**Comments**

# Of Felons and the Mentally Ill: *Range*, § 922(g)(4), and the Dangerousness Solution

Colin L. Hitt*

**ABSTRACT**

18 U.S.C. § 922(g) is a major federal gun control law that prohibits certain groups of people from owning guns. Among the law's provisions, § 922(g)(1) prohibits felons from owning guns, and § 922(g)(4) prohibits people who have been involuntarily committed to mental institutions from owning guns. Since the Supreme Court's decision in *New York State Rifle & Pistol Ass'n v. Bruen*, federal courts have divided over the constitutionality of various § 922(g) provisions. Decided in 2022, *Bruen* read the Second Amendment to require that modern gun laws comport with historical firearm restrictions.

In *Range v. Attorney General*, the Third Circuit applied *Bruen* to strike down § 922(g)(1) as applied to a nonviolent welfare fraudster. While a narrow decision by some accounts, *Range I* provoked criticism from dissenting judges for its restrictive application of Second Amendment jurisprudence. And though the Supreme Court remanded *Range I* following the Court's decision in *United States v. Rahimi*, *Range II* reaffirmed *Range I*'s holding on nearly identical grounds. Taken together,

* J.D. Candidate, The Pennsylvania State University Dickinson School of Law, 2025. I would like to thank Veronica Woodard, Andrew Lovette, and my fellow editors at the *Penn State Law Review*. All views expressed are solely those of the author.

*Bruen* and *Range II* invite consideration of the historical basis for, and constitutionality of, § 922(g)(4).

This Comment asserts that, under *Range II*, § 922(g)(4) could be unconstitutional as applied to many people who have been involuntarily committed. However, this result contradicts *Bruen*. To resolve that discrepancy, future cases should focus on dangerousness—what Judge Stephanos Bibas termed "the Second Amendment's touchstone"—to determine who may be disarmed. In accordance with *Bruen*, a dangerousness standard reflects historical tradition, maintains the presumptive lawfulness of gun bans for the mentally ill, and avoids a regulatory straightjacket. The robust historical tradition of disarming dangerous people affirms the constitutionality of § 922(g)(4).

## Table of Contents

## I. INTRODUCTION

Hundreds of thousands of Americans are involuntarily committed for mental illness each year, and the number is rising.[1] Often, Americans are committed because a psychiatrist determines them to be dangerous to themselves or others.[2] Consequently, with the Gun Control Act of 1968, Congress enacted § 922(g)(4) to categorically prohibit guns from anyone who has ever been "committed to a mental institution."[3] But because that law restricts firearms, it must comport with the right to keep and bear arms guaranteed by the Second Amendment to the United States Constitution.[4]

Section 922(g)(4) does not uniquely raise Second Amendment concerns. In *Range v. Attorney General*, the United States Court of Appeals for the Third Circuit en banc struck down a federal gun ban for

1. *See* Gi Lee & David Cohen, *Incidences of Involuntary Psychiatric Detentions in 25 U.S. States*, 72 PSYCHIATRIC SERVS. 61, 61 (2021).

2. *See id.*

3. Gun Control Act of 1968, Pub. L. No. 90-618, § 102, 82 Stat. 1213, 1220 (codified as amended at 18 U.S.C. § 922(g)(4)).

4. *See* U.S. CONST. amend. II.

felons as a violation of the Second Amendment.[5] *Range II*, like its predecessor,[6] applied the test set out in *New York State Rifle & Pistol Ass'n v. Bruen*, a landmark United States Supreme Court case requiring gun laws to comport with historical tradition.[7] Though *Range II* does not address § 922(g)(4) directly, the case raises a broad question that implicates both felony and mental health restrictions: In accordance with the United States's historical tradition, who may the government lawfully disarm?[8]

This Comment uses *Range v. Attorney General* as a lens to explore the constitutionality of § 922(g)(4).[9] Part II begins by describing the interaction between § 922(g)(4) and involuntary commitment procedures.[10] Part II then summarizes the Supreme Court's Second Amendment jurisprudence.[11] Next, Part II reviews the *Range* canon,[12] and how other courts have responded.[13] Part II concludes by examining the historical basis for § 922(g)(4).[14]

Finally, Part III of this Comment makes two arguments.[15] First, under *Range II*, § 922(g)(4) could be unconstitutional as applied to many formerly committed persons.[16] Second, as an alternative to *Range II*, future cases should focus on dangerousness to determine who may be disarmed.[17]

## II. BACKGROUND

Gun restrictions for the involuntarily committed must be contextualized within the realm of Second Amendment jurisprudence.[18] Within this jurisprudential framework, the Third Circuit's *Range v. Attorney General* decisions provide one approach to analyzing categorical gun bans.[19] Meanwhile, identifying an alternate approach requires an understanding of the historical basis for mental health restrictions.[20]

---

5. *See* Range v. Att'y Gen. U.S. (*Range II*), 124 F.4th 218, 232 (3d Cir. 2024) (en banc).

6. *See* Range v. Att'y Gen. U.S. (*Range I*), 69 F.4th 96, 106 (3d Cir. 2023) (en banc), *cert. granted*, *judgment vacated sub nom.* Garland v. Range, 144 S. Ct. 2706 (2024).

7. *See* N.Y. State Rifle & Pistol Ass'n v. Bruen, 597 U.S. 1, 17 (2022).

8. *See Range II*, 124 F.4th at 222.

9. *See infra* Part II.

10. *See infra* Section II.A.

11. *See infra* Section II.B.

12. *See infra* Section II.C.

13. *See infra* Section II.D.

14. *See infra* Section II.E.

15. *See infra* Part III.

16. *See infra* Section III.A.

17. *See infra* Section III.B.

18. *See infra* Section II.B.

19. *See infra* Section II.C.

20. *See infra* Section II.E.

### *A. Gun Restrictions for the Involuntarily Committed*

The federal Gun Control Act of 1968 bans guns for all people who have been involuntarily committed to mental institutions.[21] Commitment statutes exist in every state, and those statutes authorize the detention of any mentally ill person who is determined to be dangerous.[22] If a committed person later wants to regain their gun rights, they must seek relief at the state level.[23]

#### 1. The Mental Health Gun Ban: § 922(g)(4)

18 U.S.C. § 922(g)(4) bars anyone "who has been adjudicated as a mental defective or who has been committed to a mental institution" from shipping, transporting, possessing, or receiving a gun.[24] This mental health restriction is one of several Gun Control Act provisions that limit guns for a category of people.[25] As with many federal laws, § 922(g) only applies to activities involving "interstate commerce."[26]

This Comment concerns the commitment provision. The Bureau of Alcohol, Tobacco, Firearms and Explosives defines commitment to a mental institution as follows:

> A formal commitment of a person to a mental institution by a court, board, commission, or other lawful authority. The term includes a commitment to a mental institution involuntarily. The term includes commitment for mental defectiveness or mental illness. It also includes commitments for other reasons, such as for drug use. The term does not include a person in a mental institution for observation or a voluntary admission to a mental institution.[27]

In short, § 922(g)(4) extends only to people who have been *involuntarily* committed.[28] Thus, understanding how involuntary commitment occurs provides critical context for understanding the reach of mental health gun restrictions.

---

21. *See* 18 U.S.C. § 922(g)(4).
22. *See, e.g.*, United States v. Gould, 672 F. Supp. 3d 167, 180 (S.D.W. Va. 2023).
23. *See* 34 U.S.C. § 40915.
24. 18 U.S.C. § 922(g)(4).
25. *See, e.g.*, *id.* § 922(g)(1) (felons); *id.* § 922(g)(3) (unlawful drug users); *id.* § 922(g)(5)(A) (unlawful aliens); *id.* § 922(g)(8) (persons subject to domestic violence restraining orders).
26. *Id.* § 922(g). However, many states have equivalent laws that are not so limited. *See, e.g.*, Pennsylvania Uniform Firearms Act of 1995, 18 PA. CONS. STAT. § 6105(c)(4) (2025).
27. 27 C.F.R. § 478.11.
28. *See id.*

2. Involuntary Commitment

Involuntary commitment procedures vary by state but share certain features.[29] For instance, Pennsylvania authorizes the commitment of any mentally ill person whom a psychiatrist determines to "pose[] a clear and present danger."[30] In addition, a lawful commitment must comply with numerous procedural requirements.[31]

a. Clear and Present Danger

In Pennsylvania, an individual qualifies for commitment when the person "as a result of mental illness . . . poses a clear and present danger of harm to others or to himself."[32] The party petitioning for commitment can show a clear and present danger by evincing one of four circumstances involving the patient within a 30-day period: (1) serious violence;[33] (2) inability to care for oneself;[34] (3) suicidal tendencies;[35] or (4) self-mutilation.[36] The first circumstance endangers others, and the last three endanger the patient themselves.[37]

b. Procedural Requirements

Commitment begins with a petition asserting grounds for involuntary examination and treatment.[38] Anyone with relevant knowledge may file a petition with the county administrator who, in turn, may issue a warrant authorizing the transport of the patient to a designated hospital.[39] This warrant requirement does not apply if the petitioner is a physician or police officer who has personally witnessed conduct that indicates a need for examination.[40]

Upon the patient's arrival at the hospital, a physician must promptly examine the individual and decide whether to commit them.[41] At that time,

29. *See* United States v. Gould, 672 F. Supp. 3d 167, 180 n.7 (S.D.W. Va. 2023) (collecting statutes).

30. *See* Mental Health Procedures Act, 50 PA. STAT. § 7301 (2025).

31. *See id.* §§ 7302–05.

32. *Id.* § 7301(a). This section of the statute also deals with individuals who require "assisted outpatient treatment." *Id.* However, even those individuals must exhibit a clear and present danger to be committed. *See id.* § 7301(c)(2).

33. *See id.* § 7301(b)(1).

34. *See id.* § 7301(b)(2)(i).

35. *See id.* § 7301(b)(2)(ii).

36. *See id.* § 7301(b)(2)(iii).

37. *See id.* § 7301(b).

38. *See id.* § 7302(a).

39. *See id.* § 7302(a)(1).

40. *See* 50 PA. STAT. § 7302(a)(2).

41. *See id.* § 7302(b).

the patient must receive notice of their rights.[42] An initial commitment's duration may not exceed 120 hours.[43] However, further court proceedings may extend the commitment's duration up to one year.[44]

A full comparison of commitment procedures between states is beyond the scope of this Comment. Rather, the key takeaway from this discussion is the core standard for commitment that is capable of triggering § 922(g)(4): that a person "poses a danger to himself or others, which is a criterion for commitment in nearly every state."[45]

3. Avenues for Relief

Formerly committed persons may regain their gun rights.[46] A federal statute authorizes states to grant relief from § 922(g)(4) through programs that comply with federal requirements.[47] Such programs offer relief to people who are not "likely to act in a manner dangerous to public safety."[48] Currently, formerly committed persons can only seek relief through these programs.[49] However, formerly committed persons may avoid the need for statutory relief by successfully challenging the law's constitutionality.[50]

*B. The Second Amendment*

The Second Amendment to the United States Constitution reads: "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."[51] The Second Amendment protects an individual right,[52] which has since been incorporated against the states.[53] To determine the extent of that right, the Supreme Court has adopted a test focusing on the historical basis for

42. *See id.* § 7302(c). The patient must be told why they are being examined and of their right to contact other people. *See id.* Moreover, a designated official must inform other parties specified by the patient and arrange for the patient's family or property during detention. *See id.*

43. *See id.* § 7302(d).

44. *See id.* §§ 7303–05.

45. United States v. Gould, 672 F. Supp. 3d 167, 180 & n.7 (S.D.W. Va. 2023) (collecting statutes).

46. *See* 34 U.S.C. § 40915.

47. *See id.*

48. *Id.* § 40915(a)(2).

49. *See id.* § 40915. In the past, individuals restricted under § 922(g) could petition the Attorney General for a restoration of gun rights. *See* 18 U.S.C. § 925(c). However, such relief is now impossible because Congress defunded the program in 1992. *See* Pontarelli v. U.S. Dep't of the Treasury, 285 F.3d 216, 218–19 (3d Cir. 2002).

50. *See* U.S. CONST. amend. II.

51. *Id.* The Second Amendment mirrors similar provisions of state constitutions. *See, e.g.*, PA. CONST. art. I, § 21 ("The right of the citizens to bear arms in defence of themselves and the State shall not be questioned.").

52. *See* District of Columbia v. Heller, 554 U.S. 570, 595 (2008).

53. *See* McDonald v. City of Chicago, 561 U.S. 742, 791 (2010).

challenged gun laws.[54] And more recently, the Court has refined that historical test in the context of categorical disarmament.[55]

1. An Individual Right

In *District of Columbia v. Heller*, the Supreme Court held that the Second Amendment protects "the individual right to possess and carry weapons in case of confrontation."[56] The Court reasoned that any right the Constitution grants to "the people" must apply to "all members of the political community."[57] Moreover, the Court noted that the right to keep and bear arms was historically understood to include having guns and using them for self-defense.[58] The Court further found that the right was not restricted to service in a militia.[59] Therefore, the Court concluded that the Second Amendment "elevates above all other interests the right of law-abiding, responsible citizens to use arms in defense of hearth and home."[60]

And yet, the *Heller* Court recognized that the individual right to bear arms is not unlimited.[61] Even as the Court struck down a D.C. law banning handguns in the home,[62] it clarified that "nothing in [the Court's] opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill."[63] Indeed, the Court noted that such prohibitions remained "presumptively lawful."[64]

2. Incorporation

When the Supreme Court decided *Heller*, the Second Amendment applied only to the federal government.[65] Two years later, in *McDonald v. City of Chicago,* the Court held that "the Second Amendment right is fully applicable to the States."[66] The Court reasoned that the individual right to keep and bear arms is "deeply rooted in this Nation's history and tradition,"[67] and "necessary to our system of ordered liberty."[68] Therefore,

54. *See* N.Y. State Rifle & Pistol Ass'n v. Bruen, 597 U.S. 1, 17 (2022).
55. *See* United States v. Rahimi, 602 U.S. 680, 700 (2024).
56. *Heller*, 554 U.S. at 592.
57. *Id.* at 580.
58. *See id.* at 585.
59. *See id.* at 586.
60. *Id.* at 635.
61. *See id.* at 626.
62. *See id.* at 629.
63. *Id.* at 626.
64. *Id.* at 627 n.26.
65. *See id.* at 620 n.23.
66. *See* McDonald v. City of Chicago, 561 U.S. 742, 750 (2010).
67. *Id.* at 768 (quoting Washington v. Glucksberg, 521 U.S. 702, 721 (1997)).
68. *Id.* at 778.

the right to keep and bear arms qualifies for incorporation under the Fourteenth Amendment.[69]

*McDonald* requires state gun laws to operate within the bounds of both federal and state constitutional limitations.[70] Yet the case "does not imperil every law regulating firearms."[71] Indeed, the Court reiterated that *Heller* "did not cast doubt on such longstanding regulatory measures as 'prohibitions on the possession of firearms by felons and the mentally ill.'"[72]

3. Two-Step Framework

Following *Heller* and *McDonald*, the federal appellate courts developed a "two-step test" for Second Amendment claims.[73] The Third Circuit serves as an example.[74] First, the court asked if a "challenged law impose[d] a burden on conduct falling within the scope of the Second Amendment's guarantee."[75] This step involved a historical inquiry.[76] Second, if the court found a burden, it would "evaluate the law under some form of means-end scrutiny."[77] Depending on the burden, the court could apply an intermediate or strict standard of scrutiny.[78] If a law failed means-end scrutiny, then the court would deem it unconstitutional.[79]

4. Historical Test

In 2022, the Supreme Court rejected means-end scrutiny for Second Amendment claims in favor of a historical test.[80] The Court in *New York State Rifle & Pistol Ass'n v. Bruen* held that "when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct."[81] Moreover, for a gun regulation to survive, "the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation."[82]

69. *See id.* at 791. The Fourteenth Amendment states: "No State shall . . . deprive any person of life, liberty, or property, without due process of law." U.S. CONST. amend. XIV, § 1. The Supreme Court has read this provision to selectively incorporate enumerated rights against the states. *See McDonald*, 561 U.S. at 763 (collecting cases).

70. *See McDonald*, 561 U.S. at 791.

71. *Id.* at 786.

72. *Id.* (quoting District of Columbia v. Heller, 554 U.S. 570, 626 (2008)).

73. N.Y. State Rifle & Pistol Ass'n v. Bruen, 597 U.S. 1, 18 (2022).

74. *See* United States v. Marzzarella, 614 F.3d 85, 89 (3d Cir. 2010), *abrogated by Bruen*, 597 U.S. 1.

75. *Id.*

76. *See id.* at 90–91.

77. *Id.* at 89.

78. *See id.* at 95–97.

79. *See id.* at 89.

80. *See* N.Y. State Rifle & Pistol Ass'n v. Bruen, 597 U.S. 1, 17 (2022).

81. *Id.*

82. *Id.*

To test gun laws against historical tradition, courts must rely on "analogical reasoning."[83] This method analyzes whether a modern gun law is "relevantly similar" to a historical gun law.[84] Courts can assess similarity using "at least two metrics: how and why the regulations burden a law-abiding citizen's right to armed self-defense."[85] A court must ask "whether modern and historical regulations impose a comparable burden on the right of armed self-defense and whether that burden is comparably justified."[86]

Moreover, the Court cautioned that historical reasoning should neither turn the Second Amendment into "a regulatory straightjacket nor a regulatory blank check."[87] The government need only identify a "historical *analogue*, not a historical *twin*" to justify its law.[88] To that effect, Justice Kavanaugh, joined by Chief Justice Roberts, echoed the Supreme Court's past assurances that felony and mental health restrictions are presumptively lawful.[89]

### 5. Applying *Bruen* to Disarmament Laws

Following *Bruen*, circuit courts decided cases on the constitutionality of various § 922(g) prohibitions.[90] In one notable case, a defendant facially challenged the constitutionality of § 922(g)(8), a gun ban for persons subject to domestic violence restraining orders.[91] The Fifth Circuit struck down the statute and vacated the defendant's conviction.[92] The Supreme Court granted certiorari.[93]

In *United States v. Rahimi*, the Supreme Court reversed the Fifth Circuit's decision and upheld § 922(g)(8).[94] In an 8-to-1 opinion, the Court summarized its holding as follows: "An individual found by a court to pose

83. *Id.* at 28.
84. *Id.* at 29.
85. *Id.*
86. *Id.*
87. *Id.* at 30.
88. *Id.*
89. *See id.* at 81 (Kavanaugh, J., concurring).
90. *See, e.g.*, United States v. Sitladeen, 64 F.4th 978, 982 (8th Cir. 2023) (unlawful aliens); *Range I*, 69 F.4th 96, 98 (3d Cir. 2023) (felons), *cert. granted*, *judgment vacated sub nom.* Garland v. Range, 144 S. Ct. 2706 (2024); United States v. Daniels, 77 F.4th 337, 354 (5th Cir. 2023), *cert. granted*, *judgment vacated*, 144 S. Ct. 2707 (2024) (unlawful drug users).
91. *See* United States v. Rahimi, 61 F.4th 443, 448 (5th Cir.), *cert. granted*, 143 S. Ct. 2688 (2023), *and rev'd and remanded*, 602 U.S. 680 (2024); *see also* 18 U.S.C. § 922(g)(8). A facial challenge requires a party to show that a statute is unconstitutional in all applications. *See* United States v. Salerno, 481 U.S. 739, 745 (1987).
92. *See Rahimi*, 61 F.4th at 448.
93. *See Rahimi*, 143 S. Ct. at 2688–89.
94. *See Rahimi*, 602 U.S. at 702.

a credible threat to the physical safety of another may be temporarily disarmed consistent with the Second Amendment."[95]

In reaching this holding, the Court relied upon two main historical analogues.[96] First, the Court discussed "surety laws[,]" which compelled a person suspected of future misconduct to post a bond that was forfeited upon violating the terms of the surety.[97] Such laws guarded against both "spousal abuse" and "misuse of firearms."[98] However, sureties were limited by their temporary nature and the requirement of an evidentiary hearing before issuing a surety.[99] Second, the Court discussed "going armed" or "affray" laws, which prohibited individuals from carrying weapons to menace the public.[100] These laws aimed to prevent future violence, and violators could be punished with disarmament or imprisonment.[101]

The Court then concluded that § 922(g)(8) was "relevantly similar" to surety and affray laws.[102] In terms of the "why," § 922(g)(8) "restricts gun use to mitigate demonstrated threats of physical violence."[103] In terms of the "how," § 922(g)(8) is predicated on a "judicial determination[]" of a future threat and has a "limited duration."[104] The Court also noted that "if imprisonment was permissible to respond to the use of guns to threaten the physical safety of others, then the lesser restriction of temporary disarmament . . . is also permissible."[105]

Finally, the Supreme Court criticized the lower court's insistence on requiring a historical twin for modern gun laws, which contradicted *Bruen*.[106] Still, the Court rejected the government's contention that a law could disarm a group of people simply because they were not "responsible."[107]

---

95. *Id.* at 702. The court derived this language from § 922(g)(8), which triggers a gun ban where a restraining order contains, among other elements, a "finding that [the subject] represents a credible threat to the physical safety of [an] intimate partner or child." 18 U.S.C. § 922(g)(8)(C)(i).

96. *See Rahimi*, 602 U.S. at 694–95.

97. *Id.* at 695.

98. *Id.* at 695–96.

99. *See id.* at 696–97.

100. *Id.* at 697.

101. *See id.*

102. *Id.* at 698 (quoting N.Y. State Rifle & Pistol Ass'n v. Bruen, 597 U.S. 1, 29 (2022)).

103. *Id.*

104. *Id.* at 699.

105. *Id.*

106. *See Rahimi*, 602 U.S. at 701.

107. *Id.* at 701–02.

### *C.* Range v. Attorney General

In June 2023, after *Bruen* but before the Supreme Court's decision in *Rahimi*, the Third Circuit Court of Appeals struck down the felon-possession ban located in § 922(g).[108] 18 U.S.C. § 922(g)(1) bans guns for anyone "who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year."[109] But in *Range v. Attorney General*, the Third Circuit held § 922(g)(1) unconstitutional as applied to a nonviolent felon.[110]

In July 2024, the Supreme Court vacated and remanded *Range I* for reconsideration following *Rahimi*.[111] Nevertheless, the Third Circuit reaffirmed its original conclusion.[112] The court also maintained its original reasoning aside from a few paragraphs distinguishing *Rahimi*.[113] For that reason, this Section explores *Range I* in detail and then briefly discusses *Range II*.

#### 1. Case History

In 1995, Bryan Range pled guilty to food stamp fraud under Pennsylvania law.[114] He received a three-year probation sentence.[115] Because the crime was punishable by up to five years of imprisonment, § 922(g)(1) prohibited him from purchasing a gun.[116]

After learning of this prohibition, Mr. Range sued for a "declaration that § 922(g)(1) violates the Second Amendment as applied to him."[117] He allegedly sought to purchase guns for hunting and home defense.[118] Applying a two-step framework for Second Amendment claims, the United States District Court for the Eastern District of Pennsylvania granted summary judgment to the government.[119] Mr. Range then appealed to the United States Court of Appeals for the Third Circuit.[120]

---

108. *See Range I*, 69 F.4th 96, 106 (3d Cir. 2023) (en banc), *cert. granted*, *judgment vacated sub nom.* Garland v. Range, 144 S. Ct. 2706 (2024).

109. 18 U.S.C. § 922(g)(1). Though the law does not expressly mention felons, courts characterize it as a "federal felon-in-possession law." *Range I*, 69 F.4th at 100. State misdemeanors trigger the federal felon ban unless the misdemeanor is "punishable by a term of imprisonment of two years or less." 18 U.S.C. § 921(a)(20)(B).

110. *See Range I*, 69 F.4th at 98.

111. *See Range*, 144 S. Ct. at 2706–07.

112. *See Range II*, 124 F.4th 218, 232 (3d Cir. 2024) (en banc).

113. *See id.* at 230.

114. *See Range I*, 69 F.4th at 98.

115. *See id.* Mr. Range's criminal record also contained "minor traffic and parking infractions and a summary offense for fishing without a license." *Id.*

116. *See id.*

117. *Id.* at 99.

118. *See id.*

119. *See id.*

120. *See id.*

The Supreme Court decided *New York State Rifle & Pistol Ass'n v. Bruen* while Mr. Range's appeal was pending.[121] Because *Bruen* abrogated the old test for Second Amendment claims, the Third Circuit panel took *Bruen* into consideration.[122] However, the panel ultimately affirmed the lower court's judgment and upheld § 922(g)(1).[123] Mr. Range then petitioned for rehearing en banc, which the Third Circuit granted.[124]

2. *Range I*

In *Range I*, the Third Circuit en banc held that § 922(g)(1) violated the Second Amendment as applied to Mr. Range, a nonviolent welfare fraudster.[125] Initially, the court proclaimed that *Bruen* "abrogated [its] Second Amendment jurisprudence."[126] With this understanding, the court applied the *Bruen* test to invalidate the felon ban.[127]

a. Plain Text

As a threshold matter, the Third Circuit found that "Range and his proposed conduct are protected by the Second Amendment."[128] The court reasoned that the right to keep and bear arms is not limited to law-abiding citizens.[129] Thus, the court deemed Mr. Range one of "the people" covered by the Second Amendment.[130] The court further reasoned that having a gun for personal use falls within the plain text of the right to keep and bear arms.[131] Therefore, Mr. Range's conduct was presumptively protected.[132]

b. Historical Tradition

Turning to history, the Third Circuit found no historical tradition justifying the application of § 922(g)(1) to Mr. Range.[133] Specifically, the court rejected four sets of possible analogues.[134]

121. *See id.*
122. *See id.*
123. *See id.*
124. *See Range I*, 69 F.4th at 98.
125. *See id.* at 106.
126. *Id.* at 101.
127. *See id.*
128. *Id.* at 103.
129. *See id.* at 101. In support of this determination, the court observed that (1) the "law-abiding, responsible citizens" language from Heller was dicta; (2) other rights of "the people" are not so limited; (3) people with Second Amendment rights may still be denied guns; and (4) the category of "law-abiding, responsible citizens" is overly broad and vague. *Id.* at 101–02.
130. *Id.* at 103.
131. *See id.*
132. *See id.*
133. *See id.*
134. *See Range I*, 69 F.4th at 103–06.

First, felon gun bans from 1938 and 1961 failed as analogues because they were not "longstanding prohibitions," and the 1938 ban only applied to violent felons.[135] Second, "status-based restrictions" on racial and religious minorities failed as analogues because nonviolent felons were not members of a "similar group."[136] Third, death penalties for nonviolent crimes failed as analogues because execution differed from the "particular (and distinct) punishment at issue—lifetime disarmament."[137] Moreover, the court noted that the "greater [penalty] does not necessarily include the lesser [penalty]."[138] Fourth, gun forfeitures for firearm-related offenses failed as analogues because Mr. Range's welfare fraud "did not involve a firearm, so there was no criminal instrument to forfeit."[139] And even if a gun were involved, forfeiture laws did not prevent the subject from buying another gun.[140]

Because the Second Amendment covered Mr. Range's conduct and no historical tradition existed of disarming people "like Range," the Third Circuit held § 922(g)(1) unconstitutional as applied to the plaintiff.[141] However, the court stated that "[its] decision today is a narrow one,"[142] which may limit *Range*'s future application.

c. Judge Ambro's Concurrence

In a concurring opinion,[143] Judge Ambro emphasized the presumptive lawfulness of felon gun bans.[144] He suggested that the court's narrow holding should not extend to "murderers, thieves, sex offenders, domestic abusers, and the like."[145] Such felons may be disarmed because a historical tradition exists of disarming individuals who "would threaten the orderly functioning of society if they were armed."[146]

Supporting this standard, Judge Ambro pointed to colonial laws disarming religious dissenters and loyalists.[147] Though such laws would now be unconstitutional on other grounds, they served the same purpose

135. *Id.* at 103–04.
136. *Id.* at 104–05.
137. *Id.* at 105.
138. *Id.*
139. *Id.*
140. *See id.*
141. *Id.* at 106.
142. *Id.*
143. *See id.* at 109–13 (Ambro, J., concurring). Judge Porter also concurred and explained that there are no historical examples of federal laws "permanently disarming non-capital criminals" because Congress lacked the authority to regulate guns prior to the New Deal. *Id.* at 106, 108 (Porter, J., concurring).
144. *See Range I*, 69 F.4th at 109 (Ambro, J., concurring).
145. *Id.* at 110.
146. *Id.* at 111.
147. *See id.*

as current felon bans: maintaining "society's orderly functioning."[148] Moreover, if the relevant historical period included the Reconstruction era, then laws disarming homeless persons, intoxicated persons, and rebels could also justify the felon ban.[149]

Nevertheless, Judge Ambro conceded that "presumptions aren't rules—they can be rebutted."[150] Thus, a felon retains their gun rights when they pose no threat to the social order.[151] Mr. Range's nonviolent act of food stamp fraud distinguished him from other felons "whom we fear much like early Americans feared loyalists or Reconstruction-era citizens feared armed tramps."[152] Thus, Judge Ambro reasoned, Mr. Range could not be constitutionally disarmed.[153]

d. Judge Krause's Dissent

In a dissenting opinion,[154] Judge Krause asserted that the majority opinion was not as narrow as it purported to be.[155] Supporting § 922(g)(1)'s constitutionality, she presented a tradition of disarming "entire groups, like felons, whose conduct evinces disrespect for the rule of law," and criticized "the doctrinal and practical ramifications of the majority's approach."[156]

In her historical analysis, Judge Krause began with § 922(g)(1) itself.[157] Next, Judge Krause considered status-based disarmaments from the English, Colonial, and Revolutionary eras.[158] England disarmed religious minorities who, though not dangerous, were "viewed as unwilling to obey the law."[159] Colonial American governments disarmed not only racial minorities, but also religious and political dissenters who were seen as unwilling to follow the law, though they had not

148. *Id.* at 112.
149. *See id.* at 112.
150. *Id.*
151. *See id.*
152. *Id.*
153. *See id.*
154. *See Range I*, 69 F.4th at 116–38 (Krause, J., dissenting). Judges Schwartz also dissented, emphasizing "law-abidingness" and the presumptive lawfulness of felon gun bans. *Id.* at 114 (Schwartz, J., dissenting). Moreover, Judge Roth dissented, opining that the plaintiff lacked standing. *See id.* at 141 (Roth, J., dissenting).
155. *See id.* at 118 (Krause, J., dissenting).
156. *Id.*
157. *See id.* at 119. She reasoned that a "longstanding" prohibition may be established by mere decades of existence, rather than centuries. *Id.* at 120. And given the law's age, Judge Krause determined that § 922(g)(1) is entitled to "a strong presumption of constitutionality." *Id.* (quoting Am. Legion v. Am. Humanist Ass'n, 588 U.S. 29, 57 (2019)).
158. *See id.* at 120–28.
159. *Id.* at 121.

"demonstrated a propensity for violence."[160] Revolutionary governments disarmed people who refused to swear oaths to their state of residence—again, due to concerns about disloyalty, not dangerousness.[161]

Judge Krause also noted historical criminal punishments that "demonstrate the widespread acceptance of legislatures' authority to disarm felons."[162] For instance, legislatures punished both violent and nonviolent felons with execution or estate forfeiture—punishments which necessarily encompassed the loss of all firearms.[163] In addition, legislatures "punished minor infractions with partial disarmaments by seizing firearms involved in those offenses."[164]

Judge Krause thus found that the history of status-based disarmaments and criminal punishments supported "disarming a group that has demonstrated disregard for the law and allowing for restoration of the right to keep arms upon the requisite showing."[165] On that basis, Judge Krause concluded that she would have held § 922(g)(1) constitutional as applied to Mr. Range.[166]

Regarding the ramifications of *Range I*'s holding, Judge Krause expressed concern that the majority had created a "regulatory straightjacket" by requiring "a Founding-era statute that imposed the 'particular' restriction for the same length of time on the same group of people as a modern law."[167] She compared *Range I* to the Fifth Circuit's restrictive approach in *Rahimi*.[168]

Furthermore, Judge Krause criticized the "like Range" test.[169] She noted that if violence is the standard for disarmament, then that standard is "unworkable and leads to perverse results."[170] She further noted that if law-abidingness after conviction is the standard, then that standard is inconsistent with the majority's holding that the law was unconstitutional at its initial application.[171] And given that possessing a gun as a prohibited person is a crime, Judge Krause reasoned that the "like Range" standard's vagueness denies criminal defendants notice of their unlawful conduct, raising due process concerns.[172]

160. *Id.* at 122–24.
161. *See id.* at 124–26.
162. *Id.* at 126.
163. *See id.* at 126–27.
164. *Range I*, 69 F.4th at 128.
165. *Id.*
166. *See id.*
167. *Id.* at 129.
168. *See id.* at 130 (citing United States v. Rahimi, 61 F.4th 443 (5th Cir.), *cert. granted*, 143 S. Ct. 2688 (2023), *and rev'd and remanded*, 602 U.S. 680 (2024)).
169. *Id.* at 131.
170. *Id.* at 132.
171. *See id.*
172. *Id.* at 133.

3. *Range II*

After the Supreme Court vacated *Range I*, the Third Circuit reached the same conclusion on remand with a few additions to its reasoning.[173] The court reaffirmed that a person may not be excluded from "the people" on the basis of law-abidingness or responsibility, consistent with *Rahimi*'s rejection of such a standard.[174] Moreover, the court found that the government had not shown that Mr. Range or his offense posed a "physical danger" for purposes of *Rahimi*.[175] The court also read *Rahimi* to authorize "temporary disarmament as a sufficient analogue to historic temporary imprisonment only to 'respond to the use of guns to threaten the physical safety of others.'"[176] Thus, for nonviolent felons, historical punishments other than disarmament still could not justify a lifetime gun ban.[177]

Judge Krause, perhaps surprisingly given her earlier dissent, concurred in *Range II*.[178] She asserted that Mr. Range had the burden to show that he posed no "special risk of firearm misuse," and he carried that burden.[179] However, Judge Krause reiterated her prior criticisms of the majority's methodology.[180] She lamented the majority's continuing demand for "a precise historical match to § 922(g)(1)."[181]

*D. Judicial Responses to* Range

Courts have only recently begun to apply *Range II* in other felon-possession cases.[182] Prior to *Range II*, however, Third Circuit district courts and several other circuit courts discussed *Range I* in subsequent decisions.[183] Because *Range II* preserves the core reasoning from *Range I*, pre-remand precedents remain useful in interpreting the new opinion.[184]

173. *Compare Range II*, 124 F.4th 218, 232 (3d Cir. 2024), *with Range I*, 69 F.4th at 106.

174. *See Range II*, 124 F.4th at 226–28 (citing United States v. Rahimi, 602 U.S. 680, 701–02 (2024)).

175. *Id.* at 230 (citing *Rahimi*, 602 U.S. at 698).

176. *Id.* at 231 (quoting *Rahimi*, 602 U.S. at 699).

177. *See id.*

178. *See Range II*, 124 F.4th at 250–85 (Krause, J., concurring).

179. *Id.* at 277.

180. *Compare id.* at 277–80, *with Range I*, 69 F.4th at 128–35 (Krause, J., dissenting).

181. *Range II*, 124 F.4th at 278 (Krause, J., concurring).

182. *See, e.g.*, United States v. Mabry, No. CV 24-99, 2025 WL 579652, at *3–5 (W.D. Pa. Feb. 21, 2025); United States v. Cooper, No. 24-CR-00410, 2025 WL 611044, at *1–3 (E.D. Pa. Feb. 25, 2025); United States v. Trusty, No. CR 20-543, 2025 WL 830124, at *4–5 (D.N.J. Mar. 17, 2025).

183. *See, e.g.*, United States v. Cotton, No. CR 22-471, 2023 WL 6465836, at *4 n.2 (E.D. Pa. Oct. 4, 2023) (collecting cases); *see also, e.g.*, United States v. Daniels, 77 F.4th 337, 354 n.42 (5th Cir. 2023), *cert. granted*, *judgment vacated*, 144 S. Ct. 2707 (2024).

184. *See supra* Section II.C.3. Some courts have imported *Range I* analysis into *Range II* cases almost verbatim. *Compare, e.g.*, *Mabry*, 2025 WL 579652, at *3–5

1. District Courts Within the Third Circuit

After *Range I*, district courts "increasingly grappled with applying *Range* in similar circumstances."[185] In terms of outcome, "nearly every opinion in this circuit addressing this issue after *Range* has held that § 922(g)(1) is constitutional both on its face and as applied."[186] Moreover, breaking down the methodology reveals three common trends in district court decisions applying *Range*: (1) a broad reading of the Second Amendment's plain text; (2) a refusal to extend *Range* to facial challenges; and (3) a willingness to disarm dangerous people.[187] In addition, two possible tests emerge from courts applying *Range*: a multi-factor test and a two-pronged test.[188]

a. Common Trends in Third Circuit District Court Decisions Applying *Range*

First, in cases applying *Range*, district courts have held that a felon's possession of a firearm easily falls within the textual scope of the Second Amendment, "even when [the felon] has a lengthy criminal history."[189] However, the Second Amendment does not protect felons who possess guns illegally or for illegal purposes.[190] Second, district courts have held that *Range* is a narrow ruling that can support as-applied challenges to § 922(g)(1), but never facial challenges.[191] Third, district courts have held that *Range* permits disarmament based on violent, firearm-related, or drug-related felonies.[192]

---

(applying *Range II*), *with* United States v. Smith, 700 F. Supp. 3d 307, 311–14 (W.D. Pa. 2023) (applying *Range I*).

185. *Cotton*, 2023 WL 6465836, at *4 n.2.

186. United States v. Hedgepeth, 700 F. Supp. 3d 276, 286 & n.5 (E.D. Pa. 2023) (collecting cases); *see also* United States v. Allen, No. 23CR300, 2024 WL 2923675, at *7 & n.8 (D.N.J. June 10, 2024).

187. *See, e.g.*, United States v. Ladson, No. CR 23-161-1, 2023 WL 6810095, at *2–4 (E.D. Pa. Oct. 16, 2023); United States v. O'Connor, No. CR 03-134, 2023 WL 5542087, at *2 (W.D. Pa. Aug. 29, 2023).

188. *See* United States v. Davis, 698 F. Supp. 3d 776, 784 (M.D. Pa. 2023); *see also Ladson*, 2023 WL 6810095, at *3.

189. *Ladson*, 2023 WL 6810095, at *2; *see also Davis*, 698 F. Supp. 3d at 785; *Hedgepeth*, 700 F. Supp. 3d at 281.

190. *See* United States v. Smith, 700 F. Supp. 3d 307, 312 (W.D. Pa. 2023) (stolen firearm); *see also* United States v. Velazquez, No. CR 23-657, 2024 WL 49690, at *12 (D.N.J. Jan. 4, 2024) (gun possessed in furtherance of drug deal).

191. *See O'Connor*, 2023 WL 5542087, at *2 ("The decision in *Range* did not undermine the constitutionality of § 922(g)(1) in all situations."); *see also Davis*, 698 F. Supp. 3d at 783–84; Porter v. United States, No. CV 22-6199, 2023 WL 6366273, at *5 (D.N.J. Sept. 28, 2023).

192. *See O'Connor*, 2023 WL 5542087, at *4 (felonious assault with a firearm); *see also Porter*, 2023 WL 6366273, at *5 (drug possession and distribution); *Ladson*, 2023 WL 6810095, at *5 (robbery and attempted murder); *Hedgepeth*, 700 F. Supp. 3d at 282 (reckless endangerment with a firearm and burglary).

b. Multi-Factor *Range* Historical Test

Beyond the common trends, some district courts have read *Range* to set out a multi-factor historical framework that considers a felon's individual circumstances. Those circumstances include: (1) the prohibiting conviction itself; (2) the felon's justification for his criminal actions; (3) the time that has passed since the conviction; (4) the felon's law-abidingness since the conviction, and (5) the felon's reasons for seeking a gun.[193]

c. Two-Pronged *Range* Historical Test

Moreover, one district court has read *Range* as creating a two-pronged inquiry for a suitable Founding-era analogue. This approach analyzes both "the offense and the punishment."[194] Under the offense prong, the historical analogue must have targeted individuals who pose a similar threat of violence, danger, or disorderly behavior.[195] Under the punishment prong, the historical analogue must have "expressly called" for a penalty of lifetime disarmament.[196]

2. Other Circuit Courts of Appeals Respond

Responses to *Range* from other federal appellate courts most authoritatively impact national gun regulations. For instance, the Fifth Circuit cited *Range I* to strike down § 922(g)(3)—the federal gun ban for unlawful drug users—demonstrating that *Range*'s logic can extend to other provisions of § 922(g).[197] Four dissenting judges from the Eighth Circuit invoked *Range I* to call for en banc reconsideration of the court's Second Amendment jurisprudence in light of *Bruen*.[198] And one Seventh Circuit judge situated *Range I* as part of a broader circuit split on how to evaluate the constitutionality of § 922(g).[199]

193. *See Davis*, 698 F. Supp. 3d. at 784; *see also* United States v. Gauthney, No. CR 22-0028, 2023 WL 7311179, at *1 n.1 (E.D. Pa. Nov. 6, 2023); *cf.* United States v. Ortiz, No. CR 23-506, 2024 WL 493423, at *5 (E.D. Pa. Feb. 8, 2024) (considering a felon's entire criminal record).

194. *Ladson*, 2023 WL 6810095, at *3.

195. *See id.* at *4.

196. *Id.* at *3.

197. *See* United States v. Daniels, 77 F.4th 337, 354 (5th Cir. 2023), *cert. granted*, *judgment vacated*, 144 S. Ct. 2707 (2024).

198. *See* United States v. Jackson, 85 F.4th 468, 469 (8th Cir. 2023) (Stras, J., dissenting).

199. *See* Atkinson v. Garland, 70 F.4th 1018, 1036 (7th Cir. 2023) (Wood, J., dissenting).

### *E. The Historical Basis for § 922(g)(4)*

To understand how *Range II* impacts the constitutionality of § 922(g)(4), considering possible historical analogues to modern mental health gun restrictions is vital. Initially, attempts to justify federal gun laws encounter a hurdle: namely, that Congress lacked authority to disarm anyone prior to the New Deal era.[200] Thus, historical analogues for federal gun regulations must be found in state laws.[201]

#### 1. Defining Mental Illness

Common law recognized two primary categories of mentally ill persons: idiots and lunatics.[202] In general, idiots suffered from permanent, often inborn, mental disabilities, while lunatics suffered from temporary mental illness.[203] Historical sources did not always distinguish these categories clearly in practice.[204] However, lunatics were clearly subject to involuntary commitment.[205] Thus, evaluating the historical treatment of lunatics may be key to justifying § 922(g)(4).[206]

#### 2. Restriction of Lunatics' Rights

No historical evidence suggests that lunatics were permanently disarmed during the Founding, antebellum, or Reconstruction eras.[207] Gun bans tied to mental health likely emerged in the 1930s,[208] long after any of the historical eras that *Bruen* deemed relevant.[209] But that fact need not end the historical analysis, as lunatics faced other restrictions on their rights before the start of the twentieth century.[210]

One major restriction was involuntary commitment itself.[211] Even before the Founding, justices of the peace could confine lunatics who were

200. *See Range I*, 69 F.4th 96, 107 (3d Cir. 2023) (Porter, J., concurring), *cert. granted*, *judgment vacated sub nom.* Garland v. Range, 144 S. Ct. 2706 (2024).

201. *See id.* at 108.

202. *See* Michael Clemente, Note, *A Reassessment of Common Law Protections for "Idiots"*, 124 YALE L.J. 2746, 2775 (2015).

203. *See id.* at 2776.

204. *See id.* at 2777.

205. *See* Megan Testa & Sara G. West, *Civil Commitment in the United States*, 7 PSYCHIATRY (EDGEMONT) 30, 32 (2010).

206. *See, e.g.*, United States v. Gould, 672 F. Supp. 3d 167, 183 (S.D.W. Va. 2023) (relying on historical lunatic laws to uphold § 922(g)(4)).

207. *See* Carlton F.W. Larson, *Four Exceptions in Search of a Theory:* District of Columbia v. Heller *and Judicial Ipse Dixit*, 60 HASTINGS L.J. 1371, 1376 (2009).

208. *See id.*

209. *See* N.Y. State Rifle & Pistol Ass'n v. Bruen, 597 U.S. 1, 34 (2022).

210. *See* Larson, *supra* note 207, at 1377.

211. *See* Testa & West, *supra* note 205.

"dangerous to be permitted to go abroad."[212] In 1773, Virginia established the first state mental institution.[213] By the mid-1800s, lunatic asylums were commonplace.[214] Pennsylvania, for example, authorized the involuntary commitment of lunatics when "the welfare of himself or of others requires his restraint."[215] As one scholar observed: "If this significant infringement of liberty was permissible, then the lesser step of mere disarmament would likely be permissible as well."[216]

States also restricted lunatics through estate forfeiture.[217] In England, the king had the power to take custody of a lunatic's estate for the duration of the lunacy.[218] A similar tradition continued in the United States.[219] For instance, Pennsylvania appointed committees to manage the estates of lunatics in the antebellum era.[220]

Often, involuntary commitment and estate forfeiture occurred simultaneously.[221] For example, one Pennsylvanian in 1883 unsuccessfully challenged his involuntary commitment under the Act of 1869 and the subsequent loss of his estate under the Act of 1836.[222] Such cases demonstrate that governments would suspend a person's civil rights even after the person was released from involuntary commitment.[223] Presumably, committed individuals lost access to any guns while committed, and they forfeited personal firearms along with the rest of their estates.

212. HENRY CARE & WILLIAM NELSON, ENGLISH LIBERTIES, OR THE FREE-BORN SUBJECT'S INHERITANCE 329 (Providence, R.I., John Carter, 6th ed. 1774).

213. *See Civil Commitment of the Mentally Ill*, 107 U. PA. L. REV. 668, 669 (1959).

214. *See* Rabia Belt, *Ballots for Bullets?: Disabled Veterans and the Right to Vote*, 69 STAN. L. REV. 435, 446 (2017) ("By the start of the Civil War, there were forty-eight lunatic asylums in the United States; nearly every state had at least one hospital or asylum specializing in mental illness by the end of the century.").

215. Act of Apr. 20, 1869, Pa. Laws 78, § 6 (repealed).

216. Larson, *supra* note 207, at 1377.

217. *See* Testa & West, *supra* note 205.

218. *See* ANTHONY HIGHMORE, A TREATISE ON THE LAW OF IDIOCY AND LUNACY 73 (Exeter, N.H., George Lamson 1822).

219. *See* Testa & West, *supra* note 205.

220. *See* Act of Jun. 13, 1836, Pa. Laws 589, § 20 (repealed) ("The committee of the estate of every person found to be a lunatic . . . shall have the management of the real and personal estate of such person . . . .").

221. *See* Testa & West, *supra* note 205.

222. *See In re* Halderman, 104 Pa. 251, 252 (1883).

223. *See id.* For further discussion of mental health restrictions, see United States v. Veasley, 98 F.4th 906, 912–16 (8th Cir.), *cert. denied*, 145 S. Ct. 304 (2024).

3. Restoration of Lunatics' Rights

However, historical restrictions on the rights of lunatics were not permanent.[224] Mentally ill persons could recover, and when they did, governments would restore their rights.[225] In Pennsylvania, a lunatic who lost their estate could file a petition "setting forth that he [was] restored to a sound state of mind."[226] Similarly, a committed person could receive a hearing and be released if a "respectable person" testified that the committed person was not insane.[227] As one Pennsylvania court observed: "Providence may possibly restore the lunatic to reason, and to his estate—at all events that it ought to be preserved, and husbanded for his maintenance . . . ."[228] Some scholars have proposed that this rehabilitative view demands accessible modern relief to offset § 922(g)(4)'s lifetime ban.[229]

4. Dangerousness: An Alternate Approach?

Beyond historical lunatic laws, mental health gun restrictions could be justified under a broader tradition of disarming "any person viewed as potentially dangerous."[230] Judges and scholars who evaluated § 922(g) before *Bruen* contemplated a dangerousness standard.[231] Judge Bibas even declared that "[a]s an original matter, the Second Amendment's touchstone is dangerousness."[232]

Then-Judge Barrett famously advocated a dangerousness standard in her *Kanter v. Barr* dissent.[233] *Rahimi* later adopted a limited dangerousness inquiry in the context of temporary disarmament, which the

224. *See* HIGHMORE, *supra* note 218 ("A lunatic is never to be looked upon as irrecoverable . . . upon this principle hang all the determinations of the courts, respecting the person and estate of the lunatic.").

225. *See id.*

226. Act of Jun. 13, 1836, Pa. Laws 589, § 63 (repealed).

227. Act of Apr. 20, 1869, Pa. Laws 78, § 3 (repealed).

228. *In re* Wright, 8 Pa. 57, 63 (1848).

229. *See* C. Seth Smitherman, Note, *Rights for Thee but Not for* Mai*: As-Applied Constitutional Challenges to 18 U.S.C. § 922(g)(4)*, 25 TEX. REV. L. & POL. 515, 556–57 (2021); Zachary M. Robole, Note, *In Defense of (Mental) Hearth and Home: Challenges to § 922(g)(4) in the Wake of* New York State Rifle & Pistol Ass'n v. Bruen, 107 MINN. L. REV. 2329, 2332–33 (2023).

230. Larson, *supra* note 207, at 1377.

231. *See Range I*, 69 F.4th 96, 104 n.9 (3d Cir. 2023) (discussing Third Circuit cases*)*, *cert. granted*, *judgment vacated sub nom.* Garland v. Range, 144 S. Ct. 2706 (2024); *see also* Larson, *supra* note 207, at 1377; Joseph G.S. Greenlee, *The Historical Justification for Prohibiting Dangerous Persons from Possessing Arms*, 20 WYO. L. REV. 249, 257–75 (2020). For discussion of an alternate "virtuousness" theory, see Greenlee, *supra*, at 275–85.

232. Folajtar v. Att'y Gen. U.S., 980 F.3d 897, 924 (3d Cir. 2020) (Bibas, J., dissenting), *abrogated by* N.Y. State Rifle & Pistol Ass'n v. Bruen, 597 U.S. 1 (2022).

233. *See* Kanter v. Barr, 919 F.3d 437, 451–69 (7th Cir. 2019) (Barrett, J., dissenting), *abrogated by Bruen*, 597 U.S. 1.

Third Circuit acknowledged in *Range II* and developed in a follow-up case, *Pitsilides v. Barr*.[234] District courts have also applied a similar standard to uphold § 922(g)(4) under *Bruen*.[235]

a. Dangerousness and Felons

In 2019, then-Judge Barrett dissented from a Seventh Circuit decision, *Kanter v. Barr*, which upheld § 922(g)(1) as applied to a mail fraudster.[236] In her dissent, Judge Barrett reasoned that the felon ban was unconstitutional because Congress's power to disarm citizens "extends only to people who are *dangerous*,"[237] meaning those who have "demonstrated a proclivity for violence or whose possession of guns would otherwise threaten the public safety."[238] She further reasoned that this group includes some non-felons but excludes felons "lacking indicia of dangerousness."[239]

As evidence for the dangerousness theory, Judge Barrett considered failed constitutional proposals that would have limited gun rights for rebels, non-peaceable citizens, criminals, or individuals endangering the public.[240] She also cited the English and Founding-era disarmament of purportedly dangerous groups like rebels, Catholics, slaves, and Native Americans.[241] Judge Ambro's *Range I* concurrence closely mapped Judge Barrett's reasoning by relying on laws disarming Protestants, Catholics, loyalists, homeless people, drunkards, and rebels to justify felon restrictions.[242]

The United States advanced a similar dangerousness theory in *Rahimi*.[243] At argument, the Solicitor General defined dangerousness to support the constitutionality of two types of laws: those based on "individualized findings of dangerousness," and those based on "categorical predictive judgments" of danger.[244] Ultimately, the Supreme Court adopted a rule permitting temporary disarmament of people "found

234. *See Range II*, 124 F.4th 218, 230 (3d Cir. 2024); *see also* Pitsilides v. Barr, 128 F.4th 203, 211–12 (3d Cir. 2025).

235. *See, e.g.*, United States v. Gould, 672 F. Supp. 3d 167, 184 (S.D.W. Va. 2023).

236. *See Kanter*, 919 F.3d at 451–69 (Barrett, J., dissenting).

237. *Id.* at 451.

238. *Id.* at 454.

239. *Id.*

240. *See id.* at 455–56. The Pennsylvania ratifying convention proposal would have protected the right to keep and bear arms "unless for crimes committed, or real danger of public injury from individuals." *Id.* at 456 (quoting 2 BERNARD SCHWARTZ, THE BILL OF RIGHTS: A DOCUMENTARY HISTORY 665 (1971)). Judge Barrett read this language to support a broad exclusion of dangerous people, criminal or otherwise. *See id.*

241. *See id.* at 456–58.

242. *See supra* Section II.C.2.c.

243. *See* Transcript of Oral Argument at 13–14, United States v. Rahimi, 602 U.S. 680 (2024) (No. 22-915).

244. *Id.*

by a court to pose a credible threat to the physical safety of another."[245] *Range II* declined to extend this rule to situations other than the temporary disarmament of "physically dangerous people."[246]

Courts have yet to fully clarify the extent to which *Rahimi* and *Range II* support permanent disarmament, but one 2025 Third Circuit decision suggests that they might.[247] In *Pitsilides v. Barr*, a panel opinion by Judge Krause reviewed both cases and concluded that, at least for nonviolent felons, "courts must consider all factors that bear on a felon's capacity to possess a firearm without posing such a [physical] danger."[248] This reframing of *Range II* as a case about dangerousness could have important ramifications for how the Third Circuit applies *Range II* in the future.

b. Dangerousness and the Mentally Ill

Courts have also examined dangerousness in the mental health context. In *United States v. Gould*, decided before *Rahimi*, the Southern District of West Virginia upheld § 922(g)(4) under a dangerousness standard.[249] The court reasoned that the commonality between the mentally defective and formerly committed, both prohibited under § 922(g)(4), is that both groups consist of individuals "determined to be a danger to themselves or others."[250] Moreover, the court discerned from § 922(g)(4)'s legislative history that Congress worried about "sudden, unpremeditated crimes with firearms as a result of mental disturbances."[251]

From these premises, the *Gould* court inferred that § 922(g)(4)'s central purpose was to address gun violence by dangerous people.[252] The court then conducted a historical analysis.[253] The court concluded that governments historically considered mentally ill persons to be dangerous and that a historical tradition exists of disarming dangerous people.[254] Thus, the court held that statutes disarming purportedly dangerous groups were analogous to § 922(g)(4), making the law constitutional.[255]

245. *Rahimi*, 602 U.S. at 702. Since then, the Eighth Circuit has supplemented *Rahimi* with the government's categorical approach. *See* United States v. Jackson, 110 F.4th 1120, 1128 (8th Cir. 2024).

246. *Range II*, 124 F.4th 218, 230 (3d Cir. 2024).

247. *See* Pitsilides v. Barr, 128 F.4th 203, 210 (3d Cir. 2025).

248. *Id.* at 210–11. Other circuits have used dangerousness to disarm violent felons post-*Rahimi*. *See, e.g.*, United States v. Williams, 113 F.4th 637, 662–63 (6th Cir. 2024); United States v. Bullock, 123 F.4th 183, 185 (5th Cir. 2024).

249. *See* United States v. Gould, 672 F. Supp. 3d 167, 184 (S.D.W. Va. 2023).

250. *Id.* at 182.

251. *Id.* (quoting 114 CONG. REC. 21829 (1968)).

252. *See id.*

253. *See id.* at 182–83.

254. *See id.* at 183.

255. *See id.* at 184. For a post-*Rahimi* case applying similar reasoning, see United States v. Walker, 747 F. Supp. 3d 1195, 1201–02 (D. Minn. 2024).

## III. ANALYSIS

*Range II* narrowly answers a major question in Second Amendment jurisprudence: Who may the government lawfully disarm in accordance with the United States's historical tradition?[256] Though *Rahimi* clarifies that some dangerous people may be *temporarily* disarmed, the case does not necessarily condone permanent disarmament.[257] Thus, *Rahimi* leaves felony and mental health prohibitions vulnerable to constitutional attack.[258]

To that end, this Part argues that *Range II* could render § 922(g)(4) unconstitutional as applied to many formerly committed persons.[259] However, to remain consistent with *Bruen*, future cases should focus on dangerousness—"the Second Amendment's touchstone"[260]—to determine who may be disarmed.[261] The robust historical tradition of disarming dangerous people suggests that § 922(g)(4) is constitutional under *Bruen*.[262]

### *A. Under* Range II*, § 922(g)(4) Could Be Unconstitutional as Applied to Many Formerly Committed Persons*

The threshold question in analyzing § 922(g)(4) under *Range II* is whether the gun ban burdens conduct protected by the plain text of the Second Amendment.[263] If so, a court must reconcile the ban with the United States's historical tradition of firearm regulation.[264] For the second step, this Section applies both the multi-factor and two-pronged tests set out in *Range II*.[265]

#### 1. The Plain Text of the Second Amendment Protects Gun Possession by the Formerly Committed

Section 922(g)(4) plainly burdens the Second Amendment right.[266] Like felons, committed persons remain within "the people" protected by the right to keep and bear arms.[267] Indeed, *Range II* precludes any limitation on the mentally ill based on their status, or lack thereof, as

256. *See Range II*, 124 F.4th 218, 222 (3d Cir. 2024).
257. *See id.* at 230.
258. *See* U.S. CONST. amend. II.
259. *See infra* Section III.A.
260. Folajtar v. Att'y Gen. U.S., 980 F.3d 897, 924 (3d Cir. 2020) (Bibas, J., dissenting), *abrogated by* N.Y. State Rifle & Pistol Ass'n v. Bruen, 597 U.S. 1 (2022).
261. *See infra* Section III.B.
262. *See Bruen*, 597 U.S. at 17.
263. *See Range II*, 124 F.4th 218, 225 (3d Cir. 2024).
264. *See id.*
265. *See supra* Sections II.D.1.b–c.
266. *See supra* Section II.D.1.a.
267. *See Range II*, 124 F.4th at 226.

"responsible citizens."[268] And if a lengthy criminal history cannot disqualify someone from Second Amendment protection, a lengthy history of mental illness may also be insufficient.[269] Similarly, a formerly committed person seeking a gun for personal use would be engaged in the same protected conduct as Mr. Range.[270] Therefore, courts must conduct historical analysis in § 922(g)(4) cases.[271]

### 2. Under the Multi-Factor *Range II* Test, No Historical Basis Exists for Disarming the Formerly Committed

*Range II* could be read as announcing a multi-factor test for felon disarmament based on individual circumstances.[272] Accounting for the differences between felons and formerly committed persons, courts could construct a set of revised *Range II* factors for § 922(g)(4).[273] Moreover, when those factors are considered with the "clear and present danger" standard for commitment,[274] courts could deem the application of § 922(g)(4) unconstitutional in many situations.

The first factor considers the reason for commitment, based on the *Range II* prohibiting-conviction and justification-for-crime factors.[275] This factor favors overturning the ban for all commitments except those based on serious violence towards others,[276] or commitments involving guns, because *Range II* permits disarmament for violent or gun-related offenses.[277]

The second factor considers the amount of time that has elapsed since commitment, based on the *Range II* time-since-conviction factor.[278] This factor favors overturning the ban when several years have passed since the prohibiting commitment, with twenty-nine years being enough, but eight years likely being insufficient.[279]

The third factor considers a person's mental health record since the prohibiting commitment, based on the *Range II* law-abidingness-since-

268. *Id.* at 226–27.
269. *See supra* Section II.D.1.a.
270. *See Range II*, 124 F.4th at 228.
271. *See* N.Y. State Rifle & Pistol Ass'n v. Bruen, 597 U.S. 1, 17 (2022).
272. *See supra* Section II.D.1.b.
273. *See supra* Section II.D.1.b.
274. Mental Health Procedures Act, 50 PA. STAT. § 7301(a) (2025); *see also supra* Section II.A.2.a.
275. *See supra* Section II.D.1.b.
276. *See* 50 PA. STAT. § 7301(b)(1).
277. *See supra* Section II.D.1.a.
278. *See supra* Section II.D.1.b.
279. *Compare Range II*, 124 F.4th 218, 222–23 (3d Cir. 2024) (1995 offense), *with* United States v. Davis, 698 F. Supp. 3d 776, 784 (M.D. Pa. 2023) (2015 offense).

conviction factor.[280] This factor favors overturning the ban when a person maintains a clean mental health record for several years, with twenty-nine years again being enough and eight years being insufficient.[281] However, the record need not be perfect, given that Mr. Range had various traffic, parking, and fishing violations beyond his 1995 conviction.[282]

The fourth and final factor considers a person's reasons for seeking a gun, and mirrors the final *Range II* factor.[283] This factor favors overturning the ban when a formerly committed person seeks a gun for lawful purposes such as hunting or self-defense, like Mr. Range did.[284]

Together, these revised *Range II* factors suggest that § 922(g)(4) could be unconstitutional as applied to formerly committed persons who: (1) initially posed a danger only to themselves; (2) underwent commitment for reasons unrelated to firearms; (3) have functioned for several years without mental health intervention; or (4) seek a gun for lawful purposes.[285] Those categories likely cover many people subject to the ban.

#### 3. Under the Two-Pronged *Range II* Test, No Historical Basis Exists for Disarming the Formerly Committed

Moreover, *Range II* invalidates § 922(g)(4) under a two-pronged offense-and-punishment test, perhaps more broadly termed a classification-and-restriction test.[286] This test demands a historical analogue that burdened a similar group of people with the same penalty as the modern law at issue.[287] Unfortunately for regulators, no law from the Reconstruction era or earlier targeted mentally ill persons with the express penalty of lifetime disarmament.[288]

Under the classification prong, laws disarming rebels, loyalists, and various minorities fail as analogues because those designations have no bearing on mental capacity.[289] Similarly, laws disarming individuals based

280. *See supra* Section II.D.1.b.

281. *Compare Range II*, 124 F.4th at 222–23 (1995 offense), *with Davis*, 698 F. Supp. 3d at 784 (2015 offense).

282. *See Range II*, 124 F.4th at 223.

283. *See supra* Section II.D.1.b.

284. *See Range II*, 124 F.4th at 223.

285. *See supra* Section II.D.1.b.

286. *See supra* Section II.D.1.c.

287. *See supra* Section II.D.1.c; *cf. Range II*, 124 F.4th at 279 (Krause, J., concurring) (suggesting that *Range II* requires "a Founding-era statute that imposed the same 'particular' restriction for the same length of time on the same group of people as the modern-day law").

288. *See* Larson, *supra* note 207.

289. *See supra* Section II.E.4.a.

on criminal conduct, such as "going armed" laws, likely cannot support permanent disarmament based on a civil commitment.[290]

Under the restriction prong, commitments and estate forfeitures for lunatics fail as analogues because they imposed only temporary gun restrictions, if any.[291] The same logic applies to laws against intoxicated gun use,[292] and to the surety laws cited in *Rahimi*.[293] Under *Range II*, all of these historical analogues likely fail to justify § 922(g)(4)'s permanent ban.[294]

Admittedly, *Range II*'s narrow holding may not extend beyond § 922(g)(1).[295] The case certainly will not support facial challenges of any form.[296] Still, if courts take the Third Circuit's reasoning seriously, future as-applied challenges could compromise gun restrictions for the involuntarily committed.[297]

### *B. As an Alternative to* Range II*, Future Cases Should Focus on Dangerousness to Determine Who May Be Disarmed*

Though the Third Circuit noted that Mr. Range was not dangerous, the court declined to make dangerousness the touchstone of its analysis.[298] Instead, the court focused on the precise group burdened and the punishment imposed by various historical laws.[299] But to the extent that *Range II* undermines gun restrictions for the involuntarily committed,[300] its methodology appears inconsistent with Supreme Court assurances that such restrictions are "presumptively lawful" and that history is not a "regulatory straightjacket."[301] Courts can resolve that discrepancy by

290. *But cf.* United States v. Rahimi, 602 U.S. 680, 699 (2024) (finding that laws against "going armed" following a criminal conviction could support a temporary gun ban in connection to a civil restraining order).

291. *See supra* Section II.E.2.

292. *See supra* Section II.C.2.c.

293. *See supra* Section II.B.5.

294. *See Range II*, 124 F.4th 218, 231 (3d Cir. 2024) (noting that *Rahimi* only authorized temporary disarmament). One could argue that the ban is not truly permanent because statutory relief is available. *See supra* Section II.A.3. However, the same could be said of the felon ban, which exempts felons once certain other rights have been restored. *See* 18 U.S.C. § 921(a)(20). Yet, *Range II* still characterized the felon ban as a "lifetime ban." *Range II*, 124 F.4th at 231.

295. *See Range II*, 124 F.4th at 232.

296. *See supra* Section II.D.1.a.

297. *Cf. Range II*, 124 F.4th at 232 (holding the felon gun ban unconstitutional as applied to a nonviolent welfare fraudster).

298. *See id.* at 230.

299. *See id.* at 229–31.

300. *See supra* Section III.A.

301. *Range II*, 124 F.4th at 291–92 (Shwartz, J., dissenting) (quoting District of Columbia v. Heller, 554 U.S. 570, 627 n.26 (2008); and then quoting N.Y. State Rifle & Pistol Ass'n v. Bruen, 597 U.S. 1, 30 (2022)).

interpreting the Second Amendment to permit the disarmament of dangerous people.[302]

But what makes someone dangerous? To guide courts, a holistic definition of dangerousness should apply not only to felony and mental health restrictions, but also to other categorical gun bans.[303] To that end, sources evaluating dangerousness suggest three subsets of dangerous people.[304] The first includes individuals whom courts have actually found to be dangerous.[305] The second includes individuals who have perpetrated violent acts or threatened public safety.[306] The third includes members of groups that a legislature has categorically deemed dangerous.[307] However, restrictions predicated on categorical judgments must burden a narrow class, and those restrictions must rest on legislative findings or a consensus among legislatures that a group is, in fact, dangerous.[308]

Under a dangerousness standard, governments may presumptively disarm dangerous people without violating the Second Amendment.[309] This exclusive focus on dangerousness is a suitable alternative to *Range II* for three reasons. First, it reflects historical tradition.[310] Second, it maintains the presumptive lawfulness of gun bans for the mentally ill.[311] Third, it avoids a regulatory straightjacket.[312]

1. A Dangerousness Standard Reflects Historical Tradition

*Bruen* requires modern gun laws to comport with tradition by imposing a similar burden with a similar justification as a historical law.[313] Applying that standard to § 922(g), *Range II* defines the relevant burden as "lifetime disarmament" and the relevant justification as membership

302. *See supra* Section II.E.4.

303. *See* 18 U.S.C. § 922(g).

304. *See supra* Section II.E.4.

305. *See* United States v. Rahimi, 602 U.S. 680, 702 (2024); *see also* United States v. Gould, 672 F. Supp. 3d 167, 184 (S.D.W. Va. 2023); United States v. Walker, 747 F. Supp. 3d 1195, 1202 (D. Minn. 2024).

306. *See* Kanter v. Barr, 919 F.3d 437, 454 (7th Cir. 2019) (Barrett, J., dissenting), *abrogated by Bruen*, 597 U.S. 1; *see also* United States v. Williams, 113 F.4th 637, 662–63 (6th Cir. 2024); United States v. Bullock, 123 F.4th 183, 185 (5th Cir. 2024).

307. *See* Transcript of Oral Argument, *supra* note 243, at 14; *see also Range II*, 124 F.4th 218, 267 (3d Cir. 2024) (Krause, J., concurring); United States v. Jackson, 110 F.4th 1120, 1128 (8th Cir. 2024).

308. *See* Transcript of Oral Argument, *supra* note 243, at 14–15; *cf. Kanter*, 919 F.3d at 465 (Barrett, J., dissenting) ("The government could quickly swallow the right if it had broad power to designate any group as dangerous and thereby disqualify its members from having a gun.").

309. *See supra* Section II.E.4. *But see infra* Section III.B.2 (discussing the limits of that presumption).

310. *See Bruen*, 597 U.S. at 17.

311. *See* District of Columbia v. Heller, 554 U.S. 570, 626, 627 n.26 (2008).

312. *See Bruen*, 597 U.S. at 30.

313. *See id.*

within a "similar group."[314] The *Range II* approach, however, does not consider *why* certain groups of people were disarmed: namely, that governments considered them too dangerous to have guns.[315]

As discussed previously, an extensive historical tradition exists of disarming people deemed dangerous.[316] Key examples include Founding-era laws disarming loyalists and Reconstruction-era laws disarming rebels.[317] Such status-based restrictions were enacted around the times of the Revolutionary and Civil Wars, respectively.[318] Thus, such restrictions were likely driven by a specific fear for the public safety from armed dissidents—fear beyond simple animus.[319] Similarly, if courts apply a dangerousness standard in § 922(g)(4) cases, legislatures may disarm committed persons not because of an arbitrary designation, but because committed persons qualify as dangerous.[320]

### 2. A Dangerousness Standard Maintains the Presumptive Lawfulness of Gun Bans for the Mentally Ill

*Heller*, *McDonald*, and *Bruen* indicate that gun restrictions for the "mentally ill" are "presumptively lawful" under the Second Amendment.[321] Yet by inviting as-applied challenges to § 922(g)(4), *Range II* calls that presumption into question.[322] By contrast, a dangerousness standard maintains the presumption because committed persons qualify as dangerous under any definition of the term.[323]

First, Congress may disarm committed persons because courts have individually found such persons to be dangerous.[324] Involuntary

314. *Range II*, 124 F.4th 218, 229, 231 (3d Cir. 2024).

315. *See supra* Section II.E.4.

316. *See supra* Section II.E.4.

317. *See Range I*, 69 F.4th 96, 111–12 (3d Cir. 2023) (Ambro, J., concurring), *cert. granted*, *judgment vacated sub nom.* Garland v. Range, 144 S. Ct. 2706 (2024).

318. *See id.*

319. *See id.* at 112 ("Although these regulations are not felon-in-possession laws, they echo . . . a desire to stop firearms from being possessed or carried by those who cannot be trusted with them."). Admittedly, these laws and separate laws that targeted racial or religious minorities would now be unconstitutional for reasons unrelated to the Second Amendment. *See id.* at 111. Nevertheless, they reflect a historical justification for regulating firearms and are thus relevant to the *Bruen* analysis. *See id.*

320. *Cf.* Kanter v. Barr, 919 F.3d 437, 458 (7th Cir. 2019) (Barrett, J., dissenting) (approving the disarmament of felons because they threaten public safety, not "because of their status as felons"), *abrogated by* N.Y. State Rifle & Pistol Ass'n v. Bruen, 597 U.S. 1 (2022).

321. District of Columbia v. Heller, 554 U.S. 570, 626, 627 n.26 (2008); *see also* McDonald v. City of Chicago, 561 U.S. 742, 786 (2010); *Bruen*, 597 U.S. at 81 (Kavanaugh, J., concurring).

322. *See supra* Section III.A.

323. *See supra* notes 304–308 and accompanying text.

324. *See supra* note 305 and accompanying text.

commitment requires a finding of danger "in nearly every state."[325] That commitment standard means that anyone disarmed under § 922(g)(4) has actually received a judicial finding of danger, like the defendant in *Rahimi*.[326] Moreover, because such people have not yet obtained statutory relief, courts can infer that no authority has determined them *not* to be dangerous.[327]

Second, Congress may disarm committed persons because such persons have perpetrated violent acts or threatened public safety.[328] This conclusion follows from the evidence required in commitment proceedings.[329] All involuntarily committed persons have inflicted or threatened harm to others, which makes them violent,[330] or demonstrated a risk of self-harm, which jeopardizes public safety.[331]

Third, Congress may disarm committed persons because such persons are members of a group that Congress has deemed dangerous by enacting § 922(g)(4).[332] This categorical designation is likely legitimate because it burdens a narrow class,[333] is supported by findings that mentally ill persons pose a heightened risk of crime or suicide,[334] and reflects a consensus that such persons should be disarmed.[335] Moreover, the designation evokes historical laws that restricted the rights of dangerous lunatics through commitment or estate forfeiture.[336]

However, the presumptive lawfulness of disarming committed persons will not support disarmament in every case.[337] If the government cannot show that an individual challenger to § 922(g)(4) poses "a clear and present danger,"[338] has violent tendencies,[339] or is at a heightened risk of

325. United States v. Gould, 672 F. Supp. 3d 167, 180 (S.D.W. Va. 2023).

326. *Compare id.* (mental health commitment), *with* United States v. Rahimi, 602 U.S. 680, 702 (2024) (domestic violence restraining order).

327. *See supra* Section II.A.3.

328. *See supra* note 306 and accompanying text.

329. *See, e.g.*, Mental Health Procedures Act, 50 PA. STAT. § 7301(b) (2025).

330. *See id.* § 7301(b)(1).

331. *See id.* § 7301(b)(2).

332. *See supra* notes 307–308 and accompanying text.

333. *See* Lee & Cohen, *supra* note 1 (finding a 2014 commitment rate of 357 per 100,000 people, or 0.357%).

334. *See* United States v. Gould, 672 F. Supp. 3d 167, 182 (S.D.W. Va. 2023) (discussing the legislative history of § 922(g)(4)).

335. *See* Susan McMahon, *Gun Laws and Mental Illness: Ridding the Statutes of Stigma*, 5 U. PA. J.L. & PUB. AFF. 133, 164 n.167 (2020) (collecting state statutes).

336. *See supra* Section II.E.2.

337. *See Range I*, 69 F.4th 96, 112 (3d Cir. 2023) (Ambro, J., concurring), *cert. granted*, *judgment vacated sub nom.* Garland v. Range, 144 S. Ct. 2706 (2024) (noting that "presumptions . . . can be rebutted").

338. Mental Health Procedures Act, 50 PA. STAT. § 7301(b) (2025).

339. *See* Kanter v. Barr, 919 F.3d 437, 454 (7th Cir. 2019) (Barrett, J., dissenting), *abrogated by* N.Y. State Rifle & Pistol Ass'n v. Bruen, 597 U.S. 1 (2022).

crime or suicide,[340] then the law would still be unconstitutional as applied to the challenger.[341]

### 3. A Dangerousness Standard Avoids a Regulatory Straightjacket

Finally, *Bruen* advised that historical analysis should not create a "regulatory straightjacket" requiring a "historical twin" to justify a modern law.[342] But *Range II* appears to do exactly that by demanding that a historical analogue burden a similar group exactly like a modern law.[343] As Judge Krause observed, such an approach leaves little room for modern laws that do not mirror historical ones.[344] Judge Ambro, writing in *Range I*, also called for a more nuanced framework to preserve the felon ban in other contexts, such as those involving violent crime.[345] That nuance will remain necessary if courts extend *Range II* to § 922(g)(4) or other categorical prohibitions.[346]

A dangerousness standard offers greater flexibility to regulators. Any disarmament would be permissible if the government could demonstrate that an individual fits one of three criteria for dangerousness.[347] Indeed, this standard could conceivably justify the disarmament of every § 922(g) group: felons, fugitives, unlawful drug users, mentally ill persons, unlawful aliens, dishonorably discharged persons, renounced citizens, persons subject to domestic violence restraining orders, and domestic violent misdemeanants.[348]

Still, the dangerousness standard does not grant lawmakers a regulatory blank check, which would also contradict *Bruen*.[349] Indeed, § 922(g) would still be unconstitutional as applied to nonviolent felons like Mr. Range,[350] and to formerly committed persons who have fully recovered and may safely possess a firearm.[351]

340. *See* United States v. Gould, 672 F. Supp. 3d 167, 182 (S.D.W. Va. 2023).

341. *See Range I*, 69 F.4th at 112 (Ambro, J., concurring). Alternatively, courts might burden the challenger to show that they are safe to possess a firearm. *See Range II*, 124 F.4th 218, 277 (3d Cir. 2024) (Krause, J., concurring).

342. *Bruen*, 597 U.S. at 30.

343. *See Range II*, 124 F.4th at 279 (Krause, J., concurring).

344. *See id.*

345. *See Range I*, 69 F.4th at 112–13 (Ambro, J., concurring).

346. *See* 18 U.S.C. § 922(g).

347. *See supra* notes 304–308 and accompanying text.

348. *See* 18 U.S.C. § 922(g).

349. *See* N.Y. State Rifle & Pistol Ass'n v. Bruen, 597 U.S. 1, 30 (2022).

350. *See Range I*, 69 F.4th at 112 (Ambro, J., concurring); *Range II*, 124 F.4th 218, 277 (3d Cir. 2024) (Krause, J., concurring).

351. *See supra* Section III.B.2.

## IV. CONCLUSION

*Range v. Attorney General* casts doubt on the constitutionality of § 922(g)(1), a longstanding gun ban for felons. By extension, the Third Circuit's aggressive application of *Bruen* risks undermining § 922(g)(4), an equally longstanding gun ban for the involuntarily committed. However, history offers a different path forward. Future Second Amendment cases should focus on dangerousness to determine who may be disarmed. A dangerousness standard better accords with *Bruen* because it reflects historical tradition, maintains the presumptive lawfulness of gun bans for the mentally ill, and avoids a regulatory straightjacket.

In practice, recognizing dangerousness as the touchstone for disarmament would reduce the need for case-by-case historical analysis of Second Amendment claims. It would also promote constitutional relief for certain people restricted under § 922(g). Plaintiffs could sue for their gun rights in federal court instead of relying on statutory mechanisms controlled by state courts and Congress. Meanwhile, defendants charged with violating § 922(g) would have a Second Amendment defense that burdens the prosecutor to prove dangerousness. Governments would retain the power to disarm people who threaten public safety, and recovered mental patients would get a second chance to enjoy their Second Amendment rights.