NO. 24-1247

IN THE
UNITED STATES SUPREME COURT

UNITED STATES
Petitioner,
vs.

LA'VANCE COOPER
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI FROM THE
UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT
No. 24-1988

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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I. QUESTION PRESENTED FOR REVIEW

Whether 18 U.S.C. 922(g)(3), the federal statute that prohibits the possession of firearms by a person who "is an unlawful user of or addicted to any controlled substance," violates the Second Amendment as applied to respondent, who used marijuana but to no ill effect.

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IV. SUMMARY OF THE ARGUMENT

The Eighth Circuit did not issue a decision declaring that 18 U.S.C. § 922(g)(3) violates U.S. Const., Amend. II, as applied to Mr. Cooper. Instead, it gave the district court the "first crack" at the issue on remand. *United States v. Cooper*, 127 F.4th 1092, 1098 (8th Cir. 2025). *Cooper* found that, "[s]ometimes disarming drug users and addicts will line up with the case-by-case historical tradition, but other times it will not." *Cooper* directed that, "[t]he district court's task on remand is to figure out which side of the Second Amendment line Cooper's case falls on." *Cooper*, 127 F.4th, at 1097.

On remand from the Eighth Circuit, the district court has now entered an order granting Mr. Cooper's motion to dismiss. Respondent's App. E, *infra*, at p. 54a. The judge concluded that,

> Here, the government was bound to prove to the Court's satisfaction facts showing that defendant's use of controlled substances made him a danger or a threat. Its evidence fell short of doing that. So, the Court concludes that defendant's prosecution and conviction are unconstitutional under the Second Amendment.
>
> App., *infra*, 56a.

The analysis presented by the Court of Appeals to guide the district court's decision on remand is entirely consistent with the reasoning of this Court in *United States v. Rahimi*, 602 U.S. 680, 692 (2024), the decision that allowed for temporary disarmament pursuant to another part of § 922(g), namely, 18 U.S.C. § 922(g)(8). *Rahimi* held that 922(g)(8) could be applied to a person who had been found to be a credible threat to the physical safety of another. *Rahimi*, 602 U.S. at 698 (when an individual poses a clear threat of physical violence to another, the threatening individual may be disarmed). Likewise, *Cooper* conducted an historical analysis and concluded that that an individualized assessment of dangerousness is required to determine if prosecuting a particular drug user under 18 U.S.C.S. § 922(g)(3) is constitutional. *Cooper*, 127 F.4th, at 1096.

V. ARGUMENT

A. The Eighth Circuit's analysis and conclusion in *Cooper* is entirely consistent with this Court's analysis and holding in *Rahimi*.

Title 18 U.S.C. § 922(g)(3) without exception bars anyone, "who is an unlawful user of or addicted to any controlled

substance" from possession of a firearm. La'Vance Cooper was a mere marijuana user, like millions of other Americans, whose use created no threat to the physical safety of anyone. As set out in *Cooper*, 127 F.4th at 1094, he smoked marijuana 3-4 times per week, including two days before each of the two traffic stops that led to the filing of a two-count indictment charging him with violating 18 U.S.C.S. § 922(g)(3). No evidence was presented that this use had any adverse effect on his behavior.

Cooper characterized the district court's rationale for originally denying Cooper's as-applied challenge to the statute as, "… once Congress decided that drug users as a 'class' had no right to possess a gun, none could possess one, regardless of the who, what, when, where, and why of the drug use and gun possession." *Cooper*, 127 F.4th at 1094.

Cooper found this to be incorrect and held that the relevant questions for resolving Cooper's as-applied challenge is this:

> Did using marijuana make Cooper act like someone who is "both mentally ill and dangerous"? [United States v.] *Veasley*, 98 F.4th at 913. Did he "induce terror," id. at 918, or "pose a credible threat to the physical safety of others" with

> a firearm, *Rahimi*, 602 U.S. at 700? Unless one of the answers is yes—or the government identifies a new analogue we missed, *but cf. United States v. Connelly*, 117 F.4th 269, 274-75 (5th Cir. 2024) (coming up with a similar list)—prosecuting him under § 922(g)(3) would be "[in]consistent with this Nation's historical tradition of firearm regulation." [United States v.] *Bruen*, 597 U.S. at 17.
>
> *Cooper*, 127 F.4th at 1096.

Cooper's guidance on how 922(g)(3) may be applied in a manner that does violate the Second Amendment is entirely consistent with this Court's holding in *Rahimi*. Indeed, *Cooper* quoted and relied on *Rahimi*'s analysis.

In *Cooper*, the Eighth Circuit found that, "[n]othing in our tradition allows disarmament simply because Cooper belongs to a category of people, drug users, that Congress has categorically deemed dangerous. Neither the confinement of the mentally ill nor the going-armed laws operated on an *irrebuttable* basis." *Cooper*, 127 F.4th at 1096.

Likewise, the Supreme Court in *Rahimi* found that appropriate historical analogues presume that, "the Second Amendment right may only be burdened once a defendant has

been found to pose a credible threat to the physical safety of others." *Rahimi*, 602 U.S. at 700. And to further emphasize this point, the Court went on to remark that, in discussing the New York statute at issue in *Bruen v. United States*, 519 U.S. 890 (1996), "… our Nation's tradition of firearm regulation distinguishes citizens who have been found to pose a credible threat to the physical safety of others from those who have not." *Rahimi*, 602 U.S. at 700.

Rahimi is not directly on point because it involved an interpretation of 18 U.S.C. § 922(g)(8). But *Rahimi* did, based on its historical analysis of the regulation of the possession of firearms, conclude that 922(g)(8) did not violate the Second Amendment because there had been a finding that Rahimi's possession of a firearm possessed a credible threat of harm to another (his domestic partner, whom he had threatened to physically harm). *Rahimi*, 602 U.S. at 698. The Eighth Circuit's analysis in *Cooper* therefore directly aligns with *Rahimi's*.

B. The Government appears to argue that no as-applied challenge to 922(g)(3) can prevail.

The Government, in its Petition in Cooper's case, posed the question, whether 18 U.S.C. 922(g)(3) violates the Second Amendment as applied to respondent, who used marijuana. It did not directly answer that question. Instead, the Petition noted, at the bottom of page 2 on to the top of page 3 of the Petition, that the district court, in the original order from which Cooper appealed, found that, "Section 922(g)(3) is constitutional as applied even if, in any given case, the evidence might show that the offender was not simultaneously under the influence of drugs while in possession of a firearm." The ruling in question is the district court's ruling on the defense motion to reconsider, which is on page 16a of Appendix B of the Petition.

This quote from the Petition leaves out the final clause of that sentence in the judge's ruling, namely, "or not then a danger or terror to society."

The district court in its ruling on the motion to reconsider went on to find that, "[i]ndeed, the grandmother in possession of a

shotgun while illegally using marijuana is in violation of Section 922(g)(3), and its application to her is constitutional, even though she may not at that moment pose a danger to society." App. B, page 16a. This finding by the district court was a retort to the Eighth Circuit's ruling in *United States v. Veasley,* 98 F. 4th 906, 909 (8th Cir. 2024), that keeping firearms out of the hands of drug users can sometimes violate the Second Amendment. *Veasley* cited a hypothetical grandmother who uses marijuana to relieve pain but keeps a firearm for protection. *Veasley*, 98 F. 4th at 917-18. As *Cooper* noted, to keep a gun for protection is the central component of the right to bear arms. *Cooper*, 127 F.4th at 1098. Although not directly stated in the Petition for Writ in Cooper's case, the Government seems to be asserting that the district court's original rulings and rationale are correct … that even a grandmother who uses marijuana to relieve pain and with no ill effect and keeps a shotgun for protection may be prosecuted and permanently disarmed for violating Chapter 922(g)(3).

VI. CONCLUSION

Chapter 922(g)(3) does not apply by its terms only to drug addicts. It applies to those who are users of or addicted to any controlled substance, no matter whether their use positively or negatively affects the user or indeed has no effect. But that is not all, in the Eighth Circuit, at least. Eighth Circuit Model Criminal Instruction 6.18.922B, fully set out below in a footnote, provides that a the "user of a controlled substance element" maybe proved by evidence of use months ago or possibly even longer, as follows:

> "Such use is not limited to the use of drugs on a particular day, or within a matter of days or weeks before, but rather that the unlawful use has occurred recently enough to indicate that the individual is actively engaged in such conduct."

Excerpt from Eighth Circuit Model Instruction Criminal 6.18.922B.[1]

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[1] [The phrase "unlawful user of a controlled substance" means a person who uses a controlled substance in a manner other than as prescribed by a licensed physician. The defendant must have been actively engaged in use of [a] controlled substance[s] during the time [he] [she] possessed the [firearm] [ammunition], but the law does not require that [he] [she] used the controlled substance[s] at the precise time [he] [she] possessed the [firearm] [ammunition].

In addition to there being no recent use requirement under the Eighth Circuit's model instructions, the commentary to those instructions note that, "[u]nlike other circuits, the Eighth Circuit does not require evidence of use over an extended period," citing *United States v. Carnes*, 22 F.4th 743, 748-49 (8th Cir. 2022).

But there is more. In addition to the absence of either a recency or extended use requirement, the Eighth Circuit further allows the jury to infer that the defendant is a prohibited "user of or addicted to" a controlled substance just from proof that the defendant possessed a controlled substance. Specifically, the last sentence of the model instruction says that an inference of use "may be drawn" (not that the inference may-but-is-not-required to be drawn) from mere possession of a controlled substance.

Such use is not limited to the use of drugs on a particular day, or within a matter of days or weeks before, but rather that the unlawful use has occurred recently enough to indicate that the individual is actively engaged in such conduct. [An inference that a person [was] [is] a user of a controlled substance may be drawn from evidence of a pattern of use or possession of a controlled substance that reasonably covers the time the [firearm] [ammunition] was possessed.

All told, Chapter 922(g)(3)'s vast throw-out-the-baby-with-the-bathwater scope far exceeds the scope of any comparable legislation in effect at the time of the founding. *See Cooper*, 127 F. 4th at 1096 ("'disarming *all* drug users,' regardless of the individual danger they pose, is not comparable to anything from around the time of the Founding.")

With respect to the all-drug-users-are-too-dangerous rationale apparently advanced by the Government, as Justice Gorsuch noted in his concurring opinion in *Rahimi*, the exercise of Second Amendment rights will surely pose some risks, and that was understood by the founders. Per Justice Gorsuch:

> When the people ratified the Second Amendment, they surely understood an arms-bearing citizenry posed some risks. But just as surely they believed that the right protected by the Second Amendment was itself vital to the preservation of life and liberty.
>
> *Rahimi*, [citations omitted], 602 U.S. at 709.

And to paraphrase Justice Barrett in her concurring opinion, use of the "credible threat to the physical safety of another" standard in *Rahimi,* as incorporated by *Cooper,* achieves the

appropriate level of generality – that is, a standard that does not require finding an exact historical regulatory twin, on one hand, but is not too general that it waters down the constitutional right to bear arms, on the other. *Rahimi*, 602 U.S. at 740. Mr. Cooper's take on the level of generality analysis is that Chapter 922(g)(3)'s disenfranchisement of all drug users of any drug is to apply a principle – that possession of firearms by any and all drug users creates danger – at such a high level of generality that it impermissibly, Mr. Cooper asserts, waters down if not washes away the Second Amendment right to bear arms.

Accordingly, for the reasons and upon the authority set forth above, La'Vance Cooper requests that the Court deny the Government's petition for a writ of certiorari.

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. LA'VANCE LEMARR COOPER, Defendant.	No. 23-CR-2040-CJW-MAR **ORDER**

This matter is before the Court on defendant's motion to dismiss, (Doc. 27), part of which the Court of Appeals for the Eighth Circuit remanded to this Court, (Doc. 84), for reexamination of defendant's as-applied challenge to the constitutionality of his prosecution under Title 18, United States Code, Section 922(g)(3) in view of the Second Amendment.

On July 1, 2025, the Court held a hearing under Federal Rule of Criminal Procedure 12(d) to reexamine defendant's as-applied challenge in accordance with the Eighth Circuit's order. (Doc. 104). At the hearing, the Court gave the parties an opportunity to supplement the record with respect to the as-applied challenge. The government urged the Court to take notice of the parties' factual stipulation, (Doc. 42), and the presentence investigation report, (Doc. 57). Defendant urged the Court to consider only the parties' stipulated facts, (Doc. 42), and objected to the Court's consideration of any additional facts. The Court expressed uncertainty as to the materials it may or may not properly consider at this unfamiliar procedural juncture in disposing of defendant's motion. *See* (Doc. 104).

The Court concludes that even upon taking the broadest embrace of the available record—to encompass the presentence investigation report, (Doc. 57)—the government

has failed to demonstrate that the application of Section 922(g)(3) to this particular defendant is consistent with this Nation's historical tradition of firearm regulation. In its order remanding the case to this Court, the Eighth Circuit framed the inquiry as follows:

> Did using marijuana make Cooper act like someone who is both mentally ill and dangerous? Did he induce terror, or pose a credible threat to the physical safety of others with a firearm? Unless one of the answers is yes—or the government identifies a new analogue we missed—prosecuting him under § 922(g)(3) would be inconsistent with this Nation's historical tradition of firearm regulation.

(Doc. 84, at 5) (internal citations, alterations, and quotation marks omitted). The facts here did not show that defendant's drug use induced something analogous to a dangerous mental illness, nor did defendant's possession of firearms while an unlawful drug user induce terror or pose a threat to the physical safety of others. And the government did not identify any alternatively applicable analogue to Section 922(g)(3) and the conduct it purports to regulate in the annals of our Nation's history of firearm regulation. In short, the Court concludes that here, Section 922(g)(3) is unconstitutional as applied to defendant.

The Court maintains its concerns about the practical implications of operating under an ad-hoc, parallel system of judicial factfinding distinct from the factfinding required to prove the elements of the charged offense in criminal proceedings. What we apparently have now is a situation where the government must prove more to the Court—at some point before, during, or after a trial, through some manner and procedure not specifically laid out in the Federal Rules of Criminal Procedure—more facts about how a defendant's use of drugs made him a danger or threat to society than it must prove to the jury to convict the defendant. No court has ever held that the elements of Section 922(g)(3) include a showing that the defendant posed a danger or threat to society as a result of being an unlawful user of a controlled substance at the time of gun possession. The Court agrees with the concurring opinion authored in *United States v. Veasley*, 98

F.4th 906, 918–19 (8th Cir. 2024), which labeled the *Veasley* majority opinion's discussion about an as-applied challenge as *dicta* and would find the prohibition against unlawful drug users possessing firearms a presumptively lawful regulatory measure that would negate as-applied challenges. But, the Eighth Circuit Court of Appeals' decision in *Cooper* made it clear that what appeared to Judge Gruender and this Court to be *dicta* in *Veasley* as to as-applied challenges was instead a holding. The Court is rightly bound by the Eighth Circuit's precedential decision in this case. *See Barakat v. Frontier Justice KCMO, LLC*, No. 4:21-cv-00934-RK, 2022 WL 3269942, at *3 (W.D. Mo. Aug. 10, 2022) ("District courts in the Eighth Circuit—like this one—are duty bound to follow precedential decisions of the Eighth Circuit Court of Appeals.") (collecting cases). Thus, it does not matter what this Court thinks. The Circuit has spoken and it is this Court's obligation to follow the law. Here, the government was bound to prove to the Court's satisfaction facts showing that defendant's use of controlled substances made him a danger or a threat. Its evidence fell short of doing that. So, the Court concludes that defendant's prosecution and conviction are unconstitutional under the Second Amendment.

For these reasons, the Court **grants** defendant's motion to dismiss. (Doc. 27). Defendant is ordered to be **immediately released from custody**.

IT IS SO ORDERED this 2nd day of July, 2025.

C.J. Williams, Chief Judge
United States District Court
Northern District of Iowa