No. 24-1234

In the
Supreme Court of the United States

UNITED STATES,

Petitioner,

v.

ALI DANIAL HEMANI,

Respondent.

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

BRIEF OF AMICI CURIAE SECOND AMENDMENT FOUNDATION, CALIFORNIA RIFLE & PISTOL ASSOCIATION, INCORPORATED, SECOND AMENDMENT LAW CENTER, CITIZENS COMMITTEE FOR THE RIGHT TO KEEP AND BEAR ARMS, AND MINNESOTA GUN OWNERS CAUCUS IN SUPPORT OF RESPONDENT

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AMICUS CURIAE STATEMENT OF INTEREST

Second Amendment Foundation ("SAF") is a non-profit membership organization founded in 1974 with over 720,000 members and supporters in every state of the union. Its purposes include education, research, publishing, and legal action focusing on the constitutional right to keep and bear arms. Currently, SAF is involved in other litigation concerning the intersection of state-legal marijuana use and arms and thus has great interest in the outcome of this petition. *See* Complaint, *Greene v. Garland*, No. 1:24-cv-00021-CB (W.D. Pa. Jan. 23, 2024).[1]

Founded in 1875, the California Rifle and Pistol Association, Incorporated ("CRPA") is a nonprofit organization that seeks to defend the Second Amendment and advance laws that protect the rights of individual citizens. CRPA works to preserve the constitutional and statutory rights of gun ownership, including the right to self-defense, the right to hunt, and the right to keep and bear arms. CRPA is also dedicated to promoting shooting sports, providing education, training, and competition for adult and junior shooters. CRPA's members include law enforcement officers, prosecutors, professionals,

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[1] No counsel for a party authored this brief in whole or in part, nor did such counsel or any party make a monetary contribution to fund this brief. No person other than the amicus parties, its members or counsel, made a monetary contribution intended to fund the preparation or submission of this brief. The Parties were notified that this brief would be filed on October 8, 2025, in compliance with Rule 37.2.

firearm experts, and members of the public. In service of these ends, CRPA regularly participates as a party or amicus in firearm-related litigation.

The Second Amendment Law Center ("2ALC") is a nonprofit corporation in Henderson, Nevada. The Center defends the individual right to keep and bear arms as envisioned by the Founders. 2ALC also educates the public about the social utility of firearm ownership and provides accurate historical, criminological, and technical information to policymakers, judges, and the public.

The Citizens Committee for the Right to Keep and Bear Arms is a non-profit corporation organized under Section 501(c)(4) of the Internal Revenue Code, dedicated to promoting the benefits of the right to bear arms. This Court's interpretation of the Second Amendment directly impacts the Committee's organizational interests, as well as the Committee's members and supporters, who enjoy exercising their Second Amendment rights.

Minnesota Gun Owners Caucus ("MGOC") is a 501(c)(4) non-profit organization incorporated under the laws of Minnesota with its principal place of business in Shoreview, Minnesota. MGOC seeks to protect and promote the right of citizens to keep and bear arms for all lawful purposes. MGOC serves its members and the public through advocacy, education, elections, legislation, and legal action. MGOC's members reside both within and outside Minnesota.

SUMMARY OF ARGUMENT

This Court has explained that when it comes to which types of arms may not be banned, the American people themselves confer constitutional protection through their choices. *District of Columbia v. Heller*, 554 U.S. 570, 629 (2008); *see also Snope v. Brown*, 145 S. Ct. 1534, 1535 (2025) (Thomas, J., dissenting from denial of certiorari) ("Our Constitution allows the American people—not the government—to decide which weapons are useful for self-defense.").

By that same token, Americans have also traditionally chosen which substances are acceptable for responsible recreational use, and the fundamental right to keep and bear arms was never denied to people who occasionally partook in such drugs—unless they were carrying arms while actively intoxicated. Historically, the best example of this is alcohol, as its widespread consumption predates the founding. And sure enough, because of the dangers of mixing alcohol and firearms, plenty of laws arose to prevent inebriated people from being armed in public. But what never existed were laws that prohibited sober people from owning guns because they *sometimes* drank.

In the modern era, marijuana should be treated no differently. Once widely forbidden, "[t]oday, marijuana is legal to various extents in forty states, including for recreational use in twenty-four states and the District of Columbia." *United States v. Harris,* 144 F.4th 154, 169 (3d Cir. 2025) (Krause, J., and Bibas, J., concurring). Yet because of the prohibition

found in 18 U.S.C. § 922(g)(3), if Americans choose to use marijuana or other cannabis products (that often are legal in their state), they must surrender their Second Amendment right before they do so. The law doesn't apply only when marijuana users are intoxicated; they may not even *own* firearms if they regularly consume cannabis products, even if they leave their firearms at home when they do so. This does not square with the lengthy historical tradition of how alcohol and firearms have been regulated.

The United States and its amici miss the mark because they ignore a fundamental principle explained in *Bruen* and *Rahimi* that makes this a simple case. "[W]hen a challenged regulation addresses a general societal problem that has persisted since the 18th century, the lack of a distinctly similar historical regulation addressing that problem is relevant evidence that the challenged regulation is inconsistent with the Second Amendment." *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 26 (2022). The regulations around alcohol and guns provide the limiting metric here in terms of how far modern regulations can go. Having identified that unambiguous and distinctly similar analogue, there is no justification to rise to higher levels of generality.

Before all of that though, Amici respectfully suggest that this Court should first reconsider whether this case really is the best vehicle to decide such a critical issue, given the strange and unproven factual allegations raised in the Government's petition and briefing.

ARGUMENT

I. The Court Should Address this Case on the Factual Record and Question Presented and Must Not Be Led Astray by the Government's Attempts to Create Unsavory Distractions.

The constitutionality of 18 U.S.C. § 922(g)(3) is a critical question that must be addressed by this Court given the circuit split that has developed on it, particularly as it applies to substances like marijuana that have gained widespread social acceptance but remain federally illegal.

But this case is an exceptionally poor vehicle to decide such an important question. The facts are threadbare. Based on the Government's brief, we can conclude only a few things with any degree of certainty: Mr. Hemani was found in possession of a firearm, 60 grams of marijuana, and 4.7 grams of cocaine. *See* Petition for a Writ of Certiorari at 5, *United States v. Hemani*, No. 24-1234 (U.S. filed June 2, 2025). He apparently told FBI agents he used marijuana "about every other day," and other evidence indicated he used promethazine. *Id.*

The rest is unproven, and importantly, *uncharged*. The most shocking unsupported insinuations are that Mr. Hemani is a potential terrorist himself, or at least an associate of sympathizers working with the Iranian Revolutionary Guard Corps. *Id.* at 4. Both the Government's petition and its opening brief list those allegations first in recounting the facts about Mr. Hemani, before mentioning the drug use which is what the case is actually about. *Id.*; *see also* Brief for

the United States at 6, *United States v. Hemani*, No. 24-1234 (U.S. filed Dec. 12, 2025).

The trouble is that the Government has not charged Mr. Hemani with any crimes related to these supposed links to Iran. Nor was he charged for allegedly being a drug dealer as the Government also claims, or even simply being in possession of illegal drugs. *Id.* at 7. He faced only a "single count Indictment charging [him] with violation of 18 U.S.C. § 922(g)(3)." *United States v. Hemani*, 684 F. Supp. 3d 579, 580 (E.D. Tex. 2023). Thus, the **only** facts relevant to this matter are those related to Mr. Hemani's illegal drug use while he was also in possession of a firearm, and it should not allow its ruling to be tainted by the Government's innuendo. If the Government can prove that Mr. Hemani is a drug dealer or a terrorist, it should have charged him with the relevant crimes related to that conduct. It did not do so.

Turning back to Mr. Hemani's drug use, while he was also found with cocaine, there is no claim that he ever used the cocaine himself, habitually or otherwise. *See* U.S.Br. at 7. The Government also says, based on text messages, that Mr. Hemani found promethazine addictive. *Id*. But promethazine is not a controlled substance and thus does not fall under § 922(g)(3); the federal government's 22-page list of controlled substances does not include it. *See* U.S. Drug Enf't Admin., *Controlled Substances - Alphabetical Order* (Dec. 31, 2025), https://www.deadiversion.usdoj.gov/schedules/orangebook/c_cs_alpha.pdf; *see also* U.S. Drug Enf't Admin., *Drug Scheduling*, https://www.

dea.gov/druginformation/drugscheduling (last visited Jan. 7, 2026).[2]

This factual uncertainty calls for this Court to reconsider its decision to grant review here. It should instead decide the important question presented in another pending case with a simpler record. *See, e.g.*, *United States v. Harris*, 144 F.4th 154 (3d Cir. 2025), *petition for cert. filed* (U.S. Sept. 26, 2025) (No. 25-372).

But if this Court is not inclined to take such a step, then it should at least treat all of the factual allegations as irrelevant except for Mr. Hemani's admitted use of marijuana and his possession of a firearm in the home, and any ruling should be based on those facts alone. The rest of the Government's extraneous assertions — alleged Iranian links, cocaine possession, drug dealing, promethazine use — are immaterial here.

"If bad facts make bad law, then 'unusual facts' inspire unusual decisions." *Tharpe v. Sellers*, 583 U.S. 33, 35 (2018) (Thomas, J., and Alito, J., dissenting). It would be unjust for this Court to decide an issue affecting millions of Americans based on the unique, unusual, and unproven allegations present in Mr. Hemani's case alone. It should instead consider only his marijuana use.

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[2] The Government states that promethazine is a controlled substance when it is mixed with codeine. U.S.Br. at 7, n. 9. But neither its brief nor its petition point to anything in the record to suggest Mr. Hemani was using codeine, or even that he was in possession of it.

II. Historical Regulations on Carrying Firearms While Intoxicated Provide the Firm Boundaries of What Our Historical Tradition Will Tolerate.

A. The nation has long faced the social problem of armed drunks, yet there is no "distinctly similar" historical law that justifies 18 U.S.C. § 922(g)(3) as it applies to marijuana.

As this Court has explained, "[i]n some cases, [the historical] inquiry will be fairly straightforward ... when a challenged regulation addresses a general societal problem that has persisted since the 18th century, the lack of a distinctly similar historical regulation addressing that problem is relevant evidence that the challenged regulation is inconsistent with the Second Amendment." *Bruen*, 597 U.S. at 26. And when the same or similar problem was addressed in the past through "materially different means, that also could be evidence that a modern regulation is unconstitutional." *Id.* at 26-27.

Both are true here. The danger of common, socially acceptable, and state-legal drug use mixing with firearm possession is nothing new in our history, and since the founding, laws have consistently taken on this problem. But as other circuits have correctly ruled, our historical tradition supports, "at most, a ban on carrying firearms while an individual is *presently* under the influence." *United States v. Connelly*, 117 F.4th 269, 282 (5th Cir. 2024); *see also United States v. Seiwert*, No. 23-2553, 2025 U.S. App. LEXIS 23667, at *29 (7th Cir. Sept. 12, 2025) (holding that § 922(g)(3) is constitutional as applied to an

individual whose cognitive abilities are "presently and persistently impaired").

This historical tradition began in the colonial era, where laws existed to prevent militiamen from becoming drunk while carrying their arms. "A 1746 New Jersey law prohibited the sale of liquor to members of the militia while on duty; a 1756 Delaware law prohibited the militia from meeting within half a mile from a tavern and prohibited the sale of liquor at any militia meeting; and a 1756 Maryland law prohibited the sale of liquor within five miles of a training exercise for the militia." *Wolford v. Lopez*, 116 F.4th 959, 985 (9th Cir. 2024). It persisted throughout reconstruction as "[s]ome states—Kansas in 1867, Missouri in 1883, and Wisconsin in 1883—prohibited the carry of firearms while intoxicated." *Id.*

But this tradition also had clear limits. Historically, the law regulated the *condition of intoxication*—for example, prohibiting the carrying of weapons while drunk—rather than imposing categorical bans on possession by anyone who sometimes consumes alcohol or drugs. Because the modern law abandons that historical, conduct-based approach in favor of a status-based disarmament untethered to present dangerousness, it goes too far. As the Fifth Circuit put it, "our history and tradition may support some limits on an intoxicated person's right to carry a weapon, but it does not justify disarming a sober citizen based exclusively on his past drug usage." *United States v. Daniels*, 77 F.4th 337, 340 (5th Cir. 2023). Mr. Hemani is not proven or even alleged to have been under the influence of marijuana

while out in public, let alone proven to have been armed while doing so. Instead, the record shows only that he possessed a gun in the home while being a regular user of marijuana. The historical record does not support the idea that earlier generations of Americans would have tolerated disarming someone because they sometimes consumed alcohol—not just "drunkards," but even those who drank in moderation from time to time.

In other words, while the "why" of § 922(g)(3) as it applies to marijuana may be quite like its historical counterparts regulating alcohol, the "how" is very different. The "comparable burden on the right of armed self-defense," *Bruen*, 597 U.S. at 29, is simply much greater if occasionally partaking in a recreational substance[3] means you must completely surrender your right to own firearms unless you cease using that substance. It is not akin to banning drunkards from carrying guns, it is akin to banning anyone who has a six-pack of Budweiser in their refrigerator from owning guns.

Of course, the law is not "trapped in amber." *United States v. Rahimi*, 602 U.S. 680, 691 (2024). That is why courts need not find historical laws regulating marijuana specifically. It is reasonable

[3] Nor is the application of the law limited to those who use marijuana recreationally. Even someone who uses cannabis products for medical purposes is barred from owning firearms until they cease doing so. One of the Amici is currently involved in litigation challenging 18 U.S.C. § 922(g)(3) as it applies to a holder of a medical marijuana card in Pennsylvania. *See* Complaint, *Greene v. Garland*, No. 1:24-cv-00021-CB (W.D. Pa. Jan. 23, 2024).

enough to conclude that alcohol is a close analogue to marijuana both in terms of how the public uses it, and in terms of its potential for abuse and intoxication. Amici have no disagreement with that and therefore concede that § 922(g)(3) may be constitutional in some of its applications for those who are publicly under the influence while armed.

But by extending its application beyond the actively intoxicated and the historical category of "drunkards" to include even responsible, lawful users of marijuana, § 922(g)(3) demands precisely the kind of "blank check" that our historical tradition cannot support. *Bruen*, 597 U.S. at 30. And allowing to the statute to disarm some someone like Mr. Hemani—who, so far as the record shows, was not under the influence of marijuana when he was arrested—would require reading the historical evidence "at such a high level of generality that it waters down the right." *Rahimi*, 602 U.S. at 740 (Barrett, J., concurring).

Nor is there anything in the record to support any further "nuance" for marijuana when it comes to the historical analysis. Perhaps for some other drug in some other case, the record could demonstrate that it is so highly addictive and dangerous to society that anyone who regularly uses it is like the "drunkards" of old who could be restricted from bearing arms. But as it pertains to marijuana, that substance is increasingly being regulated in much the same way as alcohol, reflecting a broader social acceptance and recognition that its risks and patterns of use are more like alcohol than highly addictive and destructive substances like heroin or fentanyl. Indeed, available

evidence shows that marijuana is actually *less* addictive than alcohol. Alvin Powell, *What We Know and Don't Know About Pot*, Harv. Gazette (Feb. 24, 2020), https://news.harvard.edu/gazette/story/2020/02/professor-explores-marijuanas-safe-use-and-addiction/ (last visited Jan. 9, 2026).

B. Marijuana's increased social acceptance is also relevant to the historical analysis and creates a dangerous legal situation for its users.

Perhaps if substances like alcohol had not existed in the past and first came onto the scene in the modern era, then a looser analogical standard could be employed to address such an "unprecedented societal concern." *Bruen*, 597 U.S. at 27. And perhaps other far more dangerous modern drugs are so different from alcohol that it would justify analogizing those addicted to them to the "furiously mad" that New York once "kept safely locked up." *Harris*, 144 F.4th at 158 (citing An Act for Apprehending and Punishing Disorderly Persons, c.31 (1788), *reprinted in* 2 *Laws of the State of New York Passed at the Sessions of the Legislature Held in the Years 1785, 1786, 1787 and 1788, Inclusive* 643, 645 (Albany, Weed, Parsons & Co. 1886)).

But marijuana is no such substance. While drugs like fentanyl, heroin, and methamphetamine have not gained any widespread social acceptance and are extremely dangerous and highly addictive, marijuana by contrast is legal in two dozen states even for *recreational* use (and legal in another 16 for medicinal use). Even that tally understates public opinion, as legislatures are lagging behind what Americans

overwhelmingly think: "Nearly six-in-ten Americans (57%) say that marijuana should be legal for medical *and* recreational purposes, while roughly a third (32%) say that marijuana should be legal for medical use only. Just 11% of Americans say that the drug should not be legal at all." *Most Americans Favor Legalizing Marijuana for Medical, Recreational Use*, Pew Res. Ctr. (Mar. 26, 2024), https://www.pewresearch.org/politics/2024/03/26/most-americans-favor-legalizing-marijuana-for-medical-recreational-use/ (last visited Jan. 9, 2026). "In fact, a recent study found—for the first time ever—the daily use of cannabis of any kind among Americans surpassed the daily use of alcohol." Sandee LaMotte, *Why Replacing Alcohol with Weed Is a Growing Trend in the US*, CNN (May 31, 2024), https://www.cnn.com/2024/05/30/health/marijuana-versus-alcohol-wellness (last visited Jan. 7, 2026).

So dramatic has the public's shift been on marijuana that the President recently "signed an executive order on … reclassifying marijuana as a less dangerous drug." Selina Wang & Isabella Murray, *Trump Signs Executive Order Easing Marijuana Restrictions by Reclassifying Drug*, ABC News (Dec. 18, 2025), https://abcnews.go.com/US/trump-signs-executive-order-easing-marijuana-restrictions-reclassifying/story?id=128526817 (last visited Jan. 7, 2026). That move has bipartisan support, as President Biden had hoped to do the same. *See* Brian Bushard, *Biden Says Marijuana Being Reclassified As Schedule III Drug*, Forbes (May 16, 2024), https://www.forbes.com/sites/brianbushard/2024/05/16/biden-says-marijuana

-being-reclassified-as-schedule-iii-drug/ (last visited Jan. 7, 2026).

In sum, especially when it comes to social acceptance, marijuana is very much like alcohol, and not at all similar to other far more dangerous substances. Unlike marijuana, those sorts of drugs may be more analogous to opium, which earlier generations of Americans treated far less favorably than alcohol. *See, e.g.,* George Fisher, *The Drug War at 100*, Stan. L. Sch. (Dec. 19, 2014), https://law.stanford.edu/2014/12/19/the-drug-war-at-100/ (last visited Jan. 9, 2026) (discussing "America's first law banning any non-alcoholic drug—San Francisco's 1875 ordinance against opium dens. That law made it a misdemeanor to keep or visit any place where opium was smoked").

Given all of that, there is no reason to move beyond the extensive historical tradition laid out by the historical laws pertaining to alcohol and arms. Alcohol is the obvious close analogue to marijuana, both in terms of its risks and in terms of its social acceptance, and laws regulating armed drunks dealt with a very similar "general societal problem that has persisted since the 18th century." *Bruen*, 597 U.S. at 26. This Court has no need to go find—pardon the pun—other "things that are green." *Id*. at 29. It should stop here and faithfully apply "the balance struck by the founding generation to modern circumstances." *Id*. at 29 n.7.

The Government is no doubt aware of marijuana's growing popularity, and of how controversial it would be to suggest that all marijuana users may be

disarmed.[4] That is why it characterizes Mr. Hemani's marijuana use as "habitual" to justify its restriction, explaining that "courts of appeals have uniformly determined that a person is a 'user' of a controlled substance within the meaning of Section 922(g)(3) only if he engages in the habitual or regular use of a controlled substance." US.Br. 23-24. The Government's amici add that "casual" drug use does not implicate § 922(g)(3), with a coalition of state attorneys general insisting that "section 922(g)(3) is not intended to target casual users of controlled substances, but rather those who are engaged in habitual use or are addicted to controlled substances." Brief for Illinois et al. as Amici Curiae Supporting Petitioner at 10 n.9, *United States v. Hemani*, No. 24-1234 (U.S. Dec. 19, 2025).

The trouble is that it is not at all clear where the dividing line lies between a "casual" user of marijuana

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[4] Indeed, as this brief was being finalized, the Government announced proposed rulemaking to tighten up the definition of what counts as an "unlawful drug user" under § 922(g)(3). *See* Stephen Gutowski, *ATF Proposes Tightening Definition of Unlawful Drug User*, The Reload (Jan. 16, 2026), https://thereload.com/atf-proposes-tightening-definition-of-unlawful-drug-user/ (last visited Jan. 23, 2026) ("The new rule tightens the requirement for how much evidence is required to establish that somebody is an unlawful user of drugs. It establishes that more than one incident of drug use is needed. Instead, the prohibition would require multiple instances of illicit drug use within a period close to the purchase or possession of a gun."). While perhaps a welcome change in that it is an improvement over the status quo, it does not change the crux of the issue here; even regular use of a socially acceptable and often state-legal drug like marijuana should not, without more, cost anyone their right to keep and bear arms.

who may lawfully own and possess firearms and a "habitual," "regular," or "addicted" user who must forfeit their Second Amendment rights. Such a subjective standard plainly invites disparate enforcement, and therefore disparate disarmament. Nor does it square with the plain text of § 922(g)(3), which bars not only addicts, but also those who are merely "unlawful users" of a controlled substance, regardless of how infrequent that unlawful use may be.

Moreover, even if the Government is correct that courts have narrowed the law's application so that it affects only addicts, regular users, and habitual users, a "casual" marijuana user trying to purchase a firearm will still face the following question on ATF Form 4473:

> Are you an unlawful user of, or addicted to, marijuana or any depressant, stimulant, narcotic drug, or any other controlled substance? **Warning:** The use or possession of marijuana remains unlawful under Federal law regardless of whether it has been legalized or decriminalized for medicinal or recreational purposes in the state where you reside.

U.S. Dep't of Justice, Bureau of Alcohol, Tobacco, Firearms & Explosives, *Firearms Transaction Record, ATF Form 4473*, at 2 (rev. Aug. 2023).

There is no exception on that form for "casual" users of controlled substances, and if such a user

answers the question honestly with a "yes," his firearm purchase will be rejected. If he lies and says he is *not* an unlawful user, then he would be committing a crime punishable by up to ten years in prison and a fine of up to $250,000. *See* 18 U.S.C. § 922(a)(6); 18 U.S.C. § 924(a)(2). The amicus brief of the state attorneys general probably should have mentioned that fact in attempting to carve out a "casual" user distinction. At least as it pertains to acquiring a firearm in gun stores, no such distinction exists.

In sum, marijuana is closely analogous to alcohol in all ways except its current legal status. This Court should bring the application of § 922(g)(3) as to marijuana into line with the historical tradition of restricting armed drunks and strike the Government's efforts to apply it to those who are *not* publicly under the influence while carrying a firearm.

III. Courts Must Not Turn to Broader Levels of Generality When Closer Analogues Are Available.

Given that clear historical laws existed that dealt with armed drunks, this Court must not allow the Government to move to higher (and vaguer) levels of generality, as it attempts to do here by demanding the power to disarm marijuana users as part of a category of "especially dangerous persons." U.S.Br. 40.

There may always be disagreements in the analysis when it comes to the degree of similarity between a modern law and proposed analogues. But a core interpretive rule that can be discerned from

Bruen and *Rahimi* is that when a close historical analogue exists to the modern technology or societal problem at issue, lower courts may not resort to more stretched analogies to avoid the inconvenient fact that the closer analogue does not support the government's position. Indeed, *Bruen*'s analogical method "instructs courts to use closely matching analogues where available and to abstract up only when necessary." George A. Mocsary, *The Wrong Level of Generality: Misapplying Bruen to Young-Adult Firearm Rights*, 103 Wash. U. L. Rev. Online 100, 101 (2025); *id.* ("*Bruen* directs courts to begin with the text, and then to look for distinctly similar Founding-era firearm regulations before resorting to higher levels of abstraction.").

This abuse of levels of generality has become a widespread issue. For example, in a case involving (in part) new bans on carry in restaurants that happen to serve alcohol in Hawaii and California, the Ninth Circuit ignored the lack of historical carry restrictions in the numerous bars and taverns that existed in that era. Instead, it pointed to colonial laws that restricted the sale of liquor to militia members, and to a few cities that banned carry in ballrooms, and upheld the modern laws on that basis. *Wolford*, 116 F.4th at 986. It also ignored that earlier generations solved the problem of armed drunks by barring only presently intoxicated people from carrying arms, not sober individuals who happened to be carrying firearms in proximity to alcohol. *See Connelly*, 117 F.4th at 282.

In another case about non-resident firearms carry and the onerous permitting processes that included

wait times spanning over eight months (even for those with a carry permit in their home state), the Supreme Judicial Court of Massachusetts upheld the non-resident permit requirement, citing "going armed" and surety laws. *Commonwealth v. Marquis*, 495 Mass. 434, 456 (2025). In doing so, it ignored the far closer historical analogue: the extensive historical tradition of "traveler's exception" laws, which exempted visitors from other states from concealed carry restrictions. *See* Brief for Nat'l Rifle Ass'n of Am. & Second Amend. Found. as Amici Curiae at 16-28, *Commonwealth v. Donnell*, No. SJC-13561 (Mass. filed August 16, 2024) (discussing many traveler's exception laws); *see also* Brief for Second Amendment Foundation et al. as Amici Curiae Supporting Petitioner at 7-13, *Gardner v. Maryland*, No. 25-5961 (U.S. Dec. 11, 2025) (discussing the same).

When a close historical analogue is apparent, courts should not rise to higher levels of generality, particularly when earlier generations addressed the same problem in a different way (e.g., exempting travelers from carry restrictions rather than requiring them to get a permit). That is also exactly what this Court has already suggested, but lower courts are ignoring its guidance. *See Bruen*, 597 U.S. at 26-27 ("[I]f earlier generations addressed the societal problem, but did so through materially different means, that also could be evidence that a modern regulation is unconstitutional."). The generalized analogues of the "more nuanced approach" should be reserved only for those cases that present a truly new societal problem or technological change that lacks a distinctly similar analogue in our history. *Id.* at 27.

The proper methodology was exemplified in a recent case challenging California's law limiting residents to purchasing a maximum of one firearm per month. The Ninth Circuit explained that "the modern problems that California identifies as justification for its one-gun-a-month law are perhaps different in degree from past problems, but they are not different in kind. Therefore, a nuanced approach is not warranted." *Nguyen v. Bonta*, 140 F.4th 1237, 1245 (9th Cir. 2025). Similarly, in another case about the constitutionality of California's ban on open carry, that Court said that "[b]ecause California's regulations seek to address 'general societal problem[s]' that have persisted since the Founding, there is no need to reach the Ninth Circuit's 'nuanced approach'—the exception to *Bruen*'s default rule." *Baird v. Bonta*, No. 24-565, 2026 U.S. App. LEXIS 44, at *30 (9th Cir. Jan. 2, 2026).[5]

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[5] It is possible, perhaps even probable, that by the time this Court is deciding this case, the Ninth Circuit will have voted to take *Baird* en banc and therefore will have vacated the panel ruling that Amici cite to. After all, that is what the Ninth Circuit has done for all prior Second Amendment panel victories (save for one), as some of the Amici here detailed in an earlier brief submitted to this Court. *See* Brief for Second Amendment Foundation et al. as Amici Curiae in Support of Petitioners at 17-23, *Duncan v. Bonta*, No. 25-198 (U.S. Sept. 12, 2025).

In fact, since that brief, the Ninth Circuit has voted to vacate and rehear en banc yet another Second Amendment case in which the challengers prevailed before a three-judge panel, the tenth time this has happened overall. *See Rhode v. Bonta*, No. 24-542, 2025 U.S. App. LEXIS 31126, at *4 (9th Cir. Dec. 1, 2025) (ordering rehearing en banc). It is unlikely that a case concerning open carry will go any differently. *See* Charles Nichols, *California Open Carry Lawsuit Status – Charles Nichols v. Gavin*

Here, the problem of people publicly carrying arms while under the influence is also not different in kind from past problems (and in fact, may not even be different in degree). There is thus nothing to justify allowing the Government to drift from the clear historical tradition established by the laws regulating the possession of arms by actively intoxicated (but never sober) individuals. If it were otherwise, "then *Bruen*'s instruction that the absence of 'a distinctly similar historical regulation addressing [the] problem is relevant evidence that the challenged regulation is inconsistent with the Second Amendment,' … would have little practical force." *Id.* at *20.

Contrary arguments are unavailing and seek to weaken the historical analysis that *Bruen* demands. For example, one of the Government's amici argues that "the analogue is Founding-era laws banning firearm possession for certain groups that legislatures adjudged 'dangerous' when armed." Brief for Second Amendment Law Scholars as Amici Curiae Supporting Petitioner at 7, *United States v. Hemani*, No. 24-1234 (U.S. Dec. 19, 2025). According to the

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Newsom et al, California Open Carry (Jan. 2, 2026), https://californiaopencarry.com/status-of-my-federal-open-carry-lawsuit/ (last visited Jan. 23, 2026) (describing separate open carry litigation that is now in its fifteenth year).

The Ninth Circuit's mistreatment of the Second Amendment is an ongoing problem that this Court should address at some point. As it pertains to *Baird* and its relevance here, however, the panel majority's exemplary *Bruen* analysis remains persuasive whether or not it is ultimately vacated for en banc rehearing.

brief, "respect for legislative judgment preserves the balance set at the Founding." *Id*. at 13.

The Second Amendment Law Scholars forget that this Court's duty is to "honor the fact that the Second Amendment 'codified a *pre-existing* right' belonging to the American people, one that carries the same 'scope' today that it was 'understood to have when the people adopted' it." *Rahimi*, 602 U.S. at 709 (quoting *Heller*, 554 U.S. at 592, 634-35). The only distinctly similar analogue for laws restricting firearm possession while being a marijuana user are the historical laws pertaining to armed drunks, and those laws never applied to anyone once they had sobered up, nor to those who merely sometimes drank. Earlier generations of Americans would have never tolerated the broad disarmament the Government and its amici now insist on.

More fundamentally, the brief of the Second Amendment Law Scholars ignores that "[a]nalogical reasoning requires judges to apply faithfully the balance struck by the founding generation to modern circumstances...." *Bruen*, 597 U.S. at 29 n.7. If this Court abandons that guidance and instead adopts a far more general principle that the government can simply disarm any groups it deems dangerous today, then that would not be faithful to the founding generation's balance; it would *replace* that balance with one determined by a modern Congress. And it would mark a return of the very "judicial deference to legislative interest balancing" that *Bruen* so vehemently rejected. *Id*. at 26.

True enough, dangerous people can be disarmed. But when it comes to disarming entire categories of people, what constitutes dangerousness must correspond to *historical* categories. Otherwise, federal and states governments can decide all sorts of people are "dangerous" and disarm them, even based on conduct protected by other constitutional rights.

As one extreme example, New Jersey is currently arguing that its local authorities can deny the Second Amendment rights of someone because he has made troubling and offensive remarks. And that state does so even though it concedes that the speech in question, reprehensible as it may be, is protected by the First Amendment: "In the end, Appellant remains free to speak as he wishes, but his speech may be used to make the individualized determination of his suitability to be issued an FPIC, consistent with the Second Amendment." Brief for Attorney General of New Jersey as Amicus Curiae at 14, *In re Gun Permit Appeal of Rachlin*, No. A-003192-24 (N.J. Super. Ct. App. Div. Dec. 10, 2025).[6] Nothing in our historical tradition supports the government forcing citizens to choose between constitutional rights in this way,[7] but

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[6] If New Jersey has other evidence that this applicant (or any other) is objectively a dangerous person, then disarmament may be permissible. But such a determination should never be based on protected speech alone, without more. Otherwise, not only is the Second Amendment violated, but First Amendment conduct is chilled too in the process, as other individuals may not speak freely for fear of similarly losing their right to keep and bear arms.

[7] It would also enable something akin to the "unconstitutional conditions" this Court has prohibited in the government benefit context. *See, e.g.*, *Perry v. Sindermann*, 408

it is the sort of thing that would be enabled if this Court gives deference to "legislative judgment."

To be sure, the Second Amendment Law Scholars argue that any over-inclusiveness or overbreadth of these legislative judgments can be corrected by declaratory judgment actions or petitions to the Attorney General for rights restoration. *See* Brief for Second Amendment Law Scholars as Amici Curiae Supporting Petitioner at 16, *United States v. Hemani*, No. 24-1234 (U.S. Dec. 19, 2025). But that band-aid approach is not a real solution. Declaratory judgment actions will be of little help for those who want to challenge *a category itself* as illegitimate (as opposed to arguing they were erroneously included within that category).

For example, Mr. Hemani does not dispute that he uses marijuana; he just contends that his use of that substance alone is not a permissible reason to disarm him. It is therefore unclear how a declaratory judgment would help him.

As for petitioning the attorney general, as of this moment, no such process is available.[8] Proposed

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U.S. 593, 597 (1972) ("[E]ven though a person has no 'right' to a valuable governmental benefit and even though the government may deny him the benefit for any number of reasons ... It may not deny a benefit to a person on a basis that infringes his constitutionally protected interests—especially, his interest in freedom of speech.").

[8] "True, § 925(c) authorizes the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) to prospectively restore a felon's right to possess a firearm if he proves that he 'will not be likely to act in a manner dangerous to public safety' and that the 'public interest' supports rearmament …. But Congress defunded the

rulemaking to finally reestablish such a process is now underway, but the current draft of the proposed rule would provide no relief to Mr. Hemani, as someone convicted of violating § 922(g)(3) is presumptively ineligible for rights restoration under its terms. *See* U.S. Dep't of Justice, *Application for Relief From Disabilities Imposed by Federal Laws With Respect to the Acquisition, Receipt, Transfer, Shipment, Transportation, or Possession of Firearms*, 90 Fed. Reg. 34,394 (proposed July 22, 2025) (to be codified at 28 C.F.R. pts. 25, 107 (proposed)), available online at https://www.regulations.gov/document/DOJ-LA-2025-0004-0001.

Ultimately, while history may be murkier on other Second Amendment questions and demand the "nuanced approach" discussed in *Bruen*, here, it is quite clear: earlier generations would never have tolerated the broad disarmament power the Government now demands to use against users of a socially acceptable drug akin to the alcohol they were familiar with. In order to "apply faithfully the balance struck by the founding generation to modern circumstances," *Bruen*, 597 U.S. at 29, this Court must affirm the Fifth Circuit's ruling.

ATF program in 1992 ... restoration of rights for a convicted felon is, in many cases, not a legal possibility: There is no federal procedure for restoring civil rights for a federal felon." *Range v. Att'y Gen. U.S.*, 124 F.4th 218, 276 (3d Cir. 2024) (Krause, J., and Roth, J., concurring).

CONCLUSION

Intoxication is inconsistent with responsible firearm use, but our historical tradition has long allowed users of socially acceptable substances to own and use firearms, so long as they are not carrying a firearm while they are intoxicated. § 922(g)(3) is unconstitutional as it applies to Mr. Hemani's marijuana use. The Fifth Circuit's ruling should be affirmed.

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Respectfully submitted,

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