

No. 24-1247

In the Supreme Court of the United States

UNITED STATES OF AMERICA, PETITIONER

v.

LAVANCE LEMARR COOPER

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT*

REPLY BRIEF FOR THE PETITIONER

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This case presents the question whether 18 U.S.C. 922(g)(3), the statute that prohibits a person who “is an unlawful user of or addicted to any controlled substance” from possessing a firearm, violates the Second Amendment as applied to respondent. For the reasons given in the petition for a writ of certiorari (Pet. 3-4), this Court should hold the petition pending the resolution of *United States v. Hemani*, No. 24-1234 (petition for cert. filed June 2, 2025), which likewise involves an as-applied challenge to Section 922(g)(3).

Respondent does not meaningfully dispute that the question presented in this case and *Hemani* warrants this Court’s review. He does not deny that the Fifth Circuit has held Section 922(g)(3) invalid as applied in *Hemani* and other cases, that there is now a multi-sided circuit conflict about the statute’s constitutionality, or that the question presented has significant practical consequences. See Pet. at 23-26, *Hemani*, *supra* (No. 24-1234).

Respondent also does not meaningfully address the government's request to hold the petition for a writ of certiorari in this case pending the resolution of *Hemani*. He does not dispute that the two cases present materially identical questions. Nor does he dispute that *Hemani* would be a better vehicle for resolving the issue. See Pet. 4.

Respondent instead notes (Br. in Opp. 4) that, rather than invalidate Section 922(g)(3) as applied to him, the Eighth Circuit remanded this case to the district court so that it could, in the first instance, apply the constitutional standard that the Eighth Circuit had devised. But as the government has explained, the Eighth Circuit's approach conflicts with that of the Seventh Circuit (which has upheld Section 922(g)(3)) and that of the Fifth Circuit (which has applied a different test to determine which of the statute's applications comply with the Second Amendment). See Pet. at 24-25, *Hemani*, *supra* (No. 24-1234). In addition, after the government filed its certiorari petition in this case, the district court applied the test that the Eighth Circuit directed it to use, determined that Section 922(g)(3) violates the Second Amendment as applied to respondent, and dismissed the prosecution. See Br. in Opp. App. 54a-56a. In doing so, the district court expressed "its concerns about the practical implications" of the Eighth Circuit's test, which requires district courts to make "ad-hoc" factual judgments about "how a defendant's use of drugs made him a danger or threat to society." *Id.* at 55a. Those observations only underscore the need for this Court's review in *Hemani*.

Respondent also addresses (Br. in Opp. 5-14) the merits, but his arguments have no bearing on whether to hold the certiorari petition in this case pending the

resolution of *Hemani*. Respondent’s arguments are in any event incorrect. He contends (*id.* at 13) that Section 922(g)(3) lacks a founding-era analogue, but the government has shown that the statute is closely analogous to founding-era laws restricting the rights of habitual drunkards. See Pet. at 10-14, *Hemani*, *supra* (No. 24-1234). He also suggests (Br. in Opp. 7-8) that *United States v. Rahimi*, 602 U.S. 680 (2024), permits the government to disarm a person only if the government makes a case-by-case showing that he poses a danger. But *Rahimi* expressly declined to call into question “laws banning the possession of guns by categories of persons thought by a legislature to present a special danger of misuse.” *Id.* at 698.

Finally, respondent objects (Br. in Opp. 11-12) to the Eighth Circuit’s model jury instructions interpreting Section 922(g)(3). But the question presented concerns the constitutionality of the statute, not the lawfulness of the instructions. Respondent, moreover, received a bench trial, see Pet. 2, so the model jury instructions have no relevance to this case.

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This Court should hold the petition for a writ of certiorari in this case pending the disposition of the petition in *Hemani* and should then dispose of the petition in this case as appropriate.

Respectfully submitted.

D. JOHN SAUER
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