IN THE SUPREME COURT OF THE UNITED STATES

No. 24A1010

UNITED STATES OF AMERICA, APPLICANT

v.

KESHON DAVEON BAXTER

APPLICATION FOR A FURTHER EXTENSION OF TIME
WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Pursuant to Rules 13.5 and 30.2 of the Rules of this Court, the Solicitor General -- on behalf of applicant United States of America -- respectfully requests a 28-day extension time, to and including July 3, 2025, within which to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit in this case. The opinion of the court of appeals (App., infra, 1a-7a) is reported at 127 F.4th 1087. The order of the district court (App., infra, 8a-15a) is not reported.

The court of appeals entered its judgment on February 5, 2025. On April 21, 2025, Justice Kavanaugh extended the time within which to file a petition for a writ of certiorari to and including June

5, 2025. The jurisdiction of this Court would be invoked under 28 U.S.C. 1254(1).

1. In June 2023, a grand jury in the Southern District of Iowa charged respondent Keshon Baxter with possessing a firearm as an unlawful drug user, in violation of 18 U.S.C. 922(g)(3). See App., infra, 8a. Respondent moved to dismiss the indictment on the ground that Section 922(g)(3) violated the Second Amendment on its face and as applied to him. See id. at 2a. The district court denied the motion, explaining that "prohibiting possession of firearms by unlawful users of controlled substances is consistent with the historical tradition of firearm regulation." Id. at 13a; see id. at 8a-15a. Respondent then entered a conditional guilty plea, preserving his right to appeal the court's order. See id. at 2a. The court sentenced him to 64 months of imprisonment, to be followed by 3 years of supervised release. Judgment 2-3.

The Eighth Circuit vacated and remanded. App., infra, 1a-7a. The court rejected respondent's facial challenge, see id. at 2a n.1, but determined that resolving his as-applied challenge required making an individualized determination about whether "applying 'the regulation' to [respondent's] conduct is 'inconsistent with this Nation's historical tradition of firearm regulation.'" Id. at 5a (brackets and citation omitted). Because the district court "did not make any factual findings as to the nature of [respondent's] controlled substance use," the court of appeals

remanded the case, while leaving open the question "whether [respondent's] motion can properly be resolved without a trial." Id. at 4a-5a.

2. The Solicitor General has not yet determined whether to file a petition for a writ of certiorari in this case. After the Eighth Circuit remanded the case, the district court scheduled a trial for June 2, 2025 -- days before the current deadline for filing a petition for a writ of certiorari (June 5, 2025). See D. Ct. Dkt. 85 (Apr. 24, 2025). The additional time sought in this application is needed to continue consultation within the government and to assess the legal and practical impact of the court of appeals' ruling in light of the proceedings on remand in the district court. Additional time is also needed, if a petition is authorized, to permit its preparation and printing.

Respectfully submitted.

D. JOHN SAUER
Solicitor General

MAY 2025

APPENDIX

United States Court of Appeals
For the Eighth Circuit

No. 24-1164

United States of America

Plaintiff - Appellee

v.

Keshon Daveon Baxter

Defendant - Appellant

Appeal from United States District Court
for the Southern District of Iowa - Central

Submitted: January 15, 2025
Filed: February 5, 2025

Before SHEPHERD, ARNOLD, and ERICKSON, Circuit Judges.

SHEPHERD, Circuit Judge.

Keshon Baxter was charged with being an unlawful user of a controlled substance in possession of a firearm, in violation of 18 U.S.C. §§ 922(g)(3) and 924(a)(8). He moved to dismiss the charge, arguing that § 922(g)(3) violates the Second Amendment as applied to him and is unconstitutionally vague. The district court rejected both arguments pretrial. Baxter then pled guilty, preserving the right to appeal the district court's rulings, and now appeals. The opinion below does not

contain sufficient factual findings for this Court to review Baxter's as-applied Second Amendment challenge. However, we agree with the district court that Baxter's vagueness challenge fails. Thus, having jurisdiction under 28 U.S.C. § 1291, we affirm in part and reverse and remand in part.

I.

In May 2023, police encountered Baxter in downtown Des Moines, Iowa, and attempted to stop him, and he tried to flee. When they apprehended him, they searched Baxter and found a loaded pistol and a baggie of marijuana. The government charged Baxter with being an unlawful user of a controlled substance in possession of a firearm. Baxter filed a motion to dismiss, arguing both that § 922(g)(3) is unconstitutional in violation of the Second Amendment as applied to him[1] and that it is void for vagueness.

The district court denied the motion without holding a hearing on the matter. The court first rejected Baxter's Second Amendment argument, noting that the government had shown adequate historical analogues. The court further rejected Baxter's vagueness challenge because Baxter did not show the statute was vague *as applied to his conduct*. Baxter then entered a conditional guilty plea, preserving his right to appeal the court's order. On appeal, Baxter challenges both of the district court's rulings.

II.

Baxter first argues that the district court erred in denying his motion to dismiss on the grounds that § 922(g)(3) violates the Second Amendment as applied to him.

[1]Baxter does not explicitly assert a Second Amendment facial challenge, but he raised both facial and as-applied arguments in his brief. To the extent he brings a facial challenge, it is foreclosed by this Court's decision in United States v. Veasley. See 98 F.4th 906, 910 (8th Cir. 2024), cert. denied, No. 24-5089, 2024 WL 4427336 (U.S. Oct. 7, 2024) (rejecting a facial challenge to § 922(g)(3)).

Section 922(g)(3) prohibits anyone "who is an unlawful user of or addicted to any controlled substance" from possessing a firearm. See 18 U.S.C. § 922(g)(3). The statute does not define "unlawful user," see id., and "[o]n its face, . . . [it] applies to everyone from the frail and elderly grandmother to regular users of a drug like PCP, which can induce violence." See Veasley, 98 F.4th at 910. Baxter does not contend "that [§ 922(g)(3)] is unconstitutional as written" or in all circumstances, but rather "that its application to a particular person under particular circumstances"—Baxter—"deprived [him] of a constitutional right." See United States v. Lehman, 8 F.4th 754, 757 (8th Cir. 2021).

When a regulation is challenged as unconstitutional under the Second Amendment, the Government bears the burden of "justify[ing] its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." N.Y. State Rifle & Pistol Ass'n., Inc. v. Bruen, 597 U.S. 1, 24 (2022). Baxter claims that "[b]y regulating citizens 'based on a pattern of drug use' without proof the individual is intoxicated at the time of possession, [§] 922(g)(3) is not consistent with our nation's history and tradition." Appellant Br. 11 (citation omitted). An as-applied Second Amendment challenge like this one "requires courts to examine a statute based on a defendant's individual circumstances." Veasley, 98 F.4th at 909. We review the constitutionality of a statute de novo. United States v. Seay, 620 F.3d 919, 923 (8th Cir. 2010).

Pretrial motions, like Baxter's motion to dismiss, are governed by Federal Rule of Criminal Procedure 12. Under this rule, "[a] party may raise by pretrial motion any defense, objection, or request that the court can determine without a trial on the merits." Fed. R. Crim. P. 12(b)(1). As the Supreme Court has explained, this rule means that a court may rule on a pretrial motion "if trial of the facts surrounding the commission of the alleged offense would be of no assistance in determining the validity of the defense." United States v. Covington, 395 U.S. 57, 60 (1969). However, the mere existence of factual issues in a pretrial motion does not preclude a pretrial ruling on the motion. See Fed. R. Crim. P. 12(d). Rather, the rule specifically "contemplates that district courts may sometimes make factual findings

when ruling on pretrial motions and requires that the court 'state its essential findings on the record.'" United States v. Turner, 842 F.3d 602, 605 (8th Cir. 2016) (quoting Fed. R. Crim. P. 12(d)). Thus, Rule 12 allows district courts to make some factual findings so long as it states them on the record, but not when an issue is "inevitably bound up with evidence about the alleged offense itself." Id. (citation omitted).

Here, the district court did not "state its essential findings on the record." See Fed. R. Crim. P. 12(d). The district court's two-paragraph "background" in its Order on Defendant's Motion to Dismiss briefly summarized some of the relevant facts but did not lay out the court's findings as to the extent and frequency of Baxter's drug use and the overlap of Baxter's drug use with his firearm possession. While the parties have pointed to some relevant facts from various portions of the record, they also acknowledged at oral argument that the district court did not make any factual findings as to the nature of Baxter's controlled substance use. This "underdeveloped record we have on appeal simply leaves us with too much 'guesswork'" for appellate review. See United States v. Bloomfield, 40 F.3d 910, 922 (8th Cir. 1994) (en banc) (McMillian, J., dissenting). Thus, we remand this case to the district court for the factual findings required under Rule 12(d).[2]

Proper application of Rule 12 on remand will also require the district court to determine whether this issue is appropriate for pretrial resolution. See Fed. R. Crim. P. 12(b)(1). If the district court determines that the relevant factual evidence is "undisputed in the sense that it is *agreed* to by the parties," pretrial resolution may be appropriate because "a trial of the general issue would serve no purpose." See United States v. Pope, 613 F.3d 1255, 1261 (10th Cir. 2010) (Gorsuch, J.). Furthermore, pretrial resolution may also be appropriate if the district court determines that it can decide the legal issues presented without making any factual

[2]When "'there can be no genuine dispute about how the trial court actually resolved the facts missing from its express findings,' an appellate court may affirm a decision based on incomplete findings." Bloomfield, 40 F.3d at 914 (majority opinion). Here, however, it is unclear what factual determinations the district court made and relied on in its decision.

findings. See, e.g., United States v. Connelly, 668 F. Supp. 3d 662, 668 (W.D. Tex. 2023) ("assum[ing] without deciding that the Government's drug use allegations are true" in order to "decide the legal issues presented without further factual findings"), aff'd in part, rev'd in part, 117 F.4th 269 (5th Cir. 2024). If, however, ruling on the as-applied challenge requires "resolving factual issues related to [Baxter's] alleged offense, such as the extent of his drug use," then resolution of the issue is likely improper before trial. See Turner, 842 F.3d at 605. We leave this question to the district court on remand and we take no position on whether Baxter's motion can properly be resolved without a trial.

If the district court determines that Rule 12 poses no bar to deciding Baxter's as-applied challenge, the court must then focus "only on [Baxter]: [I]s applying 'the regulation' to *his* conduct '[in]consistent with this Nation's historical tradition of firearm regulation'?" See Veasley, 98 F.4th at 909 (third alteration in original) (quoting Bruen, 597 U.S. at 17). In considering this question, the district court "may consider evidence beyond the pleadings to make factual findings" on the record. Turner, 842 F.3d at 605. If, however, the district court determines that Rule 12 precludes pretrial resolution of Baxter's Second Amendment challenge, the court should then provide Baxter the opportunity to move to withdraw his guilty plea and proceed to trial on the original charge. See id. at 605-06. Otherwise, Baxter would be prejudiced by the court's premature ruling because he conditionally pled guilty under the assumption that he could "have an appellate court review an adverse determination" of his motion to dismiss. See id. at 605 (quoting Fed. R. Crim. P. 11(a)(2)).

III.

Baxter next argues that § 922(g)(3) is unconstitutionally vague because the term "unlawful user" is undefined and vague. "We review void-for-vagueness challenges de novo." United States v. Burgee, 988 F.3d 1054, 1060 (8th Cir. 2021) (citation omitted).

"The Fifth Amendment guarantees every citizen the right to due process. Stemming from this guarantee is the concept that vague statutes are void." United States v. Cook, 782 F.3d 983, 987 (8th Cir. 2015) (citation omitted). A criminal statute is void for vagueness "if it fails to give ordinary people fair notice of the conduct it punishes or is so standardless that it invites arbitrary enforcement." United States v. Deng, 104 F.4th 1052, 1054 (8th Cir. 2024) (citation omitted). To win a vagueness challenge, Baxter "need not prove that § 922(g)(3) is vague in all its applications," but rather "that the statute is vague as applied to his particular conduct." United States v. Bramer, 832 F.3d 908, 909-10 (8th Cir. 2016) (per curiam). That is "because a defendant 'who engages in some conduct that is clearly proscribed cannot complain of the vagueness of the law as applied to the conduct of others.'" Deng, 104 F.4th at 1054 (citation omitted).

Though the statute does not define "unlawful user," we have interpreted the term to require a "temporal nexus between the gun possession and regular drug use." See United States v. Carnes, 22 F.4th 743, 748 (8th Cir. 2022) (citation omitted). We have not defined "regular drug use," but we have upheld jury instructions stating that use of a controlled substance "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." Id. (emphasis omitted).

Here, Baxter's vagueness challenge fails. Though Baxter has presented broad arguments about the vagueness of the term "unlawful user" in § 922(g)(3), he has not carried his burden of presenting any argument for why the phrase is unconstitutionally "vague as applied to his particular conduct." See Bramer, 832 F.3d at 909. "Though it is plausible that the term[] 'unlawful user' of a controlled substance . . . could be unconstitutionally vague under some circumstances, [Baxter] does not argue, and has not shown, that [the] term is vague as applied to his particular conduct." Id. at 909-10. We therefore affirm the ruling of the district court as to Baxter's vagueness challenge.

IV.

For the foregoing reasons, we affirm the district court's decision to reject Baxter's vagueness and facial Second Amendment challenges. We reverse the district court's ruling on Baxter's as-applied Second Amendment challenge and remand to the district court for further proceedings consistent with this opinion.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. KESHON DAVEON BAXTER, Defendant.	)	Case No. 4:23-cr-00108-SMR-WPK-1 ORDER ON DEFENDANT'S MOTION TO DISMISS

Defendant Keshon Daveon Baxter was indicted by a grand jury on a charge of being an unlawful user in possession of a firearm. [ECF No. 22]. He moves to dismiss the indictment, arguing that § 922(g)(3) is unconstitutional as applied to him under the Second Amendment to the United States Constitution as interpreted by the United States Supreme Court in *New York State Rifle & Pistol Association, Inc.*, *v. Bruen*, 142 S. Ct. 2111 (2022). [ECF No. 37]. He also contends that the statute is unconstitutionally vague because it does not define "unlawful user."

I. BACKGROUND

On May 21, 2023, Defendant was walking in the Court Avenue district in Des Moines, Iowa, with a group of people. Shortly after midnight, a different group of people began interacting with Defendant and the other individuals. Des Moines police officers intervened and separated the groups. A witness later reported that an individual matching Defendant's clothing was carrying a firearm. Des Moines police approached Defendant and asked what was in his pocket. Defendant denied that he possessed anything and fled the scene when the officer ordered him to stop. The officer pursued Defendant, eventually tackling him. A search of Defendant's pockets revealed a firearm and a bag of marijuana.

Defendant was charged in a single-count indictment of possession of a firearm by an unlawful user in violation of 18 U.S.C. § 922(g)(3). [ECF No. 21] (sealed). He now moves to dismiss the indictment, arguing that the statute violates his rights protected by the Second Amendment and the Fourteenth Amendment. [ECF No. 37].

II. DISCUSSION

A. Legal Standard

The Second Amendment to the United States Constitution provides that "[a] well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. Const. amend. II. It protects the "right of law-abiding, responsible citizens to use arms in defense of hearth and home." *Dist. of Columbia v. Heller*, 554 U.S. 570, 635 (2008). The Second Amendment has been incorporated against the States. *See McDonald v. City of Chicago*, 561 U.S. 742 (2010). Both *Heller* and *McDonald* held that "the Second and Fourteenth Amendments protect an individual right to keep and bear arms for self-defense." *Bruen*, 142 S. Ct. at 2125.

The Supreme Court recently recognized that the Second Amendment's reach extends to possessing firearms outside of the home for "ordinary self-defense needs." *Id.* at 2156. The *Bruen* Court also crafted a new test for constitutional challenges to firearm regulations which is "rooted in the Second Amendment's text, as informed by history." *Id*. at 2127. The text and history test requires the Government to "affirmatively prove that its firearms regulation is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms." *Id*. Under this test, "when the Second Amendment's plain text covers an individual's conduct," such conduct is presumptively protected. *Id*. at 2126. The Government must then offer historical evidence to demonstrate that the regulation is sufficiently similar to restrictions from the Founding-era. *Id*.

B. As-Applied Challenge to Section 922(g)(3)

1. Protection of Conduct

The first analytical step is for the Court to determine whether "the Second Amendment's plain text covers an individual's conduct." *Bruen*, 142 S. Ct. at 2134. The Second Amendment provides that "the right of the people to keep and bear Arms shall not be infringed." U.S. Const. amend. II. This phrase is interpreted to "'guarantee[] the individual right to possess and carry weapons in case of confrontation.'" *Bruen*, 142 S. Ct. at 2127 (quoting *Heller*, 554 U.S. at 592).

Defendant argues that he is properly considered within "the people" protected by the Second Amendment. He contends that term denotes individuals who are either a recognized part of the national community or have established significant ties to the country. Because Defendant is a U.S. citizen, he maintains that he is clearly part of the national community and, by extension, one of "the people" entitled to the Second Amendment's protections. Furthermore, he points out that he does not have any felony or other disqualifying criminal conviction.

The Government argues that Defendant is not protected by the Second Amendment because he is not law-abiding. It notes that marijuana is a schedule I controlled substance and his use of marijuana is not disputed in this case. Therefore, Defendant does not fall within the scope of the Second Amendment as outlined by *Bruen*, according to the Government, because his conduct is "not covered by the plain text of the Second Amendment." *Id*.

Defendant's response to the Government's position is that "the people" mentioned in the Second Amendment refers to "all Americans." *Kanter v. Barr*, 919 F.3d 437, 453 (7th Cir. 2019) (Barrett, J., dissenting). He maintains that even marijuana users remain part of the political community and fall within the scope of the Second Amendment. [ECF No. 41 at 1]. Defendant contends that the Government "offers no limiting principle to its suggestion that only law-abiding

citizens fall within the definition of 'the people' in the Second Amendment's text." *Id*. at 2. Taken the Government's position to its extreme, Defendant urges that the Second Amendment would no longer be the right of "the people" but instead "the puritanical." *Id*.

The scope of the Second Amendment's protections is an uncertain issue where courts have been divided post-*Bruen*. *See United States v. Costianes*, --- F. Supp. 3d ----, ----, 2023 WL 3550972, at *4 (D. Md. 2023) (observing that "[c]ourts are divided on 'whether the Second Amendment protects the right to bear arms for all, or rather, only the rights of law-abiding citizens.'") (quoting *United States v. Black*, Crim. No. 22-133-01, 2023 WL 122920, at *3 (W.D. La. Jan. 6, 2023)). Some courts have found "the language of Section 922(g)(3) limits only persons that are not law-abiding from obtaining firearms and thus does not cover conduct protected by the Second Amendment." *United States v. Sanchez*, Crim. No. W-21-00213-ADA, 2022 WL 17815116, at *3 (W.D. Tex. Dec. 19, 2022). Indeed, this Court has previously held that "individuals who are not law-abiding are not entitled to the Second Amendment's protection." *United States v. Randall,* --- F. Supp. 3d ----, ----, 2023 WL 3171609, at *3 (S.D. Iowa 2023). United States District Judge Stephen H. Locher has recently observed that "the people" likely entails a much broader definition but has recognized that courts are far from a consensus on the definition. *United States v. Le*, --- F. Supp. 3d ----, ---- 2023 WL 3016297, at *4 (S.D. Iowa 2023) ("Of the courts to have decided the issue directly, most appear to have concluded that 'the people' in the Second Amendment refers to all citizens, and thus any citizen who possesses a firearm of a type in common use has satisfied *Bruen*'s first step."). Given the constantly changing case law on this uncertain issue, the Court will decline to definitely resolve the question because it ultimately finds that § 922(g)(3) passes constitutional muster. *See United States v. Hammond*, --- F. Supp.

3d ----, ----, 2023 WL 23119321, at *4 (S.D. Iowa 2023) (declining to decide whether "the people" refers to all citizens or just law-abiding citizens); *Costianes*, 2023 WL 3550972, at *4 (same).

2. Historical analogue

Defendant argues that the Government cannot establish that § 922(g)(3) is consistent with the historical tradition of firearm regulation in this country, as required by *Bruen*. The Second Amendment, according to Defendant, prohibits his prosecution under § 922(g)(3) without proof of actual intoxication at the time of his alleged possession.

The Government contends that even if Defendant falls within the scope of the Second Amendment's protections, his challenge to § 922(g)(3) fails. It argues that history and the Supreme Court's interpretation of the Second Amendment establishes that prohibiting firearm possession by unlawful drug users is consistent with this country's historical firearm regulations.

Bruen directs courts to consider whether laws regulating firearms are "consistent with this Nation's historical tradition." *Bruen*, 142 S. Ct. at 2126. The inquiry will "'involve reasoning by analogy, which 'requires a determination of whether the two regulations are 'relevantly similar.'" *Black*, 2023 WL 122920, at *2 (quoting *Bruen*, 142 S. Ct. at 2132). For a law to survive this analysis, the government needs only "identify a well-established and representative historical analogue, not a historical twin." *Bruen*, 142 S. Ct. at 2133. Laws "pass constitutional muster" if it is "analogous enough . . . [to] historical precursors." *Id.* The burden is on the Government to make this showing. *See United States v. Lewis*, --- F. Supp. 3d ----, ----, 2023 WL 187582, at *4 (citing *Bruen*, 142 S. Ct. at 2133).

Laws within the United States have long excluded individuals with mental illness from gun possession. *Heller*, 554 U.S. at 626; *McDonald*, 561 U.S. at 786. There is extensive history of states barring alcoholics from possessing firearms due to "heightened danger to the public." *Lewis,*

2023 WL 187582, at *4. It is difficult to believe "a colonial legislature would have seen much difference between the hazard presented by an armed 'lunatic' . . . or an armed and intoxicated person versus the hazard presented by an armed habitual user of illegal drugs." *Id.* This comparison is further appropriate because "[t]he manner in which the modern restriction burdens Second Amendment rights is comparable to how the intoxication statutes burdened those rights." *Fried v. Garland*, 640 F. Supp. 3d 1252, 1262 (N.D. Fla. 2022) (noting alcoholics were permanently disarmed, while individuals who use illicit substances are prohibited from ownership only while they are "a current user of a controlled substance"). Additionally, "habitual drug users, like the mentally ill, are more likely to have difficulty exercising self-control, making it dangerous for them to possess deadly firearms." *Le*, 2023 WL 3016297, at *3 (quoting *United States v. Yancey*, 621 F.3d 681, 685 (7th Cir. 2010)). Based on this comparison, the Court is satisfied the Government has met its burden through presentation of a historical analogue. *See Bruen*, 142 S. Ct. at 2133.

Even presuming the conduct of an individual charged with violating 18 U.S.C. § 922(g)(3) was covered by the Second Amendment, the Government has established that prohibiting possession of firearms by unlawful users of controlled substances is consistent with the historical tradition of firearm regulation.

C. Vagueness Challenge

Defendant also challenges § 922(g)(3) on the grounds that it is unconstitutionally vague. Congress did not define the term "unlawful user" in the statute. According to Defendant, that term does not have a clear or specialized meaning, so it fails to provide notice to individuals of common intelligence what conduct the statute proscribes. Furthermore, Defendant argues that § 922(g)(3) lacks a "triggering event" that is included in other 922(g) firearm prohibitions—like a felony

conviction or entry of a restraining order—which does not provide context for the restriction contained in § 922(g)(3). [ECF No. 37-1 at 6–7].

The Government responds that Defendant's vagueness challenge is insufficient because he does not specifically describe why it is vague as it relates to his conduct. Rather, he only makes general arguments about the absence of a definition for "unlawful user" in the statute. This argument, according to the Government, falls short of establishing the vagueness of the statute.

1. Legal Standard

The Fifth Amendment "guarantees every citizen the right to due process," which includes the "concept that vague statutes are void." *United States v. Birbragher*, 603 F.3d 478, 484 (8th Cir. 2010). A law is void for vagueness when "a criminal law [is] so vague that it fails to give ordinary people fair notice of the conduct it punishes, or so standard less that it invites arbitrary enforcement." *Johnson v. United States*, 576 U.S. 591, 595 (2016) (citing *Kolender v. Lawson*, 461 U.S. 352, 357–58 (1983)). The vagueness doctrine prohibiting the enforcement of vague laws relies on the dual constitutional principles of separation of powers and due process. *Sessions v. Dimaya*, 138 S. Ct. 1204, 1212–13 (2018).

2. Analysis

Defendant's vagueness argument is unavailing. He does not advance an argument that the statute is vague as applied to his particular conduct. *United States v. Bramer*, 832 F.3d 908, 909 (8th Cir. 2016) (holding that a facial challenge to a law cannot succeed without a showing that a criminal statute "is vague as applied to [a defendant's] particular conduct"). The Court does not agree that the vagueness doctrine applies to a statutory prohibition against possession of a firearm by an "unlawful user" when Defendant was found with marijuana in his pockets; it cannot be said that he "could not reasonably understand that his contemplated conduct is proscribed," by

§ 922(g)(3). *United States v. Washam*, 312 F.3d 926, 929 (8th Cir. 2002) (citation omitted). Possession of marijuana is unlawful under Iowa law and federal law. *See* Iowa Code section 124.401(5); 21 U.S.C. § 844(a).

The vagueness doctrine is not "designed to convert into a constitutional dilemma the practical difficulties in drawing criminal statutes both general enough to take into account a variety of human conduct and sufficiently specific to provide fair warning that certain kinds of conduct are prohibited." *Colten v. Kentucky*, 407 U.S. 104, 110 (1972). Defendant's position that § 922(g)(3) is unconstitutionally vague is without support.

III. CONCLUSION

For the foregoing reasons, Defendant's Motion to Dismiss the Indictment is DENIED. [ECF No. 37].

IT IS SO ORDERED.

Dated this 22nd day of September, 2023.

STEPHANIE M. ROSE, CHIEF JUDGE
UNITED STATES DISTRICT COURT