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 the Liberty Justice Center as Amicus Curiae Supporting Respondent**

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## Interest of the Amicus Curiae

The Liberty Justice Center ("LJC") is a nonprofit, nonpartisan public-interest litigation firm that pursues strategic, precedent-setting litigation aimed at revitalizing constitutional restraints on government power and protecting individual rights. LJC is interested in this case because the protection of an individual's right to keep and bear arms is a core value vital to a free society.[1] LJC is currently litigating on behalf of individuals whose Second Amendment rights are being infringed. *See Nebraska Firearms Owners Ass'n v. Lincoln*, 219 Neb. 723 (2025); *McCoy v. Jacobson*, No. 0:25-cv-00054 (D. Minn.) (ongoing).

## Summary of Argument

Over the last few decades, states across the nation expanded lawful access to firearms and public carry, reflecting sustained public confidence in the responsible exercise of Second Amendment rights. At the same time, Americans overwhelmingly supported efforts to relax restrictions on cannabis, through decriminalization, medical-use regimes, and widespread legalization for recreational use. Today, tens of millions of Americans lawfully use cannabis under state law; a use that is broadly accepted as neither inherently dangerous nor associated with increased violence or crime.

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[1] Rule 37 statement: No counsel for any party authored any part of this brief, and no person or entity other than Amicus funded its preparation or submission.

Against this backdrop, 18 U.S.C. § 922(g)(3)'s categorical disarmament of all "unlawful users . . . of controlled substances" sweeps far beyond any historical analogue. The Fifth Circuit correctly recognized that our historical tradition does not authorize the permanent or near-permanent disarmament of sober individuals based solely on their status as substance users. Treating all cannabis users—nearly one-fifth of the adult population—as presumptively dangerous criminals is incompatible with historical tradition, modern societal norms, and this Court's own framework for Second Amendment analysis.

The balance between liberty and safety can be hard to calibrate. But the Founders secured in the Second Amendment the individual right to keep and bear arms, which this Court has repeatedly refused to treat as a second-class right. This Court's holdings that restrictions on the right to keep and bear arms must be justified by a historical tradition that reflects the constitutional bargain struck by the American people, not by modern policy judgments about risk untethered from history.

## Argument

### I. The right to keep and bear arms is a fundamental right central to the American conception of liberty.

The right protected by the Second Amendment is an individual one. *D.C. v. Heller*, 554 U.S. 570, 595 (2008). It is "among those fundamental rights necessary to our system of ordered liberty." *McDonald v. Chicago*, 561 U.S. 742, 778 (2010). This court firmly

rejected the idea that the Second Amendment is "a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees." *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 70 (2022) (quoting *McDonald*, 561 U.S. at 780).

In *Bruen*, this Court held that "the government must demonstrate that [a] regulation is consistent with this Nation's historical tradition of firearm regulation." 597 U.S. at 17. To pass *Bruen*'s test, when a law burdens rights protected by the Second Amendment, the government must provide "relevantly similar" historical regulations as instructive precedent. *Id.* at 27–28. A historical analogue is only relevantly similar when "[w]hy and how the regulation burdens the right" are analogous. *U.S. v. Rahimi*, 602 U.S. 680, 692 (2024). A founding-era law that addresses particular problems "will be a strong indicator that contemporary laws imposing similar restrictions for similar reasons fall within a permissible category of regulations." *Id.*

This Court emphasized that "The Second Amendment 'is the very *product* of an interest balancing by the people' . . . . It is this balance—struck by the traditions of the American people—that demands our unqualified deference." *Id.* at 26 (quoting *Heller*, 554 U.S. at 635) (emphasis original). *Bruen*'s historical methodology is meant to "apply faithfully the balance struck by the founding generation to modern circumstances." *Bruen*, 597 U.S. at 29 n.7.

### A. Americans continue to strike a balance in favor of more access to firearms.

During the decades preceding this Court's decision in *Bruen*, the public made clear that it valued its ability to both keep and bear arms. Beginning with Alaska in 2003, states began eliminating requirements to obtain a permit to carry a firearm outside the home. [2] Today, twenty-nine states permit publicly carrying firearms without a license.

Americans in states where carry permits were previously unavailable have been flocking to their permitting authorities in the wake of *Bruen*. In New York City alone, more than 17,000 applicants have been approved for carry permits—up from fewer than 4,000 permit holders before 2022.[3] Across the Hudson River in New Jersey, authorities processed almost 62,000 applications between June 2022 and January 2025, compared with 1,500 applications in the two and a half years before *Bruen*.[4] In just the six months after *Bruen*, Maryland saw almost 80,000 permit

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[2] *See* H.B. 102, 23rd Leg. (Alaska 2003) (redefining crime of misconduct involving weapons as failure to inform a police officer of possession of a deadly weapon, with no requirement for a permit).

[3] Mike Lamorte, *NYPD: More city residents seeking concealed carry permits*, News12 (Nov. 14, 2025, 7:24 AM), https://newyork.news12.com/nypd-more-city-residents-seeking-concealed-carry-permits.

[4] Nikita Biryukov, *Requests for gun carry permits hit record highs in January*, N.J. Monitor (Feb. 18, 2025, 7:13 AM), https://newjerseymonitor.com/2025/02/18/requests-for-concealed-carry-permits-hit-record-highs-in-january/.

applications, compared with the roughly 12,000 in all of 2021.[5]

Americans—both legislatively and individually—are increasingly choosing more access to firearms, and a greater ability to carry them for their own defense.

## II. The American public is comfortable with increased access to cannabis.

At the same time as Americans show their appetite for more access to guns, they have also chosen looser cannabis restrictions. Nearly ninety percent of U.S. adults now say that cannabis should be legal for medical or recreational use.[6] Despite the continuing federal prohibitions on cannabis, forty states, three territories and the District of Columbia allow medical use of cannabis products as of June 2025.[7] Twenty-four states, three territories, and D.C. allow for adult recreational use.[8]

This broad access to "legal" possession and use of cannabis is the result of a decades-long trend of decriminalization, the proliferation of medical use

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[5] Dwight A. Weingarten, *With gun law gone, permit applications increased nearly 7 times in Maryland in 2022*, The Herald-Mail (Feb. 6, 2023, 5:05 AM), https://www.heraldmailmedia.com/story/news/state/2023/02/06/conceal-carry-permit-applications-rose-in-md-after-us-supreme-court-gun-law-ruling/69864157007/.

[6] *Most Americans Favor Legalizing Marijuana for Medical, Recreational Use*, Pew Research Ctr. (Mar. 26, 2024), https://www.pewresearch.org/politics/2024/03/26/most-americans-favor-legalizing-marijuana-for-medical-recreational-use/.

[7] *State Medical Cannabis Laws*, Nat'l Conf. of State Legislatures (June 27, 2025), https://www.ncsl.org/health/state-medical-cannabis-laws (last visited Dec. 23, 2025).

[8] *Id.*

regimes, and ultimately legalization for recreational use.

### A. For decades, cannabis access increased across the country.

Increased cannabis access began with a wave of states decriminalizing or reducing penalties for cannabis possession in the 1970s.[9] The push for further cannabis access went dormant until the mid-1990s, when states began legalizing medical cannabis.

In 1996, Californians approved Proposition 215, adopting the Compassionate Use Act, which made personal medical use of cannabis an affirmative defense to prosecution for its possession or cultivation. *See People v. Kelly*, 222 P.3d 186, 188 (Cal. 2010). Since then, other states followed suit at a regular clip. Most recently, Nebraska's voters approved a pair of medical marijuana ballot initiatives in 2024.[10] Acknowledging the general trend towards more medical cannabis access, President Joseph R. Biden began the administrative process to move cannabis from Schedule I of the Controlled Substances Act to

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[9] *See, e.g.,* H.B. 447, 63rd Leg., Reg. Sess. § 4.05 (Tex. 1973) (reducing possession of less than four ounces of cannabis to a misdemeanor offense); H.B. 1027, 50th Gen. Assemb., Reg. Sess. (Colo. 1975) (decriminalizing possession of up to one ounce of cannabis); L.B. 808, 85th Leg., § 2 (Neb. 1978) (decriminalizing possession of up to one half ounce of cannabis).

[10] Zach Wendling, *Medical cannabis prevails at Nebraska's ballot box, but fate depends on legal challenges*, Neb. Examiner (Nov. 6, 2024, 12:00 AM), https://nebraskaexaminer.com/2024/11/06/medical-cannabis-prevails-at-nebraskas-ballot-box-but-fate-depends-on-legal-challenges/.

Schedule III in 2024.[11] President Donald J. Trump recently completed the process by executive order. Exec. Order No. 14,370, 90 Fed. Reg. 60,541 (Dec. 18, 2025).

The Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") recently proposed a rule change guiding its internal definition of an "unlawful user" pursuant to § 922(g)(3). The ATF's proposed definition would specifically exclude a person whose drug use "is isolated or sporadic or does not otherwise demonstrate a pattern of ongoing use." Revising Definition of "Unlawful User of or Addicted to Controlled Substance," 27 C.F.R. pt. 478 (proposed Jan. 22, 2026). ATF uses this definition to decide whether to prosecute or retrieve purchased firearms from individuals whose background checks return indicia of drug use, meaning that persons with background check denials based on single admissions of drug use, a single failed drug test in the last year, or a single misdemeanor drug conviction would now be able to purchase a firearm. *Id.*

Amidst the spread of medical cannabis around the country, states began legalizing the recreational use of cannabis as well. In 2012, Colorado and Washington became the first states to legalize the possession and sale of cannabis for recreational use via state constitutional amendment and ballot initiative, respectively.[12] Two years later,

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[11] Natalie Fertig, *President Biden announces moves to relax weed restrictions*, Politico (May 16, 2024, 4:01 PM), https://www.politico.com/news/2024/05/16/biden-announces-marijuana-reclassification-00158408.

[12] Keith Coffman & Nicole Neroulias, *Colorado, Washington first states to legalize recreational pot*, Chicago Trib. (Nov. 7, 2012,

Washington, D.C. voters approved a ballot initiative to legalize recreational cannabis use.[13] Within just over a decade, almost half of the states have followed suit.

### B. Cannabis use is widespread and does not subject the public to more risk of violence.

States increasing access to legal cannabis flows from the widespread use and acceptance of cannabis in contemporary society. "Cannabis is one of the most commonly used psychoactive substances globally, trailing only caffeine, alcohol and tobacco[.]"[14] In 2024, 64.2 million Americans over the age of twelve reportedly used cannabis within the past year.[15] Of those, 49.3 million were aged twenty-six or older.[16] While there was no change in use for minors from 2021, the number of adult users over twenty-six increased by over four percentage points, from 17.3% in 2021 to 21.7% in 2024.[17] Americans who reportedly

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1:00 AM), https://www.chicagotribune.com/2012/11/07/colorado-washington-first-states-to-legalize-recreational-pot/.

[13] Matt Ferner, *Washington, D.C. Votes To Legalize Recreational Marijuana*, Huffpost (Nov. 4, 2014, 11:00 PM), https://www.huffpost.com/entry/washington-dc-legal-marijuana_n_5947520.

[14] David A. Gorelick, *Cannabis-Related Disorders and Toxic Effects*, 389 New Eng. J. of Med. 2267 (2023).

[15] Substance Abuse & Mental Health Servs. Admin., *Key Substance Use and Mental Health Indicators in the United States: Results from the 2024 National Survey on Drug Use and Health* 9 (2025), https://www.samhsa.gov/data/sites/default/files/reports/rpt56287/2024-nsduh-annual-national-report.pdf.

[16] *Id.*

[17] *Id.*

used cannabis in the last month totaled 44.3 million people.[18]

Cannabis's broad use underscores that it is not inherently dangerous. The most common acute effects of cannabis use are euphoria, relaxation, sedation, increased appetite, impaired short-term memory, impaired concentration, and impaired psychomotor coordination.[19] Overdose deaths related to cannabis use are so rare that the Centers for Disease Control and Prevention's National Center for Health Statistics does not mention it in published drug overdose statistics.[20] The Drug Enforcement Administration reports that "No deaths from overdose of marijuana have been reported."[21]

Cannabis use is also not inherently dangerous to the public. In a 2019 study comparing Washington and Oregon crime statistics with states where cannabis remained illegal, researchers found "essentially no long-term shifts in crime rates because of legalization," and the immediate effects were statistically insignificant and fleeting.[22] In the thirty years of intensifying legal access to cannabis since California legalized medical use in 1996, there is a marked lack of evidence—statistical or anecdotal—of

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[18] *Id.* at 8.

[19] *See* Gorelick, *supra*, at 2269.

[20] *See* Merianne R. Spencer et al., Nat'l Ctr. For Health Stats., *Drug Overdose Deaths in the United States, 2002–2022* (2024), https://www.cdc.gov/nchs/data/databriefs/db491.pdf.

[21] *Marijuana*, U.S. Drug Enf't Admin., https://www.dea.gov/factsheets/marijuana (last visited Jan. 9, 2025).

[22] Ruibin Lu et al., *The Cannabis Effect on Crime: Time-Series Analysis of Crime in Colorado and Washington State*, 38 Just. Quarterly 565, 577–79 (2021).

cannabis use alone making Americans significantly more violent or dangerous.

## III. The Fifth Circuit strikes the appropriate balance between protecting Second Amendment rights and preventing dangerous individuals from accessing firearms.

This case is not the first time the Fifth Circuit confronted a challenge to 18 U.S.C. § 922(g)(3). In *United States v. Connelly*, the court was confronted with a challenge to the statute by "a non-violent, marijuana smoking gunowner." 117 F.4th 269, 272 (5th Cir. 2024). In *Connelly*, the Fifth Circuit concluded that § 922(g)(3) was unconstitutional as applied to the defendant, affirming the district court's dismissal of her indictment because she was not intoxicated at the time of her arrest. *Connelly*, 117 F.4th at 281–82.

*Connelly* is the circuit's precedent for this case; even Petitioner "concluded that it applies here and is not relevantly distinguishable." *U.S. v. Hemani*, 2025 U.S. App. LEXIS 2249, at *2–3 (5th Cir. 2025). The Fifth Circuit's logic accurately reflects the balance struck by the Second Amendment and should be affirmed.

### A. The Second Amendment forbids the disarmament of sober substance users.

The *Connelly* panel faithfully applied the *Bruen* framework and analyzed the historical tradition of disarming the mentally ill, dangerous individuals, and the intoxicated—the government's justifications for §922(g)(3)—to reach its conclusion that disarming sober persons is unconstitutional. Applying this

Court's central question from *United States v. Rahimi*, 602 U.S. 680, 692 (2024), of "why and how" a regulation burdens the Second Amendment, it found that none supported curtailing the Second Amendment protections inherent in sober individuals.

First, the court found that founding-era laws curbing the liberty of the mentally ill are not relevantly similar to § 922(g)(3) because the "lunacy" associated with intoxication is a temporary result of the intoxication. 117 F.4th at 275–77. While the severely mentally ill were locked up and stripped of their rights during the early Republic, alcoholics—a more analogous category to drug users—were allowed to carry weapons while sober. *Id.* at 276. According to the Fifth Circuit, the "why" does not match up; "[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.

Next, historical laws disarming "dangerous" persons are also inapposite to sober cannabis users because there is "no class of persons at the Founding who were 'dangerous' for reasons comparable to marijuana users." *Id.* at 278. These laws existed in times of conflict, where political and religious dissidents posed a real perceived threat. *Id.* at 278–79. At the same time, drunkards were left unregulated. *Id.* at 279. The court asked if cannabis users are more like British loyalists during the Revolution or repeat alcohol users, concluding that "the answer is clearly the latter. . . . analogiz[ing] non-violent marijuana users to 'dangerous' persons fails to present a 'relevantly similar' 'why.'" *Id.*

Third, relevant historical laws dealing with firearms and alcohol—cannabis' closest analogue—addressed issues related to being drunk and misusing weapons but did not bar possession for sober drinkers. *Id.* at 280–82. Here, the "why" was the same, but without a comparable burden, there is no analogous "how." *Id.* at 280.

Without more, like a judicial finding that a person presents a credible threat to others, sober individuals who are regular users of cannabis cannot be disarmed. *See Rahimi*, 602 U.S. at 702 ("An individual found *by a court* to pose a credible threat to the physical safety of another may be temporarily disarmed consistent with the Second Amendment" (emphasis added)). Meant to disarm purportedly dangerous individuals, § 922(g)(3)'s broad prohibition on "unlawful user of . . . any controlled substance" folds in tens of millions of Americans who use cannabis for medical reasons or for recreational intoxication. Many in the forty states where their cannabis use is purportedly "legal." Unlike the provision at issue in *Rahimi*, there is no requisite judicial finding of dangerousness. *See* 18 U.S.C. § 922(g)(8).

Applying the law to all cannabis users without regard for their intoxication means that the nearly 50 million American adults who used cannabis in the last year—one fifth of the national population—are dangerous criminals who should be disarmed. In reality, they are cashiers, waiters, construction workers, nurses, teachers, doctors, lawyers, and individuals of every stripe that enjoy the effects of cannabis as innocently as many of their countrymen enjoy alcohol. Recognizing that the Second Amendment protects sober imbibers as well as

teetotalers respects the very balance between liberty and safety that the Founders intended.

### B. Other courts of appeals require judicial findings of dangerousness

Like the Fifth Circuit, other courts of appeals require judicial findings of dangerousness before a defendant can be convicted under § 922(g)(3).

Before this Court's decision in *Rahimi*, the Eighth Circuit addressed a facial challenge to § 922(g)(3). *U.S. v. Veasley*, 98 F.4th 906 (8th Cir. 2023). Holding that a facial challenge fails because "at least some drug users and addicts fall within a class of people who historically have had limits placed on their right to bear arms," the court noted that the result might come out differently in an as-applied challenge. *Id.* at 918. "Consider the 80-year-old grandmother who uses marijuana for a chronic medical condition and keeps a pistol tucked away for her own safety. It is exceedingly unlikely she will pose a danger or induce terror in others." *Id.* at 917–18.

Two years later, the court revisited *Veasley*'s hypothetical in *United States v. Cooper*, 127 F.4th 1092 (8th Cir. 2025). In *Cooper*, the Eighth Circuit held that to survive an as-applied challenge, there must be a determination that using cannabis made the defendant act like someone who is both mentally ill and dangerous, or that the person "'pose[s] a credible threat to the physical safety of others' with a firearm." *Id.* at 1096 (quoting *Rahimi*, 602 U.S. at 700). The court remanded to the district court for the necessary findings. *Id.* at 1098.

The Third and Tenth Circuits similarly remanded for further reconsideration of whether a defendant's

drug use made them dangerous. *See U.S. v. Harris*, 144 F.4th 154, 167–68 (3d Cir. 2025); *U.S. v. Harrison*, 153 F.4th 998, 1035 (10th Cir. 2025). The Third Circuit included a set of factors about a defendant's drug use and how that drug affects a user, demanding that "courts must make individualized judgments and conclude that disarming a drug user is needed to address a risk that he would pose a physical danger to others." *Harris*, 144 F.4th at 165–66. The Tenth Circuit asserted that "the district court should have inquired into whether the government could justify its assertion that non-intoxicated marijuana users pose a risk of danger." *Harrison*, 153 F.4th at 1033.

In fact, ATF's proposed rule change is meant to bring its own enforcement of § 922(g)(3) in line with these judicial developments. It is paradoxical for the government to simultaneously believe that a person who sporadically uses cannabis is safe enough to purchase a firearm despite a negative background check result, but that same person could be subject to prosecution for that purchase. In a country where cannabis use is socially acceptable and widespread, an individual finding of dangerousness should be the standard for enforcement of § 922(g)(3).

## Conclusion

Where the government fails to show that an individual cannabis user poses an inherent danger, the nation's historical tradition of regulating who can possess a firearm does not support disarmament. When a fifth of the country's population admits to using cannabis, and public opinion is broadly accepting of its use, the government must show more before burdening an individual's right to keep a

firearm for their own defense. The Founders could not have imagined a scenario where the state could disarm tens of millions of people because they like to use intoxicating substances. For this reason, this Court should affirm the decision below.

January 27, 2026 Respectfully submitted,

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