No. 24-1234

In the Supreme Court of the United States

UNITED STATES OF AMERICA, PETITIONER

v.

ALI DANIAL HEMANI

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

REPLY BRIEF FOR THE PETITIONER

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This is the archetypal case for this Court's review: the Fifth Circuit invalidated most applications of a federal statute, 18 U.S.C. 922(g)(3), creating a clear circuit conflict. Not only that, the case presents an important Second Amendment issue that affects hundreds of prosecutions every year: whether the government may disarm individuals who habitually use unlawful drugs but are not necessarily under the influence while possessing a firearm. Indeed, the circuit conflict over Section 922(g)(3)'s constitutionality has deepened with the Third Circuit's decision in *United States* v. *Harris*, No. 21-3031, 2025 WL 1922605 (July 14, 2025). Respondent's objections to review are meritless. Respondent defends the decision below—but that is no reason to deny review in the face of a circuit split, let alone decisions invalidating many applications of an oft-invoked federal statute. Respondent also incorrectly dismisses

the split as fact-bound and of limited importance, and he raises illusory vehicle objections. This Court should grant the petition for a writ of certiorari.

A. Section 922(g)(3) Complies With The Second Amendment

1. Section 922(g)(3) fits comfortably within this Nation's tradition of firearm regulation. See Pet. 10-23. Respondent offers no good defense of the Fifth Circuit's holding that the statue violates the Second Amendment except as to persons who are under the influence while possessing firearms.

Respondent accepts (Br. in Opp. 9) that Founding-era legislatures restricted the rights of habitual drunkards but argues that those laws differ from Section 922(g)(3) because they did not specifically prohibit the possession of firearms. Respondent does not dispute, however, that Founding-era laws subjected habitual drunkards to imprisonment in workhouses or confinement in asylums. See Pet. 10-11. Under this Court's cases, "if imprisonment was permissible to respond" to the habitual use of intoxicating substances at the founding, "then the lesser restriction of temporary disarmament" "is also permissible." *United States* v. *Rahimi*, 602 U.S. 680, 699 (2024); see *id.* at 772 (Thomas, J., dissenting) (imprisonment "involved disarmament").

Respondent next dismisses (Br. in Opp. 10) another set of Founding-era analogues, surety laws, on the ground that they required a case-by-case showing that an individual posed a danger of misusing firearms. That is incorrect. While surety laws allowed magistrates to demand bond from individuals found to pose a specific threat, they *also* allowed magistrates to demand bond from "common drunkards." 4 William Blackstone, *Commentaries on the Laws of England* 256 (10th ed. 1787). Such a bond requirement, this Court has deter-

mined, is "an appropriate analogue" for a modern law that temporarily restricts a person's possession of firearms. *Rahimi*, 602 U.S. at 700.

Turning to post-ratification tradition, respondent concedes (Br. in Opp. 13) that States have disarmed drug *addicts* for more than a century, see Pet. 15 & n.7, but distinguishes Section 922(g)(3) because it disarms drug *users*. But laws disarming habitual drug users are closely analogous to laws disarming drug addicts because they impose "comparable burden[s]" and are "comparably justified." *Id.* at 29.

More broadly, respondent equates (Br. in Opp. 15) the argument that Congress may temporarily disarm "categories of persons" who pose "a special danger of misuse," *Rahimi*, 602 U.S. at 698, with the erroneous theory that the Second Amendment protects only "responsible" citizens, *id.* at 701. That comparison is inapt. The latter theory, which *Rahimi* rejected, has no sound basis in history or precedent. By contrast, history and precedent establish that legislatures may restrict the possession of firearms by "categories of persons" who pose "a special danger of misuse." *Id.* at 698. And while "'[r]esponsible' is a vague term," *id.* at 701, "danger" is a straightforward and easily understood concept, especially when understood against the historical backdrop of restrictions on drunkards.

Trying to make Section 922(g)(3) seem more burdensome than it is, respondent argues (Br. in Opp. 15) that the statute does not require "habitual" drug use. But the statute refers to "an unlawful *user*" of a controlled substance, 18 U.S.C. 922(g)(3) (emphasis added), and the word "user," in this context, means one "who takes illegal drugs on a regular or habitual basis," *Oxford English Dictionary* (3d ed. 2011). Consistent with the

ordinary meaning of the language Congress used, courts of appeals—including the Fifth Circuit, see *United States* v. *McCowan*, 469 F.3d 386, 392 (2006)—have uniformly determined that the word "user" in Section 922(g)(3) refers to someone who engages in the regular or habitual use of a controlled substance. See Pet. 5 & n.1 (collecting cases).

Respondent also argues (Br. in Opp. 18-19) that the restriction imposed by Section 922(g)(3) persists even after a person's habitual drug use ends. That argument is wrong, and the Fifth Circuit did not rely on it. Section 922(g)(3) applies only to someone who "*is* an unlawful user" of a controlled substance. 18 U.S.C. 922(g)(2) (emphasis added). That language unambiguously requires proof that the defendant was still a habitual drug user when he possessed the firearm. True, the statute does not require the government to prove that respondent was using illegal drugs at the precise moment he possessed a firearm. See Br. in Opp. 19. But the statute plainly allows a person to regain his ability to possess firearms by ceasing to be a habitual drug user.

Finally, respondent argues (Br. in Opp. 17) that "24 States, two territories, and the District of Columbia have legalized marijuana for adult recreational use." But federal law still prohibits possessing marijuana, see 21 U.S.C. 812, sch. I(c)(10), and federal law takes precedence over contrary state law, see U.S. Const. Art. VI, Cl. 2. In addition, respondent's offense occurred in Texas, see Pet. 4, a State that still prohibits marijuana use, see Tex. Health & Safety Code Ann. § 481.121(a) (West 2017).

2. The Fifth Circuit's constitutional rule sweeps far more broadly than, and effectively supersedes, the relief-from-disabilities program in 18 U.S.C. 925(c).

Under Section 925(c), a person may obtain relief only prospectively and only if he shows that he "will not be likely to act in a manner dangerous to public safety." 18 U.S.C. 925(c). The Fifth Circuit's rule, by contrast, generally precludes the government from bringing a Section 922(g)(3) charge against a habitual drug user, no matter how dangerous, unless he was intoxicated when he possessed a firearm. Habitual drug users in the Fifth Circuit thus need not seek relief under Section 925(c); they may instead freely possess firearms while continuing their unlawful drug use.

Any concerns that Section 922(g)(3) might raise in marginal cases should be addressed through Section 925(c), not through a court-administered system of as-applied challenges. See Pet. 20-22. Since the filing of the certiorari petition, the Department of Justice has issued a notice of proposed rulemaking setting forth "criteria to guide determinations for granting relief." 90 Fed. Reg. 34,394, 34,394 (July 22, 2025). Because individuals covered by Section 922(g)(3) "can ordinarily take themselves out of the prohibited category by discontinuing their unlawful conduct," the proposed rule would treat such persons as "presumptively ineligible for relief." *Id.* at 34,396. But the proposed rule would still allow such individuals to seek relief in "extraordinary circumstances." *Ibid.*

Contrary to respondent's contention (Br. in Opp. 20), the government is not suggesting that respondent could have sought relief under Section 925(c). As explained (Pet. 21), that provision "was not operative at the time of respondent's offense conduct." Respondent could, however, have filed a civil suit seeking prospective relief from Section 922(g)(3). Cf. *Range* v. *Attorney General*, 124 F.4th 218, 232 (3d Cir. 2024) (en banc) (civil suit

seeking protection "for any future possession of a firearm"). Respondent instead took the law into his own hands, tried to avoid detection, and raised an as-applied challenge only once he was caught. See Pet. 22. Section 922(g)(3) complies with the Second Amendment as applied to him.

B. The Question Presented Warrants This Court's Review

1. The court of appeals' decision warrants further review because it invalidates an Act of Congress. Respondent does not deny that, when a court of appeals strikes down a federal statute, this Court ordinarily grants review, even in the absence of a circuit conflict. See Pet. 23. And respondent identifies no good reason to depart from that practice here.

Respondent describes (Br. in Opp. 21) the Fifth Circuit holding as "limited" and asserts that the court has invalidated Section 922(g)(3) in only four cases. But the Fifth Circuit has concluded that, at least as a general matter, Section 922(g)(3) is valid only as applied to someone who is "presently intoxicated" when possessing a firearm. *United States* v. *Connelly*, 117 F.4th 269, 283 (2024); see *id.* at 277 (stating that the statute would "[p]erhaps" also comply with the Second Amendment where the drugs "were so powerful that they rendered [the defendant] permanently impaired"). That rule affects far more than just four cases. As Judge Higginson observed when the Fifth Circuit issued a similar holding before *Rahimi*, that rule threatens "most, if not all, applications of § 922(g)(3)." *United States* v. *Daniels*, 77 F.4th 337, 357 (2023) (Higginson, J., concurring), vacated and remanded, 144 S. Ct. 2707 (2024). "[M]any offenders convicted under § 922(g)(3) were not intoxicated when they were found to possess or receive a firearm, but rather were generally users of

a controlled substance." *Id.* at 357 n.6 (emphases omitted).

The decision below would warrant review even were its scope as "limited" (Br. in Opp. 21) as respondent claims. Whether a court of appeals invalidates a federal statute on its face or as applied to a category of cases, its decision countermands democratically enacted legislation and prevents the full realization of Congress's objectives. This Court therefore regularly grants review of decisions striking down federal statutes as applied. See, *e.g.*, *Vidal* v. *Elster*, 602 U.S. 286, 292 (2024) (as-applied challenge to trademark statute); *Agency for International Development* v. *Alliance for Open Society International, Inc.*, 591 U.S. 430, 443 (2020) (as-applied challenge to funding condition); *DHS* v. *Thuraissigiam*, 591 U.S. 103, 107 (2020) (as-applied challenge to statutory restrictions on judicial review).

2. Underscoring the need for review, the question presented is the subject of a multi-sided and growing circuit conflict. The petition for a writ of certiorari identified (at 24-25) three sides of that conflict: The Seventh Circuit has upheld Section 922(g)(3); the Eighth Circuit has held it violates the Second Amendment unless the government can make a case-by-case showing justifying the drug user's disarmament; and the Fifth Circuit has held that it generally violates the Second Amendment unless the drug user was intoxicated while possessing the firearm.

Since then, the conflict has deepened. In *Harris*, the Third Circuit concluded that Section 922(g)(3) is "well-grounded in history" and is analogous to historical laws restricting the rights of drunkards. 2025 WL 1922605, at *6; see *id.* at *5-*8. But it then concluded that the government may apply Section 922(g)(3) to an individ-

ual only if that "particular drug user" poses a "risk of danger." *Id.* at *9. Under the Third Circuit's approach, district courts "must make individualized judgments" about risk, based on factors such as the "length and recency of the defendant's use," whether drug use affected the "person's judgment, decision-making, attention, inhibition, or impulse control," the "drug's interference with a user's perception of his own impairment," and the "long-term physical and mental effects of the use of that drug." *Id.* at *8-*9. That test differs from the test applied in the Fifth, Seventh, and Eighth Circuits—meaning that the question presented is now the subject of a four-way circuit conflict.

Respondent discounts (Br. in Opp. 23) the Seventh Circuit's decision in *United States* v. *Yancey*, 621 F.3d 681 (2010), on the ground that the court "did not partake in the history and tradition analysis required" by this Court's later decision in *NYSRPA* v. *Bruen*, 597 U.S. 1 (2022). But that court "declined to wade into the levels of scrutiny quagmire." *Yancey*, 621 F.3d at 683 (citation and internal quotation marks omitted). The court instead drew analogies to historical firearms laws, including "law[s] prohibiting intoxicated persons from carrying firearms" and laws restricting the liberty of "the mentally ill." *Id.* at 684-685. District courts in the Seventh Circuit have accordingly continued to follow *Yancey* even after *Bruen*. See Pet. 24 & n.13.

Respondent also dismisses (Br. in Opp. 23) the Eighth Circuit's decisions in *United States* v. *Cooper*, 127 F.4th 1092 (2025), petition for cert. pending, No. 24-1247 (filed June 5, 2025), and *United States* v. *Baxter*, 127 F.4th 1087 (2025), petition for cert. pending, No. 24-1328 (filed June 5, 2025). But he does not dispute that, in those cases, the Eighth Circuit adopted a Second

Amendment test that differs from the tests used by the Fifth and Seventh Circuits. And while the Eighth Circuit's test in some respects resembles the Third's, the two differ in their details. District courts in the Eighth Circuit must ask whether the defendant's drug use caused him to "act like someone who is both mentally ill and dangerous" or made him "induce terror, or pose a credible threat to the physical safety of others with a firearm." *United States* v. *Perez*, No. 24-1553, 2025 WL 2046897, at *6-*7 (July 22, 2025) (citation omitted). District courts in the Third Circuit, meanwhile, must consider factors such as the "length and recency" of the drug use in determining "whether someone's drug use suggests that he 'likely poses an increased risk of physical danger to others if armed.'" *Harris*, 2025 WL 1922605, at *8 (citation omitted).

The Eighth Circuit, to be sure, did not apply its new test itself; instead, it remanded the cases to the district courts so that they could apply that test in the first instance. See Pet. 25. But after the government filed this petition, the district courts found Section 922(g)(3) invalid as applied in *Cooper* but valid as applied in *Baxter*. See D. Ct. Doc. 105, at 3, *United States* v. *Cooper*, No. 23-cr-2040 (N.D. Iowa July 2, 2025) (*Cooper* Order); D. Ct. Doc. 120, at 21, *United States* v. *Baxter*, No. 23-cr-108 (S.D. Iowa July 23, 2025). The *Cooper* district court noted its "concerns" about the "practical implications" of the Eighth Circuit's approach, which requires "an ad-hoc, parallel system of judicial factfinding distinct from the factfinding required to prove the elements of the charged offense in criminal proceedings." *Cooper* Order 2. "What we apparently have now," the court stated, "is a situation where the government must prove," "through some manner and procedure not spe-

cifically 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." *Ibid.* Those concerns only heighten the need for this Court's review.

3. Respondent briefly suggests (Br. in Opp. 23-24) that the question presented is insufficiently important to warrant further review. That is plainly wrong. Respondent does not dispute that Section 922(g)(3) is one of Section 922(g)'s most frequently applied provisions or that district courts across the country frequently adjudicate Section 922(g)(3) cases. See Pet. 25-26.

C. Respondent's Vehicle Arguments Lack Merit

Respondent argues (Br. in Opp. 1) that "this case is not an appropriate procedural vehicle" for resolving the question presented. That is incorrect.

First, respondent objects (Br. in Opp. 25) that the government did not rely in the lower courts on the same historical analogues that it invokes now. But the lower courts were bound by circuit precedent striking down Section 922(g)(3)—the district court by *Daniels*, see Pet. App. 3a-4a, and the court of appeals by *Connelly*, see *id.* at 1a-2a. In both courts, therefore, the government conceded that circuit precedent controlled the result but expressly preserved the argument that circuit precedent is wrong. See *id.* at 2a n.2, 4a. Respondent does not explain what more the government should have done.

In any event, "[o]nce a federal claim is properly presented, a party can make any argument in support of that claim; parties are not limited to the precise arguments they made below." *Yee* v. *City of Escondido*, 503 U.S. 519, 534 (1992); see, *e.g.*, *Bartenwerfer* v. *Buckley*, 598 U.S. 69, 75 n.2 (2023); *Egbert* v. *Boule*, 596 U.S. 482,

497 n.3 (2022). Contrary to respondent's suggestion (Br. in Opp. 25), allowing the government to raise contentions that were foreclosed below by circuit precedent would not be "fundamentally unfair." If this Court grants review, respondent and his amici would have a full opportunity to file briefs responding to the government's historical arguments.

Second, respondent contends (Br. in Opp. 25) that this case would be a poor vehicle because the court of appeals "issued a two-page order" granting summary affirmance in light of circuit precedent. But this Court often grants certiorari when courts of appeals issue summary decisions that are controlled by circuit precedent. See, *e.g.*, *Rico* v. *United States*, No. 24-1056, 2025 WL 1787720 (June 30, 2025); *FS Credit Corp.* v. *Saba Capital Master Fund*, No. 24-345, 2025 WL 1787708 (June 30, 2025); *Esteras* v. *United States*, 145 S. Ct. 2031, 2037 (2025).

Third, respondent notes (Br. in Opp. 25) that the government declined to seek certiorari in *Connelly* and suggests (*id.* at 5 n.2) that the rationale for that decision applies equally to this case. But the government did not seek certiorari in *Connelly* because, given post-appeal factual developments, it was no longer confident that it could prove the defendant's guilt beyond a reasonable doubt. See Pet. 7 n.2. The government does not harbor such concerns here.

Far from being an unsuitable vehicle for resolving the question presented, this case is the best vehicle available. The government has filed petitions for writs of certiorari in four other cases presenting the same question. See *United States* v. *Cooper*, No. 24-1247 (filed June 5, 2025); *United States* v. *Daniels*, No. 24-1248 (filed June 5, 2025); *United States* v. *Sam*, No. 24-

1249 (filed June 5, 2025); *United States* v. *Baxter*, No. 24-1328 (filed June 27, 2025). As those petitions explain, this case presents the Second Amendment issue more cleanly than *Cooper*, *Daniels*, and *Baxter* and involves a more developed record than *Sam*.

* * * * *

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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