No. 24-1234

IN THE

Supreme Court of the United States

UNITED STATES,

Petitioner,

v.

ALI DANIAL HEMANI,

Respondent.

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

BRIEF IN OPPOSITION FOR ALI HEMANI

RAMZI KASSEM
NAZ AHMAD
MUDASSAR TOPPA
CLEAR PROJECT
MAIN STREET LEGAL SERVICES, INC.
CITY UNIVERSITY OF NEW YORK SCHOOL OF LAW
Long Island City, NY 11101

ZACHARY L. NEWLAND
Counsel of Record
DAVID C. BOYER
NEWLAND LEGAL, PLLC
P.O. Box 3610
Evergreen, CO 80437
(303) 948-1489
zach@newlandlegal.com

Counsel for Respondent

383127

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

QUESTION PRESENTED

The government charged Mr. Hemani with one count of violating 18 U.S.C. § 922(g)(3) in February 2023, several months after retrieving a firearm from his home. After the Fifth Circuit issued *United States v. Connelly*, 117 F.4th 269 (5th Cir. 2024), which concerned an as-applied challenge to 18 U.S.C. § 922(g)(3), the government moved for summary affirmance of the dismissal of an indictment against Mr. Hemani on direct appeal. Following *Connelly*, the Fifth Circuit found that 18 U.S.C. § 922(g)(3) was unconstitutional as applied to Mr. Hemani and granted the unopposed motion. Did the court of appeals err in granting summary affirmance?

TABLE OF CONTENTS

Table of Contents

Table of Contents

TABLE OF CITED AUTHORITIES

Page

Cases

Page

Statutes & Other Authorities

Cited Authorities

Page

Cited Authorities

Page

INTRODUCTION

The court of appeals' decision below is exceedingly narrow: 18 U.S.C. § 922(g)(3) is unconstitutional as applied to Mr. Hemani. Despite the narrowness of the Fifth Circuit's two-page opinion granting the parties' request for summary affirmance, Petitioner seeks certiorari on broad grounds that were never raised in Mr. Hemani's case before the district court or court of appeals.

Petitioner's request misrepresents the facts of Mr. Hemani's case and the decision below. Contrary to Petitioner's claim, the Fifth Circuit did not invalidate § 922(g)(3) in all its applications. (Pet. 3). Additionally, Petitioner's assertion that a circuit split has developed which would warrant this Court's review is inaccurate.

Before this Court Petitioner now claims for the first time that the serious constitutional concerns presented by § 922(g)(3) can be simply addressed under the long-defunct procedure of 18 U.S.C. § 925(c). Petitioner themselves admit that § 925(c) was effectively defenestrated from 1992 until March 2025. (Pet. 21). Section 925(c) has no bearing on whether § 922(g)(3) is unconstitutional as applied to Mr. Hemani.

With no circuit split and the limited scope of the summary affirmance below, this case is not an appropriate procedural vehicle for seeking this Court's review. The petition for writ of certiorari should be denied.

STATEMENT

A. Preliminary Statement

This case begins and ends with a one-count indictment which charged Mr. Hemani with possession of a firearm by a user of a controlled substance, in violation of 18 U.S.C. § 922(g)(3). (Pet. App. 1a). The sole factual allegations contained in the indictment were that on or about August 3, 2022, Mr. Hemani knew that he was an unlawful user of a controlled substance, and he knowingly possessed a Glock 19, 9mm pistol. *See* C.A. ROA 12. Mr. Hemani was not alleged to have been currently intoxicated when law enforcement found the Glock 19 at his home.

The limited allegations set forth in the indictment should be the only facts before the Court. The Petitioner acknowledged that "there was no evidence that [Mr. Hemani] was intoxicated on [marijuana] at the time of his arrest or while he carried the weapon" in its unopposed motion for summary affirmance. (citing ROA.380-81). Rather than grapple with vital fact, the government instead levies allegations made during a bond hearing before the district court which are nongermane to the legal issue before this Court. Those allegations are presented as fact by Petitioner to inflame and disparage Mr. Hemani's character.[1] Indeed, Petitioner concedes that Mr. Hemani's

1. *See* 18 U.S.C. § 3142(f) ("The rules concerning admissibility of evidence in criminal trials do not apply to the presentation and consideration of information at the hearing. The facts the judicial officer uses to support a finding pursuant to subsection (e) that no condition or combination of conditions will reasonably assure the safety of any other person and the community shall be supported by clear and convincing evidence.").

prosecution is based solely on his use of marijuana. (Pet. 5). Petitioner's thinly veiled attempt to inject prejudicial and irrelevant allegations should be disregarded. The only issue that was before the court of appeals and is before this Court is whether 18 U.S.C. § 922(g)(3) is unconstitutional as applied to Mr. Hemani.

B. District Court Proceedings

On February 8, 2023, a federal grand jury in the Eastern District of Texas returned a one-count indictment which charged Mr. Hemani with possession of a firearm by a user of a controlled substance, in violation of 18 U.S.C. § 922(g)(3). Mr. Hemani moved to dismiss the indictment on February 15, 2023, and challenged § 922(g)(3) as unconstitutionally vague in light of this Court's decision in *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022).

A United States Magistrate Judge issued a Report and Recommendation that Mr. Hemani's motion to dismiss the indictment be granted after concluding that § 922(g)(3) is unconstitutional post-*Bruen*. Before the district court ruled on Mr. Hemani's motion, the Fifth Circuit issued its decision in *United States v. Daniels*, 77 F.4th 337 (5th Cir. 2023), which found section 922(g)(3) unconstitutional in an as-applied challenge. Mr. Hemani amended his motion to dismiss and raised an as-applied challenge to § 922(g)(3). In response, the government conceded that dismissal of the indictment was appropriate as applied to Mr. Hemani in light of *Daniels* but reserved its right to appeal. The district court granted the motion to dismiss on February 1, 2024. The government appealed the decision to the United States Court of Appeals for the Fifth Circuit.

C. Fifth Circuit Proceedings

While Mr. Hemani's appeal was pending, this Court issued its decision in *United States v. Rahimi*, 602 U.S. 680 (2024), which held that 18 U.S.C. § 922(g)(8) was constitutional on its face and as applied to that particular defendant. This Court granted certiorari in *Daniels*, vacated judgment, and remanded to the Fifth Circuit for further consideration in light of *Rahimi*. *United States v. Daniels*, 144 S.Ct. 2707 (2024).

Back in the Fifth Circuit, while Mr. Hemani's appeal was still pending, the Fifth Circuit issued its decision in *United States v. Connelly*, 117 F.4th 269 (5th Cir. 2024). Applying this Court's instruction in *Rahimi*, the *Connelly* court rejected the government's "three buckets of historical analogues" used as support for the constitutionality of § 922(g)(3) as applied to Connelly. *Id.* at 274–282. The *Connelly* court held that Connelly's § 922(g)(3) charge was inconsistent with the Nation's history and tradition of firearms regulations and affirmed the judgment of dismissal to her as-applied challenge. *Id.* at 283. The Fifth Circuit concluded that the "holding is narrow" and "[t]here undoubtedly exist circumstances where § 922(g)(3) may apply constitutionally[.]" *Id.*

On September 16, 2024, the government filed its unopposed motion for summary affirmance in Mr. Hemani's case. Although it disagreed with *Connelly*, the government conceded that it could not distinguish the material facts of *Connelly* from Mr. Hemani's case, moved for summary affirmance, and reserved its right to further appellate review.

On January 31, 2025, the Fifth Circuit granted the government's motion and summarily affirmed the dismissal of the indictment.

REASONS FOR DENYING THE PETITION

The Fifth Circuit appropriately granted the government's unopposed motion for summary affirmance after finding 18 U.S.C. § 922(g)(3) unconstitutional as applied to Mr. Hemani. Petitioner has failed to demonstrate that § 922(g)(3) is constitutional as applied to Mr. Hemani specifically and that this case is a proper procedural vehicle for this Court's review. Further, there is no circuit split warranting this Court's intervention.

A. The Fifth Circuit Correctly Held Section 922(g)(3) Unconstitutional as Applied to Mr. Hemani.

The Fifth Circuit appropriately granted the government's unopposed motion for summary affirmance and upheld the district court's order dismissing the indictment charging Mr. Hemani with one count of violating 18 U.S.C. § 922(g)(3). The Fifth Circuit's decision and the government's concession are based on the holding in *United States v. Connelly*, 117 F.4th 269 (5th Cir. 2024), which the government concluded was "not relevantly distinguishable" from Mr. Hemani's case. (Pet. App. 2a).

Petitioner now seeks to overturn the Fifth Circuit's decision in *Connelly* through Mr. Hemani's case despite not seeking certiorari in *Connelly*.[2] Regardless, the Fifth

2. Petitioner explains that it did not seek certiorari in *Connelly* due to "'factual developments'" that it does not expound on. (Pet. 7 n. 2). Petitioner also does not explain how these factual developments distinguish Mr. Hemani's case from *Connelly*

Circuit correctly granted summary affirmance in Mr. Hemani's case based on the well-reasoned decision in *Connelly*.

1. The *Connelly* Court Correctly Applied this Court's Precedent in its Decision.

Petitioner makes scant effort to argue that the Fifth Circuit erred in its decision in *Connelly*. In its 26-page petition, Petitioner devotes three paragraphs arguing that *Connelly* was wrongly decided. (Pet. 22–23). Petitioner's primary argument is that the Fifth Circuit's decision in *Connelly* conflicts with founding-era laws that restricted the rights of drunkards based on their habitual use of alcohol. (Pet. 23).

The Fifth Circuit faithfully applied the holdings of *Bruen* and *Rahimi* in issuing its decision in *Connelly*. The Fifth Circuit began its analysis of whether 18 U.S.C. § 922(g)(3) was unconstitutional as applied to Connelly by evaluating the Second Amendment claim post-*Rahimi*. *Connelly*, 117 F.4th at 273. As required by the holdings in both *Bruen* and *Rahimi*, the Fifth Circuit first asked "whether the Second Amendment's plain text covers an individual's conduct." *Id.* at 274 (citing *Bruen*, 597 U.S. at 17). Second, the court of appeals questioned "whether the challenged regulation is consistent with the principles that underpin our regulatory tradition." *Id.* (quoting *Rahimi*, 602 U.S. at 681).

To answer the second question of the *Bruen-Rahimi* analysis, the Fifth Circuit reiterated that the government

---

after it had already conceded that the cases were "not relevantly distinguishable." (Pet. 2a).

bears the burden of demonstrating that the challenged regulation is "relevantly similar to laws our tradition is understood to permit." *Id.* (quoting *Rahimi*, at 681; *Bruen* at 29). As this Court held in *Rahimi*, the government need not present a "historical twin," but at least must present a historical analogue with sufficiently similar "why" and "how." *Rahimi*, at 681.

In Mr. Hemani's direct appeal, the government maintained the position that Mr. Hemani's as-applied challenge fails at step one–that the Second Amendment does not apply to him because he was a user of a controlled substance. In *Connelly*, and in its present petition, Petitioner does not dispute that the Fifth Circuit correctly concluded that the Second Amendment presumptively applies and the government bore the burden of establishing history and tradition support § 922(g)(3) as applied to Mr. Hemani.

a. The government's proffered historical analogues failed to support § 922(g)(3)'s constitutionality as applied to *Connelly*.

In *Connelly*, the government proffered "three buckets of historical analogues as support for § 922(g)(3)'s constitutionality: (1) laws disarming the mentally ill, (2) laws disarming 'dangerous' individuals, and (3) intoxication laws." *Connelly*, at 274–75. The Fifth Circuit appropriately rejected each of the government's analogues with a thorough review of the history and tradition surrounding each bucket of disarmament.

The *Connelly* court correctly concluded that "[t]here are no clear sets of positive-law statutes concerning

mental illness and firearms from the Founding." *Connelly*, at 275. The court further found that "[j]ust as there is no historical justification for disarming citizens of sound mind, there is no historical justification for disarming a sober citizen not presently under an impairing influence." *Id*. at 275–76. The court concluded that the historical regulations surrounding disarming the mentally ill did not address a problem comparable to § 922(g)(3), thus failing the "why" prong to support § 922(g)(3) as constitutional as applied.

In response to the government's "dangerous" individuals argument, the Fifth Circuit concluded that the government failed to identify any class of persons at the Founding who were "dangerous" for reasons comparable to marijuana users. *Id*. at 278.

The *Connelly* court agreed that historical intoxication laws were the most comparable to § 922(g)(3) but did not impose a comparable burden. *Id*. at 279. The critical distinction as noted by the Fifth Circuit is that history and tradition showed laws banning carrying weapons while under the influence of alcohol, but none barred gun possession by regular drinkers. *Id*. at 280. The court concluded that "§ 922(g)(3) is much broader than historical intoxication laws. These laws may address a comparable problem–preventing intoxicated individuals from carrying weapons–but they do not impose a comparable burden on the right holder." *Id*. at 281. The Fifth Circuit found that historical regulations support banning the carry of firearms while *actively intoxicated*, whereas § 922(g)(3) bans all possession, "and it does so for an undefined set of 'user[s]' even while they are not intoxicated." *Id*. at 282.

The Fifth Circuit concluded its opinion by noting the narrowness of its decision. The court affirmed that "[t]here undoubtedly exists circumstances where § 922(g)(3) may apply constitutionally, such as when it bans a presently intoxicated person from carrying firearms[.]" *Id.* at 283.

b. Petitioner's proffered historical analogues are equally insufficient to meet the why and how of this Nation's history and tradition in restricting firearms for drug users.

In contrast to the historical analogues presented in *Connelly*, and those presented in Mr. Hemani's case, Petitioner asserts three types of historical laws in support of its position that history and tradition support the constitutionality of § 922(g)(3) as applied to Mr. Hemani: vagrancy laws, civil-commitment laws, and surety laws. (Pet. 10). Each of these categories, according to Petitioner, constitute founding-era laws restricting the rights of drunkards. *Id.*

Petitioner first argues that vagrancy laws of the 18th century classified "common drunkards" as "vagrants" which subjected them to imprisonment or confinement in "workhouses." (Pet. 10). However, Petitioner cites to no case, law, or statute from the founding era that disarms habitual drunkards or vagrants. Instead, Petitioner notes that habitual drunkards have been found incompetent to do business, *Lawton v. Steele*, 152 U.S. 133, 136 (1894), or that habitual drunkards could be committed or placed under guardianship. *Kendall v. Eewert*, 259 U.S. 139, 146 (1922). Notably, Petitioner's discussion on vagrancy lacks any nexus to fundamental rights of possession or carrying of firearms for "vagrants."

Finding no history or tradition in restricting firearms for vagrants, Petitioner turns to historical surety laws which have been covered in depth by this Court previously. *See Rahimi*, at 695. Surety laws combined with "going armed" laws addressed the why and how on restrictions under 18 U.S.C. § 922(g)(8): "When an individual poses a clear threat of physical violence to another, the threatening individual may be disarmed." *Rahimi*, at 698. However, surety laws miss both the why and how of the restrictions imposed by § 922(g)(3).

This Court was clear in *Rahimi* that surety, going armed laws, and § 922(g)(8)(C)(i) "applies to individuals found to threaten the physical safety of another." *Rahimi*, at 698. Moreover, this Court noted that Section 922(g)(8) applies "*only once a court has found that the defendant 'represents a credible threat to the physical safety of another*." *Id*. at 698–99 (emphasis added). Further, § 922(g)(8)'s restriction is temporary and only applies while the defendant is subject to a restraining order. *Id*. at 699; § 922(g)(8).

Section 922(g)(3) differs greatly from the surety laws discussed in *Rahimi* and Section 922(g)(8), and this Court recognized the danger of the Petitioner's argument in *Rahimi*:

> The burden Section 922(g)(8) imposes on the right to bear arms also fits within our regulatory tradition. While we do not suggest that the Second Amendment prohibits the enactment of laws banning the possession of guns by categories of persons thought by a legislature to present a special danger of misuse . . . we note that Section 922(g)(8) applies only once a court has found that the defendant

> "represents a credible threat to the physical safety" of another.

Rahimi, at 689–99.

Yet, this is precisely what Petitioner argues: that drug users are a class of people categorically prohibited from possessing firearms under 18 U.S.C. § 922(g)(3). And that prohibition should apply without any court process or procedure. Perhaps more concerning is Petitioner's inverted view on due process. This Court found surety and going armed laws historical precursors to § 922(g)(8) because they each required a finding by a judge that the individual represented a danger to the safety of others. Petitioner argues that § 922(g)(3)–which requires no prerequisite finding of an individual being a credible threat to the safety of others–somehow creates *greater* due process because a person accused of violating § 922(g)(3) "has a right to a full criminal trial[.]" (Pet. 13).

Petitioner clearly misses the mark. Under § 922(g)(8), an individual's Second Amendment rights are not restricted until a judge makes a finding of a credible threat to the safety of others. If the person under a restraining order possesses a firearm afterwards, he too is entitled to a full criminal trial. Under § 922(g)(3), there is no requirement that prior to prosecution that the individual be found by a court to be a "unlawful user" or "addict." 18 U.S.C. § 922(g)(3). Under Section 922(g)(3), a user or addict of controlled substances is stripped of his fundamental Second Amendment rights without judicial proceedings.

The right to a full criminal trial is not designed to answer whether a citizen has any Second Amendment

right to bear arms, but whether they are subject to the statutory penalties of up to 15 years imprisonment for violating the statute. 18 U.S.C. § 924(a)(8).

Surety laws satisfy the why and how for history and tradition supporting the constitutionality of Section 922(g)(8), but fall well short of carrying the government's burden on the broad restrictions under § 922(g)(3).

Petitioner's argument that history and tradition support regulation under § 922(g)(3) is tenuous at best. Petitioner's logic is as follows: 18th century laws against vagrancy includes restriction on rights of "drunkards;" 19th century laws allowed for drunkards to be committed to asylums or placed under guardianship; and surety laws sometimes extended to "common drunkards." (Pet. 10–12). Petitioner faults the Fifth Circuit for not addressing founding-era laws restricting the rights of drunkards "even during sober intervals[.]" (Pet. 23). To be clear, the government raised no such argument in *Connelly* or on Mr. Hemani's direct appeal. Which is another reason to deny *certiorari* considering the lack of previous judicial development on the issue in this case. However, the Fifth Circuit did address the history and tradition surrounding intoxication laws in *Connelly*, and concluded:

> Considering the 'extremely high level of alcohol consumption in the early Republic, this handful of generally inapposite laws does little to help the government's position. The government fails to identify any relevant Founding-era tradition or regulation disarming ordinary citizens who consumed alcohol.

Connelly, at 281 (cleaned up).

The Fifth Circuit did not err in failing to consider arguments that were never brought before the court. Petitioner still failed before this Court to identify any founding-era laws or regulations that address the why and how of the restrictions imposed by 18 U.S.C. § 922(g)(3). With no founding-era historical analogues to Section 922(g)(3), Petitioner next turns to post-ratification legislation for justification.

2. Legislatures' Restrictions on Drug Users' Possession of Firearms is Generally Less Restrictive Than Section 922(g)(3).

Claiming to recognize that post-ratification history does not supersede the text of the Second Amendment or founding-era regulations, Petitioner points to state legislation in the 1920s and 1930s "prohibiting drug addicts or drug users from possessing, carrying, or purchasing *handguns*." (Pet. 15) (emphasis added). Notably, the post-ratification legislation cited by Petitioner only apply to the purchase, possession, and sale of handguns to drug addicts.

These proffered historical precursors are far less broad than Section 922(g)(3) which prohibits the possession of *any* firearm by anyone who is addicted to *or uses* a controlled substance. The government has not accused Mr. Hemani of being a drug addict. Instead, Mr. Hemani was indicted for possession of a firearm merely by an unlawful user of a controlled substance. This important distinction again demonstrates the overbreadth of § 922(g)(3) as applied to Mr. Hemani.

Turning to modern day legislation, Petitioner claims at least 32 States and territories have laws that restrict

the possession of firearms by drug users or addicts. (Pet. 15). As with the early 20th century firearm legislation, the vast majority of modern gun control legislation cited by Petitioner are far less burdensome than the restrictions of Section 922(g)(3). Of the 32 state statutes cited by Petitioner (Pet. 15 n. 8) only three are comparably similar to the language of 18 U.S.C. § 922(g)(3).[3] The remaining 29 statutes are each less burdensome on an individual's Second Amendment right than 922(g)(3). The vast majority of statutes apply only to concealed handgun permits. Further, many of these regulations require a prior conviction or commitment for a drug offense, typically within a specified amount of time.[4] Meaning, restriction on rights only following some form of meaningful due process.

The overwhelming majority of state regulations undermine Petitioner's claim that post-ratification history provides support for Section 922(g)(3)'s validity. Instead, these laws demonstrate how overburdensome Section 922(g)(3) is on the Second Amendment as applied to Mr. Hemani. Section 922(g)(3) makes it a felony to possess a firearm of any type based solely on the use of illegal drugs. In contrast, the majority of state legislation cited by Petitioner focuses only on pistols or concealed carry permits, requires a prior conviction or commitment, or only applies to addicts and not just "unlawful users."

---

3. Nev. Rev. Stat. § 202.360.1(f); Utah Code Ann. § 86-10-503(b)(iv); W. Va. Code § 61-7-7(a)(3).

4. Del. Code Ann. Tit. 11 § 1448(a)(3); D.C. Code § 8-2502.03(a)(4)(A); Fla. Stat. § 790.06(2)(e) and (f); Ga. Code Ann. § 16-11-129(b)(2)(I) and (J); 10 Guam Code Ann. § 60109.1(b)(5) and (6); Haw. Rev. Stat. § 134-7(c)(1); Ind. Code § 35-47-1-7(5); Ky. Rev. Stat. Ann. § 237.110(4)(d); Md. Code Ann., Public Safety, § 5-133(b)(7); Mass. Gen. Laws ch. 140, § 131(d)(iii)(A); R.I. Gen. Laws § 11-47-6.

3. Precedent and Common Sense Weighs in Mr. Hemani's Favor.

Petitioner next turns to "precedent and common sense" as grounds for finding § 922(g)(3) is constitutional as applied to Mr. Hemani's case. (Pet. 16). Petitioner's "common sense" argument is that habitual drug users are more likely to commit crimes and pose a danger of misusing firearms. *Id*. In fact, throughout the entire petition, Petitioner uses the phrase "habitual drug users" ten times, despite the term being found nowhere in the plain text of § 922(g)(3). To be clear, 18 U.S.C. § 922(g)(3) makes it unlawful for any person "who is an unlawful user of or addicted to any controlled substance" to possess a firearm. 18 U.S.C. § 922(g)(3). Nothing in the plain text of the statute requires "habitual use."

The entirety of Petitioner's "common sense" theory is the same argument as the government's "responsible citizen" argument advanced in *Rahimi* just by a different name. In the appeal below, the government maintained that Section 922(g)(3) fits within history and tradition because it disarms individuals who are not law-abiding, responsible citizens. This argument has been directly foreclosed by this Court. *Rahimi*, at 701–02. As Justice Gorsuch wrote in his concurrence: "Nor do we purport to approve in advance other laws denying firearms on a categorical basis to any group of persons a legislature happens to deem, as the government puts it, 'not responsible.'" *Rahimi*, at 1910 (Gorsuch, J., concurring); *see also Rahimi* at 1944 (Thomas, J., dissenting) ("Not a single Member of the Court adopts the Government's theory").

Likewise, none of the precedent cited by Petitioner touches on the constitutional concerns posed by Section 922(g)(3) prosecutions. (Pet. 16–19). It is true that this Court has addressed the "dangerous combination" of "drugs and guns." *Smith v. United States*, 508 U.S. 223, 240 (1993). However, this "dangerous combination" is in reference to a different statute, 18 U.S.C. § 924(c), which makes it unlawful to use or carry a firearm in furtherance of a drug trafficking crime or crime of violence. Individuals who are found to possess, brandish, or discharge a firearm in furtherance of a drug trafficking crime may be tried and punished for a minimum of five years imprisonment and up to life imprisonment, consecutive to any other sentence. 18 U.S.C. § 924(c). Unlike those laws, Section 922(g)(3) requires no underlying predicate drug offense or crime of violence to obtain a conviction for unlawfully doing what would otherwise be legal: exercising Second Amendment rights.

Common sense would dictate that individuals who employ firearms in relation to drug crimes are subject to other penalties aside from Section 922(g)(3). Section 924(c) is but one example to address the "dangerous combination" of drugs and guns. The United States Sentencing Guidelines also account for a two-level increase in the guidelines range if a firearm was possessed in relation to a drug offense. U.S.S.G. § 2D1.1(b)(1). As such, federal law and the Sentencing Guidelines already have statutes and policies to deter and punish individuals who employ a firearm in relation to a drug crime.

Common sense also establishes why Petitioner's position is untenable and why the Fifth Circuit's holding in *Connelly* is correct. Marijuana remains a Schedule I

controlled substance under federal law. Yet, 24 states, two territories, and the District of Columbia have legalized marijuana for adult recreational use. According to the Center for Disease Control, approximately 52.5 million people, or about 19 percent of Americans, have used marijuana.[5] Likewise, 32 percent of Americans own a firearm.[6] While the number of Americans who use marijuana legally under state law and possess a firearm is unknown, there is certainly a significant overlap between the two.

However, Americans who lawfully use cannabis under state law and possess a firearm are in violation of 18 U.S.C. § 922(g)(3) could be charged and sentenced to a term of imprisonment up to 15 years. Under Petitioner's interpretation of the statute, millions of Americans are currently violating Section 922(g)(3) and do so on a continuing basis. It bears repeating that nothing in Section 922(g)(3) requires "habitual use" as an element of the offense. Any American who owns a firearm and uses a controlled substance which is illegal under federal law violates § 922(g)(3) under Petitioner's theory.

Connelly squarely addresses this issue using common sense. Finding that historic intoxication laws prevented intoxicated individuals from carrying weapons, the Fifth Circuit concluded that Section 922(g)(3) goes much further by prohibiting all possession "for an undefined set of 'user[s],' even while they are not intoxicated." *Connelly*, at 281–82. Accordingly, the Fifth Circuit held:

---

5. Center for Disease Control, https://www.cdc.gov/cannabis/data-research/facts-stats/index.html (last accessed July 8, 2025).

6. Gallup, https://news.gallup.com/poll/264932/percentage-americans-own-guns.aspx (last accessed July 8, 2025).

> While older laws' bans on '"carry" may be analogous to § 922(g)(3)'s ban on "possess[ion]," there is a substantial difference between an actively intoxicated person and an "unlawful user" under § 922(g)(3). The statutory term "unlawful user" captures regular marijuana users, but the temporal nexus is most generously described as vague–it does not specify how recently an individual must "use" drugs to qualify for prohibition. *See* 27 C.F.R. § 478.11 (defining terms in § 922(g)(3)) ("A person may be an unlawful current user of a controlled substance even though the substance is not being used at the precise time the person . . . possesses a firearm."). Stunningly, an inference of "current use" can be drawn even from "a conviction for use or possession of a controlled substance *within the past year*." *Id*. (emphasis added).

Id. at 282.

Accordingly, the Fifth Circuit faithfully applied the principles of *Bruen* and *Rahimi*, as well as a common sense approach, to hold that history and tradition only supports a ban on carrying firearms while intoxicated.

4. Section 922(g)(3) Unconstitutionally Restricts Mr. Hemani's Second Amendment Right.

The *Connelly* court's discussion of the temporal and practical problems inherent in defining an "unlawful user" of controlled substances also highlights the flawed reasoning in Petitioner's next argument–Section 922(g)(3)

only applies to habitual or regular users of illegal drugs. (Pet. 19). Petitioner further argues that the restrictions of the statute "lasts only as long as the habitual drug use continues." (Pet. 20). Nothing in the statute supports Petitioner's conclusory theory.

As noted in *Connelly* and stated above, the term "unlawful user" is defined under 27 C.F.R. § 478.11. Section 478.11 notes that "A person may be an unlawful current user of a controlled substance even though the substance is not being used at the precise time the person seeks to acquire a firearm or receives or possesses a firearm." Contrary to Petitioner's claim, the restriction–as defined by Section 478.11–does not "last[] only as long as the habitual drug use continues." (Pet. 20). To belabor the point, the term "habitual drug use" is nowhere to be found in Section 478.11.

Perhaps more concerning is Petitioner's position that the individual "can regain his ability to possess arms at any time by ending his habitual use of illegal drugs." (Pet. 20). Considering an inference can be made of current use based upon a conviction for possession of a controlled substance within the past year under Section 478.11, Petitioner's argument is flatly incorrect. Moreover, using a controlled substance any time the individual "possesses" a firearm violates § 922(g)(3). Simply ending unlawful drug use would not undo a prior violation of the statute.

Given this, the Fifth Circuit correctly granted summary affirmance in Mr. Hemani's case. The government failed to proffer any historical analogue to § 922(g)(3) that would support a finding that the statute is constitutional as applied to Mr. Hemani.

5. Section 925(c) is Wholly Inapplicable

Petitioner confoundingly posits that Mr. Hemani could have sought relief from federal firearms disability under 18 U.S.C. § 925(c). (Pet. 20–21). Petitioner makes this claim while at the same time conceding that the "program was effectively disabled from 1992 until 2025[.]" (Pet. 21).

Mr. Hemani was charged by way of indictment on February 8, 2023, long before § 925(c) was operable. An application under Section 925(c) has no bearing on whether § 922(g)(3) is constitutional as applied to Mr. Hemani, nor would it prevent prosecution under the same statute.

Further, Petitioner's citation to *United States v. Gay*, 98 F.4th 843, 847 (7th Cir. 2024) is completely inapposite. (Pet. 22). There, the defendant was charged under 18 U.S.C. § 922(g)(1) for possessing a firearm while on parole. The Seventh Circuit correctly noted that "parolees lack the same armament rights as free persons." *Id*. There is simply no evidence that Mr. Hemani "violated the law in secret," and "tried to avoid detection[.]" (Pet. 22). Once again Petitioner resorts to unsupported and inflammatory remarks instead of focusing on whether history and tradition support the constitutionality of Section 922(g)(3) as applied to Mr. Hemani.

6. The Fifth Circuit Did Not Err in *Connelly* nor *Hemani*

As discussed above, the Fifth Circuit did not err in its application of *Bruen* and *Rahimi* in its decision in *Connelly* or its grant of summary affirmance in Mr. Hemani's case. Contrary to Petitioner's claim, the Fifth Circuit's thorough analysis of all the government's

proffered historical analogues resulted in a conclusion that history and tradition do not support disarming individuals who are not actively intoxicated.

Petitioner still fails to put forward any historical analogue to support its position. Petitioner falls short of their burden under *Bruen-Rahimi*. Instead, the overwhelming majority of the legislation offered by Petitioner demonstrates that restrictions on firearms by drug users by the states is far less burdensome on the Second Amendment than the broad prohibition under Section 922(g)(3).

B. Mr. Hemani's Case Does Not Warrant This Court's Review

1. The "Lion's Share" of Section 922(g)(3) Cases.

The Fifth Circuit did not hold 18 U.S.C. § 922(g)(3) to be unconstitutional in all of its applications. The Court in *Connelly* was clear that its holding was a limited one, and that Section 922(g)(3) was still facially constitutional. *Connelly*, at 282.

Petitioner nonetheless claims that the *Connelly* decision "invalidates Section 922(g)(3) in the lion's share of its applications." (Pet. 23). By "lion's share" Petitioner seems to refer to Mr. Hemani's case, *Connelly*, and two other cases, *United States v. Daniels*, 124 F.4th 967 (2025) and *United States v. Sam*, No. 23-60570, 2025 WL 752543 (Mar. 10, 2025).

In *Sam*, the Fifth Circuit concluded that the government did not show that the defendant was intoxicated or unlawfully using a controlled substance at

the time he was found in possession of the firearm, nor did the government seek to prove that Sam's drug usage was so extensive as to render him analogous to being dangerously mentally ill or a danger to others. 2025 WL 752543, at *1. *Daniels* presents a different case than *Connelly, Sam,* and Mr. Hemani's as the defendant there had been tried and found guilty by a jury. *Daniels*, 124 F.4th at 971. The Fifth Circuit stated that *Daniels* was largely controlled by *Connelly*. *Id*. Crucially, however, the Fifth Circuit noted, "Our analysis in *Connelly* does not foreclose the government from attempting to reformulate its dangerousness argument in the context of different as-applied challenges moving forward." *Id.* at 977. Further, the court wrote, "our holding is not a windfall for defendants charged under § 922(g)(3), present company included. The government remains free to reprosecute Daniels under a theory consistent with a proper understanding of the Second Amendment." *Id.*

In sum, the "lion's share" of § 922(g)(3) cases cited by Petitioner includes *Connelly*–the case in which the government chose not to seek this Court's review; Mr. Hemani's case which was a grant of the government's unopposed motion for summary affirmance; *Sam* where the government failed to provide sufficient historical analogues; and *Daniels* which the Fifth Circuit explicitly noted the government was not foreclosed from reprosecuting.

2. There is No Circuit Split on Section 922(g)(3) Post-*Bruen* and *Rahimi*.

Petitioner is mistaken that there is any circuit conflict on the application of Section 922(g)(3). (Pet. 24). To support

its argument for a "three-way circuit conflict," Petitioner cites to *United States v. Yancey*, 621 F.3d 681 (2010), which it concedes was decided long before *Bruen* or *Rahimi*. *Id.* There, the Seventh Circuit did not partake in the history and tradition analysis required by *Bruen* and instead held that Congress acted within its constitutional bounds enacting § 922(g)(3) because it is substantially related to an important government interest. *Id.* at 687.

In the Eighth Circuit, the court of appeals has decided two Section 922(g)(3) cases, *United States v. Cooper*, 127 F.4th 1092 (8th Cir. 2025) and *United States v. Baxter*, 127 F.4th 1087 (8th Cir. 2025). Neither case creates a circuit split on whether Section 922(g)(3) is unconstitutional as applied. In both cases the Eighth Circuit remanded back to the district courts to decide the defendants' respective as-applied challenges in the first instance. *Cooper*, 127 F.4th at 1098; *Baxter*, 127 F.4th at 1091.

The only circuit to affirmatively decide whether § 922(g)(3) is constitutional as applied to a particular defendant is the Fifth Circuit. The notion that there is a three-way circuit split is premature at best.

3. The Practical Consequences of 922(g)(3).

Petitioner next cites the practical consequences of the Fifth Circuit's decision as grounds for granting the petition. (Pet. 25). As "practical consequences," Petitioner refers to federal background checks for firearms transactions and the aforementioned 32 states and territories with laws restricting the possession of firearms by drug users or addicts. (Pet. 25–26).

For Firearms Checks, the Brady Act established the National Instant Criminal Background Check System (NICS). The NICS follows the definition of an unlawful user and/or addict found in 27 C.F.R. 478.11.[7] Whether Section 922(g)(3) is unconstitutional as applied to Mr. Hemani has no bearing on how federal background checks are instituted. Further, if an individual is denied a firearm based on NICS results, he has the capability of appealing that decision directly to the FBI.

As for the 32 states and territories, *Connelly* has no effect on these. Only three of the states identified by Petitioner have laws substantially similar to Section 922(g)(3): Nevada, Utah, and West Virginia. These states are not located within the jurisdiction of the Fifth Circuit. Further, the overwhelming majority of the statutes cited by Petitioner are *less restrictive* than Section 922(g)(3). Most apply only to handguns or concealed carry permits, and many require proof of an actual addiction or prior conviction for a drug offense. The Fifth Circuit's decision in Mr. Hemani's case, as well as the other Section 922(g)(3) cases, has no bearing on these state laws.

4. Mr. Hemani's Case is Not an Appropriate Vehicle for This Court's Review.

Finally, Mr. Hemani's case is far from an ideal procedural vehicle for resolving the question presented.

---

7. Federal Bureau of Investigations, https://www.fbi.gov/how-we-can-help-you/more-fbi-services-and-information/nics/national-instant-criminal-background-check-system-nics-appeals-vaf#Federal-Categories%20of%20Persons%20Prohibited%20from%20Receiving%20Firearms (last accessed July 8, 2025).

The Fifth Circuit issued a two-page order granting the government's motion for summary affirmance. (App. 1a). What Petitioner seeks is to overturn *Connelly* through Mr. Hemani's case. The government conceded that Mr. Hemani's case "is not relevantly distinguishable" from the facts of *Connelly* but chose not to seek certiorari in *Connelly*.

The government has had ample opportunity to demonstrate that Section 922(g)(3) is constitutional as applied to Mr. Hemani before the district court and Fifth Circuit. At no time in the prior proceedings did the government present the historical analogues that it advances here in Mr. Hemani's proceedings. It would be fundamentally unfair to allow the government to argue history and tradition supports Section 922(g)(3) as applied to Mr. Hemani when it failed to do so before two lower courts.

Even so, as discussed above, Petitioner has failed to proffer any historical analogues addressing the why and how of Section 922(g)(3)'s restrictions that would show the statute is constitutional as applied to Mr. Hemani.

CONCLUSION

The petition for writ of certiorari should be denied.

Respectfully submitted,

RAMZI KASSEM
NAZ AHMAD
MUDASSAR TOPPA
CLEAR PROJECT
MAIN STREET LEGAL SERVICES, INC.
CITY UNIVERSITY OF NEW YORK SCHOOL OF LAW
Long Island City, NY 11101

ZACHARY L. NEWLAND
Counsel of Record
DAVID C. BOYER
NEWLAND LEGAL, PLLC
P.O. Box 3610
Evergreen, CO 80437
(303) 948-1489
zach@newlandlegal.com

Counsel for Respondent