

No.

In the Supreme Court of the United States

UNITED STATES OF AMERICA, PETITIONER

v.

KINDLE TERRELL SAM

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

PETITION FOR A WRIT OF CERTIORARI

D. JOHN SAUER
*Solicitor General
Counsel of Record*
SARAH M. HARRIS
Deputy Solicitor General
VIVEK SURI
*Assistant to the Solicitor
General*
MATTHEW R. GALEOTTI
PAUL CRANE
Attorneys
*Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217*

QUESTION PRESENTED

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.

RELATED PROCEEDINGS

United States District Court (S.D. Miss.):

United States v. Sam, No. 22-CR-87 (Oct. 3, 2023)

United States Court of Appeals (5th Cir.):

United States v. Sam, No. 23-60570 (Mar. 10, 2025)

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PETITION FOR A WRIT OF CERTIORARI

OPINIONS BELOW

The opinion of the court of appeals (App., *infra*, 1a-2a) is available at 2025 WL 752543. The orders of the district court (App., *infra* 3a-4a, 5a-7a) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on March 10, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. In 2021, law-enforcement officers searched a house with the consent of the owner. See C.A. ROA 71. In one bedroom, which belonged to respondent Kindle Sam, the officers found a Glock pistol, magazines, and ammunition, as well as marijuana, electronic scales, and drug paraphernalia. See *ibid.* In an interview with the officers, respondent admitted that the pistol and mari-

juana belonged to him and that he had been a marijuana smoker for around five years. See *id.* at 71-72.

A grand jury in the United States District Court for the Southern District of Mississippi charged respondent with possessing a firearm as an unlawful user of a controlled substance, in violation of 18 U.S.C. 922(g)(3). See App., *infra*, 1a. Respondent moved to dismiss the indictment, arguing that Section 922(g)(3) violates the Second Amendment. See *ibid.* The court initially denied the motion, citing decisions in which other courts had rejected Second Amendment challenges to Section 922(g)(3). *Id.* at 5a-7a.

Soon afterwards, the Fifth Circuit held in *United States v. Daniels*, 77 F.4th 337 (2023), vacated, 144 S. Ct. 2707 (2024), that Section 922(g)(3) violates the Second Amendment as applied to a defendant who was not “under an impairing influence” while possessing a firearm. *Id.* at 349. Reconsidering its earlier decision in this case in light of *Daniels*, the district court granted respondent’s motion to dismiss the indictment. App., *infra*, 3a-4a. The court observed that the government “d[id] not contend that [respondent] was intoxicated at the time charged in the indictment.” *Id.* at 4a.

2. After the district court issued its decision in this case, this Court vacated the Fifth Circuit’s decision in *Daniels* and remanded that case for reconsideration in light of *United States v. Rahimi*, 602 U.S. 680 (2024). See *United States v. Daniels*, 144 S. Ct. 2707 (2024). The Fifth Circuit, however, soon reinstated essentially the same interpretation of the Second Amendment in another case, *United States v. Connelly*, 117 F.4th 269 (2024). The court concluded in *Connelly* that “there is no historical justification for disarming a sober citizen

not presently under an impairing influence.” *Id.* at 275-276.

The government conceded before the Fifth Circuit that *Connelly* controlled this case but preserved its argument that *Connelly* was wrongly decided. See App., *infra*, 2a. Relying on *Connelly*, the Fifth Circuit summarily affirmed the district court’s dismissal of the indictment. See *id.* at 1a-2a.

REASONS FOR GRANTING THE PETITION

This case presents the question whether Section 922(g)(3) violates the Second Amendment as applied to respondent. The government recently filed a petition for a writ of certiorari in another case involving an as-applied Second Amendment challenge to the same law, *United States v. Hemani*, No. 24-1234 (June 2, 2025). The Court should hold this petition for a writ of certiorari pending the disposition of the petition in *Hemani* and should then dispose of this petition as appropriate.

Hemani would be a better vehicle than this case for deciding whether Section 922(g)(3) complies with the Second Amendment. The record in *Hemani* includes more detail about the nature and extent of the defendant’s drug use than the record in this case. Compare Gov’t C.A. Br. 49 (“[A]dditional proceedings would permit further development of the nature and extent of Sam’s drug use.”), with Pet. at 5, *Hemani*, *supra* (No. 24-1234) (describing the nature and extent of Hemani’s drug use). This Court should accordingly grant plenary review in *Hemani* and hold the petition for a writ of certiorari in this case.

CONCLUSION

This Court should hold the petition for a writ of certiorari pending the disposition of the petition in *United States v. Hemani*, No. 24-1234 (filed June 2, 2025) and should then dispose of this petition as appropriate.

Respectfully submitted.

D. JOHN SAUER
Solicitor General
SARAH M. HARRIS
Deputy Solicitor General
VIVEK SURI
*Assistant to the Solicitor
General*
MATTHEW R. GALEOTTI
PAUL CRANE
Attorneys

JUNE 2025

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 23-60570
Summary Calendar

UNITED STATES OF AMERICA, PLAINTIFF-APPELLANT

v.

KINDLE TERRELL SAM, DEFENDANT-APPELLEE

Filed: Mar. 10, 2025

Appeal from the United States District Court
for the Southern District of Mississippi
USDC No. 3:22-CR-87-1

Before GRAVES, WILLETT, and WILSON, *Circuit Judges*.

PER CURIAM:*

A grand jury charged Kindle Terrell Sam with possessing a firearm while being an unlawful user of a controlled substance, in violation of 18 U.S.C. § 922(g)(3). The district court granted Sam's motion to dismiss the indictment, and the Government appeals. We review the constitutionality of § 922(g)(3) de novo. *See United*

* This opinion is not designated for publication. *See* 5th Cir. R. 47.5.

States v. Perez-Macias, 335 F.3d 421, 425 (5th Cir. 2003).

As here, we have previously considered an as-applied challenge to § 922(g)(3) in a case involving a motion to dismiss the indictment where the Government did not seek to prove that the defendant was unlawfully using a controlled substance at the time she was found in possession of a firearm. *See United States v. Connelly*, 117 F.4th 269, 272-73 (5th Cir. 2024). There, we concluded that, because there was no effort to show that Connelly, despite being a regular drug user, was intoxicated at the time she was arrested for possessing a firearm, applying § 922(g)(3) to her was unconstitutional. *Id.* at 282.

Likewise, in this case the Government did not seek to show that Sam was intoxicated or unlawfully using a controlled substance at the time he was found in possession of a firearm. *See Connelly*, 117 F.4th at 282. Nor did it seek to prove that Sam’s marijuana use was so extensive as to render him analogous to the dangerously mentally ill or a danger to others. *See United States v. Daniels*, 124 F.4th 967, 976 (5th Cir. 2025). Accordingly, the district court properly determined that § 922(g)(3) was unconstitutional as applied to Sam. Though the Government asserts that § 922(g)(3) is constitutional in all its applications, it acknowledges our holding in *Connelly* and states that it raises the argument to preserve it for further review.

The district court’s judgment is AFFIRMED.

APPENDIX B

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

Civil Action No. 3:22CR87TSL-LGI

UNITED STATES OF AMERICA

v.

KINDLE TERRELL SAM, DEFENDANT

Filed: Oct. 3, 2023

ORDER

On February 23, 2023, the court denied defendant Kindle Terrell Sam’s motion to dismiss the indictment, in which he argued that 18 U.S.C. § 922(g)(3) is unconstitutional as applied to him. See 18 U.S.C. § 922(g)(3) (stating that “[i]t shall be unlawful for any person . . . (3) who is an unlawful user of or addicted to any controlled substance . . . [to] possess in or affecting commerce, any firearm or ammunition.”). Defendant moved to reconsider and the court stayed consideration of his motion to reconsider pending a ruling by the Fifth Circuit in the case of United States v. Daniels, 22-60596 (5th Cir.), which also presented the issue of the constitutionality of § 922(g)(3) in light of New York State Rifle & Pistol Assoc., Inc. v. Bruen, — U.S. —, 142 S. Ct. 2111, 213 L. Ed. 2d 387 (2022)). On August 9, 2023, the

Fifth Circuit issued its opinion in Daniels, ruling that “§ 922(g)(3) fail[ed] constitutional muster under the Second Amendment” as applied to Daniels, who was not alleged to have been intoxicated when he was arrested and whose drug usage amounted to smoking marihuana multiple times a month. United States v. Daniels, 77 F.4th 337, 340 (5th Cir. 2023). The facts charged in the present case are substantially similar to those presented in Daniels; that is, here, as in Daniels, the government does not contend that defendant was intoxicated at the time charged in the indictment and he has previously only been convicted of possession of marihuana. In accordance with Daniels, therefore, the court concludes that § 922(g)(3) is unconstitutional as applied to Sam. Accordingly, his motion to reconsider will be granted and the indictment against him will be dismissed.

Based on the foregoing, it is ordered that the motion to reconsider is granted, and the indictment is dismissed.

SO ORDERED this 3rd day of October, 2023.

/s/ TON S. LEE
TON S. LEE
UNITED STATES DISTRICT JUDGE

APPENDIX C

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

Civil Action No. 3:22CR87TSL-LGI

UNITED STATES OF AMERICA

v.

KINDLE TERRELL SAM, DEFENDANT

Filed: Feb. 23, 2023

ORDER

This cause is before the court on the motion of defendant Kindle Terrell Sam to dismiss the indictment against him. The government opposes the motion, and the court, having considered the parties' memoranda and submissions, concludes that the motion is not well taken and should be denied.

On July 19, 2022, the grand jury returned an indictment charging defendant with one count of knowingly possessing a firearm while an unlawful user of a controlled substance in violation of 18 U.S.C. § 922(g)(3). By his motion, defendant, citing New York State Rifle & Pistol Assoc., Inc. v. Bruen, 213 L. Ed. 2d 387, 142 S. Ct. 2111, 2129-30 (2022), contends that § 922(g)(3) is unconstitutional under the Second Amendment, and therefore, the indictment against him must be dismissed.

See id. (stating that “[w]hen the Second Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects that conduct” such that Government bears burden of “justify[ing] its regulation by demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation”). The court, however, concludes that the motion should be denied for the reasons set forth in United States v. Daniels, Crim. No. 1:22-CR58-LG-RHWR-1, 2022 WL 2654232 (S.D. Miss. July 8, 2022) (conducting historical analysis and finding § 922(g)(3) constitutional), as well as in United States v. Posey, No. 2:22CR 83 JD, 2023 WL 1869095, at *1 (N.D. Ind. Feb. 9, 2023) (assuming without deciding that defendant’s conduct was covered by Second Amendment and concluding “that the government has established that the restrictions imposed by § 922(g)(3) are consistent with the history and tradition of firearms regulation in the United States”); United States v. Lewis, No. CR-22-368-F, 2023 WL 187582, at *4 (W.D. Okla. Jan. 13, 2023) (finding § 922(g)(3) constitutional under historical analogues offered by government); United States v. Black, No. CR 22-133-01, 2023 WL 122920, at *4 (W.D. La. Jan. 6, 2023) (“agree[ing] that § 922(g)(3) is a constitutional restriction consistent with historical tradition”); United States v. Sanchez, No. W-21-CR00213-ADA, 2022 WL 17815116, at *2 (W.D. Tex. Dec. 19, 2022) (concluding that § 922(g)(3) is constitutional and collecting cases); but see United States v. Harrison, No. CR-22-00328-PRW, 3 2023 WL 1771138, at *24 (W.D. Okla. Feb. 3, 2023) (finding § 922(g)(3) unconstitutional under Bruen).

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Based on the foregoing, it ordered that defendant's motion to dismiss is denied.¹

SO ORDERED this 23rd day of February, 2023.

/s/ TOM S. LEE
TOM S. LEE
UNITED STATES DISTRICT JUDGE

¹ The court likewise denies defendant's supplemental motion to dismiss which merely brought to the court's attention the recent decisions in Harrison, cited above, and in United States v. Rahimi, 59 F.4th 163, 168 (5th Cir. 2023), which found 18 U.S.C. § 922(g)(8) unconstitutional under Bruen.