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3 **IN THE UNITED STATES DISTRICT COURT**  
4 **FOR THE DISTRICT OF COLUMBIA**

5 UNITED STATES OF AMERICA,

Case No. 1-22-cr-00001-JEB

6 v.

7 DANIEL SHAW,  
8

9  
10 **DEFENDANT’S OPPOSITION TO GOVERNMENT’S MOTION TO IMPOSE**

11 **PROBATION CONDITION**

12 **BACKGROUND**

13 On March 17, 2023, the Court sentenced defendant Daniel Shaw to 24 months’ probation, a  
14 condition of which is 10 days’ imprisonment with credit for time served for one count of Parading,  
15 Demonstrating, or Picketing in a Capitol Building, a misdemeanor violation of 40 U.S.C.  
16 § 5104(e)(2)(G), 40 U.S.C. § 5109(b). Dkts. 40, 42. The defense objected to the government and  
17 probation’s request that the Court impose a probation condition restricting Mr. Shaw’s right to access  
18 and possess firearms. Dkts. 34, 38. The Court, after hearing initial argument from the parties, ordered  
19 the government to file a motion if it wanted the condition imposed. The government did so, Dkt. 43, and  
20 the defense now responds.

21 **ARGUMENT**

22 The proposed probation condition restricting Mr. Shaw’s access and possession to firearms should  
23 not be imposed because it is unsupported by 18 U.S.C. § 3563(d), which governs the Court’s imposition  
24 of discretionary conditions of probation and violates Mr. Shaw’s Second Amendment right to bear arms.  
25 The condition proposed by probation states that Mr. Shaw have “no possession or access to firearms  
26 and/or dangerous weapons during supervision.” Presentence Report, Dkt. 35 ¶ 69.<sup>1</sup>

27 <sup>1</sup> The Standard Conditions of Supervision also include a firearm restriction: “You must not own,  
28 possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e.,  
anything that was designed, or was modified for, the specific purpose of causing bodily injury or death  
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1 **I. 18 U.S.C. § 3563(d) does not support imposition of the firearm restriction.**

2 The government’s proposed firearm ban upon Mr. Shaw is untethered to his individual  
3 circumstances and based upon generic safety concerns. Dkt. 43 at 2, 7. This indiscriminate application is  
4 at odds with the requirements for imposing discretionary conditions of probation.

5 District courts may impose discretionary conditions of probation per 18 U.S.C. § 3563(b) “to the  
6 extent that such conditions are reasonably related to the factors set forth in section 3553(a)(1) and (a)(2)  
7 and to the extent that such conditions involve only such deprivations of liberty or property as are  
8 reasonably necessary for the purposes indicated in section 3553(a)(2).” Section 3553(a)(1) includes the  
9 nature and circumstances of the offense and the history and characteristics of the defendant. Section  
10 3553(a)(2) provides the need for the sentence imposed “(A) to reflect the seriousness of the offense, to  
11 promote respect for the law, and to provide just punishment for the offense; (B) to afford adequate  
12 deterrence to criminal conduct; (C) to protect the public from further crimes of the defendant; and (D) to  
13 provide the defendant with needed educational or vocational training, medical care, or other correctional  
14 treatment in the most effective manner.”

15 A complete ban on Mr. Shaw’s access to firearms is not reasonably related to the 3553(a)(1) and  
16 (a)(2) factors because Mr. Shaw’s personal circumstances, the nature of his offense, and his conduct  
17 demonstrate he is not a continuing danger to the public. First, Mr. Shaw’s personal history and  
18 characteristics are void of any indication of danger to others, violence, physical abuse, or improper gun  
19 or weapon use. His only prior conviction is a 2017 DUI and related child cruelty offense (his son was in  
20 the vehicle) for which he was sentenced to 90 days’ jail and 48 months’ probation. PSR ¶ 26. There is no  
21 indication that he been violent or threatened anyone physically or with a weapon in his 56 years of life.  
22 Rather, he has strong work history with 25 years as an operating engineer and he is now permanently  
23 disabled due to injuries from his career of physically demanding work. PSR ¶¶ 39, 40, 51. Second, as the  
24 government concedes, Mr. Shaw did not engage in any violent conduct as part of his underlying offense  
25 that might suggest he presents a danger. Dkt. 43 at 7. In sum, there is nothing about Mr. Shaw’s history  
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28 to another person such as nunchakus or tasers). The Special Condition of Supervision states: “Firearm  
Restriction – You shall remove firearms, destructive devices, or other dangerous weapons from areas  
over which you have access or control until the term of supervision expires.”

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1 and characteristics nor his offense that suggests dangerousness, let alone that a complete ban on firearms  
2 is *reasonably* related to the § 3553(a)(1) factors. *See* 18 U.S.C. § 3563(b).

3 As to the factors set forth in § 3553(a)(2), a complete firearm ban is also not reasonably related.  
4 The Court has already determined the appropriate sentence to “reflect the seriousness of the offense, to  
5 promote respect for the law, and to provide just punishment.” § 3553(a)(2)(A). As the Court determined,  
6 Mr. Shaw must serve 10 days’ imprisonment and 24 months’ probation, pay restitution of \$500, and  
7 contribute community service hours. Dkt. 40. Were the Court to have determined that Mr. Shaw’s  
8 offense required greater punishment, it would have done so with the sentence imposed. The proposed  
9 firearm ban is also not necessary for deterrence to criminal conduct. § 3553(a)(2)(B). Again, Mr. Shaw’s  
10 history does not indicate that he is someone who repeatedly commits criminal offenses. His prior DUI  
11 was connected to his alcoholism, but he has been sober since his life-altering car accident in 2017. PSR  
12 ¶ 46. Mr. Shaw expressed remorse and stated that he wished he could take back his conduct at the  
13 sentencing hearing for the present offense in which he made the poor and unlawful decision to get swept  
14 him in the movement of individuals rioting at the capitol. Further, taking away Mr. Shaw’s access to  
15 firearms does not reasonably relate to deterrence where here, none of Mr. Shaw’s history indicates that  
16 firearms are linked or have assisted in his limited criminal conduct. Further, for the reasons stated, Mr.  
17 Shaw does not pose a danger to the public such that restricting his access to firearms is necessary to  
18 protect the public. § 3553(a)(2)(C). The government cites to the need to protect probation officers and  
19 the public by restricting Mr. Shaw’s access to firearms, but it offers no specific information as to why  
20 Mr. Shaw is a danger. Dkt. 43 at 7. The only argument they appear to offer is that firearms generally,  
21 can be dangerous and may hinder a probation officer’s ability to supervise an individual because of the  
22 heightened risk that firearm possession creates. While safety for all might be generally increased with  
23 lesser access to firearms, that is not the inquiry. The government’s general argument is an insufficient  
24 justification that fails to show why a ban on firearms *for Mr. Shaw specifically* is *reasonably related* to  
25 the goal of protecting the public “from further crimes of the defendant.” *See* § 3553(a)(2)(C). Finally,  
26 the government has made no argument to show why a firearm ban is reasonably related to providing Mr.  
27 Shaw with “needed educational or vocational training, medical care, or other correctional treatment in  
28 the most effective manner.” § 3553(a)(2)(D).

1 In addition to the requirement that the probation condition be reasonably related to § 3553(a)(1)  
2 and (a)(2) factors, the condition must “involve only such deprivations of liberty or property as are  
3 reasonably necessary for the purposes indicated in section 3553(a)(2).” 18 U.S.C. § 3563(b). Here, Mr.  
4 Shaw’s liberty interests in his Second Amendment right to bear arms and his property rights are severely  
5 implicated by the complete firearm ban. Mr. Shaw lawfully possesses firearms for hunting and for self-  
6 defense. Along with his teenage son, he resides in a semi-rural area in Santa Rosa, California. Mr. Shaw  
7 tends to his land there and has long enjoyed hunting with his son and friends. Mr. Shaw has shown that  
8 he is a responsible custodian of his Second Amendment rights, with no indication that he has ever  
9 improperly used firearms or exercised dangerous behavior. As discussed below, Mr. Shaw’s Second  
10 Amendment right is a significant liberty interest. Because there is nothing to suggest that Mr. Shaw  
11 poses a danger to the public and because of his history of lawful firearm use, the complete ban on his  
12 lawfully-owned firearms is a greater deprivation of his liberty and property than in reasonably necessary  
13 to achieve the sentencing goals in § 3553(a)(2).

14 Again, the government’s general references to the safety of the public and probation officers are  
15 insufficient to meet the standard set forth for applying conditions in 18 U.S.C. § 3563(b). Although  
16 restriction on firearm access is one of the possible, additional conditions of probation that can be  
17 imposed, 18 U.S.C. § 3563(b)(8), any discretionary condition must still not impose a greater deprivation  
18 of liberty than is reasonably necessary based on the individual circumstances of a defendant. And while  
19 the probation officer’s ability to supervise a defendant without risk to safety caused by the possession of  
20 weapons may certainly be a concern in some cases, the government has pointed to no reason why those  
21 concerns apply specifically in this case given Mr. Shaw’s circumstances and history. The government  
22 nor probation has identified any information that would suggest Mr. Shaw’s firearm possession presents  
23 a particular danger to probation officers or their ability to supervise him. In fact, Mr. Shaw was on  
24 pretrial release without a single violation for a year and approximately three months. Although the  
25 government may respond that he was without his firearms during this time, this does not suggest that he  
26 a restriction is still needed, but instead, his long period of perfectly compliant supervision suggests that  
27 he will continue to not pose problematic behavior during his term of probation. Should any concerning  
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1 behavior arise, probation or the government could notify the Court and the Court could then consider  
2 whether modification of conditions was necessary.

3 In sum, the government has failed to demonstrate why a complete ban on Mr. Shaw's access to  
4 his lawfully-possessed firearms is a reasonably necessary deprivation of his rights to achieve the  
5 sentencing factor goals. The Court must look to the particular factors in this case and the standard in  
6 § 3563(b). Further, practical precautions can be taken by Mr. Shaw putting the firearms away and/or  
7 stored on his property when the probation officer visits and so informing the officer.

8  
9 **II. A complete ban on Mr. Shaw's access and possession of firearms violates his Second  
Amendment Constitutional rights**

10 **A. The Second Amendment's plain text presumptively protects Mr. Shaw's right to keep and  
11 bear arms during the term of his misdemeanor probation.**

12 The government claims that the Supreme Court has defined the Second Amendment right to keep  
13 and bear arms as a right belonging to "law-abiding, responsible" citizens. Dkt. 43 at 3. It then argues  
14 that, because Mr. Shaw has been convicted of violating 40 U.S.C. § 5104(e)(2)(G), he is not "law-  
15 abiding," and therefore is not within the Second Amendment's plain text. While this argument is  
16 dubious even in the context of felony convictions, it is truly remarkable when invoked in the context of a  
17 *misdemeanor* conviction, as here. The government's argument misapprehends the Supreme Court's  
18 seminal decisions in *Heller*<sup>2</sup> and *Bruen*<sup>3</sup>, and would reinstitute interest-balancing and deference to  
19 legislatures' policy preferences, despite *Bruen*'s forceful repudiation of those approaches. The Court  
20 must reject it.

21 More than two centuries after the Bill of Rights was ratified, the Supreme Court, relying on the  
22 constitutional text and historical evidence, held that the Second Amendment codified a pre-existing  
23 "individual right to possess and carry weapons in case of confrontation" that does not depend on service  
24 in the militia. *Heller*, 554 U.S. at 592, 624. Although *Heller* "[le]ft to future evaluation" the right's full  
25 scope, it stated that the Second Amendment surely elevates above all other interests the right of law-  
26 abiding, responsible citizens to use arms in defense of hearth and home." *Id.* at 635.

27  
28 <sup>2</sup> *District of Columbia v. Heller*, 554 U.S. 570 (2008).

<sup>3</sup> *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S.Ct. 2111 (2022).

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1 The D.C. Circuit and other courts identified this as the “core of the Second Amendment,” and  
2 developed a two-step inquiry for deciding constitutional challenges. *See, e.g., Heller v. District of*  
3 *Columbia*, 670 F.3d 1244, 1255-58 (D.C. Cir. 2011). First, courts asked if “the challenged law burdens  
4 conduct protected by the Second Amendment,” “as historically understood”; second, courts applied  
5 either strict or intermediate scrutiny depending on whether the challenged law substantially burdened the  
6 “core” right. *Id.* Both forms of scrutiny involved weighing the government’s interest in the regulation  
7 against the challenger’s Second Amendment interests. *Bruen*, 142 S.Ct. at 2126-27.

8 *Bruen* repudiated this approach, which contravened both *Heller*’s methodology and its express  
9 rejection of means-end balancing. *Id.* at 2129-30. Instead, courts must ask whether “the Second  
10 Amendment’s plain text covers an individual’s conduct.” *Id.* at 2138, 2126. If it does, then “the  
11 Constitution presumptively protects that conduct.” *Id.* at 2126, 2129-30.

12 To rebut this presumption, “the government may not simply posit that [a] regulation promotes an  
13 important interest,” but “must demonstrate that the regulation is consistent with this Nation’s historical  
14 tradition of firearm regulation.” *Id.* at 2126. Only if the government meets its burden “may a court  
15 conclude that the individual’s conduct falls outside the Second Amendment’s unqualified command.” *Id.*  
16 at 1026 (internal quotations omitted). If “no such tradition” exists, then the challenged regulation is  
17 unconstitutional. *Id.* at 2132. Applying this framework, *Bruen* struck down New York’s requirement that  
18 a concealed carry applicant demonstrate “proper cause,” because the state respondents “have not met  
19 their burden to identify an American tradition justifying the ... requirement.” *Id.* at 2156.

20 *Bruen*, then, directs courts to begin by asking whether “the Second Amendment’s plain text  
21 covers an individual’s conduct.” 142 S. Ct. at 2129-30. It is indisputable that Mr. Shaw seeks to continue  
22 possessing his lawfully-acquired firearms for the purpose of self-defense. He is also an American  
23 citizen, so part of “the people” protected by the Second Amendment.

24 To begin, *Heller* held that “the people” is a “term of art” that bears a uniform meaning in the  
25 First, Second, Fourth, and Ninth Amendments, and comprises “all members of the political community,  
26 not an unspecified subset.” *Id.* at 580-81. To so hold, it explained that the First, Fourth, and Ninth  
27 Amendments “unambiguously refer to individual rights, not ‘collective’ rights[.]” *Id.* at 579-80. And  
28 while three other constitutional provisions (the preamble, Section 2 of Article I, and the Tenth

1 Amendment) “arguably” refer to “the people” acting collectively, they deal with the exercise or  
2 reservation of powers, not rights. *Id.* Critically, all six provisions “unambiguously refer to all members  
3 of the political community, not an unspecified subset.” *Id.* at 580 (citing *United States v. Verdugo–*  
4 *Urquidez*, 494 U.S. 259, 265 (1990) (in Fourth Amendment case, holding that “‘the people’ protected by  
5 the Fourth Amendment, and by the First and Second Amendments, and to whom rights and powers are  
6 reserved in the Ninth and Tenth Amendments, refers to a class of persons who are part of a national  
7 community or who have otherwise developed sufficient connection with this country to be considered  
8 part of that community.”)).

9 By contrast, the Second Amendment’s prefatory clause references the “Militia,” which “in  
10 colonial America consisted of a subset of ‘the people’—those who were male, able bodied, and within a  
11 certain age range.” *Id.* This tension confirmed that the prefatory clause did not limit the operative clause,  
12 but merely announced the purpose for which the right was codified. *Id.* at 578-81, 598-600.

13 The phrase “the people,” then, created “a strong presumption that the Second Amendment right  
14 is exercised individually and belongs to all Americans.” *Id.* And combined with the common meaning of  
15 the phrase “keep and bear arms,” which was not limited to the military context, it established that the  
16 operative clause “guarantee[s] the individual right to possess and carry weapons in case of  
17 confrontation.” *Id.* at 592.

18 *Heller*’s discussion of “the people” was thus integral to its reasoning and ultimate holding. And  
19 *Heller* unambiguously held that “the people” in the Second Amendment, like “the people” in the First  
20 and the Fourth Amendments, includes all members of the national community, “not an unspecified  
21 subset.” *Heller*, 554 U.S. 580. Courts have so recognized. *See, e.g., United States v. Rahimi*, 61 F.4th  
22 443, 451-53 (5th Cir. 2023) (rejecting the government’s “law-abiding” “gloss on the Second  
23 Amendment” in light of *Heller*’s “exposition of ‘the people,’” and holding that defendant subject to  
24 domestic violence protective order “while hardly a model citizen, is nonetheless among “the people”  
25 entitled to the Second Amendment’s guarantees”); *United States v. Jimenez-Shilon*, 34 F.4th 1042,  
26 1044–45 (11th Cir. 2022) (discussing “*Heller*’s ‘national community’-focused definition of ‘the  
27 people’” and remarking that it “finds support in Founding-era dictionaries”); *United States v. Meza-*  
28 *Rodriguez*, 798 F.3d 664, 670-71 (7th Cir. 2015) (“the term ‘the people’ in the Second Amendment has

1 the same meaning as it carries in other parts of the Bill of Rights” and therefore extends to all “persons  
2 who are part of a national community,” including undocumented immigrants with substantial  
3 connections to the country); *Kanter v. Barr*, 919 F.3d 437, 453 (2019) (Barrett, J., dissenting) (“[T]he  
4 Court interpreted the word ‘people’ as referring to ‘all Americans.’ . . . Neither felons nor the mentally  
5 ill are categorically excluded from our national community.”).

6 The government does not acknowledge *Heller*’s holding regarding “the people,” and contends  
7 that it defined the Second Amendment right as “belonging to ‘law-abiding, responsible citizens.’” Dkt.  
8 43 at 3 (citing *Heller*, 554 U.S. at 635). What *Heller* actually said is that “whatever else [the Second  
9 Amendment] leaves to future evaluation, it surely elevates above all other interests the right of law-  
10 abiding, responsible citizens to use arms in defense of hearth and home.” *Heller*, 554 U.S. at 635. By  
11 beginning this passage with “whatever else it leaves to future evaluation,” the Court made clear that its  
12 reference to “law-abiding, responsible citizens” established a Second Amendment floor, not a ceiling.

13 *Heller*’s “‘law-abiding citizens’ . . . passage[] did not reflect an attempt to define the term  
14 ‘people.’” *Meza-Rodriguez*, 798 F.3d at 669. Rather, *Heller* merely “established [that] the Second  
15 Amendment applies to law-abiding and peaceable citizens *at the very least*.” *Stimmel v. Sessions*, 879  
16 F.3d 198, 204-05 (6th Cir. 2018) (emphasis added). *Heller*’s “law-abiding” language does not  
17 “demarcate [the Second Amendment’s] outer limit” or “exclude[]” anyone from the amendment’s  
18 coverage. *Id.* Indeed, it would have been very strange for the *Heller* Court to amend, *sub silentio*, its  
19 express holding that “the people” comprise “all Americans.” *Id.* at 580.

20 *Bruen* confirms this reading of *Heller*. The passage from *Heller* cited above references law-  
21 abiding, responsible citizens’ right to use arms “in defense of hearth and home.” If that passage were  
22 meant to mark off the outer edges of the Second Amendment right, then even law-abiding, responsible  
23 citizens would have no right to use firearms outside the home. But *Bruen* held the need for self-defense  
24 and thus the Second Amendment right extend outside the home, and explained that *Heller* “did not  
25 suggest that the need was insignificant elsewhere.” 142 S. Ct. at 2135. *Bruen* thus confirms that *Heller*’s  
26 “law-abiding, responsible citizens” language cannot be read as a limitation on the Second Amendment.

27 The government claims that *Bruen* itself limited the Second Amendment to “law-abiding,  
28 responsible citizens.” Dkt. 43 at 3-4. It is true that at several points, *Bruen* describes its holding by using

1 the term “law-abiding.” *See, e.g., Bruen*, 142 S. Ct. at 2156. But “that description can’t be read as  
2 breaking new ground with respect to who make up ‘the people’ protected by the Second Amendment.”  
3 *United States v. Harrison*, --F.Supp.3d--, 2023 WL 1771138, at \*4 n.20 (W.D. Okla. Feb. 3, 2023)  
4 (holding that 18 U.S.C. § 922(g)(3) is unconstitutional as applied to unlawful user of marijuana). *Bruen*  
5 repeated the “law-abiding” designation because the petitioners in that case alleged, “[a]s set forth in the  
6 pleadings below,” that they were “law-abiding, adult citizens,” and the Court granted certiorari to decide  
7 only whether “New York’s denial of *petitioners*’ license applications violated the Constitution.” *Bruen*,  
8 142 S. Ct. at 2124-25 (emphasis added). “The issue of whether a non-law-abiding citizen qualifies for  
9 Second Amendment protection was not before the Court,” *United States v. Goins*, 2022 WL 17836677,  
10 at \*5 (E.D. Ky. Dec. 21, 2022), so *Bruen*’s reference to the petitioners as “law-abiding” is, “at best, . . .  
11 dicta.” *Harrison*, 2023 WL 1771138, at \*4 n.20.

12 In fact, *Bruen* reaffirmed “*Heller*’s holding that ‘the people’ includes ‘all members of the  
13 political community,’ not just ‘an unspecified subset,’” and *Bruen*’s “reference in dicta to ‘law-abiding  
14 citizens’ cannot possibly be read as overturning the very holding upon which it relies.” *Id.*; *see Bruen*,  
15 142 S. Ct. at 2134, 2156 (citing *Heller*’s “people” holding, 554 U.S at 580, 581). Unsurprisingly, a  
16 growing number of courts have rejected the government’s “law-abiding” “gloss” on the Second  
17 Amendment. *See, e.g., Rahimi*, 61 F.4th at 451-53; *Harrison*, 2023 WL 1771138, at \*4 & nn. 20-21;  
18 *Harrison*, 2023 WL 1771138, at \*4 & nn. 19-20 (“The United States argues . . . that marijuana users are  
19 lawbreakers, and lawbreakers aren’t part of “the people” whose rights are protected by the Constitution.  
20 But this is precisely the sort of carving out of a subset from ‘all Americans’ that the *Heller* Court  
21 rejected.”); *United States v. Carrero*, 2022 WL 9348792, at \*2 (D. Utah Oct. 14, 2022) (convicted  
22 felons); *United States v. Williams*, 2022 WL 18285005, at \*2 (N.D. Ga. Nov. 14, 2022) (same); *Campiti*  
23 *v. Garland*, 2023 WL 143173, at \*3 (D. Conn. Jan. 10, 2023) (same).

24 The Court should do the same. It should also recognize the government’s argument for what it is:  
25 a thinly-veiled attempt to disregard the Supreme Court’s prescriptions in *Heller* and *Bruen* and return to  
26 an interest-balancing regime. Indeed, the government invites the Court to treat Congress’s decision to  
27 criminalize certain conduct—even as a *misdemeanor*—as definitive proof that individuals who  
28 committed that conduct are insufficiently “law-abiding” to enjoy Second Amendment protection. *See*

1 *Harrison*, 2023 WL 1771138, at \*4 n.21 (characterizing the “law-abiding” argument “as an outright  
2 declaration of the federal government’s belief that it can deprive practically anyone of their Second  
3 Amendment right.”). But in eschewing interest-balancing, *Bruen* rejected deferring to legislative  
4 judgments about the scope of Second Amendment rights, explaining that “it is not deference that the  
5 Constitution demands here.” 142 S.Ct. at 2131. Rather, it is the balance “struck by the traditions of the  
6 American people...that demands [courts’] unqualified deference.” *Id.* The Second Amendment, after all,  
7 protects a pre-existing, fundamental right, “enshrined with the scope [it was] understood to have *when*  
8 *the people adopted [it]*,” *id.* at 2136 (emphasis in original), not the scope that Congress or state  
9 legislatures would deign to give it. *See United States v. Chovan*, 735 F.3d 1127, 1148 (9th Cir. 2013)  
10 (Bea, J., concurring) (“The boundaries of this right are defined by the Constitution. They are not defined  
11 by Congress.”).

12 The government’s argument, furthermore, “admits to no true limiting principle” and, under its  
13 reading, Congress could remove “‘non-law-abiding’ people—however expediently defined—from the  
14 scope of the Second Amendment.” *Rahimi*, 61 F.4th at 543. But “[n]either *Heller* nor *Bruen*  
15 countenances such a malleable scope of the Second Amendment’s protections; to the contrary, the  
16 Supreme Court has made clear that ‘the Second Amendment right is exercised individually and belongs  
17 to all Americans,’” *Id.* (quoting *Heller*, 554 U.S. at 581). Mr. Shaw is therefore among “the people”  
18 whose conduct is presumptively protected by the Second Amendment.

19 The government makes another unavailing textual argument. It claims that, “as historically  
20 understood,” “the Second Amendment’s text” allowed people to be disarmed for “‘crimes committed,’  
21 either permanently or at least during the duration of their sentences.” Dkt. 43 at 4-5. The government  
22 first notes that the 1689 English Bill of Rights, which “has long been understood to be the predecessor to  
23 our Second Amendment,” *Heller*, 554 U.S. at 593, protected the rights of “Protestants” to “‘have Arms  
24 for their Defence suitable to their Conditions, and as allowed by Law,’” from which the government  
25 concludes that “those who violated the law could be prevented from possessing guns.” Dkt. at 4. Even  
26 assuming that is the best interpretation of the English Declaration, it is irrelevant to the Second  
27 Amendment, whose text contains neither of those restrictions, much less a restriction on misdemeanants’  
28 firearm possession. *See Kanter*, 919 F.3d at 457 n.5 (Barrett, J., dissenting) (“[T]he the right protected

1 by the Second Amendment was decidedly broader than the one protected in the English Bill of  
2 Rights.”); JOYCE LEE MALCOLM, *TO KEEP AND BEAR ARMS* at 162 (1994) (in addition to the  
3 limitations to Protestants and type and quantity of arms as “suitable” to a person’s “condition,” “[t]he  
4 English also included the proviso that the right to have arms was to be ‘as allowed by law.’ Americans  
5 swept aside these limitations and forbade any ‘infringement’ upon the right of the people to keep and  
6 bear arms.”).<sup>4</sup>

7 The government also cites a proposal from Pennsylvania’s constitutional ratifying convention  
8 that would have denied the arms right “unless for crimes committed, or real danger of public injury.”  
9 Dkt. 43 at 5.<sup>5</sup> But this *proposal*, by a *minority* of the Pennsylvania ratifying convention, did not “ma[k]e  
10 its way into the Second Amendment” and didn’t even “carr[y] a majority of its convention.” *Kanter*, 919  
11 F.3d at 455 (Barrett, J., dissenting); *see also Folajtar v. Att’y Gen. of the United States*, 980 F.3d 897,  
12 915 (3d Cir. 2020) (Bibas, J., dissenting) (“A single failed proposal is too dim a candle to illumine the  
13 Second Amendment’s scope.”); *Harrison*, 2023 WL 1771138, at \*14 (similar). Because the proposal  
14 “w[as] not enacted,” it is “not reflective of the Nation’s early understanding of the scope of the Second  
15 Amendment right.” *Rahimi*, 59 F.4th at 457. Thus, this proposal “cannot counter the Second  
16 Amendment’s text, or serve as an analogue ... because, inter alia, [it was] not enacted.” *Id.* at 457.<sup>6</sup>

17 \_\_\_\_\_  
18 <sup>4</sup> Furthermore, the English Bill of Rights “‘like all written English rights it was held only against the  
19 Crown, not Parliament,’” and therefore an “absolute legislative-discretion principle is based on a faulty  
20 conflation of two entirely different constitutional systems and is inconsistent with the very foundations  
21 of our Nation’s constitutional structure.” *Harrison*, 2023 WL 1771138, at \*22 n. 158 (quoting *Heller*,  
22 554 U.S. at 593).

23 <sup>5</sup> The government correctly notes that *Heller* identified this proposal “as ‘highly influential’ in the run-  
24 up to the Second Amendment, but it did so in the context of concluding that the Amendment codified an  
25 individual right not limited to militia service. 128 S.Ct. at 2804. There is no reference in *Heller* to the  
26 ‘unless’ clause in the Pennsylvania dissenters’ proposal, and needless to say, this limiting language did  
27 not find its way into the Second Amendment.” *United States v. Skoien*, 614 F.3d 638, 648 (7th Cir.  
28 2010) (Sykes, J., dissenting); *see also Harrison*, 2023 WL 1771138, at \*14 (similar).

<sup>6</sup> The *Rahimi* court made the same point regarding Samuel Adams’s proposal at the Massachusetts  
convention to limit the scope of the Second Amendment right to “peaceable citizens.” The Supreme  
Court has also admonished that “the drafting history of the Second Amendment—the various proposals  
in the state conventions and the debates in Congress”—is a “dubious” source for Second Amendment  
interpretation, as the Second Amendment was “widely understood to codify a pre-existing right, rather  
than to fashion a new one.” *Heller*, 554 U.S. at 603; *see also id.* at 590. That admonishment is  
particularly well taken here, given that the Pennsylvania Minority proposal differed from “proposals  
from other states that advocated a constitutional right to arms did not contain similar language of  
limitation or exclusion,” and “similar limitations or exclusions do not appear in any of the four parallel  
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1 In sum, the Second Amendment’s plain text covers Mr. Shaw’s conduct, so it is presumptively  
2 constitutional. The government therefore bears the burden of demonstrating that prohibiting a  
3 misdemeanor probationer from possession a firearm is consistent with the Nation’s tradition of firearm  
4 regulations. *Bruen*, 142 S. Ct. at 2130.

5 **B. The government has not identified an American tradition of prohibiting misdemeanants  
6 like Mr. Shaw from possessing firearms.**

7 Under *Bruen*, the character of the government’s burden varies depending on the type of  
8 regulation under scrutiny. The first type of regulation addresses “a general societal problem that has  
9 persisted since the 18th century.” *Id.* at 2131. To save such a regulation, the government must identify a  
10 “distinctly similar” historical regulation. *Id.* The government’s failure to do so constitutes evidence that  
11 the challenged regulation violates the Second Amendment. *Id.* If earlier generations addressed the  
12 societal problem through “materially different means,” that, too, constitutes evidence of the challenged  
13 regulation’s unconstitutionality. *Id.* And if there were failed historical efforts to enact analogous  
14 regulations, that experience would likewise “provide some probative evidence” of the challenged  
15 regulation’s unconstitutionality. *Id.*

16 The regulation in *Bruen*, like those in *Heller*, addressed the longstanding “societal problem” of  
17 “‘handgun violence,’ primarily in ‘urban area[s].’” *Id.* Notwithstanding population growth,  
18 technological changes, including in the operation and lethality of firearms, the unique challenges posed  
19 by organized crime, and innumerable other changes that would make modern-day urban America  
20 unrecognizable to our founders, the Court determined that the basic issue of handgun violence had  
21 persisted since the 18th century.

22 The second type of challenged regulation is one “implicating unprecedented societal concerns or  
23 dramatic technological changes.” *Id.* at 2132. Such “modern regulations that were unimaginable at the  
24 founding” “may require a more nuanced approach” that makes use of “reasoning by analogy.” *Id.* Under  
25 this approach, the government must identify “relevantly similar” historical regulations, which requires  
26 comparison of “how” and “why” the regulations burden the Second Amendment right. *Id.* at 2132–33.  
27 “[W]hether modern and historical regulations impose a comparable burden on the right of armed self

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state constitutional provisions enacted before ratification of the Second Amendment.” *Kanter*, 919 F.3d  
at 455 (Barrett, J., dissenting).

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1 and whether that burden is comparably justified are *central* considerations when engaging in an  
2 analogical inquiry.” *Id.* at 2133 (internal quotations omitted; italics in original). Analogical reasoning is  
3 “neither a regulatory straightjacket nor a regulatory blank check,” and the government must “identify a  
4 well-established and representative historical *analogue*, not a historical *twin*.” *Id.* at 2133 (emphasis in  
5 original). Therefore, “courts should not ‘uphold every modern law that remotely resembles a historical  
6 analogue, because doing so risks endorsing outliers that our ancestors would never have accepted.’” *Id.*  
7 (internal quotations omitted).

8 **1. The government’s regulations do not establish a historical tradition of disarming  
9 misdemeanants.**

10 The government appears to assume that the second type of inquiry (analogical reasoning) applies  
11 here. *See* Dkt. 43 at 6. But there is no question that misdemeanors, or offenses of equally or lesser  
12 gravity, existed at the founding and that commission of misdemeanor offenses is a long-standing societal  
13 problem. Therefore, the government must identify a “distinctly similar” historical regulation. *See Bruen*,  
14 142 S. Ct. at 2131. The government has not done so, but it fails in its burden even assuming *arguendo*  
15 that analogical reasoning applies.

16 The government argues that “a number of colonies or states near the time of the founding passed  
17 laws requiring misdemeanants to forfeit their guns,” and that “[t]emporarily preventing a person from  
18 possessing a firearm during his probation imposes a ‘comparable burden’ to these historical laws and is  
19 ‘comparably justified.’” Dkt. 43 at 6. But the government’s historical examples do not evidence *any*  
20 historical tradition.

21 The government offers *four* regulations: (1) a 1783 “Act in Addition to the Several Acts Already  
22 Made for the Prudent Storage of Gun Powder within the Town of Boston,” which allowed the Firewards  
23 of the Town of Boston to seize, out of safety concerns, any “cannon, swivels, mortars, howitzers,  
24 cohorns, fire arms, bombs, grenades, and iron shells of any kind, that shall be found .... charged with, or  
25 having in them any gun-powder”<sup>7</sup>; (2) a 1768 North Carolina Act designed “To Prevent Killing Deer At  
26 Unseasonable Times, And For Putting A Stop To Many Abuses Committed By White Persons Under  
27 Pretense Of Hunting,” which provided that “persons who have no settled habitation, or not tending five  
28 thousand corn hills, are prohibited from hunting, under the penalty of five pounds, and forfeiture of his

<sup>7</sup> *See* Declaration of Elisse Larouche (“Larouche Decl.”), ¶ 2, Ex. A.  
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1 gun[.]”<sup>8</sup>; (3) a 1771 New Jersey “Act for the Preservation of Deer, and other game, and to prevent  
2 trespassing with guns,” which provided that “one carry[ing] any gun on any lands not his own” pay a  
3 fine to the landowner or tenant in possession of the land<sup>9</sup>; and (4) a 1790 Massachusetts “Act for the  
4 Protection and Security of the Sheep and other Stock on Tarpaulin Cove Island, otherwise called  
5 Naushon Islands, and on Nennemessett Island, and several small islands contiguous, situated in the  
6 County of Dukes County” which required armed trespassers on the islands to forfeit their guns “or their  
7 value thereof” if sued and prosecuted. *Id.* § 2, 1 Private and Special Statutes of the Commonwealth of  
8 Massachusetts 258, 259 (Manning & Loring ed., 1805).<sup>10</sup>

9 This sparse record does not demonstrate a tradition of generally prohibiting misdemeanants from  
10 possessing firearms, and not even a tradition of forfeiting firearms used in a misdemeanor. The number  
11 of regulations is too small (four) and they are too unrepresentative to amount to “a *well-established* and  
12 *representative* historical analogue;” they are, in fact, “outliers.” *Bruen*, 142 S. Ct. at 2133 (emphases  
13 added; the Court’s italics omitted). The list only includes two types of misdemeanors (three are  
14 game/hunting regulations while one is a gunpowder safety regulation); two are localized regulations, not  
15 even applicable in an entire state or colony; and only two even allowed for seizure of the firearm  
16 involved in the offense, while one regulation allowed for payment of the value of the firearm instead of  
17 forfeiture, and one only allowed for payment of a fine. *See Bruen*, 142 S.Ct. at 2142 (“[W]e doubt that  
18 *three* colonial regulations could suffice to show a tradition of public-carry regulation.”).

19 Even assuming *arguendo* that these discrete regulations amount to a historical tradition of  
20 requiring the forfeiture of firearms used in a misdemeanor, they are not similarly or relevantly similar to  
21 a misdemeanor probationer ban. These regulations were prompted by safety concerns about gunpowder  
22 storage or the desire to protect the game inventory of landowners; by contrast, the requested condition is  
23 motivated by purported safety concerns posed by Mr. Shaw to Probation Officers or other people. *See*  
24 Dkt. 43 at 7; 18 U.S.C. §§ 3563(b), 3553(a)(2). And while two regulations allowed the seizure of the  
25 arm used in the offense but did not prohibit the person from possessing other arms or acquiring new  
26 ones, the requested condition would prohibit Mr. Shaw from possessing or acquiring any firearm during

27 <sup>8</sup> *See* Larouche Decl., ¶ 3, Ex. B.

28 <sup>9</sup> *See* Larouche Decl., ¶ 4, Ex. C.

<sup>10</sup> *See* Larouche Dec., ¶ 5, Ex. D.

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1 his term of probation, although the firearm had no connection whatsoever with the offense. The  
2 regulations and the requested condition, therefore, are not “distinctly similar,” and also fail both the  
3 “why” and “how” of analogical reasoning. Because they do not impose a “comparable burden” and are  
4 also not “comparably justified,” they are not relevantly similar. *Bruen*, 142 S.Ct. at 2133.

5 **2. The government’s argument that legislatures may disarm people they deem “not to be  
6 law-abiding and untrustworthy” contravenes *Bruen*.**

7 Alternatively, the government argues that “at the time of the founding, legislatures had the  
8 authority to disarm even non-violent people whom they deemed not to be law-abiding and trustworthy.”  
9 Dkt. 43 at 5-6. And because § 3563(b)(8) concerns “people who have violated the law or otherwise  
10 shown that they are untrustworthy,” its requested condition is “entirely consistent with the historical  
11 tradition.” *Id.* Not so.

12 The government’s argument rests on the historical treatment of felons at the founding<sup>11</sup> and  
13 Revolution-era regulations disarming certain groups who refused to swear their loyalty to their states or,  
14 in one state, those who criticized the legislature’s actions during the war for independence. *See id.* From  
15 these, the government deduces a broad principle: that our nation has a historical tradition of regulating  
16 *any* group whom legislatures consider non-law-abiding or untrustworthy, *even if that specific group was  
17 never disarmed at the founding.*

18 The government’s argument suffers of a serious methodological error: its purported historical  
19 comparison operate at far too high a level of generality. Under *Bruen*, however, narrow historical  
20 regulations do not support broad claims of regulatory authority. To the contrary, *Bruen* instructs that in  
21 carving out exceptions to “the Second Amendment’s unqualified command,” 142 S.Ct. at 2126, courts  
22 should proceed cautiously, defining those exceptions narrowly and concretely to ensure that they are  
23 consistent with the Nation’s historical tradition of firearms regulations.

24 *Bruen* modeled this cautious approach. There, New York claimed a general governmental power  
25 to regulate the public carrying of firearms. *Id.* at 2135. To support that claim, New York compared the  
26 proper-cause requirement to four types of regulation.

27 <sup>11</sup> In *Medina v. Whitaker*, 913 F.3d 152 (D.C. Cir. 2019), the D.C. Circuit held that “convicted felons are  
28 excluded from the scope of the Second Amendment” relying on an assortment of rationales, including  
the historical treatment of felons at the founding.

1 First, New York attempted to characterize the proper-cause requirement as a “‘sensitive places’  
2 law,” similar to historical prohibitions on carrying firearms in legislatures, polling places, and  
3 courthouses. *Id.* at 2133. Like these regulations, New York claimed, the proper-cause requirement  
4 restricted public carry in “places where people typically congregate and where law-enforcement and  
5 other public-safety professionals are presumptively available.” *Id.* The Court rejected that  
6 overgeneralization. By “expanding the category of ‘sensitive places’ simply to *all* places of public  
7 congregation that are not isolated from law enforcement,” New York “define[d] the category of  
8 ‘sensitive places’ far too *broadly*.” *Id.* at 2134 (emphases added). Instead, the Court demanded a clear  
9 “historical basis” for the comparison, which New York failed to provide. *Id.*

10 Second, New York cited the 1328 Statute of Northampton, which prohibited  
11 “bring[ing] . . . force in affray of the peace” and carrying armor or unusual weapons in public. *Id.* at  
12 2139-40 (citation omitted). Similar prohibitions were later codified in founding-era American statutes.  
13 *Id.* at 2142-46. The Court determined that the cited historical laws prohibited only “bearing arms in a  
14 way that spreads ‘fear’ or ‘terror’ among the people.” *Id.* at 2145. It therefore declined to infer from  
15 them that the government enjoys a “sweeping” power to pass “onerous public-carry regulations.” *Id.* at  
16 2139; *see also id.* at 2145.

17 The Court applied the same kind of analysis to New York’s third and fourth set of proffered  
18 regulations. Historical statutes proscribing *concealed* carry did not justify New York’s “*general*  
19 prohibition” on *all* modes of public carry (both concealed and open). *Id.* at 2146–47 & n.19. And  
20 historical “surety statutes,” which required a surety “only [by] those reasonably accused” of intending to  
21 do injury or breach the peace, and which could be avoided by a show of special need, did not validate a  
22 proper-cause requirement applicable indiscriminately to *all* New Yorkers. *Id.* at 2148–50.

23 In sum, “[a] survey of Anglo-American history” therefore revealed only a small number of  
24 “well-defined” restrictions on public carry: those that limited “the intent for which one could carry  
25 arms” (to terrorize the people), “the manner by which one carried arms” (concealed vs. open), “the  
26 exceptional circumstances under which one could not carry arms” (if a surety statute applied); and the  
27 exceptional places in which one could not carry arms (places historically deemed “sensitive”). *Id.* at  
28 2133, 2156. But New York could not extrapolate, from these specifics, a general power to regulate

1 public carry. Indeed, because New York did not demonstrate a tradition of “broadly prohibit[ing] the  
2 public carry of commonly used firearms for personal defense,” nor of requiring ““a special need for self-  
3 protection distinguishable from that of the general community’ in order to carry arms in public,” its  
4 proper-cause requirement was unconstitutional. *Id.* at 2156.

5 As in *Bruen*, the Court must reject the government’s attempt “to transform distinct historical  
6 examples into roving warrants applicable to whatever conduct it desire.” *Harrison*, \*19 n.134. “The trick  
7 goes something like this: Take a historical example that applied to a distinct class of persons (e.g.,  
8 [felons and those suspected of disloyalty]), extract from it a broad principle (e.g., [claim of broad  
9 regulatory power over people ‘deemed not to law-abiding and trustworthy’]), and then fit into that broad  
10 category whole new classes of people (e.g., [misdemeanant probationers]), even if they aren’t remotely  
11 the sort of persons that were historically regulated.” *Id.* It is an overgeneralization maneuver that *Bruen*  
12 already rejected, and the government may not distill such “broad” and “general” powers from  
13 “particular” prohibitions. 142 S. Ct. at 2145, 2147 & n.19; *see also Rahimi*, 61 F.4th at 456-57 (rejecting  
14 the government’s argument that historical regulations that disarmed slaves, Native Americans, and  
15 disloyal people demonstrated a tradition of disarming classes of “dangerous” people and asking instead  
16 if “colonial and state laws disarming categories of ‘disloyal’ or ‘unacceptable’ people present tenable  
17 analogues to § 922(g)(8).”).<sup>12</sup>

18 The government, then, must demonstrate that its proffered historical regulations are apt  
19 analogues to the requested condition. That it cannot do. The Constitution and the Bill of Rights  
20 responded to abuses “both ancient *and* recent.” *Harrison*, 2023 WL 1771138, at \*21. “The Framers  
21 themselves recognized that colonial and early state governments repeatedly violated the liberty-  
22 protecting provisions of the English and state bills of rights,” so “[i]t is difficult to think that the public  
23 who adopted the Second Amendment intended to incorporate the Catholic and loyalist type of pre-  
24 constitutional restrictions—and the United States’ broader theory of legislatively determined  
25

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26 <sup>12</sup> The government in *Rahimi* argued that those unwilling to take an oath of allegiance were  
27 “dangerous”; here, it claims they were “untrustworthy.” That the government derives two, seemingly  
28 different regulatory powers from the same historical evidence, depending on the case it argues,  
demonstrates that its theories operate at much too high a level of abstraction and are so unmoored from  
the historical record as to become unprincipled.

1 ‘untrustworthiness’—into the federal Constitution” rather than repudiating it. *Id.* at \*21-\*22; *see also*  
2 *United States v. Perez-Gallan*, -- F.Supp.3d--, 2022 WL 16858516, at \*11 (W.D. Tex. Nov. 10, 2022)  
3 (rejecting historical analogy to disarming the politically disloyal because “[p]unishment for failing to  
4 display the proper political affiliation, however, was what the Second Amendment was meant to deter”  
5 and because “if the Second Amendment can be read separate from the First as the Government argues,  
6 the history of disarming someone because of political allegiance oaths could be used to justify disarming  
7 political dissidents today.”). Furthermore, like its “law-abiding” theory, the government’s  
8 “untrustworthy” theory also runs counter to *Bruen*’s rejection of interest-balancing and deference to  
9 legislatures. “The purpose of enshrining a right into the Constitution is to limit the discretion of a  
10 legislature. But if the United States’ theory is correct and all a legislature must do to prohibit a group of  
11 persons from possessing arms is to declare that group ‘untrustworthy,’ then the Second Amendment  
12 would provide virtually no limit on Congress’s discretion. The Framers weren’t perfect, but they also  
13 weren’t fools.” *Harrison*, 2023 WL 1771138, at \*22.

14 In any event, such regulations are not “relevantly similar” to a firearm ban on misdemeanor  
15 probationers because “*why* they disarmed people was different. The purpose . . . was ostensibly the  
16 preservation of political and social order,” not the protection of identified (such as Probation Officers) or  
17 unidentified people from the purported threat posed by a misdemeanor probationer like Mr. Shaw – a  
18 man with no violent history. *Rahimi*, 61 F.4th at 457; *see also Harrison*, 2023 WL 1771138, at \*23  
19 (“These colonial laws were justified on the fear that the covered groups were likely to wage active war  
20 against the colonies or interfere with the colonists’ war efforts. This is a radically different justification  
21 than the justification for § 922(g)(3).”).

22 Nor are felon firearm prohibitions apt analogues. Indeed, in upholding 18 U.S.C. § 922(g)(1), the  
23 D.C. Circuit stressed the crucial distinction between felonies and misdemeanors. At the founding,  
24 felonies were punished with death and estate forfeiture. *Medina*, 913 F.3d at 158. And although “the  
25 penalties for many felony crimes quickly became less severe in the decades following American  
26 independence and, by 1820, forfeiture had virtually disappeared in the United States,” felonies remained  
27 “the most serious category of crime deemed by the legislature to reflect grave misjudgment and  
28 maladjustment.” *Id.* (internal quotations omitted). For that reason, “[t]he commission of a felony often

1 results in the lifelong forfeiture of a number of rights, including the right to serve on a jury and the  
2 fundamental right to vote.” *Id.* at 160. Indeed, “[w]hen the legislature designates a crime as a felony, it  
3 signals to the world the highest degree of societal condemnation for the act, a condemnation that a  
4 misdemeanor does not convey.” *Id.* Because “[a]t common law, there was a fundamental difference  
5 between felons and misdemeanants,” *Chovan*, 735 F.3d at 1144 (Bea, J., concurring), felon firearm  
6 possession bans and the requested condition are not “comparably justified” and thus not “relevantly  
7 similar.”

8 **3. Disarmament during incarceration is not relevantly similar to disarmament during a**  
9 **sentence of misdemeanor probation.**

10 Finally, the government argues that “it is aware of no decision that has ever interpreted the  
11 Second Amendment to prevent disarming a person as part of his criminal sentence,” that Mr. Shaw  
12 could have been sentenced up to six months’ incarceration, and that the condition is “only a temporary  
13 restriction and will be far less restrictive than the sentence of incarceration that he could have received.”  
14 Dkt. 43 at 4. The government does not explain why the fact that Mr. Shaw could have been sentenced up  
15 to six months’ incarceration is relevant to the Second Amendment analysis; after all, the Court decided,  
16 after weighing all relevant 18 U.S.C. §3553(a) factors, that probation with a ten-day incarceration as a  
17 condition, was the warranted sentence.

18 In any event, the requested condition is not relevantly similar to a firearm possession ban while  
19 serving a term of incarceration. The power to limit freedoms in custody is rooted in institutional needs.  
20 “[M]aintaining institutional security and preserving internal order and discipline are essential goals that  
21 may require limitation or retraction of the retained constitutional rights of both convicted prisoners and  
22 pretrial detainees.” *Bell v. Wolfish*, 441 U.S. 520, 546 (1979). “Prison officials must be free to take  
23 appropriate action to ensure the safety of inmates and corrections personnel and to prevent escape or  
24 unauthorized entry.” *Id.* at 547. Therefore, “even when an institutional restriction infringes a specific  
25 constitutional guarantee, such as the First Amendment, the practice must be evaluated in the light of the  
26 central objective of prison administration, safeguarding institutional security.” *Id.* And because “the  
27 problems that arise in the day-to-day operation of a corrections facility are not susceptible of easy  
28 solutions,” prison administrators must “be accorded wide-ranging deference in the adoption and

1 execution of policies and practices that in their judgment are needed to preserve internal order and  
 2 discipline and to maintain institutional security.” *Id.*

3 Of course, the unique institutional concerns regarding maintaining prison security and preventing  
 4 escape or unauthorized entry – which have undergirded a long historical tradition of banning firearms or  
 5 other dangerous weapons in detention facilities, regardless of whether a particular person would pose an  
 6 individualized risk of firearm misuse<sup>13</sup> – do not apply outside the prison doors, to misdemeanants whom  
 7 courts have deemed safe to remain in the community after carefully weighing the § 3553 factors and  
 8 sentenced to probation because it meets the goals of sentencing in § 3553(a)(2). Therefore, prison  
 9 regulations banning firearms and the requested condition are not “comparably justified” and are not  
 10 relevantly similar. *Bruen*, 142 S.Ct. at 2133.<sup>14</sup>

11 \*\*\*

12 Prohibiting misdemeanor probationers from possessing firearms is not relevantly similar to  
 13 disarming detainees, felons, or any of the other comparison groups proffered by the government. The  
 14 Court must therefore reject, as inconsistent with the Second Amendment, the government’s request for a  
 15 condition of probation that would bar Mr. Shaw from possessing firearms.

16 **CONCLUSION**

17 For the reasons stated, Mr. Shaw respectfully requests that the Court not impose the proposed  
 18 firearm ban condition.

19 April 21, 2023  
 20 Dated

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21 /S  
 22 \_\_\_\_\_  
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25 <sup>13</sup> The infringements on detainees’ rights discussed in *Bell* were upheld under interest balancing. *See*,  
 26 *e.g.*, *Bell*, 441 U.S. at 552, 559 (First and Fourth Amendments). Again, balancing is not permitted under  
 27 the Second Amendment. Mr. Shaw agrees, however, that there is a historical tradition of banning  
 28 weapons in detention facilities, rooted in institutional concerns.

<sup>14</sup> Likewise, all detainee-parents are separated from their children during the period of their  
 incarceration. But it would be absurd to argue that the government has the power to impose the same  
 restriction on every probationer-parent.