No. 24-1234

In the Supreme Court of the United States

UNITED STATES OF AMERICA,
Petitioner,

v.

ALI DANIAL HEMANI,
Respondent.

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

BRIEF OF COREY J. BIAZZO AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENT

Corey J. Biazzo
BIAZZO LAW, PLLC
P.O. Box 78373
6416 Rea Rd,
Ste. B7
Charlotte, NC 28277
(703) 297-5777 corey@biazzo-law.com

Counsel of Record for Amicus

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QUESTIONS 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.

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INTEREST OF THE AMICUS[1]

Amicus Corey J. Biazzo is a civil litigation attorney, constitutional scholar, U.S. Navy veteran, and author of nonpartisan guidebooks explaining the original public meaning of the Second Amendment. His work emphasizes text, history, and tradition, consistent with this Court's methodology in *District of Columbia* v. *Heller*, 554 U.S. 570 (2008); *McDonald* v. *Chicago*, 561 U.S. 742 (2010); *N.Y. State Rifle & Pistol Ass'n* v. *Bruen*, 597 U.S. 1 (2022); and *United States* v. *Rahimi*, 602 U.S. 680 (2024).

Amicus has a professional and civic interest commitment to ensuring that federal firearms statutes comport with the Founding-era understanding of "the right of the people to keep and bear Arms," and that modern classifications do not erode constitutional guarantees through status-based restrictions untethered from historical practice. Biazzo's interest in this case further arises from a professional and civic commitment to maintaining American constitutionally protected civil liberties.

SUMMARY OF THE ARGUMENTS

This case asks whether the Government may permanently forbid a sober, nonviolent citizen from possessing a firearm solely because he occasionally uses marijuana—conduct that is lawful in nearly half the States. *Bruen* and *Rahimi* require the Government to

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[1] No counsel for any party authored this brief in whole or in part, and no person or entity, other than Biazzo has contributed money that was intended to fund preparing or submitting the brief.

identify a well-established historical analogue for such a prohibition. None exists.

Founding-era legislatures routinely punished dangerous conduct, including bearing arms while intoxicated or breaching the peace, but they did not impose firearm disabilities based on status, lifestyle, or consumption of substances while sober. Early American laws—including those addressing alcohol misuse, vagrancy, sureties of the peace, or "common drunkards"—were directed at behavior demonstrating a threat to others, not mere personal habits.

Section 922(g)(3)'s modern disability is unprecedented in scope: it imposes a categorical and indefinite prohibition on individuals who are sober, peaceable, and fully capable of exercising the right responsibly. That is not regulation of conduct; it is disarmament based on identity.

Historical tradition supports temporary restrictions targeting actual dangerousness, not status-driven prohibitions that permanently eliminate a constitutional right. The Fifth Circuit correctly held the statute unconstitutional as applied here. Consistent with *Bruen* and *Rahimi*, it recognized that the Government's proposed analogues regulate: (1) armed intoxication; (2) dangerous behavior; or (3) individuals adjudged threats after process, none of which shares the "why" or "how" of section 922(g)(3)'s broad status-based ban.

The Government's position also raises serious concerns of constitutional structure and federalism. The Second Amendment secures a national constitutional right that applies uniformly throughout the United States. Although States retain broad authority to regulate health and safety, including controlled

substances, the scope of an enumerated constitutional right may not expand or contract based on federal classifications that conflict with lawful state policy choices

An interpretation of section 922(g)(3) that renders the exercise of the Second Amendment contingent on such classifications risks transforming a fundamental right into a geographically variable privilege. This Court has repeatedly emphasized that federalism protects individual liberty not only by dividing power, but by ensuring that constitutional guarantees apply with equal force across the Nation. A right incorporated against the States cannot depend on geography, administrative definitions, or regulatory schemes untethered from historical tradition.

THE ARGUMENTS

I. The Second Amendment Protects a Broad Individual Right Not Contingent on Government-Defined Status

The Second Amendment provides: "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., Amdt. II.

The Second Amendment guarantees "the right of the people to keep and bear Arms." U.S.Const., Amdt. II. As *Heller* established, that phrase refers to all Americans, not a subset deemed acceptable by the Government. 554 U.S. at 579-95. The prefatory clause announces a purpose –the preservation of a citizen militia—but does not limit the operative guarantee. *Id.* at 577-78.

More importantly, this Court has repeatedly rejected the idea that the Government may disarm citizens based on categorical judgments about who is "worthy" of exercising enumerated rights. See *Bruen*, 597 U.S. at 24-25 ("The Constitution demands our unqualified deference to the text and historical tradition."; *Rahimi*, 602 U.S. at 689-90 (upholding disarmament only when an individual "poses a credible threat").

The Amendment allows regulation of dangerous conduct, not status. The distinction is constitutionally and historically fundamental. Although the right is not unlimited, any restriction must be consistent with historical tradition. *Bruen*, 597 U.S. at 24. *Rahimi* reaffirmed that modern regulations must share a comparable "why" and "how" with historical analogues. 602 U.S. at 690-700. Section 922(g)(3) fails both prongs.

II. Constitutional Structure and Federalism Forbid Using Federal Drug Classifications to Create Geographically Variable Second Amendment Rights

Although the Second Amendment applies uniformly across all states, section 922(g)(3) makes the exercise of that right effectively contingent on federal classifications that conflict with many States' sovereign decisions. *Heller* recounts how the Stuart monarchs disarmed their political enemies, prompting the English Declaration of Right of 1689 and, ultimately, the Second Amendment. 554 U.S. 592-93. That history teaches that disarmament powers can be wielded for political suppression.

As James Madison observed, "The advantage of being armed, which the Americans possess over the people of almost every other nation, forms a barrier against the enterprises of ambition." The Federalist No. 46. That understanding was not rhetorical; it was structural. The Framers codified the right to bear arms precisely so that it could not be conditioned on government approval or political allegiance. That principle remains salient today. A government that may disarm entire political regions risks transforming a constitutional safeguard into a tool of control—the very evil the Framers codified the Second Amendment to prevent.

The Second Amendment secures a national constitutional right that applies uniformly throughout the United States. While States retain broad authority to regulate criminal law and public health—including the regulation of controlled substances—the scope of an enumerated constitutional right may not expand or contract based on federal administrative classifications that conflict with lawful state policy choices.

This Court has long recognized that federalism protects individual liberty not only by dividing power between sovereigns, but by preventing the national government from using its regulatory authority in a manner that undermines constitutional guarantees. *Bond* v. *United States*, 564 U.S. 211, 221 (2011). A constitutional right incorporated against the States must operate with equal forces across the Nation and may not be transformed into privilege whose practicable availability varies by geography. *McDonald* v. *Chicago*, 561 U.S. 742 (2010).

An interpretation of 18 U.S.C. § 922(g)(3) that renders the exercise of the Second Amendment contin-

gent on federal drug classifications risks producing precisely that result. Where States have chosen—through their sovereign authority—to legalize or decriminalize certain conduct, the use of those classifications to impose a categorical firearm disability creates uneven consequences for citizens depending solely on where they reside. Such variability is incompatible with the Fourteenth Amendment's incorporation of the Second Amendment and this Court's insistence that fundamental rights are not regional privileges.

Federalism permits regulatory diversity, but it does not permit dilution of constitutional rights. Allowing federal firearm prohibitions to turn on classifications untethered from historical tradition or individualized dangerousness risks converting a national guarantee into a geographically variable entitlement. The Constitution does not tolerate that result.

III. Historical Tradition Confirms That Firearm Regulation Targeted Dangerous Conduct, Not Status

This historical record reveals a consistent principle: American governments regulated the manner of arms-bearing to address concrete threats to public safety, but they did not impose categorical firearm prohibitions based on lawful personal habits or status.

Founding-era and nineteenth-century laws addressed conduct such as carrying arms while intoxicated, firing weapons in a dangerous manner, brandishing arms to terrorize others, or breaching the peace. These regulations were behavior-focused, temporary, and closely tied to preventing violence. They

did not impose indefinite firearm disabilities to sober, peaceable citizens based on past or occasional substance use.

Colonial and early state laws prohibiting the use of firearms while intoxicated or in a manner that threatened public order illustrate this distinction. Such laws punished dangerous behavior at the time it occurred; they did not disarm individuals based on identity or lifestyle. Likewise, surety laws required an individualized showing of threat and allowed continued possession of arms absent a breach of the peace. As *Bruen* explained, these laws are poor analogues for categorical disarmament, 597 U.S. at 48.

This historical pattern is further reinforced by what the record does not show. Americans widely consumed alcohol, opiates, and other intoxicants throughout the eighteenth and nineteenth centuries, yet no jurisdiction imposed a general prohibition on firearm possession by individuals who used such substances while sober. That absence is constitutionally significant. Under *Bruen*, "silence where history would have spoken is meaningful." 597 U.S. at 25.

Even during periods of heightened federal regulation—most notably the Prohibition era—Congress did not disarm citizens for alcohol consumption. Enforcement efforts targeted unlawful distribution and public disorder, not the deprivation of constitutional rights by peaceable individuals. This confirms that firearm regulation has historically been tied to dangerousness, not status.

Rahimi reaffirmed this principle. There, the Court upheld disarmament only where an individual posed a demonstrated threat to others and only after judicial process. 602 U.S. at 690-91. Section 922(g)(3) departs

from that tradition by imposing a categorical prohibition untethered from conduct, adjudication, or temporal limitation. History thus supports regulation of dangerous conduct, including restrictions on carrying arms while intoxicated. It does not support indefinite disarmament of sober, peaceable citizens based solely on status.

IV. The Fifth Circuit Correctly Applied the Text-and-History Framework

The Fifth Circuit's judgment faithfully applies *Bruen* and *Rahimi*. It recognized that section 922(g)(3) lacks a historical analogue and that its enforcement, untethered to violence or intoxication, violates the Second Amendment's text and history. Further, a statute that categorically disarms large numbers of otherwise law-abiding citizens sits uneasily with the Founding-era understanding of a citizen militia composed of 'the body of the people.' The court's decision respects both the constitutional right and the federal-state balance of powers. This Court should affirm the narrow, fact-specific ruling.

The Fifth Circuit's narrow, as-applied ruling does not disable Congress from regulating armed intoxication or other genuinely dangerous conduct. It simply holds that sober, peaceable citizens cannot be permanently disarmed based solely on their status.

This Court should affirm.

CONCLUSION

The Fifth Circuit's judgment faithfully applies *Bruen* and *Rahimi*. It recognized that section

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The Fifth Circuit's narrow, as-applied ruling does not disable Congress from regulating armed intoxication or other genuinely dangerous conduct. It simply holds that sober, peaceable citizens cannot be permanently disarmed based solely on their status.

This Court should affirm.

Respectfully submitted

Corey J. Biazzo, Esq.
BIAZZO LAW, PLLC
P.O. Box 78373
6416 Rea Rd., Ste B7
Charlotte, NC 28277
(703) 297-5777
corey@biazzolaw.com

Counsel of Record
for Amicus

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