# United States Court of Appeals
## For the First Circuit

No. 25-1721

THOMAS MARSHALL,

Plaintiff, Appellant,

v.

TODD BLANCHE, in the official capacity as United States Attorney General; ROBERT CEKADA, in the official capacity as Director of the Bureau of Alcohol, Tobacco, Firearms and Explosives*; KASHYAP PRAMOD PATEL, in the official capacity as Director of the Federal Bureau of Investigation; UNITED STATES,
Defendants, Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

[Hon. Paul J. Barbadoro, U.S. District Judge]

Before

Barron, Chief Judge,
Lynch and Montecalvo, Circuit Judges.

Kyle Singhal, with whom Hopwood & Singhal PLLC was on brief, for appellant.

Joshua K. Handell, United States Department of Justice, with whom Erin Creegan, United States Attorney, Anna Dronzek, Assistant United States Attorney, Brett A. Shumate, Assistant Attorney

* Pursuant to Federal Rule of Appellate Procedure 43(c)(2), Attorney General Todd Blanche has been substituted for former Attorney General Pamela J. Bondi, and Director Robert Cekada has been substituted for former Acting Director Daniel Patrick Driscoll.

General, and Michael Raab, Department of Justice, were on brief, for appellees.

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November 13, 2026

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**BARRON, Chief Judge.** Thomas Marshall brought the underlying civil action in the United States District Court for the District of New Hampshire against officials in the United States Department of Justice. He sought a declaratory judgment that "18 U.S.C. § 922(g)(1), its derivative regulations, and all related laws, policies, and procedures violate [his] right to Keep and Bear Arms as guaranteed by the Second Amendment to the United States Constitution." He further sought to "[p]ermanently enjoin" the defendants "from enforcing" against him "§ 922(g)(1) and all its derivative regulations, and all related laws, policies, and procedures that would impede or criminalize [his] exercise of his right to Keep and Bear Arms."

Section 922(g) makes it a federal crime for a prohibited person -- which, under § 922(g)(1), includes an individual who has been convicted of a "crime punishable by imprisonment for a term exceeding one year," 18 U.S.C. § 922(g)(1) -- to "possess in or affecting commerce . . . any firearm," id. § 922(g). Marshall alleges that he is a prohibited person under § 922(g)(1) based on his prior state-law convictions for driving under the influence, an offense "punishable by imprisonment for a term exceeding one year."[1]

[1] While a separate statutory provision states that § 922(g) does not apply to "any State offense classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of two years or less," 18 U.S.C. § 921(a)(20)(B), this exemption is

The District Court granted the defendants' motion to dismiss Marshall's complaint for failure to state a claim upon which relief may be granted. Marshall now appeals from that judgment. We vacate and remand for further proceedings consistent with this opinion.

**I.**

We begin by recounting the travel of the case. Because we are reviewing the grant of a motion to dismiss, "we recount the underlying facts as alleged in the complaint, but disregard any conclusory allegations." Humana Inc. v. Biogen, Inc., 126 F.4th 94, 98 (1st Cir. 2025) (citation modified).

**A.**

In June 2024, Marshall filed this suit in the District Court. The complaint alleges as follows.

In 1997, Marshall was convicted of driving under the influence (DUI) in violation of Mass. Gen. Laws ch. 90, § 24(1)(a)(1), which is an offense punishable by up to two-and-a-half years of imprisonment. In 2005, Marshall was again convicted of driving under the influence in violation of that statute.

In 2023, Marshall moved to New Hampshire. Later that year, he "attempted to purchase a firearm to which the New

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inapplicable here as there is no dispute that Marshall's offense was punishable by more than two years of imprisonment.

Hampshire State Police Permits and Licensing Unit responded, stating that he was denied by the Federal Bureau of Investigation, as his 1997 and 2005 convictions for DUI in Massachusetts were putatively prohibiting under 18 U.S.C. § 922(g)(1)."

A copy of the denial letter that Marshall received from the New Hampshire State Police is attached to his complaint. The letter indicated that his purchase was denied "in accordance with 18 U.S.C. [§] 922(g), (n) and state law" because "a routine background investigation" had revealed that he had prior "conviction(s)" that constituted "federal disqualifier(s)" under § 922(g)(1). The letter also indicated that § 922(g) "prohibits certain persons from . . . receiving any firearm which has been shipped or transported in interstate or foreign commerce, or possessing any firearm in or affecting commerce."

Marshall's complaint states that it is his "present intention and desire to purchase and possess a handgun and a long gun for self-defense within his home." The complaint proceeds to make the following statements about Marshall's intended course of conduct:

> 35. Mr. Marshall desires and intends to purchase, possess and utilize firearms for self-defense and for defense of his family, including within his home.
>
> 36. Mr. Marshall, after learning of the Defendants' position in relation to his 1997 and 2005 convictions, has abstained from attempting to purchase a firearm for fear of

> arrest, prosecution, incarceration, and/or fine, pursuant to 18 U.S.C. § 922(g)(1), instigated and directed by Defendants, should he attempt to purchase or possess a firearm.
>
> 37. Mr. Marshall is unwilling to purchase, possess or utilize a firearm, because doing so would subject him to arrest, prosecution, fine and incarceration, at Defendants' instigation and direction, for violating 18 U.S.C. § 922(g)(1).

The complaint asserts not only that "the current enforcement policies of [the] [d]efendants prevent Mr. Marshall from legally purchasing or possessing a firearm," but also that the defendants have already "violated [his] Second Amendment rights by denying him the ability to purchase and possess a firearm as a result of a DUI conviction." The complaint notes that the Federal Bureau of Investigation -- whose Director is named as a defendant -- is "responsible for performing background checks for federal, state, and local law enforcement authorities via the National Instant Check System," and that this system "informs law enforcement officials in the states that certain individuals are prohibited from acquiring, possessing, and utilizing a firearm."

The complaint further states that "[t]here is currently no mechanism available in New Hampshire or under federal law for Mr. Marshall to obtain relief from his federal disability, as a result of his conviction, absent a Second Amendment as-applied challenge." (Emphasis omitted). The complaint seeks the declaratory and injunctive relief described above.

**B.**

In June 2025, the District Court dismissed Marshall's complaint for failure to state a claim upon which relief may be granted. See Marshall v. U.S. Att'y Gen., No. 24-cv-00191, 2025 WL 1566878, at *1 (D.N.H. June 3, 2025). The District Court, quite rightly, addressed Marshall's standing under Article III of the U.S. Constitution, even though the defendants did not dispute that he had standing. Id. at *5 n.3; U.S. Const. art. III, § 1. The District Court concluded that Marshall has standing to bring his action because Marshall is seeking to "enjoin the federal government from enforcing § 922(g)(1) and its derivative regulations against him" and his "requested relief would redress [his] inability to obtain a firearm." Marshall, 2025 WL 1566878, at *5 n.3.

As to the merits of his claims, the District Court understood Marshall to be arguing that the "Second Amendment bars the defendants from using 18 U.S.C. § 922(g)(1) . . . to prevent him from possessing firearms based solely on his [prior DUI] convictions." Id. at *1. The District Court acknowledged that in New York State Rifle & Pistol Ass'n, Inc. v. Bruen, 597 U.S. 1 (2022), the Supreme Court of the United States had "made it clear that it was announcing a new analytical framework for evaluating Second Amendment claims." Marshall, 2025 WL 1566878, at *5.

The District Court nonetheless concluded that our pre-Bruen decision in United States v. Torres-Rosario, 658 F.3d 110 (1st Cir. 2011), which largely foreclosed as-applied Second Amendment challenges to § 922(g)(1), "remain[ed] binding precedent" and thereby precluded Marshall's challenge. Marshall, 2025 WL 1566878, at *5. The District Court emphasized that it was "mindful of the First Circuit's directive that '[u]ntil a court of appeals revokes a binding precedent, a district court within the circuit is hard put to ignore that precedent unless it has unmistakably been cast into disrepute by supervening authority.'" Id. (quoting Eulitt v. Me., Dep't of Educ., 386 F.3d 344, 349 (1st Cir. 2004)).

In the District Court's view, it was not "unmistakably clear" that Torres-Rosario had "been cast into disrepute." Id. The District Court went on to note that Torres-Rosario left open the possibility of an individual raising an as-applied challenge to § 922(g)(1) if that individual's prior conviction was "so tame and technical as to be insufficient to justify [§ 922(g)(1)'s] ban." Id. at *4 (quoting Torres-Rosario, 658 F.3d at 113). The District Court concluded, however, that Marshall's "repeated drunk driving" did not fall under Torres-Rosario's exception because it represented "ongoing reckless conduct" that was "exactly the type that poses a serious threat to the community." Id. at *5-6.

Marshall timely appealed. Following oral argument, we ordered supplemental briefing on questions concerning Marshall's Article III standing.

**II.**

Before we consider the merits of Marshall's Second Amendment challenge, we first must address whether Marshall has Article III standing to pursue the relief that he seeks. To be sure, the parties agree that he does have such standing. But we have an "independent obligation" to ensure that he does. Summers v. Earth Island Inst., 555 U.S. 488, 499 (2009). By undertaking that inquiry, we ensure that he is bringing a case or controversy fit for judicial resolution rather than a "generalized grievance" better left to the political branches. Lujan v. Defs. of Wildlife, 504 U.S. 555, 575 (1992) (citation modified).

There are some complexities to assessing Marshall's standing that are worth acknowledging up front. His briefing to us focuses primarily on whether § 922(g)(1) itself, as applied to him, violates the Second Amendment. Indeed, in advancing his arguments as to the merits of his Second Amendment challenge, his briefing makes no reference to any other statutory or regulatory provision that sets forth a restriction on his intended course of conduct.

Marshall's complaint, however, does not refer only to § 922(g)(1). It also refers to what his complaint describes as

§ 922(g)(1)'s "derivative regulations, and all related laws, policies, and procedures that would impede or criminalize" his Second Amendment rights.

Moreover, the complaint's request for declaratory and injunctive relief does not apply only to § 922(g)(1). It also applies to those "derivative" and "related" measures.

Standing requires a showing of an "injury in fact" that is "fairly traceable to the challenged action of the defendant" and that would likely be redressed by the requested relief. Summers, 555 U.S. at 493 (citation modified). Given the range of measures that Marshall's request for relief implicates, we must be attentive to the fact that he appears to rest his standing on two distinct sets of allegations about his conduct.

The first set of allegations pertains to his intent to possess a firearm. By contrast, the second set of allegations pertains both to his past attempt to purchase a firearm, which was denied after a background check, and his alleged intent to purchase a firearm in the future.

Unfortunately, Marshall does not precisely connect each set of allegations to the relief that he seeks, either in his briefing addressing the merits or his supplemental briefing addressing standing. Nonetheless, reading his complaint and his briefing in his favor, we take him to be contending that each set

of allegations supports his standing as to all the relief that he seeks, and, certainly, such a reading causes him no prejudice.

We thus begin our standing inquiry in Part III by addressing whether Marshall is right that his allegations that pertain to his alleged intent to possess a firearm suffice to support his standing for all the relief that he seeks. After explaining why we conclude that Marshall has not met his burden to show that he has standing to obtain any of the relief that he seeks based on his allegations regarding his intent to possess a firearm, we will turn in Part IV to his arguments that he nonetheless has standing to obtain the relief that he seeks based on his allegations that he previously sought to purchase a firearm but was denied his ability to do so after a background check and that he intends to purchase a firearm in the future.

**III.**

We begin by addressing whether Marshall's allegations concerning his intended firearms possession suffice to show that he has standing to seek relief from the defendants' enforcement of what Marshall's complaint refers to as § 922(g)(1)'s "derivative" and "related" measures. We then will address whether those possession-focused allegations suffice to show that he has standing to seek relief from § 922(g)(1).

**A.**

As best we can tell from Marshall's filings, all the "derivative" and "related" measures at issue appear to pertain to how the defendants would conduct federal background checks if Marshall were to seek to purchase a firearm. Pursuant to that federal background check system, when an individual applies to purchase a firearm from a federally licensed firearms manufacturer or dealer, the manufacturer or dealer is generally precluded from completing the transfer absent a federal background check, which ascertains whether the transfer would violate the prohibitions set out in 18 U.S.C. § 922 in part by assessing whether an individual has prohibiting prior convictions. See 18 U.S.C. § 922(t)(1); 28 C.F.R. §§ 25.1-11.

It is not evident how Marshall's mere possession of a firearm would implicate the federal background check system. We therefore do not see how any injury "fairly traceable" to the "derivative" and "related" measures referenced in his complaint would result from his mere possession of a firearm. See California v. Texas, 593 U.S. 659, 679-80 (2021) (citation modified). Accordingly, his complaint fails to establish his standing insofar as his complaint relies on those possession-focused allegations in seeking any of the relief that he requests as to measures other than § 922(g)(1) itself.

Unlike the "derivative" and "related" measures just considered, which target the purchase of a firearm, § 922(g)(1) itself does criminalize firearms possession, as such, in certain circumstances. We turn next, then, to whether Marshall has standing based on his alleged intended firearms possession to obtain the relief that he seeks from any prospective criminal enforcement of § 922(g)(1) against him.[2]

**B.**

To establish that he has Article III standing to bring this pre-enforcement challenge to the criminal enforcement of § 922(g)(1) against his possession of a firearm, Marshall must plausibly allege: (1) "an intention to engage in a course of conduct arguably affected with a constitutional interest," (2) that his "intended future conduct is arguably proscribed by the statute [he] wish[es] to challenge," and (3) that "the threat of future enforcement of the [challenged] statute is substantial." Susan B. Anthony List v. Driehaus, 573 U.S. 149, 161-64 (2014) (citation modified). Our review is de novo. See Katz v. Pershing, LLC, 672 F.3d 64, 70 (1st Cir. 2012).

[2] The District Court's standing analysis did not specifically home in on Marshall's Article III standing as to this portion of his action, see Marshall v. U.S. Att'y Gen., No. 24-cv-00191, 2025 WL 1566878, at *5 n.3 (D.N.H. June 3, 2025), and the parties did not address it in their initial briefing to us.

Through his allegation in his complaint that he intends to "possess . . . firearms for self-defense," Marshall has plausibly alleged an intent to engage in conduct "affected with a constitutional interest." See District of Columbia v. Heller, 554 U.S. 570, 592 (2008) (recognizing an "individual right [under the Second Amendment] to possess and carry weapons in case of confrontation"). And, although we have some doubts, we will assume for present purposes that he has plausibly alleged that, in light of his two prior convictions, he faces a "substantial" "threat of future enforcement" based on his alleged intent to possess a firearm for self-defense insofar as that firearm is "arguably proscribed" by § 922(g)(1)'s criminal prohibition against firearms possession.[3]

[3] The doubts arise in part because the same Department of Justice that Marshall says will enforce § 922(g)(1) against him has recently promulgated regulations allowing applicants such as Marshall to obtain restoration of their right to possess firearms under federal law. See 28 C.F.R. §§ 107.1-80 (2026); see also infra Part IV (further discussing these regulations). Marshall has not agreed to hold his appeal in abeyance to pursue relief through this restoration process, but he has not disclaimed that he will request such relief. Nor are Marshall's predicate misdemeanors among those crimes for which the regulations require applicants to make a heightened evidentiary showing to obtain relief. See 28 C.F.R. § 107.50. At the very least, the possibility that Marshall may have the federal prohibition on his firearms possession lifted in the near future calls into question whether his alleged intent to possess a firearm makes the threat of future prosecution under § 922(g)(1) "substantial," even assuming the firearm that he intends to possess is "arguably proscribed" by that statute.

The question remains whether Marshall has plausibly alleged in his complaint that he intends to possess a firearm that is "arguably proscribed" by § 922(g)(1)'s criminal prohibition. For reasons that will follow, we conclude that Marshall has not.

**1.**

Analyzing § 922(g)'s "in or affecting commerce" limitation, the Supreme Court of the United States has clarified that "[b]ecause Congress adopted § 922(g) pursuant to the Commerce Clause, the statute requires the government to show that a firearm possessed in violation of the statute's terms 'has been shipped or transported in interstate or foreign commerce.'" United States v. Hemani, 608 U.S. 772, 777 n.1 (2026); see also Scarborough v. United States, 431 U.S. 563, 564, 575 (1977) (interpreting similar language in a predecessor statute to § 922(g)(1) to require "the minimal nexus that the firearm [h]as been, at some time, in interstate commerce"). Indeed, there would be serious questions about § 922(g)(1)'s constitutionality if its criminal prohibition against firearms possession were to extend to the possession of any firearm just because it is one, especially in cases where the defendant, like Marshall, is a prohibited person under that statute based solely on state-law convictions. See United States v. Lopez, 514 U.S. 549, 567 (1995) (declining "to convert congressional authority under the Commerce Clause to a general police power"); cf. United States v. Bass, 404 U.S. 336, 347 (1971) (setting aside

a conviction under a predecessor statute to § 922(g)(1) because the government "failed to show the requisite nexus with interstate commerce").

Marshall's complaint does not expressly allege, however, that he intends to possess a firearm or firearms "in or affecting commerce" or "of the kind proscribed by § 922(g)(1)." Nor does his complaint expressly allege that he intends to possess a firearm or firearms that have been "shipped or transported in interstate or foreign commerce." His complaint also does not otherwise expressly allege anything about the characteristics of the firearm or firearms that he intends to possess in ways that would bring them within the reach of § 922(g)(1).

Marshall's supplemental briefing does direct our attention to his complaint's allegation that his prior attempt to purchase a firearm was denied because his "convictions for DUI in Massachusetts were putatively prohibiting under 18 U.S.C. § 922(g)(1)." And he attaches to his complaint a copy of the letter from New Hampshire authorities informing him that his purchase had been denied "in accordance with 18 U.S.C. [§] 922(g)." That letter lists his prior DUI convictions as disqualifying under § 922(g)(1) and states that the statute "prohibits certain persons" from "possessing any firearm in or affecting commerce."

But Marshall's complaint does not expressly allege, with respect to the firearm that he intends to possess in the future, any more about that firearm than that it is a "handgun" or a "long gun." Indeed, after noting his prior purchase attempt, his complaint alleges no more than an intent to purchase and possess "a firearm" in the future. In short, for reasons that only Marshall knows, he has not expressly alleged an intent to possess the kind of firearm that is the only kind of firearm for which § 922(g)(1) would make it a crime for him to possess, which is a firearm that has been shipped or transported in interstate or foreign commerce.

Of course, at the motion to dismiss stage, we must "indulge all reasonable inferences" that may be drawn from Marshall's complaint "in his favor." Katz, 672 F.3d at 70 (citation modified). We therefore also must consider whether Marshall has impliedly alleged that he intends to possess the kind of firearm that § 922(g)(1) prohibits him from possessing even though he has not made such an allegation expressly.

Marshall has alleged an intent to possess multiple firearms. But that allegation fails to shed any light on the nature of those firearms and so does not itself allege, impliedly, what he has not alleged expressly.

Marshall also alleges that he intends to purchase "a firearm" in the future. We may assume that such an allegation

would imply that the firearm that he intends to purchase (and then possess) is one that has been shipped or transported in interstate or foreign commerce if he resided in a state that lacks in-state firearm manufacturers. In that case, any new firearm that would be offered for sale to him would be one that must have traveled interstate.

Marshall does not allege, however, that he resides in such a state. In fact, he alleges that he resides in New Hampshire, and we note that there were at least 30 federally licensed firearms manufacturing facilities (including both handgun and long gun manufacturers) in New Hampshire in 2023, when Marshall first applied to purchase a firearm. See Bureau of Alcohol, Tobacco, Firearms and Explosives, Annual Firearms Manufacturing and Export Report (Year 2023), https://www.atf.gov/media/15716/download [https://perma.cc/QZ45-HDPF] (last visited Nov. 2, 2026).

Finally, we note that in his supplemental briefing Marshall states with respect to the prior denial of his attempted purchase of a firearm that the fact that the complaint "asserts that his purchase was prohibited 'by operation of § 922(g)(1)' . . . thereby impl[ies] that [he] in fact sought to purchase the kind of firearm that 18 U.S.C § 922(g)(1) does prevent him from purchasing." But Marshall makes this argument only in service of his argument that he has standing to challenge § 922(g)(1) based on what he contends is the cognizable injury

that he suffered from the denial of his prior purchase attempt. He develops no argument based on that past denial that he has standing to obtain prospective relief from § 922(g)(1)'s criminal enforcement against him based on his alleged intent to possess a firearm.[4] We therefore cannot conclude that, even though Marshall has failed to expressly allege that the "firearm" that he intends to possess is the kind of firearm that § 922(g)(1) criminally prohibits him from possessing, he nonetheless has shown that his complaint impliedly has done so.[5]

**2.**

Marshall separately contends that, even if his complaint has alleged no more than that he intends to possess "a firearm," he still has plausibly alleged that he intends to engage in conduct that § 922(g)(1) "arguably proscribe[s]" in making it a crime for a prohibited person to possess a firearm "in or affecting

[4] Insofar as the firearm that Marshall alleges that he intends to possess is a firearm that he intends to purchase, it is also not clear how he has shown that he faces a "substantial" "threat of enforcement" of § 922(g)(1)'s criminal prohibition against firearms possession. See Susan B. Anthony, 573 U.S. at 164. The reason is that Marshall's own complaint appears to allege that what it refers to as that statute's "derivative" and "related" measures would prevent him from purchasing such a firearm.

[5] Marshall notes in his supplemental briefing that other statutory provisions make it unlawful to sell him any firearm. See 18 U.S.C. § 922(d),(t). These provisions, however, proscribe the sale of a firearm regardless of whether it has traveled in interstate or foreign commerce. See id. They thus shed no light on whether Marshall, by alleging an intent to purchase a firearm, implicitly has alleged that he intends to possess a firearm that has been shipped or transported in interstate or foreign commerce.

commerce." He thus contends, on that separate basis, that he has standing to obtain the relief that he seeks as to § 922(g)(1)'s criminal enforcement against him based on his allegations about his intent to possess a firearm. He makes various arguments on this score. But we are not persuaded by them.

**a.**

Marshall first contends that his allegation that he intends to possess "a firearm" is, in and of itself, enough to "raise the question of the lawfulness of his possession." That is so, he contends, because the federal government, based on his "status as a prohibited possessor combined with his possession of" a firearm, would have "probable cause" to believe he is violating § 922(g)(1).

Insofar as Marshall means to draw support for this argument from the Supreme Court's discussion of "probable cause" in Susan B. Anthony, we fail to see how that discussion provides it. The Court did note in that discussion that a state commission had previously found "probable cause to believe that [one of the plaintiffs] had violated" the state law that the plaintiffs were challenging under the First Amendment when that plaintiff made statements akin to those that the plaintiffs alleged that they intended to make in the future. Susan B. Anthony, 573 U.S. at 163. But the Court invoked that probable-cause finding only to substantiate its conclusion that the challenged statute "arguably"

could be construed to proscribe the specific conduct in which the plaintiffs alleged they intended to engage and that such conduct would thereby "result in similar [commission] proceedings" in the future if the plaintiffs engaged in it. Id.

Marshall does not allege, however, that § 922(g)(1)'s criminal prohibition has been enforced against him previously for merely possessing a firearm.[6] Nor does he allege that the federal officials whom he is suing have enforced § 922(g)(1)'s criminal prohibition against a similarly situated individual solely based on that individual possessing a firearm. See Rehaif v. United States, 588 U.S. 225, 230 (2019) (pointing out that the commerce nexus is an element of a § 922(g) possession offense). Thus, Marshall's assertion that his intent to possess "a firearm" is, in and of itself, enough to "raise the question of the lawfulness of his possession" does not suffice to show that he has satisfied Susan B. Anthony's "arguably proscribed" test.

**b.**

Marshall separately emphasizes that his complaint alleges that he intends to possess a firearm that he has purchased,

[6] The previous denial of his application to purchase a firearm does not bear on whether federal officials would criminally enforce § 922(g)(1) against him for simply possessing "a firearm," where, without further detail, it is not evident what authority they would have to do so. Indeed, Marshall's own complaint suggests that his prior federal background check determined that his convictions are "putatively prohibiting under 18 U.S.C. § 922(g)(1)," not that it is unlawful for him to possess "a firearm."

that his "desired purchase of a firearm is, on its own, commerce," and that "it is not established that . . . a firearm purchased and moved entirely within a state is not within § 922(g)(1)'s reach." But we cannot agree that his allegations that he intends to possess a firearm that he has purchased suffice to show that he has alleged that he intends to engage in conduct that § 922(g)(1)'s criminal prohibition against firearms possession "arguably proscribes."

As we explained above, the Supreme Court has clarified that, under § 922(g), the government must show that the firearm that a prohibited person possesses has been "shipped or transported in interstate or foreign commerce." Hemani, 608 U.S. at 777 n.1. Moreover, Marshall makes no allegations that the government enforces § 922(g)(1)'s criminal prohibition against firearms possession by a prohibited person merely based on such a person's possession of a firearm that the person has purchased. Nor do the defendants indicate in their briefing that § 922(g)(1) would be criminally enforced on that specific basis.

We recognize that the "purchase" of a firearm might fall under § 922(g)(1)'s separate prohibition against "receiv[ing] any firearm." But, even if so, that possibility would not in and of itself help Marshall show that he has pre-enforcement standing to block the defendants from criminally enforcing § 922(g)(1) against him for possessing a firearm. The text of that prohibition in § 922(g)(1) explicitly requires such a "receiv[ed]" firearm to

have "been shipped or transported in interstate or foreign commerce." 18 U.S.C § 922(g)(1).

**c.**

Marshall also gestures at the fact that the general type of conduct in which his complaint alleges that he intends to engage -- possession of "a firearm" -- is likely to result in him possessing a firearm that has been shipped or transported in interstate or foreign commerce. We do not dispute that most firearms in this country have traveled in interstate commerce. But Marshall never develops an argument as to why that reality matters.

In that regard, Marshall fails to explain why we must conclude that he can satisfy the "arguably proscribed" test so long as it is "arguable" that his allegations about his intended conduct of possessing an unspecified firearm could be construed to include his possessing a firearm that has traveled in interstate or foreign commerce. Indeed, he does not appear to contest that the "arguably proscribed" inquiry turns solely on whether it is "arguable" that the statute that he is challenging could be construed to proscribe the conduct in which he has alleged that he certainly intends to engage: possession of an unspecified firearm.

It is perhaps unsurprising that Marshall does not contest that understanding of the "arguably proscribed" inquiry; it is hardly evident that he could succeed in contesting it.

Indeed, the plaintiffs in Susan B. Anthony "pleaded specific statements" that they intended to make, 573 U.S. at 161, and the Court then evaluated whether they were right that the state statute that they were challenging "arguably" could be construed to reach those specific statements, id. at 162-63.

We note as well that the point of Susan B. Anthony's test is to ensure that a plaintiff who brings a pre-enforcement challenge to a law is facing an "actual or imminent" injury due to the threat of being subjected to that law's enforcement. Id. at 158 (quoting Lujan, 504 U.S. at 560); see also Trump v. New York, 592 U.S. 125, 131 (2020) (invoking the imminent injury requirement). It is hard to see how there could be an "imminent" threat of criminal enforcement of the challenged statute's prohibition of firearms possession against a plaintiff who has not pleaded that he in fact intends to engage in the only kind of conduct that the statute even arguably could be construed to proscribe through that prohibition. See Susan B. Anthony, 573 U.S. at 159.

A simple hypothetical makes the point. Suppose a plaintiff were to bring a pre-enforcement Second Amendment challenge to § 922(g)(1) being criminally enforced against him for possessing a firearm by alleging only an intent to possess a weapon for self-defense, without further specifying the nature of that weapon. Such a plaintiff would not have alleged an intent to

possess the only kind of weapon that § 922(g)(1)'s criminal prohibition even arguably proscribes, as that statute's criminal prohibition against firearms possession cannot arguably be construed to proscribe a weapon's possession just because it is intended to be used for self-defense. And that is so, even if, as well may be the case, a firearm that has been shipped or transported in interstate commerce is the kind of weapon most often used for that purpose. Thus, it is hard to see how that plaintiff would have plausibly alleged that he was facing an imminent threat of being subject to § 922(g)(1)'s criminal enforcement.

Marshall also has failed to identify any authority that supports the contention that a plaintiff can establish standing under the "arguably proscribed" test without plausibly alleging an intent to engage in the specific conduct that -- under an arguable construction of the challenged law -- that law would reach. In fact, the only cases that touch on that issue of which we are aware suggest that the opposite is true. See Paxton v. Dettelbach, 105 F.4th 708, 712 (5th Cir. 2024) (denying plaintiffs standing because they alleged an intent only to manufacture firearm suppressors, whereas the challenged statute "prohibit[ed] making a firearm suppressor without complying with the applicable procedures and requirements"); Nat'l Shooting Sports Found. v. Att'y Gen. of N.J., 80 F.4th 215, 219-20 (3d Cir. 2023) (denying plaintiff standing to

challenge a law regulating the sale and marketing of firearms because the plaintiff's "intent to act [was] too general").[7]

**3.**

Simply put, § 922(g)(1) does not make it a crime -- even arguably -- for Marshall to possess any firearm just because it is one. It makes it a crime for him to possess one that has been shipped or transported in interstate or foreign commerce. And yet, Marshall has not alleged -- expressly or impliedly -- that he intends to possess such a firearm. Nor has Marshall explained how, despite that failure on his part, he nonetheless has plausibly alleged what he must to show that he has standing to bring a pre-enforcement constitutional challenge to § 922(g)(1)'s criminal enforcement based solely on his intended possession of a firearm.

Moreover, even if we were free to do so, and we are not, we have no reason to water down Susan B. Anthony's "arguably proscribed" requirement here. For, while the Second Amendment is not a "second-class right," Bruen, 597 U.S. at 70 (citation modified), it also is not a preferred one. Unlike Marshall, the plaintiffs bringing their First Amendment claims in Susan B. Anthony specified the conduct in which they intended to engage and

[7] We need not address whether the right test for vagueness or chill-based claims is even less demanding than the Susan B. Anthony test itself, because Marshall is neither challenging § 922(g)(1) on vagueness grounds nor alleging that he has standing on the basis that § 922(g)(1)'s scope is otherwise potentially so broad that it chills his conduct.

then made the case that the challenged statute arguably could be construed to reach that conduct. See 573 U.S. at 162. Marshall has not done the same or explained how he nonetheless can satisfy the "arguably proscribed" requirement insofar as his argument that he has standing as to § 922(g)(1)'s criminal enforcement is based on his alleged intent to possess an unspecified firearm. We thus conclude that just as Marshall's alleged intent to possess a firearm fails to secure his standing to seek relief from what his complaint describes as § 922(g)(1)'s "derivative" and "related" measures, that alleged intent also fails to secure his standing as to his pre-enforcement challenge to § 922(g)(1) being criminally enforced against him for his possession of a firearm.

**IV.**

We come, then, to Marshall's attempt to ground his standing to obtain the relief that he seeks based upon his allegations concerning his past attempt to purchase a firearm, along with his allegations that he intends to purchase a firearm again. Here, too, we must be attentive to the distinct types of relief that he seeks.

**A.**

We start with Marshall's attempt, based on his purchase-focused allegations, to establish his standing to pursue the relief that he seeks from the enforcement of the federal background check system, as indicated in his request for relief

from § 922(g)(1) and its "derivative" and "related" measures. In assessing whether Marshall has shown that he has standing to seek relief from the federal background check system's enforcement, we note that his complaint leaves it somewhat ambiguous as to whether New Hampshire officials, and not the federal officials whom he is suing, were in fact independently responsible for denying his prior application to purchase a firearm. But to the extent that there is ambiguity on this point, we read the complaint in Marshall's favor, particularly because the denial stemmed from the federal background check system's provision of information regarding his prior convictions.

We further observe that, based on Marshall's prior failed background check, the District Court concluded that Marshall has standing to bring his action because he is seeking to "enjoin the federal government from enforcing § 922(g)(1) and its derivative regulations against him" and his "requested relief would redress [his] inability to obtain a firearm." See Marshall, 2025 WL 1566878, at *5 n.3. With respect to Marshall's pursuit of the forward-looking relief that he seeks as to the enforcement of the federal background check system to bar him from purchasing a firearm based on the convictions that make him a prohibited person under § 922(g)(1), we see no reason to question the District Court's standing ruling. See Dearth v. Holder, 641 F.3d 499, 501-03 (D.C. Cir. 2011).

To be sure, we recognize that § 922(g)(1) does not in and of itself require a federal background check in the event of an attempted purchase of a firearm. But, notwithstanding that the past denial of Marshall's firearm purchase stemmed from actions taken only pursuant to the federal background check system, the District Court appears to have concluded that Marshall does have standing to seek the relief that he seeks from § 922(g)(1) insofar as that relief would redress his ability to obtain a firearm, see Marshall, 2025 WL 1566878, at *5 n.3, and the government does not argue otherwise. We see no reason to disagree with that ruling, which appears to have some precedential support in other courts based on the role that § 922(g)(1) plays in the federal background check system. See Williams v. Att'y Gen. U.S., No. 24-1091, 2026 WL 3059230, at *9 n.30 (3d Cir. Oct. 13, 2026) (en banc).

As for the merits of Marshall's Second Amendment challenge to the enforcement against him of the federal background check system (as comprised of § 922(g)(1) as well as its "derivative" and "related" measures), however, we see no reason to address them in the case's present posture. Recall that the District Court's rejection of Marshall's as-applied challenge was grounded in our pre-Bruen precedent in Torres-Rosario, as the District Court reasoned that "it is not unmistakably clear" that this precedent has "been cast into disrepute." Marshall, 2025 WL 1566878, at *5. We have since clarified that the proper approach

for evaluating a Second Amendment challenge, including an as-applied challenge to § 922(g)(1), entails applying Bruen's methodological framework. See United States v. Levasseur, No. 24-1687, 2026 WL 2731003, at *3 (1st Cir. Sept. 16, 2026).

That framework requires courts to first "consider whether the Second Amendment's plain text covers the regulated conduct," and, if so, then proceed to evaluate "whether the government has demonstrated that the challenged regulation is consistent with this Nation's historical tradition of firearm regulation." Id. (citation modified). This latter inquiry centers on "[w]hy and how the [challenged] regulation burdens the [Second Amendment] right." United States v. Rahimi, 602 U.S. 680, 692 (2024).

The District Court was properly attentive to the law of the circuit doctrine in concluding that Torres-Rosario controlled. But at least in light of our decision in Levasseur, we no longer think that Torres-Rosario controls. See Eulitt, 386 F.3d at 349. Because the District Court did not undertake the why and how analysis, we think it appropriate to remand for the District Court to do so.

That is especially so insofar as Marshall's Second Amendment challenge takes aim at the federal background check system. Bruen's analogical inquiry suggests that it may make a difference whether the Second Amendment challenge is to the

defendants' enforcement of the background check process to prevent Marshall's purchase of firearms or to the defendants' criminal enforcement of § 922(g)(1)'s prohibition on his firearms possession as such. After all, in terms of the why and how inquiries Bruen requires, restrictions on the commercial sale of firearms might raise distinct issues from a criminal prohibition on the mere possession of a firearm, although we do not purport here to address whether that is the case.

Moreover, remanding to the District Court is particularly appropriate in this case given the Department of Justice's recently issued rule that establishes a process for prohibited persons like Marshall to apply to restore their right to acquire and possess firearms. See 28 C.F.R. §§ 107.1-80 (implementing the Attorney General's authority under 18 U.S.C. § 925(c) to grant relief); see also Williams, 2026 WL 3059230, at *9 (noting the new restoration process).[8] In their briefing, the parties dispute whether this restoration process on

[8] As relevant, 18 U.S.C. § 925(c) provides that "[a] person who is prohibited from possessing, shipping, transporting, or receiving firearms or ammunition may make application to the Attorney General for relief from the disabilities imposed by Federal [firearms] laws . . . ." Section 925(c) goes on to clarify that "[a]ny person whose application for relief from disabilities is denied by the Attorney General may file a petition with the United States district court for the district in which he resides for a judicial review of such denial." Id. Furthermore, "[t]he court may in its discretion admit additional evidence where failure to do so would result in a miscarriage of justice." Id.

its own forecloses Marshall's as-applied challenge, and they also dispute how the availability of relief through the restoration process might bear on the underlying Bruen analysis. But the parties at the very least agree that the new restoration process presents new questions that the District Court has yet to address.[9] We thus remand for the District Court to consider the merits of Marshall's challenge to the defendants' use of his prohibited person status, pursuant to the background check process, to prevent him from purchasing firearms.

There is one additional point worth highlighting with respect to Marshall's Second Amendment challenge to the federal background check system based on his purchase-focused allegations. It is hardly evident that Marshall's alleged injury from the denial of his purchase would entitle him to equitable relief to prevent the defendants from enforcing § 922(g)(1)'s criminal prohibition on his firearms possession insofar as he would be entitled to obtain declaratory and injunctive relief from the enforcement of the federal background check system. After all, enjoining the federal defendants from providing information regarding Marshall's

[9] On February 11, 2026, the defendants also submitted a Fed. R. App. P. 28(j) letter to us noting that "the Attorney General, pursuant to 18 U.S.C. § 925(c), granted relief from federal firearms disabilities" to twenty-two individuals. Marshall subsequently filed a motion to strike this letter. We deny Marshall's motion to strike but accept Marshall's filing as an oversized, responsive Citation of Supplemental Authorities pursuant to Rule 28(j).

prior convictions during the background check process would appear to remedy Marshall's alleged injury from his background check denial. And "[i]njunctive relief should be no more burdensome to the defendant than necessary to provide complete relief to the plaintiff[]." See Trump v. CASA, Inc., 606 U.S. 831, 852 (2025) (citation modified) (emphasis omitted).

Of course, the District Court had no occasion to ponder such questions, given that it concluded that it was bound to reject Marshall's Second Amendment challenge on the merits under our decision in Torres-Rosario. As we have explained, however, that precedent is not controlling. And so, we leave it to the District Court to consider, given the developments regarding the inquiry Bruen requires and the Department of Justice's new process for prohibited persons to restore their firearm rights, not only these questions as to the merits but, should they be relevant, any questions pertaining to equitable relief.

**B.**

There is one last wrinkle to address. Although Marshall's complaint and briefing are not precise, it is possible to construe Marshall as relying on his purchase-focused allegations to ground his standing to challenge the criminal enforcement against him of § 922(g)(1) itself, independently of how § 922(g)(1) may bear on the enforcement of the federal background check system. It is not at all clear to us that

Marshall's purchase-focused allegations would suffice to secure such standing, precisely because § 922(g)(1)'s criminal prohibition exists separate and apart from the background check process. Cf. TransUnion LLC v. Ramirez, 594 U.S. 413, 431 (2021) ("standing is not dispensed in gross"); California, 593 U.S. at 678-80 (rejecting that plaintiffs had standing to challenge one provision of a statute on the basis that they had suffered a cognizable injury from other provisions of that statute).

Moreover, it is not evident to us that the District Court's standing ruling even addressed whether Marshall's purchase-focused allegations support his standing to challenge § 922(g)(1)'s criminal prohibition on its own, insofar as it could bar his mere possession of a firearm. To the contrary, in explaining its ruling, the District Court underscored that the "background check process is the primary means through which the federal government keeps firearms out of the hands of people prohibited from possessing them under § 922(g)," and its ruling accordingly centered on "Marshall's inability to obtain a firearm." Marshall, 2025 WL 1566878, at *5 n.3 (emphasis added).

But, as we are remanding in any event, we leave this issue concerning standing to be addressed in the first instance by the District Court, insofar as the issue is not moot after the District Court addresses the merits of Marshall's various Second

Amendment claims based on the standing he otherwise has. See Wescott v. Stanfill, 171 F.4th 534, 543-44 (1st Cir. 2026).

**V.**

For the foregoing reasons, we **vacate** the District Court's judgment and **remand** for additional proceedings consistent with this opinion.