitutional, as applied to him, under the Second Amendment and an injunction against enforcement. Both parties eventually moved for summary judgment, and the District Court granted Williams’s motion, a decision the United States now appeals.⁷

II.

Regulations on firearms can be separated into three categories: restrictions on people, places, and things. *See District of Columbia v. Heller*, 554 U.S. 570, 626–27 (2008). We aim for “the principles that underpin our regulatory tradition,” not for a superficial canvassing of history, so a deep understanding of which category of regulation we address is crucial. *United States v. Rahimi*, 602 U.S. 680, 692 (2024).

“[I]t has always been widely understood that the Second Amendment . . . codified a *pre-existing* right.” *Heller*, 554 U.S. at 592. As a corollary, laws extensively regulating the types of firearms a person can possess and the places where possession is permitted can “eviscerate the general right to publicly carry arms for self-defense.” *N.Y. State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1, 31 (2022); *see also Heller*, 554 U.S. at 636. The Second Amendment thus recognizes a robust right to bear arms within civil society that can rarely be

⁷ The District Court had jurisdiction under 28 U.S.C. § 1331 and we have jurisdiction under 28 U.S.C. § 1291. We ordered rehearing *en banc* and allowed the parties to brief “[w]hether a court may consider evidence beyond an individual’s predicate conviction(s), including, for example, other criminal convictions or conduct post-dating the predicate conviction” when assessing a plaintiff’s as-applied challenge to § 922(g)(1) seeking declaratory relief. Dkt. No. 67. Our review is plenary. *See Jorjani v. N.J. Inst. of Tech.*, 151 F.4th 135, 140 n.5 (3d Cir. 2025).

circumvented by the sovereign. Put simply, things and places cannot be casually conscribed.

A different principle informs regulations about people. Regulations concerning *what* types of firearms a person may carry and *where* a person may carry apply uniformly. But, necessarily, regulations on *who* may carry require an individualized inquiry addressing present threats to the community with “punishments inflicted by temporal laws” that “deprive [offenders] of any power to do future mischief.” 4 William Blackstone, Commentaries *252 [hereinafter Blackstone]. After all, “the *end* or final cause of human punishments” is “a precaution against future offences of the same kind.” *Id.* at *11; *see also* The Unsigned Essays of Supreme Court Justice Joseph Story: Early American Views of Law 98 (Valerie L. Horowitz ed., 2015) (“The object of human punishments” includes “depriving the offender of the power of doing mischief” in order “to secure the safety of the community.”). Upon this foundation of punishment rests the history of regulations disarming physically dangerous individuals consistent with the pre-existing right.

Focusing on physical dangerousness corrects the erroneous argument, rejected in *Rahimi*, that only law-abiding and responsible citizens can exercise the rights protected by the Second Amendment. 602 U.S. at 701; *see also Range v. Att’y Gen.*, 124 F.4th 218, 226 (3d Cir. 2024). We find no history that supports disarming irresponsible people, where “responsible” is defined by the whim of the sovereign or the will of the majority. But *Heller* did not “cast doubt on longstanding prohibitions on the possession of firearms by felons.” 554 U.S. at 626. Those longstanding customs restricted the violently dangerous (within which some felons would be included), not felons writ large. *See Range*, 124 F.4th at 230–31.

That felons were restricted because they posed a physical danger, rather than for their offense of conviction, is made evident by other “people” regulations directed at non-felons. Take the going-armed laws and surety system, which illustrate the longstanding idea that liberty cannot be used for lawless violence. *Rahimi*, 602 U.S. at 695–97. Or our English forebears, who deprived arms from individuals suspected of

treason or sedition against the Crown.⁸ This reveals an important limit on the right to arms for self-defense: a sovereign may disarm classes of people who pose a true risk of sedition or treason because doing so promotes the public peace and the common good.

Properly distilled, these and other regulations on people reveal a tradition of disarming those determined to use firearms to threaten civil society. *See United States v. Bost*, __ F.4th __, No. 24-1719, at 4–11 (3d Cir. Oct. 13, 2026). This accords with our understanding of the Second Amendment, which codified a pre-existing right to bear arms for self-defense but, “[l]ike most rights, . . . is not unlimited.” *Heller*, 554 U.S. at 626. As a result, regulators can disarm those who pose a risk of harm to civil society. But the regulator is not justified if the restriction goes beyond that principle. If past regulations of the same conduct were not concerned with preventing arms violence, they addressed that problem in a materially different way, or if the targeted individual does not currently pose a threat of violence, that indicates the regulator has gone too far. Those considerations are at the heart of this matter.

III.

Bruen contemplates “two distinct analytical steps.” *Lara v. Comm’r Pa. State Police*, 125 F.4th 428, 435 (3d Cir. 2025). “[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. Call that “Step One.” Then, “[t]o justify its regulation, the government . . . must demonstrate that the regulation is consistent with this Nation’s historical tradition of firearm regulation,” and it “may not

⁸ For instance, Protestants and Catholics were each disarmed at points because they were presumed disloyal to the King. *See, e.g., The Somers Papers, reprinted in* 2 Miscellaneous State Papers from 1501–1726, at 407, 417–18 (W. Strahan & T. Cadell eds., 1778); Joyce Lee Malcolm, *The Right of the People to Keep and Bear Arms: The Common Law Tradition*, 10 Hastings Const. L.Q. 285, 304–05 (1983); An Act for the Better Securing the Government by Disarming Papists and Reputed Papists, 1 W. & M., Sess. 1, ch. 15 (Eng. 1689).

simply posit that the regulation promotes an important interest.” *Id.* That’s the enigmatic “Step Two.”

A.

Step One simply asks whether the Second Amendment is relevant at all. It applies only to “the people” and to arms that they can “keep and bear.” U.S. Const. amend. II. So we first consider whether those who have completed a sentence for a crime punishable by more than one-year imprisonment remain part of “the people.”

“*Heller* never established a categorical rule that the Constitution prohibits regulations that forbid firearm possession in the home.” *Rahimi*, 602 U.S. at 699. Rather, it acknowledged “that many such prohibitions, like those on the possession of firearms by ‘felons and the mentally ill,’ are ‘presumptively lawful.’” *Id.* (citation omitted). But we have “reject[ed] the Government’s [prior] contention that ‘felons are not among “the people” protected by the Second Amendment.’” *Range*, 124 F.4th at 228. Indeed, “[t]he Second Amendment protects the right of ‘all Americans.’” *United States v. Hemani*, 146 S. Ct. 1677, 1685 (2026) (quoting *Heller*, 554 U.S. at 581). Williams is a citizen, so he satisfies that portion of Step One.

The text of the Amendment also applies to bearable arms, not every imaginable weapon. Certain types of arms may well fall outside the Second Amendment’s ambit—think large cannons, unmanned aerial vehicles, and nuclear weapons. *See Ass’n of N.J. Rifle & Pistol Clubs, Inc. v. Att’y Gen. N.J.*, 183 F.4th 211, 233 (3d Cir. 2026). But Williams only wants to “possess a handgun and/or a long gun to defend [his] family and [him]self within [his] home.” App. 58. These goals are squarely within the text and purpose of the Second Amendment. *See Range*, 124 F.4th at 228 (holding someone who “possess[es] a rifle to hunt and a shotgun to defend himself at home [] tracks the constitutional right as defined by *Heller*”); *Heller*, 554 U.S. at 635 (holding a “ban on handgun possession in the home violates the Second Amendment”). Williams easily satisfies both parts of Step One.

B.

A familiar path follows. If the individual is among “the people,” and the weapon he seeks to possess is a “bearable arm,” then he is presumed to enjoy the liberty protected by the Second Amendment. But that presumption can be challenged, since the Amendment is not without limit.⁹ So we assess whether the regulation’s proponent has demonstrated that “the challenged regulation is consistent with the principles that underpin our regulatory tradition.” *Rahimi*, 602 U.S. at 692. Of course, since the liberty ensured by the Second Amendment is *from* state action, the state “bears the burden to ‘justify its regulation.’” *Id.* at 691 (quoting *Bruen*, 597 U.S. at 24). That raises two further questions: a) was the present limitation customarily grounds for temporary exclusion and b) what is the best analogy between customary restrictions and the person’s conduct? Both are necessary to avoid the error of overly broad or underinclusive comparisons.

1.

We start by asking the regulator whether its proposed liberty definition (or restriction, though every definition has some contracting element) is consistent with tradition. In assessing the response, we look for a custom of similar definitions.

A definition fitting within common and longstanding firearm regulation helps the regulator because long acceptance evidences noninfringement of the right. In contrast, it is likely impossible to show equivalence when the challenged restriction applies to people, places, and things that have gone unregulated for most of America’s existence. *See Bruen*, 597 U.S. at 26. Time is essential, and a recent innovation must be weighed against our “Anglo-American common-law

⁹ We must use straightforward “common-law method[s]” to help “untangle the *right* to keep and bear arms—that is, the legal claim individuals have against the government not to regulate arms in certain ways—from the mere liberty that early Americans had to possess and carry all sorts of weapons (including some that the Framers may not have recognized as constitutionally protected).” William Baude & Robert Leider, *The General-Law Right to Bear Arms*, 99 Notre Dame L. Rev. 1467, 1493, 1497 (2024).

tradition.” *Washington v. Glucksberg*, 521 U.S. 702, 711 (1997). An enduring custom since the founding is all but dispositive—one would be hard-pressed to argue that a state can prohibit the purchase of a flintlock musket. The same framework applies with respect to permissible regulations of people: if a regulation was common throughout our history, that is strong evidence that it does not infringe the right.

That is not the case here given the novelty of forever restricting all felons from possessing firearms for lawful purposes. The Federal Firearms Act of 1938 first made it “unlawful” for “any person who has been convicted of a crime of violence or is a fugitive [sic] from justice” to possess a firearm. *See* Pub. L. No. 75-785, § 2(f), 52 Stat. 1250, 1251 (1938).¹⁰ In 1961, Congress expanded this prohibition, abandoning a focus on violence in favor of a technical bar on any person convicted of a “crime punishable by imprisonment for a term exceeding one year.” *See* Pub. L. No. 87-342, §§ 1–2, 75 Stat. 757, 757 (1961). By this point, “a crime punishable by imprisonment for more than one year” was the common approximation for “felony.” *See Burgess v. United States*, 553 U.S. 124, 130 (2008).¹¹ The late entrance of a regulation tying felonies to gun possession disproves any longstanding customary contraction of the liberty codified in the Second Amendment.

Of course, common exclusions from society—which do not explicitly touch on arms-bearing—might sometimes, but not always, reveal that a regulation of an individual is

¹⁰ A “crime of violence” was defined in the Act to mean “murder, manslaughter, rape, mayhem, kidnaping, burglary, housebreaking; assault with intent to kill, commit rape, or rob; assault with a dangerous weapon, or assault with intent to commit any offense punishable by imprisonment for more than one year.” *See* Pub. L. No. 75-785, § 1(6), 52 Stat. 1250, 1250 (1938).

¹¹ *See also* 18 U.S.C. § 1(1) (1964) (repealed 1984) (“Any offense punishable by death or imprisonment for a term exceeding one year is a felony.”); 18 U.S.C. §§ 3559(a)(1)–(5) (2024) (defining classes of felonies ranging from “more than one year” to “life imprisonment”).

consistent with the reasoning offered by the regulator. Take classic felonies like murder and rape, long punishable by death. See *McGautha v. California*, 402 U.S. 183, 197–98 (1971), *vacated on other grounds by Crampton v. Ohio*, 408 U.S. 941, 941–42 (1972); 4 Blackstone *210–11, *215. Those statutes evidence a regulatory custom of indirect disarmament since a “sentence of death” left the person “already dead in law” and “out of its protection.” 4 Blackstone *380. So too when those same offenses resulted in life imprisonment, life servitude, or civil death.¹² Punishments for crimes belonging to this

¹² Capital punishment was long considered to include both physical and civil death. Samuel Hallifax, *Elements of the Roman Civil Law* 110 (1818) (“Punishments of Natural or Civil Death were called Capital: others, short of Natural or Civil Death, were called Not-Capital.”). Civil death refers to those who were “banished or abjured the realm by the process of the common law,” and were thus left “dead in law” because the “laws would not suffer those persons to enjoy the benefits of society, who secluded themselves from it, and refused to submit to its regulations.” 1 Blackstone *132. “In medieval Europe, the legal doctrine of ‘civil death’ not only resulted in a complete loss of citizenship rights, but also it left offenders, in extreme cases, exposed to injury or death, since they could be killed by anyone with impunity. English law continued this tradition of disenfranchisement with the penalty of attainder, which in extreme applications led to the loss of all civil rights.” Jeff Manza & Christopher Uggen, *Punishment and Democracy: Disenfranchisement of Nonincarcerated Felons in the United States*, 2 Perspectives on Pol. 491, 492 (2004). Still, “death and maiming, were the ordinary penalties for serious crime in the Western legal systems in the later Middle Ages.” John H. Langbein, *The Historical Origins of the Sanction of Imprisonment for Serious Crime*, 5 J. Legal Stud. 35, 36 (1976). But beginning in the seventeenth century, England put fewer people to death “because of the development of an alternative to the blood sanctions: transportation of convicts for terms of labor as indentured servants in the overseas colonies.” *Id.* at 54. And in the eighteenth century, some criminal codes “completely abolished capital punishment,” replacing it with “confinement, sometimes at hard labor for terms up to life.” *Id.* at 37.

unbroken custom were justly predicated on the protection of the community from prospective physical danger.¹³ Financial crimes carrying equally harsh punishments at transient moments in history, like the ones we considered in *Range*, do not share these crucial characteristics. 124 F.4th at 230–31.

But the Justice Department’s apparent attempt to broaden discrete crimes justly punished by death to include all felonies, much less all crimes punishable by more than one-year imprisonment, misses the point. The word “felony” has roots in mortal sin.¹⁴ But as time passed, felony’s substance was lost, as it came not to be defined by the character of the wrongdoer, but by the potential punishment. By Blackstone’s

¹³ Justice Story justified capital punishment as most effectively guarding “[t]he safety of society” by cutting off the offender from “the power of doing further mischief” because “[i]f his life be not taken away, the only other means left are, confinement for life, or transportation and exile for life,” which are not “a perfect security against the commission of other crimes, and may not always be within the power of a nation.” The Unsigned Essays of Supreme Court Justice Joseph Story: Early American Views of Law 102 (Valerie L. Horowitz ed., 2015). He acknowledged that beyond “crimes of very great enormity, and danger to individuals or the state . . . it is extremely questionable whether there is any necessity or expediency of applying so great a severity.” *Id.* at 103–04. Even those at the vanguard of limiting capital punishment admitted to its staying power in cases of murder because, in such cases, capital punishment preserved the lives of innocents. See William Bradford, *An Enquiry How Far the Punishment of Death Is Necessary in Pennsylvania* 6–7, 35 (London reprint, 1795).

¹⁴ See Elizabeth Papp Kamali, *Felonia Felonice Facta: Felony and Intentionality in Medieval England*, 9 *Crim. L. & Phil.* 397, 400–01, 411 (2015) (“In both Middle English and Anglo Norman . . . ‘felony’ was used to reference sin or crime in a general sense,” including “ideas such as evil or wickedness, even when used in legal sources,” because “long-cherished ire or felony of heart was a mortal sin that transformed a person from the image of God to the image of the devil.”).

age, it was a crime punishable by death, encompassing “no less than a hundred and sixty [offenses].” 4 Blackstone *18. More recently, commentators have given up trying to apply any independent, substantive meaning to “felony,” admitting that it means whatever the legislature says it means. “[F]elony . . . has derived so many meanings from so many parts of the common law, and so many statutes in England, and has got to be used in such a vast number of different senses, that it is now impossible to know precisely in what sense we are to understand this word.” 6 Nathan Dane, General Abridgment and Digest of American Law 715 (1823).¹⁵

These sources reveal that the modern regulatory label of felony—a crime punishable by more than one year of imprisonment—is not even close to the proper “level of generality at which to define [the] historical practice.” *Rahimi*, 602 U.S. at 724 n.4 (Kavanaugh, J., concurring). It captures conduct that would have commonly justified exclusion, and a host of less significant acts. So simply pointing to Williams’s felony because it is labeled “felony” does not do. We must move to a more granular comparison, assessing Williams’s conduct against the Justice Department’s proffered analogy.

2.

a.

That rigorous analysis starts by considering “whether ‘historical precedent’ from before, during, and even after the

¹⁵ See 4 Blackstone *97–98 (observing that “capital punishment does by no means enter into the true idea and definition of felony” but “we now entertain of felony as a crime to be punished by death”); 1 Francis Wharton, *A Treatise on the Criminal Law of the United States* 3 (7th ed. 1874) (“By statutes, however, running from the earliest period, new felonies were . . . created; till finally . . . it was held, that whenever judgment of life or member was affixed by statute, the offence to which it was attached became felonious by implication In this country, with a few exceptions, the common law classification has obtained; the principal felonies being received as they originally existed, and their number being increased as the exigencies of society prompted.”).

founding evinces a comparable tradition of regulation.” *Bruen*, 597 U.S. at 27; *see also Hemani*, 146 S. Ct. at 1685–86. These historical regulations can confirm a custom—some widely practiced and long-established action—evidencing the boundaries of the liberty protected by the Second Amendment. Customary restrictions are not incursions on the rights protected by the Second Amendment; they are merely part of the tradition the amendment codified. That is why *Bruen* explains courts cannot “uphold every modern law that remotely resembles a historical analogue,” nor require the regulator to identify a “historical *twin*” or “dead ringer.” 597 U.S. at 30. Instead, the regulator may “reason[] by analogy—a commonplace task for any lawyer or judge.” *Id.* at 28; *see also Hemani*, 146 S. Ct. at 1686. Courts need not scour all the history books because it is the regulator’s burden to proffer that analogy “‘based on the historical record’ and arguments ‘compiled by the parties.’” *Hemani*, 146 S. Ct. at 1687 (quoting *Bruen*, 597 U.S. at 26 n.6). And since “one needs ‘some metric enabling the analogizer to assess which similarities are important,’” considerations must include, but are not limited to, “how and why the regulations burden a law-abiding citizen’s right to armed self-defense.” *Bruen*, 597 U.S. at 29 (citation omitted); *see also Hemani*, 146 S. Ct. at 1686 (“While we have not yet had cause to ‘exhaustive[ly] survey’ the features that may render a modern law ‘relevantly similar’ to historical ones, we have said two play a ‘central’ role.” (citation omitted)); *Wolford v. Lopez*, 146 S. Ct. 2032, 2044 (2026) (determining relevant similarity “requires consideration of ‘how’ . . . [and] ‘why’ the analogue restricted the keeping or bearing of arms”).

The “how” is straightforward—how did earlier generations address a similar problem? For the “why,” we look to whether earlier generations regulated the conduct *because* it presented a physical danger of the misuse of arms against ordered society. That careful definition—physical danger caused by one’s misuse of a firearm—is key because broadening the meaning of “dangerous” to its limits risks operating at “such a high level of generality that it waters down the right.” *Rahimi*, 602 U.S. at 740 (Barrett, J., concurring). Someone who swerves in and out of lanes on an electric scooter in Philadelphia is acting dangerously, likely warranting regulatory restrictions on his driving. A person who transports

flammable materials in a porous paper container can expect penalties and limitations on his ability to secure explosives. But we would be surprised to learn that senseless scootering could trigger the loss of the right to speak, or that poorly guarded chemicals could forfeit the right against unreasonable searches. So too here, where we focus not on Williams's general dangerousness but on whether Williams would have been punished for his conduct because it was thought to correlate with future dangerous use of arms.

b.

We first identify the actual conduct at issue to compare against the Government's historical analogues so we can determine if this conduct was ever disarmable in the first instance and, ultimately, measure these analogues for fit with the modern restriction.¹⁶ We look to the elements of the predicate offense, and to clarify those elements, we may also consider the "charging document, written plea agreement, transcript of plea colloquy, and any explicit factual finding by the trial judge to which the defendant assented." *Shepard v. United States*, 544 U.S. 13, 16 (2005). If the predicate offense lacks threats or violence, then the predicate crime was likely never disarmable. *See Rahimi*, 602 U.S. at 700 ("[T]he Second Amendment right may only be burdened once a defendant has been found to pose a credible threat to the physical safety of others.").

Williams's predicate offense requires that the offender 1) "drive, operate or be in actual physical control of the movement of a vehicle" 2) "after imbibing a sufficient amount of alcohol such that the alcohol concentration in the individual's blood or breath is 0.16% or higher" and 3) "ha[ve] one prior [DUI] offense." *See* 75 Pa. C.S. §§ 3802(c),

¹⁶ By "actual conduct," we do not refer to an unbounded inquisition into the general dangerousness of an individual, which was outlined by a panel of this Court in *Pitsilides v. Barr*, 128 F.4th 203, 212–13 (3d Cir. 2025). Indeed, "that case is no longer our touchstone" and does not provide precedential value moving forward. *Bost*, No. 24-1719, at 5 (3d Cir. Oct. 13, 2026).

3803(b)(4).¹⁷ This offense plainly does not contain threatening or violent elements. *Cf. Bost*, No. 24-1719, at 14 (3d Cir. Oct. 13, 2026) (noting that a predicate offense with elements including “threat[ening] to commit any crime of violence with intent to terrorize another” sufficiently evinced a risk of physical violence from misusing arms). So we must turn to the Government’s proffered analogues to determine if they allow us to infer that the restriction imposed by Williams’s continued disarmament is consistent with the right codified by the Second Amendment. *See Wolford*, 146 S. Ct. at 2044.

The Department of Justice analogizes this conduct to laws “disarming loyalists, underage individuals, [] vagrants,” “common drunkards,” and “habitual drunkards.” DOJ Opening Br. 24–26 & n.8. But only those laws restricting drunkards bear any resemblance to Williams’s conduct, so we focus our analysis there. The first two elements of Williams’s offense are a variation of public intoxication laws, customarily defined as the vice of drunkenness made public.¹⁸ The third element

¹⁷ The other *Shepard* documents provide no reason to expand our scope since they show Williams’s conduct did not involve “any property damage or injury to another.” App. 55.

¹⁸ *See, e.g.,* An Act for the Punishment of Drunkenness, *reprinted in* Acts and Laws of the State of Connecticut, in America 43 (1784) (“[A]ny Person . . . thereby bereaved, and disabled in the use of his Reason and Undertaking, appearing either in his Speech, Gesture or Behaviour.”); Act of Dec. 16, 1812, *reprinted in* Police and Nuisances, § 19, 1 Burch Digest 141 (Washington, D.C.) (punishing those “found . . . drunk in or about the streets”); Act of Mar. 19, 1874, No. 646, § 8, 1873–1874 S.C. Acts 797, 799 (codified at S.C. Gen. Stat. pt. 1, tit. 13, ch. 55, § 1739, at 509 (1881–1882)) (“Any person who shall be found drunk or grossly intoxicated in any street, highway, public house or public place shall be fined.”); *see* 4 Blackstone *25–26 (“*drunkenness* or intoxication, which, depriving men of their reason, puts them in a temporary frenzy”); *id.* at *41 (“[T]he vice of drunkenness, if committed privately and alone, is beyond the knowledge and of course beyond the reach of human tribunals; but if committed publicly, in the face of the world, its evil example makes it liable to temporal censures.”).

sweeps in proscriptions against being a “common” or “habitual” drunkard, *i.e.*, the analogy on which the Justice Department rests its case.¹⁹ Some of those laws allowed for the involuntary commitment of habitual drunkards to prisons or inebriate asylums.²⁰ Others allowed courts to place habitual drunkards under guardianship.²¹

The Justice Department acknowledges it may proscribe Williams’s possession of firearms only if he “presently poses a physical danger if armed,” DOJ Panel Supp. Br. 2, but offers no evidence to establish this as the aim of the habitual drunkard laws. Indeed, it provides no analysis on the “why” of these laws.²² And that silence has since been supplemented by the

¹⁹ The Government’s reluctance to cite public intoxication laws is understandable because offenders were put into the stocks for hours at most, “until they sobered up.” *United States v. Harris*, 144 F.4th 154, 159 (3d Cir. 2025), *vacated and remanded*, No. 25-372, 2026 WL 1854989 (U.S. June 29, 2026).

²⁰ *See, e.g.*, Act of Apr. 1, 1870, ch. 426, § 2, 1869–1870 Cal. Stat. 585–586; Act of July 8, 1890, No. 100, § 1, 1890 La. Acts 116; Act of Mar. 5, 1860, ch. 386, §§ 6–7, 1860 Md. Laws 607–609; Act of July 25, 1874, ch. 113, § 1, 1874 Conn. Pub. Acts 256; Act of May 1, 1890, ch. 42, §§ 1, 2, 1890 Iowa Acts 67; Act of Mar. 31, 1873, ch. 57, §§ 1–3, 1873 Miss. Laws 61–62; Act of Mar. 27, 1857, ch. 184, §§ 4, 9, 1857 N.Y. Laws, vol. 1, at 429, 431; Act of June 18, 1885, ch. 339, §§ 1–3, 1885 Mass. Acts 790; *see also infra* notes 24–25.

²¹ *See, e.g.*, Act of May 1, 1890, ch. 42, §§ 1, 2, 1890 Iowa Acts 67; Act of Aug. 18, 1876, ch. 112, § 147, 1876 Tex. Gen. Laws 188; *see* David Korostyshevsky, *Incapable of Managing His Estate: Habitual Drunkards and the Expansion of Guardianship in the Nineteenth-Century United States*, 43 L. & Hist. Rev. 795, 797–813 (2025).

²² The Department of Justice first argued these laws exemplify why categorical bans, like § 922(g)(1), are permissible. In supplemental briefing, the Department pivots, asking this Court to remand for further factfinding on whether Williams is physically dangerous. But the government has the burden to proffer an analogy from the historical record based

Supreme Court’s conclusion that these same laws did not seek “to protect the public from violence so much as to protect habitual drunkards from themselves and their families from financial devastation.” *Hemani*, 146 S. Ct. at 1690.²³

Nor does the Justice Department explain “how” the habitual drunkard laws ameliorated the threat of firearm misuse in a way relevant to the operation of § 922(g)(1). As *Bruen* clarifies, “if earlier generations addressed the societal problem, but did so through materially different means, that . . . could be evidence that a modern regulation is unconstitutional.” 597 U.S. at 26–27. That is the case here, and why the analogy to the permanent bar in § 922(g)(1) breaks down. Most statutes capped the commitment of habitual drunkards to the state inebriate asylum, prison, or hard labor to a few months or years.²⁴ Others provided for an indefinite

on the *Shepard* documents. *See Hemani*, 146 S. Ct. at 1686. Only after it meets that burden might factfinding be needed.

²³ The government does not raise founding-era laws that permitted justices of the peace to grant the “Surety for the Good Behaviour” “[a]gainst common Drunkards,” so we do not consider them. Michael Dalton, *The Country Justice: Containing the Practice, Duty and Power of The Justices of the Peace* 411 (E&R Nutt & R. Gosling ed. 1727). In any case, that regime would probably not justify this application of § 922(g)(1), since those sureties were intended “to protect the community from scandals ‘against good morals,’” not from “individual[s] [who] posed a threat of violence.” *Hemani*, 146 S. Ct. at 1691 (quoting Nathan Dane, *General Abridgment and Digest of American Law* 301 (1824)).

²⁴ Compare *Leavitt v. City of Morris*, 117 N.W. 393, 395 (Minn. 1908) (discussing a Minnesota law that “provide[d] that if the board determine that such person is an inebriate he shall be committed to the hospital farm for treatment for an indeterminate period, but not for more than two years without being released on parol”), Act of Feb. 1, 1866, No. 11, § 10, 1866 Pa. Laws 10 (“[W]henver any person shall, hereafter, be found to be a habitual drunkard, by due course of law, it shall be lawful for the court of common pleas . . . to commit him to the Inebriate Asylum, for a period, not less than six months, nor more than two years.”), with Act of July 25, 1874, ch. 113,

period of incarceration, but had no indication that upon release individuals continued to forfeit their arms.²⁵ Rather, once

§ 1, 1874 Conn. Pub. Acts 256 (allowing commitment to the inebriate asylum “for a term not less than four months, and not more than twelve months”), and Jerome Hall, *Drunkenness as a Criminal Offense*, 32 J. Crim. L. & Criminology 297, 303 n.37 (1941) (referencing Iowa law, which provided that “[a] habitual drunkard . . . may be kept in the common jail for any time, not exceeding six months, at hard labor [sic].”), Act of Apr. 1, 1870, ch. 426, § 2, 1869–1870 Cal. Stat. 585–86 (same), and Miscellaneous Crimes, Title XVII, § 1014, *reprinted in* Revised Statutes of Arizona 753–754 (1887) (allowing imprisonment of “every common drunkard” for a time period “not exceeding ninety days”), Act of Apr. 30, 1855, *reprinted in* 2 General Laws of the State of California, from 1850 to 1864, Inclusive 1076–77 (Theodore H. Hittell ed., 2d ed. 1870) (same), Act of Mar. 7, 1873, ch. 114, § 1, 1873 Nev. Stat. 189–190 (same), Act of Feb. 18, 1876, § 378, *reprinted in* The Compiled Laws of the Territory of Utah 647 (1876) (same), Act of June 10, 1799, ch. 806, § 5, 1798 N.J. Laws 561–63 (allowing “disorderly persons,” including “common drunkards,” to be “kept at hard labour for any time not exceeding three calendar months”), and 1825 Me. Pub. Acts 1034, Act of Feb. 22, 1825, ch. 297, § 4 (allowing a “Board of Overseers” to commit any “common drunkard” “for a term of time not exceeding forty eight hours, at one time, if . . . the public good shall require it”).

²⁵ See, e.g., Act of May 14, 1718, *reprinted in* 2 Laws of New Hampshire 266–67 (Albert Stillman ed., 1913) (“[T]he [] Court, or any one Justice of the Peace” may “commit to the” “house of Correction” “Common Drunkards,” where the “Master of such house of Correction” may force them to “Work and Labour, . . . for such time as they shall continue, or remain in the said house.”); Act of Mar. 5, 1860, ch. 386, §§ 6–7, 1860 Md. Laws 607–09 (allowing the commitment of habitual drunkards to the inebriate asylum for a period that may “be from time to time extended for such periods as may be necessary for his or her complete reformation”); Act of Mar. 28, 1872, ch. 996, §§ 10–11, 1872 Ky. Acts, Vol. 2, at 523–24 (similar); Act of Mar. 27, 1857, ch. 184, § 10, 1857 N.Y. Laws, vol. 1, 431 (similar); Act of June 18, 1885, ch. 339, §§ 1–3,

someone was “safe” to “go at large,” Act of Mar. 27, 1876, ch. 208, § 7, 1876 Va. Acts 249, they were restored to the status of a full rights-bearing citizen. *See Range*, 124 F.4th at 231 (“[I]n the Founding era, a felon could acquire arms after completing his sentence and reintegrating into society.”).²⁶

Finally, the Justice Department fails to show that Williams threatens to “misuse[] a gun while intoxicated,” or that he “poses a danger to himself or others as a result” of alcohol abuse. *Hemani*, 146 S. Ct. at 1693–94. In fact, much like those nineteenth-century drunkards released from custody and restored their rights, the record shows that Williams poses no present physical danger from the use of a firearm, or anything else.²⁷ He has done nothing violent, let alone dangerous, for over twenty years, and has held steady employment at the same job for over three decades. He “no longer consume[s] alcohol, save for the occasional glass of wine with dinner or champagne at home on New Year’s Eve with [his] family,” testimony the Justice Department has not challenged. App. 55. He has submitted to an expert examination, finding he “has a normal personality, without psychopathology and without addiction or violent tendencies.”

1885 Mass. Acts 790 (similar); Act of Mar. 31, 1873, ch. 57, §§ 1–3, 1873 Miss. Laws 61–62 (similar); Act of Mar. 27, 1857, ch. 184, §§ 4, 9, 1857 N.Y. Laws, vol. 1, at 429, 431 (indefinite period).

²⁶ The Justice Department cites only one law that “specifically disarmed ‘common drunkards.’” DOJ Opening Br. 26 n.8. Upon closer inspection, even that law only allowed the disarming of drunkards “who go armed, and are not known to be peaceable and quiet persons, and who can give no good account of themselves.” Act of Apr. 30, 1855, *reprinted in* 2 General Laws of the State of California, from 1850 to 1864, Inclusive 1076–77 (Theodore H. Hittell ed., 2d ed. 1870). Williams does not fit this bill.

²⁷ Our tradition establishes that continuance of a people-based proscription against arms possession is only enforceable after individual, not collective, considerations. *See Hemani*, 146 S. Ct. at 1686, 1693–94; *Bost*, No. 24-1719, at 11 (3d Cir. Oct. 13, 2026). Of course, this is the usual focus of as-applied constitutional challenges.

App. 73–74. And there is nothing to suggest Williams has ever wielded firearms in a manner dangerous to peaceable persons, despite a lifetime of gun ownership. Williams is presently a peaceable citizen, capable of bearing arms consistent with the design of the Second Amendment.²⁸

3.

All but conceding these historical points, the United States pivots to 18 U.S.C. § 925(c), which gives the Attorney General discretion to “grant . . . relief” from § 922(g) “if . . . the applicant will not be likely to act in a manner dangerous to public safety” and gives the district courts review over any “denial[s]” of an application. As told by the Justice Department, this provision turns a textually permanent ban into a temporary restraint.

But it can offer no practice supporting that view. To the contrary, § 925(c) sat dormant since 1992, when Congress barred the Bureau of Alcohol, Tobacco, Firearms and Explosives from using “funds . . . to investigate or act upon applications for relief from Federal firearms disabilities under 18 U.S.C. [§] 925(c).” *United States v. Bean*, 537 U.S. 71, 74–75 (2002) (citation omitted). Since ATF held the “delegated authority to act on § 925(c) applications” from the Attorney General, *id.* at 74, for some three decades, applications were returned upon receipt. Only last year did the Attorney General reclaim this authority by withdrawing ATF’s delegation, *see Withdrawing the Attorney General’s Delegation of Authority*, 90 Fed. Reg. 13080, 13083 (Mar. 20, 2025), and begin granting relief to a few applicants, *see, e.g., Granting of Relief; Federal Firearms Privileges*, 90 Fed. Reg. 17835 (Apr. 29, 2025). It is a slow trickle of relief available only upon invitation. *See* Tr. Oral Arg. 8–9 (“[W]e have not opened up the process to the public as a whole.”).

²⁸ *See* Stephen Halbrook, *That Every Man Be Armed* 79–80 (1984) (“[T]he Second Amendment . . . originated in part from Samuel Adams’s proposal . . . that Congress could not disarm any peaceable citizens.” (citing *From the Boston Independent Chronicle*, *Philadelphia Independent Gazetteer*, 20 Aug. 1789, at 2, col. 2.)).

Still, the United States offers optimism that once its proposed rules are finally effective (and, one imagines, judicially challenged), the floodgates of freedom will open.²⁹ Such speculation is simply outside this controversy. Our duty is to decide the case based on present facts, not future promises.³⁰

²⁹ See *Application for Relief from Disabilities Imposed by Federal Laws with Respect to the Acquisition, Receipt, Transfer, Shipment, Transportation, or Possession of Firearms*, 91 Fed. Reg. 54054, 54080, 54086 (Aug. 20, 2026).

³⁰ The scant chance of an invitation to apply for restoration under § 925(c) does not displace our decisional duty, as Williams presents an actual controversy ripe for adjudication. A case is ripe when it is “not dependent on ‘contingent future events that may not occur as anticipated, or indeed may not occur at all.’” *Trump v. New York*, 592 U.S. 125, 131 (2020) (per curiam) (quoting *Texas v. United States*, 523 U.S. 296, 300 (1998)). The United States reasons that since Williams can patiently await discretionary relief from the Justice Department, he faces no present harm (from, say, prosecution under § 922(g)(1)). That is a curious conception of our Second Amendment right and one that, in any event, does not fit the facts. Williams “attempted to obtain a Pennsylvania License to Carry Firearms and was denied.” App. 56. This was a result of “the FBI’s National Instant Check System,” which returned the prohibition on Williams due to his 2005 DUI conviction. App. 56. As a result, Williams has “refrained from purchasing, possessing and utilizing firearms” and has “divested himself of all firearms” he formerly owned. App. 57; Williams Response Br. 7–8. Because any firearm dealer that complies with federal directives will refuse to sell Williams a firearm, there is a controversy “‘of sufficient immediacy and reality’ to justify judicial resolution.” *Peachlum v. City of York*, 333 F.3d 429, 434 (3d Cir. 2003) (citation omitted).

Nor will we dismiss Williams’s case under the administrative exhaustion doctrine. Congress has imposed no such requirement and no principles of “sound judicial discretion” support holding a constitutional right in abeyance while the Government gradually comes into compliance. *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992).

* * *

Our Republic, like those before it, has long understood “how base it is to pour down more liquor than one can carry,” and that “drunkenness is nothing but a condition of insanity purposely assumed.”³¹ Driving under that condition no doubt exacerbates the fault of the wrongdoer. Williams’s criminal conviction and sentence is consistent with our tradition because acts incongruous with the virtue necessary for enjoying the rights of our political community have always justified punishment and the corresponding loss of civic privileges.

But virtuous life is a perpetual project, with redemption and reentry into the community a constant promise. And with that rehabilitation comes restoration of the civic privileges guaranteed to citizens by the Constitution, and the freedom to again exercise the natural right of armed defense against threats and tyranny. For the reasons above, we will affirm the District Court’s judgment granting Williams summary judgment.

³¹ 2 Lucius Annaeus Seneca (Seneca the Younger), *Moral Letters to Lucilius* § 83.18 (Richard Mott Gummere trans., Loeb Classical Library ed. 1915).

Williams v. Attorney General

No. 24-1091

CHAGARES, Chief Judge, concurring in part, concurring in the judgment, and dissenting in part, with whom KRAUSE, Circuit Judge, joins as to Parts I and II, and with whom FREEMAN, Circuit Judge, joins as to Parts I and III.

I agree with my learned colleagues that the District Court's order granting Williams declaratory relief should be affirmed. I also concur in the parts of the majority's opinion discussing the proper analysis to be conducted by courts considering requests for declaratory relief in the Second Amendment context. I write separately and part ways with the majority opinion because I believe that individuals seeking to have their Second Amendment rights restored must first pursue their claims through the revitalized administrative process outlined in 18 U.S.C. § 925(c). But I would excuse Williams from this requirement given the unusual circumstances of this lawsuit and its protracted timeline. I therefore respectfully concur in the judgment and in parts I–III.B.2 of the majority's opinion but dissent from part III.B.3.

I.

Much has changed in the Second Amendment landscape since Williams first brought this lawsuit in 2017 to have his federal firearm rights restored. This includes the recent revitalization of the long-moribund section 925(c) process.

Section 925(c) provides that the Attorney General may restore an individual's firearm rights that have been disabled

under 18 U.S.C. § 922(g) if it is “established to his satisfaction 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 that the granting of the relief would not be contrary to the public interest.” 18 U.S.C. § 925(c). Denial of such relief is reviewable in federal district court, and “[t]he court may in its discretion admit additional evidence where failure to do so would result in the miscarriage of justice.” Id.

The authority to review section 925(c) petitions had been delegated to the Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”) since 1975. See 40 Fed. Reg. 16835 (Apr. 15, 1975). But Congress, starting in 1992 and continuing to the present day, prohibited ATF from using any funds to act on section 925(c) petitions. See United States v. Bean, 537 U.S. 71, 75 & n.3 (2002). The Supreme Court subsequently held that “the absence of an actual denial of [a] petition by ATF precludes judicial review under § 925(c).” Id. at 78. Early in 2025, however, the Attorney General issued an interim final rule that sidesteps this funding bar and withdrew the delegation of authority to ATF to adjudicate section 925(c) petitions. See Withdrawing the Attorney General’s Delegation of Authority, 90 Fed. Reg. 13080, 13083 (Mar. 20, 2025). As an interim final rule, the Attorney General’s withdrawal of authority delegated to ATF took effect immediately. See Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania, 591 U.S. 657, 665 (2020) (noting that the Administrative Procedure Act’s good cause exception “permits an agency to dispense with notice and comment and promulgate an [interim final rule] that carries immediate legal force”).

Acting on this reclaimed authority, the Attorney General has granted section 925(c) relief to dozens of disarmed individuals. See Granting of Relief; Federal Firearms Privileges, 90 Fed. Reg. 17835 (Apr. 29, 2025); Granting of Relief; Federal Firearms Privileges, 91 Fed. Reg. 8532 (Feb. 23, 2026); Granting of Relief; Federal Firearms Privileges, 91 Fed. Reg. 32094 (May 29, 2026). The Department of Justice has also issued a notice of proposed rulemaking (“NPRM”) outlining in more detail how the section 925(c) process will be administered. See generally Application for Relief from Disabilities Imposed by Federal Laws with Respect to the Acquisition, Receipt, Transfer, Shipment, Transportation, or Possession of Firearms, 90 Fed. Reg. 34394–34404 (July 22, 2025). The Attorney General signed a final rule implementing section 925(c) on August 13, 2026. Office of the Att’y Gen., Application for Relief from Disabilities Imposed by Federal Laws with Respect to the Acquisition, Receipt, Transfer, Shipment, Transport, or Possession of Firearms (Aug. 13, 2026), <https://perma.cc/44EJ-8F3A> (“Final Rule”).

II.

When Williams filed this lawsuit nine years ago, he contended that ATF’s funding prohibition prevented him from “avail[ing] himself of any federal procedure to vindicate his Second Amendment rights.” Compl. ¶ 51. He therefore alleged that nothing but “a Second Amendment as-applied challenge” would allow him “to obtain relief from his federal disability.” Id. ¶ 52.

Today, that premise is no longer true. With the revitalization of section 925(c) consideration, section 922(g)(1) no longer “prohibits—in perpetuity—an individual”

from possessing a firearm, as Williams argues. Williams First Supp. Br. 10. Instead, felons are now able to apply to the Department of Justice for relief from section 922(g)(1) under section 925(c). The question is whether individuals seeking to have their Second Amendment rights restored must first pursue their claims through this revitalized process. The answer is yes, in my view.

A “long-settled rule of judicial administration” is that parties must generally exhaust administrative remedies available to them prior to seeking judicial relief. Myers v. Bethlehem Shipbuilding Corp., 303 U.S. 41, 50 (1938). Of course, “[w]here Congress specifically mandates, exhaustion is required.” McCarthy v. Madigan, 503 U.S. 140, 144 (1992) (citing Coit Indep. Joint Venture v. Fed. Sav. & Loan Ins. Corp., 489 U.S. 561, 579 (1989)). But the Supreme Court has instructed that where, as here, a statute does not specifically require exhaustion, “sound judicial discretion” determines whether a plaintiff may seek relief in federal court in the first instance. Id. at 144. The exercise of this discretion is guided by “balanc[ing] the interest of the individual in retaining prompt access to a federal judicial forum against countervailing institutional interests favoring exhaustion.” Id. at 146. Further, the Supreme Court has posited that this balancing is “intensely practical.” Id. (quoting Bowen v. City of New York, 476 U.S. 467, 484 (1986)). An exhaustion requirement thus furthers the “twin purposes of protecting administrative agency authority and promoting judicial efficiency.” Id. at 145.

Requiring individuals seeking restoration of their federal firearm rights to exhaust their administrative remedy under section 925(c) serves both aims. The concerns

underlying exhaustion “apply with particular force when the action under review involves exercise of the agency’s discretionary power or when the agency proceedings in question allow the agency to apply its special expertise.” *Id.* (citing *McKart v. United States*, 395 U.S. 185, 194 (1969)). Section 925(c) is rooted in such discretion. The Attorney General under the statute “may grant such relief if it is established to his satisfaction” that the applicant meets the prescribed criteria. 18 U.S.C. § 925(c) (emphases added); see also Final Rule at 116 (noting that the final rule “provide[s] detailed criteria to guide determinations under section 925(c)”).

Importantly, both the Supreme Court and this Court have endorsed the Executive Branch as best equipped to first address the prospect of danger when rearming felons. The Supreme Court has recognized:

Whether an applicant is “likely to act in a manner dangerous to public safety” presupposes an inquiry into that applicant’s background—a function best performed by the Executive, which, unlike courts, is institutionally equipped for conducting a neutral, wide-ranging investigation. Similarly, the “public interest” standard calls for an inherently policy-based decision best left in the hands of an agency.

United States v. Bean, 537 U.S. 71, 77 (2002) (quoting 18 U.S.C. § 925(c)). We made similar observations when

reviewing section 925(c)'s conferral of authority to ATF,¹ rather than the courts in the first instance, to consider such petitions. See Pontarelli v. U.S. Dep't of the Treasury, 285 F.3d 216, 231 (3d Cir. 2002) (en banc) ("Unlike ATF, courts possess neither the resources to conduct the requisite investigations nor the expertise to predict accurately which felons may carry guns without threatening the public's safety.").

In the final rule, the Department of Justice sets out categories of individuals who are presumptively ineligible for relief (none of which seem to apply to Williams) and requires explicit consideration of whether "a failure to grant relief would infringe the applicant's rights under the Second Amendment." Final Rule at 135. The final rule also outlines several felony convictions that "render an applicant presumptively unable to establish to the Attorney General's satisfaction that the applicant will not be likely to act in a manner dangerous to public safety . . . absent extraordinary circumstances." Final Rule at 140–41. This framework accords with our recognition that "the government may show that a felon's predicate crime involves violence or the risk of it, thus justifying disarmament." United States v. Bost. No. 24-1719, slip op. at 12 (3d Cir. Sep. __, 2026); see also United States v. Williams, 113 F.4th 637, 661 (6th Cir. 2024) (recognizing that "the rearmament criteria in § 925(c) map

¹ Section 925(c) first bestowed authority to grant relief to the Secretary of the Treasury, who formerly oversaw ATF, but the statute was amended in 2002 to now refer to the Attorney General. See Homeland Security Act of 2002, Pub. L. No. 107-296, § 1112(f)(6), 116 Stat. 2135, 2276.

neatly onto the dangerousness principle underlying traditional firearm regulation”).

That Williams’s objection to section 922(g)(1) is grounded in the Constitution does not change this analysis. In United States v. Graves, our Court confronted concerns that section 925(c) may “impermissibly operate[] to delay or even forestall the duration of alleged deprivations of constitutional rights.” 554 F.2d 65, 83 n.69 (3d Cir. 1977). We concluded that Congress “has the power to establish reasonable remedial alternatives to immediate vindication of constitutional rights by federal courts.” Id. This reasoning accords with decisions in the intervening decades from both the Supreme Court and our Court. We have held that, in certain instances, constitutional claims are subject to the exhaustion requirement of the Individuals with Disabilities Education Act. See Wellman v. Butler Area Sch. Dist., 877 F.3d 125, 134–35 (3d Cir. 2017) (holding that a due process claim brought under section 1983 is subject to exhaustion). And the Supreme Court has held that claims brought under the Prison Litigation Reform Act, including constitutional claims, must be exhausted. See Woodford v. Ngo, 548 U.S. 81, 93 (2006). Later, in Elgin v. Department of Treasury, the Court held that federal employees bringing claims under the Civil Service Reform Act must first raise those claims before the Merit Systems Protection Board (“MSPB”). See 567 U.S. 1, 5, 13–14, 21 (2012). Rejecting the employees’ argument that their constitutional claims were “outside the MSPB’s expertise,” the Court reasoned that the Board’s actions may “obviate the need to address the constitutional challenge . . . [t]he challenged statute may be one that the MSPB regularly construes, and its statutory interpretation could alleviate constitutional concerns.” Id. at 22–23.

Here, too, a successful section 925(c) petition would obviate the need for a constitutional as-applied challenge. So there is no constitutional problem with having the Attorney General adjudicate disarmed felons' firearm rights restoration claims in the first instance. See Williams, 113 F.4th at 661 (explaining that the principle "from our tradition of firearms regulation is that, when the legislature disarms on a class-wide basis, individuals must have a reasonable opportunity to prove that they don't fit the class-wide generalization" and that this principle "is satisfied whether the official is an executive agent or a court addressing an as-applied challenge"). Accordingly, allowing the Attorney General to make the restoration determination in the first instance presents no constitutional problem and protects the administrative authority conferred by Congress.

Turning to judicial efficiency, the Supreme Court has recognized that exhaustion promotes efficiency because "[c]laims generally can be resolved much more quickly and economically in proceedings before an agency than in litigation in federal court." Woodford, 548 U.S. at 89; see also McKart v. United States, 395 U.S. 185, 195 (1969) (noting the interest of "judicial efficiency" and observing that if the plaintiff "is required to pursue his administrative remedies, the courts may never have to intervene"). And "[w]hen an agency has the opportunity to correct its own errors, a judicial controversy may well be mooted, or at least piecemeal appeals may be avoided." McCarthy, 503 U.S. at 145.

Already in its nascent rebirth, section 925(c) consideration has proven to be no exception. The Government informs us that the Attorney General has granted relief to at least five individuals with still-pending civil declaratory

judgment actions, including two in our Circuit. See February 9, 2026 Letter Filed Pursuant to Rule 28(j) (Dkt. No. 117); Gov’t Third Supp. Br. at 6. This includes an individual convicted under the same Pennsylvania statute as Williams who has already obtained section 925(c) relief — despite filing his as-applied challenge seven years later than Williams did. See Complaint, Heussman v. Garland, No. 24-cv-904 (E.D. Pa. Mar. 1, 2024); Granting of Relief; Federal Firearms Privileges, 91 Fed. Reg. 32094 (May 29, 2026) (indicating that Heussman had his federal firearm rights restored under section 925(c) in March 2026); Stipulation of Dismissal, Heussman, No. 24-cv-904 (E.D. Pa. July 6, 2026) (“Plaintiff filed an application with the Attorney General pursuant to 18 U.S.C. § 925(c). Plaintiff was granted relief pursuant to 18 U.S.C. § 925(c), on March 30, 2026. Therefore, no further relief is being sought by Plaintiff.”)

The Attorney General estimates that “approximately 1 million people will apply for relief within the first year of the program.” 90 Fed. Reg. at 34399. Channeling those applicants to the section 925(c) process will thus preserve judicial resources and may well restore applicants’ federal firearms rights sooner. See Nyhuis v. Reno, 204 F.3d 65, 75 (3d Cir. 2000) (“Courts have recognized myriad policy considerations in favor of exhaustion requirements. They include . . . conserving scarce judicial resources, since the complaining party may be successful in vindicating his rights in the administrative process and the courts may never have to intervene.”). Amid the ongoing sea change in Second Amendment jurisprudence, the revitalized section 925(c) can serve as a bulwark against the courts being flooded with as-applied challenges.

The Supreme Court, however, has identified “at least three broad sets of circumstances in which the interests of the individual weigh heavily against requiring administrative exhaustion.” McCarthy, 503 U.S. at 146. None of them are present here.

First, an exhaustion requirement is disfavored where the administrative remedy may cause “undue prejudice to subsequent assertion of a court action,” such as when the administrative action has “an unreasonable or indefinite timeframe” or the “particular plaintiff may suffer irreparable harm if unable to secure immediate judicial consideration of his claim.” Id. at 146–47. The Department of Justice, in estimating the personnel and operating costs of implementing the revitalized section 925(c) process, speaks of adjudicating the one million applications it expects in the first year of the program “within a year of receipt.” 90 Fed. Reg. at 34399. Even if this goal proves too expeditious, it seems likely that the typical section 925(c) applicant will receive a decision far quicker than the nine years (and counting) that Williams has waited. And though Williams cautions that the Government could require section 925(c) petitioners to waive constitutional challenges to section 922(g)(1), I take the Government at its word that nothing would be waived if someone engaged in the section 925(c) administrative process. See En Banc Oral Arg. Tr. 43:17–22.

Second, exhaustion is disfavored where the remedy may be inadequate “because of some doubt as to whether the agency was empowered to grant effective relief,” the agency “lacks institutional competence to resolve the particular type of issue presented . . . [or] authority to grant the type of relief requested.” McCarthy, 503 U.S. at 147–48 (citation omitted).

Again, the Supreme Court has instructed that the inquiry into whether a section 925(c) applicant is likely to act in a dangerous manner is “a function best performed by the Executive.” Bean, 537 U.S. at 77. And while concerns about the agency’s ability or authority to grant relief may have been present when the ability to review section 925(c) petitions was delegated to ATF, the Attorney General’s withdrawal of this delegation ameliorates those concerns.

Third, exhaustion is disfavored where the administrative body “is shown to be biased or has otherwise predetermined the issue before it.” McCarthy, 503 U.S. at 148. But the Attorney General has already granted relief to dozens of individuals, so this is not a concern.

* * * * *

Requiring individuals who want their Second Amendment rights restored to first exhaust their claims through section 925(c) both protects the authority conferred to the Attorney General by Congress and promotes judicial efficiency. And no meritorious contrary interests to imposing an exhaustion requirement have been raised. Accordingly, I would hold that exhaustion of the remedy now available under section 925(c) is required before an individual may file an as-applied civil action invoking the Second Amendment.

III.

The next question is whether Williams must exhaust the now-available section 925(c) procedure before he may be granted declaratory relief from the courts. I would hold that he

need not exhaust his remedy under section 925(c), considering the unusual circumstances of this case.

We have observed that excusing exhaustion occurs “in very limited circumstances.” D.M. v. N.J. Dep’t of Educ., 801 F.3d 205, 212 (3d Cir. 2015). Balancing the interests discussed above nonetheless favors excusing Williams from exhausting the remedy available to him under section 925(c). Williams invested nine years pressing this declaratory judgment action. These circumstances are precisely why the Supreme Court has observed that “[e]xhaustion is typically nonjurisdictional for good reason [A]n exhaustion objection raised late in litigation (as jurisdictional objections can be) might derail ‘many [years] of work on the part of the attorneys and the court.’”

Santos-Zacaria v. Garland, 598 U.S. 411, 417–18 (2023) (citation omitted). Williams’s efforts resulted in a favorable judgment in the District Court, and on appeal by the Government, he later argued before a panel of this Court and then the en banc Court. Only while on appeal in 2025 did section 925(c) become available as an option to vindicate his rights.

The Supreme Court has also sensibly recognized that a party should not be “required to exhaust a remedy which may not exist.” Noyd v. Bond, 395 U.S. 683, 698 n.11 (1969); see also Lloyd v. Reg’l Transp. Auth., 548 F.2d 1277, 1287 (7th Cir. 1977) (holding that exhaustion did not apply where there was “no administrative remedy open to the[] plaintiffs”). True, the section 925(c) remedy did become available during the pendency of the Government’s most recent appeal of Williams’s judgment. However, the Supreme Court in Walker v. Southern Railway Company has considered this

circumstance. 385 U.S. 196, 198–99 (1966). The Court in Walker held that exhaustion of remedies would be unnecessary when “the new procedures were not available to [the plaintiff]” when the plaintiff filed his lawsuit, and the new procedures only went into effect the year the Supreme Court decided the case. Id. Williams should similarly not be compelled to engage in the section 925(c) procedure that was only activated nine years after filing his declaratory judgment action seeking to vindicate his Second Amendment rights. See Eastman Kodak Co. v. STWB, Inc., 452 F.3d 215, 223 (2d Cir. 2006) (“[A]n ERISA benefits claimant is not required to exhaust a claims procedure that was adopted only after a suit to recover benefits has been brought.”); England v. Marriott Int’l, Inc., 764 F. Supp. 2d 761, 773, 775 (D. Md. 2011) (excusing resort to exhaustion where the “[d]efendants did not implement an administrative claims procedure until *after* this lawsuit was filed” and noting that “[t]he exhaustion requirement is designed to require utilization of extant administrative processes, not to wear out [plaintiffs] with after-the-fact diversions and detours”).

The interests favoring exhaustion do not outweigh Williams’s interest in retaining prompt access to a federal judicial forum, considering the circumstances of this case. As I have discussed, an interest favoring exhaustion is conservation of scarce judicial resources. But Williams has spent nine years in the courts, and any further use of judicial resources will be relatively inconsequential. In addition, the interest favoring exhaustion of “produc[ing] a useful record for subsequent judicial consideration” is similarly weak in this case where judicial consideration has already occurred.

McCarthy, 503 U.S. at 145.²

For these reasons, I would hold that Williams is excused from exhausting his remedy under section 925(c).

IV.

I join in the Court's judgment affirming the District Court's order granting Williams declaratory relief. In addition, I concur in parts I–III.B.2 of the majority's opinion regarding the proper analysis to be conducted by courts considering requests for declaratory relief in the Second Amendment context. I respectfully dissent from the analysis of available relief under 18 U.S.C. § 925(c) in part III.B.3.

² Yet another interest favoring exhaustion is to avoid “frequent and deliberate flouting of administrative processes [that] could weaken the effectiveness of an agency by encouraging people to ignore its procedures.” McKart, 395 U.S. at 195. While that interest is a concern, it does not tip the scales in this case. It bears repeating that Williams's case presents unusual circumstances and the analysis in this section is limited to the facts of this case. I do not suggest, for instance, that all parties who filed lawsuits for declaratory and other relief before the section 925(c) remedy were resurrected may bypass that procedure.

FREEMAN, *Circuit Judge*, joined by MONTGOMERY-REEVES and CHUNG, *Circuit Judges*, concurring in part and dissenting in part, and dissenting in the judgment.

I.

I join the majority opinion in some respects. I agree with its pronouncement of the methodology when a plaintiff seeks a declaratory judgment that he is free from prosecution under 18 U.S.C. § 922(g)(1): A court first must evaluate the elements of the plaintiff’s felony conviction. Maj. Op. at 14. After all, § 922(g)(1) prohibits firearm possession by anyone “who has been *convicted* . . . of[] a crime punishable by imprisonment for a term exceeding one year.” 18 U.S.C. § 922(g)(1) (emphasis added). And we assess the scope of a conviction by evaluating the elements of a statute—*i.e.*, what the prosecution necessarily must prove to obtain a conviction—not by looking to unproven conduct. *See Mathis v. United States*, 579 U.S. 500, 509–12 (2016) (reiterating that a criminal sentencing enhancement triggered by a defendant’s prior “convictions” requires courts to look only to “the elements of the [prior] offense, not to the facts of the defendant’s conduct” (quoting *Taylor v. United States*, 495 U.S. 575, 601 (1990) (citation modified))); *id.* at 504 (“Elements are . . . the things the prosecution must prove to sustain a conviction.” (citation modified)).

But I part ways from the majority opinion when it says a prior conviction is disarming on its face only if it involved violence or threats. Maj. Op. at 14. To be sure, convictions that require violence or threats are disarming; as our Court’s opinion in *Bost* explains, that is consistent with our Nation’s historical tradition of firearm regulation. *See United States v. Bost*, No. 24-1719, slip op. at 12–13 (3d Cir. Oct. 13, 2026). But so are other convictions that show a person poses a credible threat to the physical safety of others.

In *United States v. Rahimi*, the Supreme Court upheld a different federal firearm disability because it “presume[d] . . . that the Second Amendment right may only be burdened once a defendant has been found to pose a credible threat to the physical safety of others.” 602 U.S. 680, 700 (2024). And a

prior conviction can encompass such a finding even if the conviction did not require violence or threats per se.

Such is the case here. Williams was convicted of “driv[ing], operat[ing] or be[ing] in actual physical control of the movement of a vehicle” after having consumed enough alcohol to put him at “[h]ighest rate of alcohol” proscribed by Pennsylvania DUI law. 75 Pa. C.S. § 3802(c). And he was convicted of doing so after he previously sustained a DUI conviction. *See* 75 Pa. C.S. § 3803(b)(4).

Williams’s DUI conviction establishes that he controlled a vehicle while highly intoxicated, notwithstanding the obvious risks that his conduct could severely injure or kill others. *See* Schwartz Op. at 2–4 (discussing the physical dangers associated with DUI offenses). In other words, he engaged in the dangerous use of “what can be a deadly weapon: a vehicle.” *Sykes v. United States*, 564 U.S. 1, 18 (2011) (Thomas, J., concurring in the judgment) (discussing an Indiana vehicle flight statute), *overruled by Johnson v. United States*, 576 U.S. 591 (2015); *see also Smith v. Freland*, 954 F.2d 343, 347 (6th Cir. 1992) (“[A] car can be a deadly weapon.”); *Focht v. Rabada*, 268 A.2d 157, 161 (Pa. Super. Ct. 1970) (“Automobiles represent the most lethal and deadly weapons today entrusted to our citizenry. When automobiles are driven by intoxicated drivers, the possibility of death and serious injury increases substantially.”).

Because Williams’s conviction shows that he “pose[d] a credible threat to the physical safety of others,” *Rahimi*, 602 U.S. at 700, the Second Amendment does not bar Williams’s disarmament, at least for some period of time.

Williams’s conviction also satisfies the narrower standard our Court announces today. The majority opinion asks whether the conduct at issue presents a risk of physical danger from the misuse of firearms. Maj. Op. at 15. But we have acknowledged that a prior conviction can evince a risk of firearm misuse even if the conviction did not involve firearms. *See Bost*, slip. op. at 13. And Williams’s dangerous misuse of one potentially deadly weapon (a motor vehicle) evinces a risk that he would dangerously misuse another potentially deadly weapon: a firearm.

II.

The majority opinion concludes that Williams was never disarmable in the first instance. But it elides that Williams was disarmable at least for the two years when he was on home confinement and parole for his DUI conviction.

Under Pennsylvania’s sentencing regime, “the actual sentence of a prisoner subject to total confinement is his maximum sentence, and his minimum sentence merely sets the time after which he is eligible to serve the remainder of his sentence on parole.” *Hudson v. Pennsylvania Bd. of Prob. & Parole*, 204 A.3d 392, 396 (Pa. 2019).

Williams was sentenced to a minimum of 90 days and a maximum of two years of imprisonment for his DUI conviction. The sentencing judge permitted him to serve the custodial portion of his sentence under house arrest because of a medical condition. Additionally, at sentencing, the judge ordered that Williams was “[t]o be paroled after completing the minimum sentence without further order of the court.” App. 28 (quoting sentencing judge).

We recently concluded that the Second Amendment right must be interpreted alongside our Nation’s “history and tradition support disarming convicts who are completing their sentences.” *United States v. Moore*, 111 F.4th 266, 273 (3d Cir. 2024), *cert. denied*, 145 S. Ct. 2849 (2025). And our precedent establishes that this history and tradition apply to convicted persons serving federal terms of supervised release, *id.*, and to those serving state sentences of parole or probation, *United States v. Quailles*, 126 F.4th 215, 223 (3d Cir. 2025), *cert. denied*, 146 S. Ct. 127 (2025). So it applied to Williams during the 640 days that he spent on parole after his home confinement ended. *Id.* And there is no principled reason why it would not apply to his 90 days of home confinement as well. *See Moore*, 111 F.4th at 273 (“A prisoner on house arrest does not necessarily have a right to keep a weapon at home for self-defense, even though typical citizens do. The same is true for a prisoner on supervised release.”).¹

¹ That is so regardless of the specific crime for which Williams was sentenced. *See Moore*, 111 F.4th at 271 (discussing the

Although Williams’s conviction justified his disarmament at least for two years, that does not prevent him from seeking to restore his federal firearm rights. And because Williams asks us to restore those rights now, we need not decide whether or for how long it was constitutional to disarm him after he completed his sentence.

III.

Williams seeks to avail himself of a method we have countenanced for restoring federal firearm-possession rights: filing a declaratory judgment action in court. *See Range v. Att’y Gen.*, 124 F.4th 218 (3d Cir. 2024) (en banc); *Pitsilides v. Barr*, 128 F.4th 203 (3d Cir. 2025). Like the majority and Chief Judge Chagares, I would not require Williams to exhaust 18 U.S.C. § 925(c)’s administrative process before seeking relief in court. *See* Maj. Op. at 20–21; Chagares Op. at 11–14. Doing so would be inequitable where Williams filed his declaratory judgment action years before anyone knew the § 925(c) process would emerge from its long dormancy. *See United States v. Duque-Ramirez*, 161 F.4th 1237, 1249 n.11 (10th Cir. 2025) (explaining that relief under § 925(c) was practically unavailable until the government began revitalizing the process in 2025).

Going forward, however, declaratory judgment actions ordinarily should not be available for individuals seeking rearmament. The government has reactivated the § 925(c) process and very recently promulgated rules for its implementation. *See* Application for Relief from Disabilities Imposed by Federal Laws With Respect to the Acquisition, Receipt, Transfer, Shipment, Transportation, or Possession of Firearms, 91 Fed. Reg. 54,054 (Aug. 20, 2026) (final rule effective September 21, 2026) (“Rules Governing § 925(c) Applications”). With this development—and assuming the administrative process functions adequately—there are strong reasons for requiring individuals who want their federal firearm rights restored to first exhaust their claims administratively before seeking judicial review. *See* Chagares

history and tradition of “temporarily disarm[ing] citizens who had committed a wide range of crimes . . . until they had finished serving their sentences”).

Op. at 1–11. So, in my view, once the § 925(c) process is available, absent extraordinary circumstances, individuals should not be permitted to bypass that process by filing declaratory judgment actions to restore their federal firearm rights. *See generally id.* at 11–13 (discussing circumstances under which exhaustion may be excused or simply not required).

IV.

The question remains what should become of Williams’s declaratory judgment action. Unlike under § 925(c), there is no established standard by which courts must evaluate a declaratory judgment action like Williams’s. *See* 18 U.S.C. § 925(c) (permitting the Attorney General to grant relief if “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 that the granting of the relief would not be contrary to the public interest”); *see also* Rules Governing § 925(c) Applications. But in *Range*, we permitted an individual to have his federal firearm rights restored “[m]ore than two decades after he was convicted of food-stamp fraud and completed his sentence” and where there was “no evidence that [he] poses a physical danger to others.” 124 F.4th at 232.

Williams’s case presents a closer call than *Range*. In *Range*, the government presented no evidence “that food-stamp fraud is closely associated with physical danger.” *Id.* at 230. By contrast, evidence abounds that a recidivist DUI offense involving the rate of alcohol Williams had in his body is associated with physical danger. *See, e.g., Birchfield v. North Dakota*, 579 U.S. 438, 443 (2016) (“Drunk drivers take a grisly toll on the Nation’s roads, claiming thousands of lives, injuring many more victims, and inflicting billions of dollars in property damage every year.”); *id.* at 465 (characterizing “those who drive with a BAC significantly above the current limit of 0.08% and recidivists” as the “most dangerous offenders” among drunk drivers).

Moreover, after Williams completed his sentence for his DUI conviction, he made a material misstatement to obtain a gun permit. In 2007, he falsely stated on a Pennsylvania State

Police form that he had never been “charged with[] or . . . convicted of a crime punishable by imprisonment for a term exceeding one year.” App. 18; *cf. United States v. Holden*, 70 F.4th 1015, 1018 (7th Cir. 2023) (Easterbrook, J.) (“Indeed, one might think that the very act of lying to obtain a firearm implies a risk that the weapon will be misused.”). And there’s more: “Although Williams knew his license to carry a firearm had been revoked due to his 2005 DUI conviction, he continued to own approximately twenty firearms until 2014, including semiautomatic guns, revolvers, and shotguns.” App. 17. Williams’s years-long knowing failure to comply with firearm laws may increase the likelihood that he would pose a risk of physical danger to others if he were permitted to possess a firearm.

On the other side of the coin, during summary judgment proceedings the government introduced no evidence to dispute that Williams currently consumes alcohol only in modest amounts, has no addictions, and has no violent tendencies. *See* Maj. Op. at 19. And I agree with the majority that no evidence suggests that Williams has ever misused a firearm, despite his lifetime of gun ownership (several years of which was unlawful). *See id.* at 19–20.

During this appeal, the government conceded that § 922(g)(1) “raises constitutional concerns . . . when applied to persons who do not *presently* pose a danger if armed.” DOJ Panel Supp. Br. 2 (emphasis added). It seeks a remand for further record development about Williams’s present danger, and it emphasizes that the legal landscape has shifted significantly since the District Court evaluated the record in this case. *Id.*

I would grant the government’s request for a remand for factfinding about Williams’s present risk of physical danger to others if he were to possess a gun. Although we have not established precisely what the relevant criteria would be upon remand, I trust that our *Range* decision, along with other authority that physical danger is the touchstone, would provide adequate guidance to the District Court.

SHWARTZ, Circuit Judge, dissenting, with whom KRAUSE and RESTREPO, Circuit Judges, join.

Unlike the Majority, I conclude that Williams’s request for a declaration that he is not subject to the felon firearm possession ban in 18 U.S.C. § 922(g)(1) fails. First, Williams has a felony-equivalent DUI conviction¹ that bans him from possessing firearms. Second, he failed to exhaust his administrative remedy under 18 U.S.C. § 925(c) before seeking court intervention. As a result, I would vacate the order granting Williams a declaratory judgment and direct the District Court to dismiss his complaint without prejudice so that he can pursue relief under § 925(c).

I

Applying § 922(g)(1) to Williams based on his DUI conviction does not violate the Second Amendment. The Second Amendment provides “[a] well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.” U.S. CONST. amend. II. To determine whether a law is consistent with the Second Amendment, we apply the two-part test set forth in New York State Rifle & Pistol Association, Inc. v. Bruen, 597 U.S. 1 (2022). At Bruen Step One, we examine whether “the Second Amendment’s plain text covers an individual’s conduct.” Id. at 24. If so, “the Constitution presumptively

¹ Although Williams’s second DUI conviction was labeled a first-degree misdemeanor under Pennsylvania law, this conviction qualified as a felony under § 922(g)(1) because it was punishable by up to five years’ imprisonment. See 75 Pa. Cons. Stat. § 3803(b)(4); see also 18 Pa. Cons. Stat. §§ 106(b)(6), 1104(1).

protects that conduct,” and we move to Bruen Step Two, where we ask whether the State can “justify its regulation by demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation.” Id. If the State cannot do so, the regulation is unconstitutional. Id.

Because there is no dispute that the Constitution presumptively covers Williams’s conduct—possessing a firearm for self-defense—we move to Bruen Step Two. Our historical regulatory tradition supports the longstanding ban on firearms possession by felons.² See Dist. of Columbia v. Heller, 554 U.S. 570, 626 (2008) (“[N]othing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons”); McDonald v. City of Chicago, 561 U.S. 742, 786 (2010) (similar); Bruen, 597 U.S. at 80 (Kavanaugh, J., concurring) (reiterating that Heller and McDonald recognized “longstanding prohibitions on the possession of firearms by felons”). For the reasons set forth in my concurrence in the judgment in United States v. Bost, No. 24-1719 (3d Cir. Oct. 13, 2026), the analysis concerning his conviction should stop there.

To the extent the law of our Circuit limits the firearms ban to felons whose felonies pose a risk of physical violence

² Indeed, as the Majority acknowledges, Majority Op. at 10 n.12, there is a clear regulatory custom of indirect disarmament for all felonies to the extent that “death and maiming were ordinary penalties for serious crimes,” including non-violent crimes like burglary. John H. Langbein, The Historical Origins of the Sanction of Imprisonment for Serious Crime, 5 J. Legal Stud. 35, 36 (1976).

from misusing guns and thus present a danger,³ id.; Range v. Att’y Gen., 124 F.4th 218, 230 (3d Cir. 2024) (en banc) (recognizing that United States v. Rahimi, 602 U.S. 680 (2024) “bless[ed] disarming (at least temporarily) physically dangerous people” who “pose[] a clear threat of physical violence to another”); see also United States v. Martinez, 169 F.4th 1147, 1154 (9th Cir. 2026) (recognizing historical tradition of disarming “people deemed dangerous to the physical safety of others”), Williams’s DUI conviction places him squarely in that group. “Drunk driving is a dangerous and often deadly crime,” and Pennsylvania’s felony-equivalent recidivist drunk driving offense is “serious,” as reflected by both its penalty and that it involves conduct that “presents a potential for danger and risk of harm to self and others.” Holloway v. Att’y Gen., 948 F.3d 164, 167, 173–77 (3d Cir. 2018).⁴ The imminent danger posed by drunk driving is significant. Virginia v. Harris, 558 U.S. 978, 978-80 (2009) (Roberts, C.J., dissenting from denial of writ of certiorari) (Mem.) (explaining dangers of drunk driving); see Mitchell v. Wisconsin, 588 U.S. 840, 861 (2019) (Sotomayor, J., dissenting) (“[D]runk driving poses significant dangers that [states] must be able to curb.”); Begay v. United States, 553 U.S. 137, 141 (2008) (“Drunk driving is an extremely dangerous crime.”). As a result, a recidivist DUI conviction

³ As noted in my concurrence in the judgment in Bost, this narrow basis for disarmament does not seem tethered to any historical analogue.

⁴ Although Holloway was decided under the Binderup v. Attorney General, 836 F.3d 336 (3d Cir. 2016) (en banc), framework, its observations about the danger posed by drunk driving and thus those with DUI convictions remains unaffected by Bruen’s analytical framework.

“bear[s] on a felon’s capacity to possess a firearm without posing such a danger,” Pitsilides v. Barr, 128 F.4th 203, 211 (3d Cir. 2025), because one’s conviction for such a crime shows he repeatedly operated a potentially lethal instrument unlawfully, see, e.g., Holloway, 948 F.3d at 174 (acknowledging danger of potential death and serious injuries posed by drunk driving).⁵

The District Court’s view that historical regulations on the possession of firearms by intoxicated persons did not “allude to disarmament lasting beyond the individual’s state of intoxication,” Williams v. Garland, No. 17-cv-2641, 2023 WL 7646490, at *5 (E.D. Pa. Nov. 14, 2023), does not adequately consider “the principles that underpin our regulatory tradition” of disarming those who pose a physical danger to others, Rahimi, 602 U.S. at 692–93, 698 (upholding temporary disarmament under 18 U.S.C. § 922(g)(8) “because the Government offer[ed] ample evidence” in the form of surety and going armed laws that revealed a tradition of disarming “individuals who pose a credible threat to the physical safety of others”).

⁵ See also United States v. Betancourt, 139 F.4th 480, 484 (5th Cir. 2025) (holding that § 922(g)(1) was constitutional as applied to individual with felony conviction for aggravated assault in which defendant “disregarded a flashing red light while driving at his vehicle’s maximum speed, 107 miles per hour, causing a major crash and serious injuries to two people”); United States v. Simpson, 152 F.4th 611, 615 (5th Cir. 2025) (holding that § 922(g)(1) was constitutional as applied to individual with felony conviction for using a vehicle to evade police).

Similarly, Williams’s argument that there is no Founding-era analogue for disarmament based on his recidivist DUI conviction is unpersuasive because the Supreme Court made clear in Rahimi that Bruen “w[as] not meant to suggest a law trapped in amber.” Rahimi, 602 U.S. at 691. Instead, “the appropriate analysis involves considering whether the challenged regulation is consistent with the principles that underpin our regulatory tradition.” Id. at 692; see also id. (stating that the Government need not identify a Founding-era “dead ringer” for, or a “historical twin” of, a modern regulation (quotation omitted)). The relevant principle here is whether, at the Founding, those who posed a danger could be disarmed. An intoxicated person behind the wheel of a multi-ton vehicle has in his hands an instrument that can do horrific damage to himself and others, and the same analogues support disarming felons who pose a physical danger by misusing dangerous instruments, including firearms.⁶ Rahimi, 602 U.S. at 698-700.

⁶ Not only is drunk driving dangerous in its own right, but those convicted of DUIs are significantly more likely to later be convicted of violent crimes, including firearm-related violent crime. See Association of Prior Convictions for Driving Under the Influence With Risk of Subsequent Arrest for Violent Crimes Among Handgun Purchasers, 180 JAMA: Internal Med. 35, 38 (2019). Accordingly, contrary to the Majority’s suggestion that banning Williams from possessing a firearm is akin to preventing someone who swerves in and out of lanes on an electric scooter from speaking, Majority Op. at 13-14, there is a logical relationship between a drunk driving conviction and a resulting firearm ban.

The Majority appears to agree that “felons were restricted because they posed a physical danger.” Majority Op. at 5. That category includes those suspected of treason or sedition, not because treason and sedition are committed with a firearm, but because disarming people suspected of such disloyal acts “promotes the public peace and the common good.” Majority Op. at 6. Thus, they are apt analogies here because they pose a danger to the community. The DUI laws, which did not exist at the founding, nevertheless similarly protect the public from dangerous actors. Habitual drunkard laws, in contrast, are not analogous because they are not concerned with public safety or governmental security but rather were concerned with whether the individual could care for himself. United States v. Hemani, 608 U.S. ___, 146 S. Ct. 1677, 1689 (2026) (concluding that habitual drunkard laws were not analogous to § 922(g)(3)’s prohibition on firearm possession by unlawful drug users because the law does not require the government to show that a particular individual is “incapable of conducting his affairs or a threat to himself or others”).

Thus, because the District Court did not focus on that relevant principle, it reached an incorrect conclusion about whether there is a regulatory tradition to support concluding

that those with DUI convictions pose a physical danger to others and thus can be disarmed.⁷

For the reasons set forth herein, and in Holloway, I conclude that Williams's DUI conviction disarms him consistently with the Second Amendment.⁸

II

I agree with Chief Judge Chagares that individuals seeking to have their Second Amendment rights restored must first exhaust their claims through the revitalized administrative process outlined in § 925(c).⁹ Thus, despite his disqualifying

⁷ Although the Supreme Court in Leocal v. Ashcroft, 543 U.S. 1, 4 (2004), held that a DUI conviction is not a crime of violence under 18 U.S.C. § 16, that conclusion does not foreclose the possibility that the offender is nonetheless dangerous, as those convicted of such offenses have shown a disregard for human life, and their conduct presents a risk of grave harm to self or others.

⁸ My discussion here of Williams's disqualifying conviction is not meant to convey that the Attorney General or a district court would be required to ignore an individual's background when determining whether to grant the relief requested. I write simply to make clear that I view felony-equivalent DUIs as dangerous offenses for which offenders are subject to the federal firearms disabilities under § 922(g)(1) and may seek relief from the same under § 925(c).

⁹ Where I part company is that I would require Williams to exhaust, which the Chief Judge absolves Williams from having to do. Among other things, information about

conviction, Williams may nonetheless apply to restore his ability to possess a firearm. Although federal law bans felons,¹⁰ among other individuals, from possessing firearms, see 18 U.S.C. § 922(g), Congress did not intend for the ban to be permanent in all cases.¹¹ First, it provided that those who receive pardons, whose convictions have been expunged or set aside, or whose civil rights have been restored are not federally banned. Id. § 921(a)(33)(B)(ii). Second, and relevant here, it established a process under § 925(c) through which an individual may be relieved from the federal ban. Section 925(c) provides:

a person who is prohibited from possessing . . .
firearms or ammunition may make application to

Williams' background is stale. For example, he has not provided a release for criminal history information for years.

¹⁰ The statute defines the word "felony." The ban under § 922(g)(1) applies to individuals "convicted in any court of, a crime punishable by imprisonment for a term exceeding one year." 18 U.S.C. § 922(g)(1).

The term 'crime punishable by imprisonment for a term exceeding one year' does not include . . .
any Federal or State offenses pertaining to
antitrust violations, unfair trade practices,
restraints of trade, or other similar offenses
relating to the regulation of business practices, or
. . . any State offense classified by the laws of the
State as a misdemeanor and punishable by a term
of imprisonment of two years or less.

Id. § 921(a)(20).

¹¹ To the extent the Majority is concerned with permanent bans, that concern is unwarranted here because, as stated herein, Congress provided means for rearmament.

the Attorney General for relief from the disabilities imposed by Federal laws with respect to the acquisition, receipt, transfer, shipment, transportation, or possession of firearms, and the Attorney General may grant such relief if it is established to his satisfaction 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 that the granting of the relief would not be contrary to the public interest. Any person whose application for relief from disabilities is denied by the Attorney General may file a petition with the United States district court for the district in which he resides for a judicial review of such denial.

18 U.S.C. § 925(c). Thus, the statute provides for a disarmed individual to apply to the Attorney General for relief from the federal firearm ban. A successful application allows an individual to be rearmed, and those denied relief may seek judicial review.

Read in context, the language of § 925(c) mandates that an individual seeking relief from disarmament under § 922(g)(1) apply for relief from DOJ before seeking judicial intervention. Besides setting forth an administrative process for seeking rearmament, it gives an applicant an opportunity for judicial review of an adverse decision. This conveys that Congress intended that applicants follow a particular sequence to seek to restore their firearms rights. Although the statute provides that applicants “may” apply for relief from the regulatory authority and “may” seek judicial review if the regulator denies relief, we have held that similar statutes

nonetheless mandate exhaustion. See Heywood v. Cruzan Motors, Inc., 792 F.2d 367, 370 & n.1 (3d Cir. 1986) (holding that “exhaustion was required” where statute provided mechanism by which a person “may” file a petition for review of “acts, orders or resolutions issued by” the Virgin Islands Consumer Services Administration in district court). Thus, as a matter of statutory interpretation, individuals who seek restoration of their federal firearms right must first request relief from the Attorney General before seeking, as Williams has, relief from the judicial branch.¹²

Even if the statute was read as not expressly requiring exhaustion, a court may require exhaustion as a matter of discretion. McCarthy v. Madigan, 503 U.S. 140, 144 (1992). In exercising this discretion, a court may balance the

¹² Although the statute uses the word “may,” which, in some regulatory contexts is interpreted to mean that the act described is permitted rather than mandatory, those authorities are inapposite because they do not involve a mechanism to seek relief from the executive branch. See, e.g., McMunn v. Babcock & Wilcox Power Generation Grp., Inc., 869 F.3d 246, 266 (3d Cir. 2017) (holding that “may” in phrase “concentrations may be averaged over a period not greater than one year” in environmental regulations governing permissible annual average concentration of uranium effluent in manufacturing facility emissions was “permissive”). In other words, § 925(c)’s structure—by establishing a process for applicants to first seek relief from a firearms ban before seeking judicial review of that decision—indicates that the first “may” is mandatory. In contrast, the second “may” reflects the Attorney General’s “broad authority” to grant or deny applications. United States v. Bean, 537 U.S. 71, 77 (2002).

institutional interests favoring exhaustion against an individual's interest in prompt access to the federal courts. *Id.* at 146. The institutional interests include considering (1) “deference to Congress’[s] delegation of authority to coordinate branches of Government,” which is especially important when the statute grants agencies “discretionary power” or the proceedings “allow the agency to apply its special expertise,” and (2) “promot[ing] judicial efficiency” by allowing agencies to “correct [their] own errors” and create “a useful record for subsequent judicial considerations.” *Id.* at 145. When considering the individual's interest, courts may consider (1) whether the administrative remedy may cause “undue prejudice to subsequent assertion of a court action,” such as when the administrative action has “an unreasonable or indefinite timeframe” or the “particular plaintiff may suffer irreparable harm if unable to secure immediate judicial consideration of his claim,” *id.* at 146–47, (2) whether the agency remedy is adequate, *id.* at 147–48, and (3) whether the agency “is shown to be biased or has otherwise predetermined the issue before it,” *id.* at 148.

The institutional and individual interests here clearly favor requiring administrative exhaustion. First, § 925(c)'s language demonstrates that Congress intended for the Attorney General to review any application for firearm rights restoration and specifically directed the Attorney General to consider specific criteria when assessing applications. Second, and relatedly, the language shows that Congress granted the Attorney General significant discretion to grant relief to a petitioner upon “his satisfaction” that the petitioner is unlikely to act dangerously, and restoration is not contrary to the public interest. 18 U.S.C. § 925(c); *see Bean*, 537 U.S. at 77 (discussing § 925(c)'s grant of “broad authority” to approve or

deny applications). Third, the Attorney General is well positioned to assess an applicant's dangerousness and whether rearmament would harm the public interest. See Bean, 537 U.S. at 77 (concluding that the ATF, to which the Attorney General previously delegated authority under § 925(c), is best positioned to determine whether an applicant is likely to act in a manner dangerous to public safety and to understand when rearmament is against public interest). Fourth, a reviewing court will benefit from a developed administrative record concerning an applicant's dangerousness, especially in a case like this one, where the criminal record check in the record is over eight years old and Williams has not submitted to an updated background check. See Weinberger v. Salfi, 422 U.S. 749, 765 (1975) (explaining that exhaustion is beneficial in part because it may allow the agency "to compile a record which is adequate for judicial review"). Fifth, the statute empowers the Attorney General to grant "relief from the disabilities imposed by Federal laws." 18 U.S.C. § 925(c). Finally, there is no evidence that the agency would unduly delay review of an application.

In short, requiring individuals to apply for relief under § 925(c) before filing civil actions promotes administrative efficiency, respects executive autonomy and provides courts with the benefit of agency expertise, advances judicial economy by having the agency compile a factual record¹³ and

¹³ Although the statute does not explicitly state what DOJ must produce following its investigation, we do know that those who are granted relief have their names published in the Federal Register so that they can demonstrate to other authorities that they no longer suffer under a federal firearms ban under § 922(g). We also know from § 925(c)'s text that

reduces the number of as-applied Second Amendment challenges in court. Finally, the benefits from an exhaustion requirement do not come at the cost of Second Amendment rights because applicants who are denied relief may seek judicial review.

Requiring an individual to exhaust an administrative process even where a constitutional right is implicated is well-established in federal law. For example, the Prison Litigation Reform Act requires administrative exhaustion for claims arising under, among other things, the First and Eighth Amendments. 42 U.S.C. § 1997e(a); Porter v. Nussle, 534 U.S. 516, 532 (2002) (confirming that Prison Litigation Reform Act exhaustion requirement applies to “all inmate suits about prison life,” including constitutional claims); see also

DOJ evaluates the application to determine whether an individual “will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest.” 18 U.S.C. § 925(c). Thus, denying relief would involve assessing facts relevant to this determination, and there would be a record of the information presented, and the assessment made. Finally, the final rule was promulgated under the Administrative Procedure Act, see Application for Relief From Disabilities Imposed by Federal Laws With Respect to the Acquisition, Receipt, Transfer, Shipment, Transportation, or Possession of Firearms, 28 C.F.R. pts. 25, 107, and thus decisions under those regulations and/or pursuant to the Act will be reviewed under 5 U.S.C. § 706. Furthermore, for a court to provide judicial review, the agency would need to provide its reasons, and if it failed to do so, a court could remand for the DOJ to explain the reasons for its denial of relief.

Washington v. Barr, 925 F.3d 109, 115-17 (2d Cir. 2019) (requiring administrative exhaustion before federal court would hear Commerce Clause, First Amendment, Fifth Amendment, and Ninth Amendment claims); Volvo GM Heavy Truck Corp. v. U.S. Dep't. of Lab., 118 F.3d 205, 210 (4th Cir. 1997) (requiring exhaustion of Fifth Amendment claims). Exhaustion here similarly promotes efficiency, expertise, and opportunity to address the situation without court intervention.

Furthermore, although the final rule was only promulgated recently, see Application for Relief From Disabilities Imposed by Federal Laws With Respect to the Acquisition, Receipt, Transfer, Shipment, Transportation, or Possession of Firearms, 28 C.F.R. pts. 25, 107, exhaustion was not futile even before that because applicants sought and obtained relief for over a year before the rules were published. Indeed, even absent final regulations, the Attorney General had rearmed dozens of individuals. See, e.g., Granting of Relief; Federal Firearms Privileges, 90 Fed. Reg. 17835 (Apr. 29, 2025); Granting of Relief; Federal Firearms Privileges, 91 Fed. Reg. 32094 (May 29, 2026); Atkinson v. Blanche, No. 26-1356, 2026 WL 1690071, at *1 (7th Cir. June 8, 2026); Order, Foster v. Att'y Gen., No. 24-13044 (11th Cir. Apr. 6, 2026); Order, Mastrangelo v. Att'y Gen., No. 24-12856 (11th Cir. Mar. 10, 2026); Order, Bailey v. Bondi, No. 24-3752 (6th Cir. Mar. 4, 2026). In addition, several district court declaratory judgment actions have been stayed where similarly-situated plaintiffs seeking rearmament have applied for administrative review under § 925(c). See, e.g., Status Update, Calzone v. Blanche, No. 1:24-cv-00381 (M.D. Pa. Dec. 17, 2025), Dkt.

No. 12, at 1.¹⁴ The availability of relief under § 925(c) is thus presently available.

Because (1) there is a functioning procedure Williams may use to seek relief, (2) there are compelling reasons to support the conclusion that Congress has required him to pursue it, and (3) the current record before the District Court is both stale and lacking an analysis of Williams's present dangerousness,¹⁵ I would vacate the District Court order granting relief and direct the District Court to dismiss the complaint without prejudice. Williams can then pursue relief under § 925(c) and if denied relief, seek judicial review.

III

Because Williams's recidivist DUI conviction is the type of crime that should lead to disarmament, and Williams is required to exhaust his request to rearm under § 925(c), I would vacate the District Court order and direct the Court to dismiss

¹⁴ Plaintiffs in at least two other cases voluntarily dismissed their Second Amendment declaratory judgment complaints around the same time other § 925(c) applications were granted and thus might be the result of their own § 925(c) applications. Order Dismissing with Prejudice, Cooper v. Barr, No. 3:19-cv-02141 (M.D. Pa. Feb. 10, 2026), Dkt. No. 58; Notice of Voluntary Dismissal, Pitsilides v. Barr, No. 3:19-cv-01736 (M.D. Pa. Apr. 14, 2026), Dkt. No. 53.

¹⁵ Presumably, the District Court did not engage in this analysis because it concluded that Williams's conviction did not disqualify him from possessing a firearm. For the reasons set forth herein, this conclusion rests on a mistaken premise.

the complaint without prejudice. As a result, I respectfully dissent.

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