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 DRUG POLICY ALLIANCE AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENT

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INTEREST OF AMICUS

Amicus is the Drug Policy Alliance ("DPA"), a 501(c)(3) nonprofit organization that leads the nation in promoting drug policies that are grounded in science, compassion, and human rights.[1] Established in 1994, DPA is a nonpartisan organization with tens of thousands of members nationwide. DPA is dedicated to advancing policies that reduce the harm of drug use and drug prohibition while seeking solutions that promote public health and public safety. DPA is actively involved in the legislative process across the country and strives to roll back the excesses of the drug war in favor of sensible drug policy reforms. DPA regularly files legal briefs as amicus curiae, including in cases involving the criminalization of people who use drugs. *See, e.g.*, *Timbs v. Indiana*, 586 U.S. 146 (2019); *see also Gonzales v. Raich*, 545 U.S. 1, 5 (2005).

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[1] Under Supreme Court Rule 37.6, *amicus* confirms that no counsel for any party has authored this brief in whole or in part, and no entity or person, aside from *amici*'s counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

SUMMARY OF ARGUMENT

The Constitution's prohibition on vague laws protects the separation of powers by ensuring that Congress, rather than police, prosecutors, or judges, defines what conduct is criminal. It also protects ordinary people by requiring a criminal law to be sufficiently definite to provide notice of what the law prohibits.

The statute at issue here, 18 U.S.C. § 922(g)(3) (the Statute), violates this precept because it prohibits an "unlawful user" of "any controlled substance" from possessing a firearm, without defining the quantity, frequency, or timing of the use that triggers its application. The Government disagrees. It reasons that, if this Court reads certain terms into the Statute, then that modified version of § 922(g)(3) is not unconstitutionally vague, as applied to Mr. Hemani. It argues, without relevant authority, that the Statute operates as a "temporary" disarmament that reaches only "habitual" drug users. The Government's interpretation does not remotely reflect the Statute's capacious reach.

Under a plain reading of § 922(g)(3), a recreational marijuana user faces all the consequences of a felony conviction, including a maximum 15-year prison sentence, for possessing a firearm in an otherwise lawful manner. That result follows even if the marijuana use occurs entirely separately from obtaining or handling a firearm.

In substance, § 922(g)(3), as applied here, punishes drug use under the guise of firearm regulation. The Statute potentially implicates tens of

millions of Americans, and it fails to provide them fair notice of the consequences of their conduct.

Nor can the Statute be justified on assumptions about marijuana use and violence. § 922(g)(3) provides no standard linking drug use to dangerousness, impairment, or firearm misuse, and it offers no guidance on when a person becomes (or ceases to be) an "unlawful user." That indeterminacy exposes ordinary people to felony liability while leaving law enforcement with unguided discretion, a dynamic that predictably amplifies existing disparities produced by inconsistent application.

In our constitutional order, a vague law is no law at all. Congress is the only branch that has the power to enact federal criminal laws. Allowing this prosecution to proceed under § 922(g)(3) as applied here would require this Court to supply the limiting principle Congress omitted and to decide when the Statute applies and to whom. That approach only furthers the inequitable, selective criminalization of drug use. It has little, if anything, to do with regulating firearms.

This Court should affirm.

ARGUMENT

I. THE STATUTE IS VOID FOR VAGUENESS

"Vague laws invite arbitrary power." *Sessions v. Dimaya*, 584 U.S. 148, 175 (2018) (Gorsuch, J., concurring). The Constitution's prohibition of vague laws protects the separation of powers by ensuring that Congress bears responsibility for determining what conduct is punished criminally, rather than

members of the judicial or executive branches. *Smith v. Goguen*, 415 U.S. 566, 575 (1974). It also ensures that individuals, consistent with Due Process, have fair notice of what conduct the law prohibits. *Kolender v. Lawson*, 461 U.S. 352, 357 (1983).

The void-for-vagueness doctrine imposes a severe remedy: dismissal of a federal prosecution. In some circumstances, the same defect may warrant relief for similarly situated defendants. *See, e.g., Welch v. United States*, 578 U.S. 120, 130 (2016) (applying *Johnson v. United States*, 576 U.S. 591 (2015) retroactively to cases on collateral review).[2] The remedy is severe because the stakes are severe: the right to live one's life without unwittingly engaging in conduct that might result in a felony conviction,

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[2] Though affirmance would foreclose this § 922(g)(3) prosecution as applied to Mr. Hemani, the fallout is not as drastic as the Government intimates. According to the Government, roughly "300 defendants have been charged with violating § 922(g)(3) each year." Gov't Br. 6. The Government does not identify how many of those prosecutions proceeded under the "addicted to" prong rather than the "unlawful user" prong. Even assuming all prosecutions proceeded on an "unlawful user" theory, that figure represents .5 percent of all criminal cases filed in 2024 and four percent of all § 922(g) cases resulting in conviction. *See* United States Attorneys' Annual Statistical Report FY 2024, pg. 4, https://www.justice.gov/usao/media/1399686/dl?inline (52,469 criminal cases filed in United States District Courts in 2024); *see also* United States Sentencing Commission, FY 2020 through FY 2024 Section 922(g) Firearms Quick Facts, https://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Felon_In_Possession_FY24.pdf (the Government secured 7,419 convictions for § 922(g) offenses in 2024).

confinement, disenfranchisement,[3] and a prohibition on exercising the constitutional right to bear arms.[4]

As discussed *infra*, amicus Drug Policy Alliance ("DPA") urges this Court to affirm the Fifth Circuit because 18 U.S.C. § 922(g)(3), as written, subjects an untenably vague class of "unlawful users" to a felony conviction and denial of their constitutional rights.[5] The fair-notice problem posed by § 922(g)(3) is not theoretical. It is magnified by the sheer number of ordinary Americans whose lawful conduct could place them within the statute's reach.

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[3] Except for Maine, Vermont, and the District of Columbia, people convicted of felony offenses cannot vote while incarcerated. Nat'l Conf of State Legis., *Restoration of Voting Rights for Felons*, (Aug 19, 2025), https://www.ncsl.org/elections-and-campaigns/felon-voting-rights. In 10 states, "felons lose their voting rights indefinitely for some crimes, or require a governor's pardon for voting rights to be restored, face an additional waiting period after completion of sentence (including parole and probation), or require additional action before voting rights can be restored." *Id.*

[4] 18 U.S.C. § 922(g)(1) prohibits anyone convicted of a felony from possessing a firearm.

[5] Amicus does not address whether it is permissible or appropriate for Congress to categorically prohibit certain groups from possessing a firearm, including those who have engaged in violent or threatening behavior or have otherwise exhibited an inability to exert self-control. Instead, Amicus seeks to substantiate the practical real-world implication of the Statute's vagueness, which is that people exercising their Second Amendment right to possess firearms are subject to federal felony prosecutions because of any amount of drug use, no matter how frequent, problematic, or relevant it is to firearm possession, or consumption of substances decriminalized or lawful under state law.

1. Because Most Americans Have Used Drugs, the Statute's Sweep is Potentially Vast

Over 98 percent of Americans live in a state that permits possession and use of some cannabinoids, such as marijuana or chemical compounds found within marijuana, such as cannabidiol (CBD).[6] Four in five Americans live in a county with at least one marijuana dispensary.[7] More than half of American adults have used an illicit drug in their lifetime (143 million), including 133 million who have used marijuana.[8] More than 20 percent of adults over 26 years old (49.3 million) and one-third of 18 to 25-year-olds (12.2 million people) reported using marijuana in the past year.[9] Over 15 percent of the U.S. population (44.3 million people), a figure that includes a quarter of 18 to 25-year-olds, used marijuana in the past month.[10] Marijuana remains[11] a Schedule I controlled

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[6] Christian MacDonald, *A Blunt Reality: How § 922(g)(3) of the Gun Control Act Violates the Second Amendment Rights of Marijuana Users*, 78 SMU L. Rev. Forum 115, 128-30 (2025)

[7] Katherine Schaeffer, *9 Facts About Americans and Marijuana*, Pew Rsch Ctr (Apr. 10, 2024), https://www.pewresearch.org/short-reads/2024/04/10/facts-about-marijuana/

[8] *Id.*

[9] *See* Substance Abuse & Mental Health Servs. Admin. (SAMSHA), Nat'l Survey on Drug Use & Health (2025), https://www.samhsa.gov/data/report/2024-nsduh-detailed-tables

[10] *Id.*

[11] In December 2025, the President issued an executive order directing the Department of Justice, through the Drug Enforcement Administration (DEA), to reclassify marijuana from

substance under federal law. 21 U.S.C. § 812 Schedule I(c)(10).

At the same time, America's strong tradition of individual gun ownership for the purpose of self-defense is well documented. *District of Columbia v. Heller*, 554 U.S. 570, 593 (2008) ("By the time of the founding, the right to have arms had become fundamental for English subjects.") Today, gun ownership sits at its highest level in decades.[12] Nearly half of all Americans live in a house with a firearm.[13]

Given that reality, the overlap between people who have used marijuana and firearm possession is likely substantial. Read plainly, 18 U.S.C. § 922(g)(3), which applies to any "unlawful user of…any controlled substance," may subject a large swath of the population that once consumed drugs and, later, exercises their constitutional right to possess a firearm to a felony conviction.[14]

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a Schedule I controlled substance to a Schedule III controlled substance. *See* Exec. Order No. 14370, 90 Fed. Reg. 60541 (2025); *accord* Gov't Br. 23. Until the DEA promulgates final regulations rescheduling marijuana, it remains in Schedule I. The reclassification to Schedule III would officially recognize cannabis as having accepted medical use under federal law. *See* 21 U.S.C. §812.

[12] Pew Research Center, *Key Facts About Americans and Guns*, Jul 7, 2024, https://www.pewresearch.org/short-reads/2024/07/24/key-facts-about-americans-and-guns/ (As of 2023, 32% of Americans own guns).

[13] In 2025, 42% of Americans reported living in a gun-owning house. Gallup, Guns, https://news.gallup.com/poll/1645/guns.aspx.

[14] In 2022, Congress increased the maximum penalty for violating the Statute from ten to fifteen years of imprisonment.

The Statute has the potential to ensnare tens of millions of Americans. The potential consequences are dire: A gun owner with no prior criminal history who experiments with marijuana can suddenly—without any individualized determination of dangerousness—be stripped of their constitutional right to possess a firearm, be subject to felony penalties and, depending on their domicile, be prohibited from voting in elections due to the collateral consequences of a felony conviction.[15] In a nation where marijuana consumption is as common as alcohol use,[16] it cannot be the law that any American who uses marijuana forfeits their constitutional right to firearm possession.

2. Congress Distinguished "Unlawful Users" from "Addicts," Implying that "Use" Has a Different Meaning than "Habitual Use."

The Statute applies to any person who is either "an unlawful user of or addicted to any controlled substance." 18 U.S.C. § 922(g)(3). Congress defined "addict" as someone who "habitually uses any narcotic

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See Pub. L. 117–159, div. A, title II, § 12004(c), 136 Stat. 1329 (June 25, 2022).

[15] *See supra* note 3.

[16] Caulkins JP, *Changes in self-reported cannabis use in the United States from 1979 to 2022*, Addiction (May 2024), https://doi.org/10.1111/add.16519 ("[C]annabis consumers report daily or near daily use, and their numbers now exceed the number of daily and near daily drinkers.")

drug," 21 U.S.C. § 802(1).[17] Congress did not define "unlawful user," nor did it specify how much one must "use" within a given timeframe to be an "unlawful user." Moreover, the Statute does not require the "unlawful user" to be impaired at the time they handle the firearm. Congress' failure to cabin the Statute's reach could subject a person who once unlawfully used marijuana to a § 922(g)(3) prosecution if that person, now abstaining from use or engaging in sporadic use, possesses a gun for self-defense.[18] Indeed, Mr. Hemani finds himself in a similar position.

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[17] 21 U.S.C. § 802(1) defines "addict" as one "who habitually uses any narcotic drug so as to endanger the public morals, health, safety, or welfare, or who is so far addicted to the use of narcotic drugs as to have lost the power of self-control with reference to his addiction." "Narcotic drug" is defined to include a small list of controlled substances that does not include marijuana. 21 U.S.C. § 802(17). However, the language used in the Statute appears to have a broader reach, including anyone who is "addicted to any controlled substance," raising doubts of whether the definition of "addict" applies to the Statute, creating more confusion and vagueness.

[18] Reasonable minds may disagree about whether the Government *would* prosecute someone who, years before possessing a gun, used marijuana on a single occasion. That there is room for debate only proves the point: a question of *whether* the Government would prosecute under those circumstances necessarily acknowledges that it is unclear if the Government *could* apply the Statute under those circumstances. Criminal laws, particularly those that strip individuals of fundamental constitutional rights require more certainty. *United States v. Davis*, 588 U.S. 445, 448 (2019) ("When Congress passes a vague law, the role of courts under our Constitution is not to fashion a new, clearer law to take its place, but to treat the law as a nullity and invite Congress to try again.") Further, according to the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), nearly half of denials for firearm purchases "were predicated on

The Government attempts to cure the vagueness problem by recasting the scope of the Statute as a "temporary and limited" firearm restriction for "habitual users," which the Government defines as "those who regularly and unlawfully use drugs." Gov't Br. 3. Elementary principles of statutory interpretation defeat that claim.

The Statute applies to both "unlawful users" and "addicts." 18 U.S.C. § 922(g)(3).[19] To read unlawful user and addict "as somehow repeating [the habitual use] requirement, even while using different words, is to disregard what 'or' customarily means." *Loughrin v. United States*, 573 U.S. 351, 357 (2014). The "ordinary use" of the term "or" "is almost always disjunctive, that is, the words it connects are to be given separate meanings." *United States v. Woods*, 571 U.S. 31, 45 (2017). Here, the Statute separates

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an inference based on a single use," meaning that people have been denied their constitutional right to possess a firearm based on a single instance of past-year use. Department of Justice Bureau of Alcohol, Tobacco, Firearms, and Explosives, 27 CFR Part 478, [Docket No. ATF-2026-0034; ATF No. 2025R-54T], https://www.federalregister.gov/documents/2026/01/22/2026-01141/revising-definition-of-unlawful-user-of-or-addicted-to-controlled-substance.

[19] As noted, there are strong reasons to believe that the definition of "addict" in 21 U.S.C. § 802(1) does not apply to marijuana users. *See, supra* at note 17. That Congress defined "addict" as requiring "habitual use" demonstrates that if Congress wanted to define "unlawful user" as also requiring "habitual use," it knew how to do so. However, for present purposes, *Amicus* assumes the definition of "addict" applies to the Statute despite Congress limiting the definition of "addict" to use of "narcotic drugs," of which marijuana is not included.

"unlawful users" from "addicts" with the disjunctive "or." Thus, if "habitual" use transforms a user into an "addict," and the Statute applies to *both* "addicts" and "users," an "unlawful user" must mean something other than one who habitually uses drugs. The Government's framing violates the "usual rule against ascribing to one word a meaning so broad that it assumes the same meaning as another statutory term." *Ysleta Del Sur Pueblo v. Texas*, 596 U.S. 685, 698 (2022) (internal quotation omitted). It also defies the "usual presumption" that different statutory terms "convey differences in meaning." *Id.*

Congress did not define "unlawful user," but its separation from "addict," which requires "habitual use," signifies that "unlawful user" requires different criteria. Congress left those criteria undefined, resulting in vagueness. That vagueness cannot be corrected by reading non-existent terms into the Statute. *See*, *e.g.*, *Ruan v. United States*, 597 U.S. 450, 471 (Alito, J., concurring) ("In our constitutional system, it is Congress that has the power to define the elements of criminal offenses, not the federal courts.") (citing *Liparota v. United States*, 471 U.S. 419, 424 (1985)).

3. The Statute Provides No Standard for Timing, Frequency, or Nexus to Firearm Possession, Potentially Subjecting Tens of Millions of Americans to Criminal Penalties for Activity that is Otherwise Constitutionally Protected.

In August 2022, the Government accused Mr. Hemani of violating § 922(g)(3) because he safely

secured his handgun in a locked gun safe in his mother's home and admitted that he used marijuana a few times a week. Resp. Br. 7. There is no allegation that Mr. Hemani ever mishandled, improperly brandished, or even carried the firearm outside his home. Nor does the Government allege that Mr. Hemani handled the gun while impaired. Yet, despite the absence of any temporal or spatial nexus between his gun possession and occasional marijuana use, he faces a felony prosecution.

The Statute prohibits an "unlawful user of… any controlled substance" from possessing a firearm. 18 U.S.C. § 922(g)(3). But the Statute does not define the set of "unlawful users" who are subject to its application. Even setting aside Congress's failure to distinguish use from addiction, § 922(g)(3) provides no guidance as to when, how often, or under what circumstances drug use triggers criminal liability. Does it apply if a person uses marijuana once and, years later, possesses a gun? What if a person uses marijuana weekly or monthly but keeps the firearm in a locked safe? Is every person who possesses a firearm required to relinquish their firearms or face felony charges if they use marijuana one time? If not, when does their use cross the line so that they become an "unlawful user" who must relinquish their firearms or face federal prosecution? The Statute does not say.

Congress' failure to provide clear guidelines requires those responsible for applying and enforcing the Statute to unconstitutionally determine who is subject to it. That, in turn, leaves individuals who occasionally use marijuana at risk of felony prosecution for possessing a firearm in an otherwise constitutionally protected manner. *See, e.g., United*

States v. Turnbull, 349 F.3d 558, 561 (8th Cir. 2003) (noting "unlawful user" prong of § 922(g)(3) "runs the risk of being unconstitutionally vague").

The circuits are split on whether the Statute is unconstitutionally vague. But the split itself illustrates the problem: every circuit that upheld the Statute did so by inserting different terms into the Statute, none of which Congress enacted. *See, e.g., United States v. Yancey*, 621 F.3d 681, 682 (7th Cir. 2010) (defining "unlawful user" as one "who regularly ingests controlled substances in a manner except as prescribed by a physician"); *United States v. Marceau*, 554 F.3d 24, 30 (1st Cir. 2009) (defining "unlawful user" as "one who engages in regular use over a long period of time proximate to or contemporaneous with the possession of a firearm") (cleaned up); *United States v. Bowens*, 938 F.3d 790, 793 (6th Cir 2019) (stating person is "unlawful user" if he "took drugs with regularity, over an extended period of time and contemporaneously with his purchase or possession of a firearm") (cleaned up); *United States v. Augustin*, 376 F.3d 135, 139 n.6 (3d Cir. 2004) (concluding "unlawful user" is one who uses "drugs with some regularity"); *United States v. Stennerson*, 150 F.4th 1276, 1286 (9th Cir. 2025) (holding defendant was "unlawful user" based on "consistent, prolonged," use that was "close in time to his gun possession") (cleaned up).

Those judicially created glosses only underscore the vagueness problem. Courts of Appeal provide little guidance on how to apply them consistently. For example, how frequently must one use to do so with "some regularity?" For how long must one use to be a "consistent" and "prolonged" user? Inserting vague

terms into an already vague statute only compounds the Due Process problems. *See, e.g., Turnbull*, 349 F.3d at 561 (recognizing that "courts generally agree that [the Statute] runs the risk of being unconstitutionally vague without a judicially-created temporal nexus between the gun possession and regular drug use").

Every court that has upheld the Statute against a vagueness challenge has done so by adding to the Statute that Congress enacted, an approach that this Court has explicitly rejected. *United States v. Davis*, 588 U.S. 445, 448 (2019) (rejecting the Government's invitation to cure vagueness by requiring "case-specific" analysis when Congress required "categorical" approach because that required this Court to "step[] outside our role as judges and writ[e] a new law rather than applying the one Congress adopted"). In concordance with longstanding precedent, this Court should reject the Government's invitation to usurp Congress' role by rewriting the Statute and should affirm the decision of the Fifth Circuit.

4. The Statute Does Not Provide Fair Notice to Millions of Americans Who May be Subject to a Felony Conviction and a Prohibition on Future Gun Possession for Exercising Otherwise Constitutionally Protected Rights.

As members of this Court have recognized, "the Federal Government's current approach" to cannabis regulation is "a half-in, half-out regime that simultaneously tolerates and forbids local use of marijuana," an approach which "strains basic

principles of federalism and conceals traps for the unwary." *Standing Akimbo, LLC v. United States*, 141 S. Ct. 2236, 2236-37 (2021) (Thomas, J., respecting the denial of certiorari); *see also* Erwin Chemerinsky et al., *Cooperative Federalism and Marijuana Regulation*, 62 UCLA L. Rev. 74 (2015) (describing cannabis regulation as "one of the most important federalism conflicts in a generation").

§ 922(g)(3) is a trap for the unwary. It subjects any cannabis user, even in a state that permits its use, to a potential fifteen-year federal prison sentence. *Standing Akimbo*, 141 S. Ct. at 2238 ("A marijuana user similarly can find himself a federal felon if he just possesses a firearm."); see also Helen Sudhoff, *Blowing Smoke at the Second Amendment*, Reason Foundation (Oct. 2021), https://reason.org/wp-content/uploads/blowing-smoke-at-the-second-amendment.pdf (explaining that anyone who procures a medical marijuana card is automatically thereby disqualified from legal firearm ownership).[20]

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[20] On January 20, 2026, the ATF announced proposed amendments to its definition of "unlawful user of or addicted to any controlled substance." The proposal would define an "unlawful user" as a person who "regularly uses a controlled substance over an extended period of time continuing into the present, without a lawful prescription or in a manner substantially different from that prescribed by a licensed physician." *See* Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosives, *Revising Definition of Unlawful User of or Addicted to Controlled Substance*, 27 C.F.R. Part 478, Docket No. ATF-2026-0034; ATF No. 2025R-54T, https://www.federalregister.gov/documents/2026/01/22/2026-01141/revising-definition-of-unlawful-user-of-or-addicted-to-controlled-substance. It further requires evidence of use with sufficient "regularity and recency" to show ongoing conduct,

§ 922(g)(3) purports to punish gun possession, but the Statute's triggering event is unlawful drug use. Because the gun possession itself is lawful up until the minute a person uses cannabis, the gravamen of the Statute concerns drug use unrelated to gun possession. That disparity matters because, absent firearm possession, unlawful marijuana possession by a person with no criminal history is punishable only as a misdemeanor. 21 U.S.C. § 844.

The trap could ensnare a significant percentage of the public. Nearly three-quarters of Americans live in one of the thirty-nine states that permit recreational or medical marijuana use.[21] More than half of Americans across 24 states and the District of Columbia can purchase and consume marijuana for recreational purposes under the laws of those jurisdictions.[22] Recreational marijuana use is as common as alcohol consumption.[23] Because the Statute leaves "unlawful user" undefined, its reach turns on whatever limiting gloss a court supplies. As

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while clarifying that isolated, sporadic, or discontinued use does not qualify. *Id.* The proposal is currently subject to notice and comment through June 30, 2026. One plausible reading of this abrupt shift is a tacit acknowledgment that the Statute, as written, is unconstitutionally vague.

[21] DEF. INFO. SYS. AGENCY (DISA) GLOB. SOL., *Marijuana Legality by State* (last updated Nov. 18, 2025), https://disa.com/marijuana-legality-by-state

[22] *See* U.S. CENSUS BUREAU, QUICKFACTS, https://www.census.gov/quickfacts (calculated based on July 1, 2024, population estimates, excluding states that only allow low-volume THC consumption as a component of CBD products and states that only allow medical marijuana use).

[23] *See* Caulkins, *supra* at note 16.

a result, over 15 percent of Americans (those who have used marijuana in the past month) but up to as many as half of the adult population (those who have used marijuana in their lifetime)[24] are at risk of a felony conviction (and the consequences it carries) if they possess a firearm in an otherwise constitutionally protected manner.

The trap is not limited to cannabis users. The unlawful use of "*any* controlled substance" may render one an "unlawful user." 18 U.S.C. § 922(g)(3) (emphasis added). Even a single instance of taking a prescription sleep aid or a pain reliever—if not in compliance with the prescription[25] or if obtained from a family member or friend—could be enough, under at least one court's interpretation, to render one an unlawful user. *See, e.g., United States v. Carnes*, 22 F.4th 743, 749 (8th Cir. 2022) (concluding no showing of "regular drug use" required to qualify as an "unlawful user").

More than a quarter of the American population used an illicit drug in the past year, including nearly 14 million Americans who misused prescription psychotherapeutics (*e.g.*, pain relievers, stimulants, or sedatives).[26] That significant cross-

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[24] SAMHSA, Detailed Tables, *supra* at note 9.

[25] The Government also recognizes this possibility and attempts to address it in the ATF's interim rule by disclaiming that "[a] person is also not an unlawful user if the person, while using a lawfully prescribed controlled substance, deviates slightly or immaterially from the instructions of the prescribing physician." *See* Department of Justice, *supra* at note 20.

[26] SAMHSA, Detailed Tables, *supra* at note 9.

section of the American public has no way to know whether their occasional use renders them unlawful users for purposes of § 922(g)(3). That is particularly problematic for a statute that punishes a person for exercising a fundamental constitutional right.

The Statute does not provide notice of who could (or could not) be subject to investigation, arrest, or prosecution upon the basis of such an allegation. The constitutional harm is that the decision of who is subject to punishment is determined by executive and judicial branch functions, rather than a constitutionally required Act of Congress. *See, e.g., Davis*, 588 U.S. at 470 ("no matter how tempting, this Court is not in the business of writing new statutes").

Congress knows how to criminalize gun possession in a way that does not contravene Due Process. For example, Congress has identified specific circumstances that define when a person may be deemed a prohibited possessor. *See, e.g.*, 18 U.S.C. § 922(g)(8)(C)(i) (prohibiting a person who is subject to a court order finding that such person represents a credible threat to the physical safety of an intimate partner or child). But this Court is powerless to insert those limitations when Congress did not. *See, e.g., Davis*, 588 U.S. at 448, 469 (rejecting Government's "invitation" to "adopt a case-specific approach" to save a vague statute because the cure to vagueness is "to treat the law as a nullity and invite Congress to try again.")

When Congress fails to define the conduct it criminalizes, ordinary people lack fair notice of when lawful behavior exposes them to felony punishment. § 922(g)(3) creates that uncertainty on a massive

scale, placing millions of Americans at risk of severe criminal penalties for conduct that is otherwise lawful and constitutionally protected.

II. MARIJUANA USE IS NOT A SOUND PROXY FOR DANGEROUSNESS.

The Government attempts to defend § 922(g)(3) by implicitly relying on the assumption that drug use meaningfully correlates with dangerousness. Those claims are not supported by sound data.

Most people who try drugs do not use them problematically and do not develop a substance use disorder or physical dependence.[27] Indeed, over half of adults in the United States report using some form of "illicit drugs" within their lifetimes, while a quarter of adults (69.7 million people) used illicit drugs in the past year.[28]

In 2024, 61.5 million American adults used marijuana, making it "the most commonly used federally illegal drug in the United States."[29] The number of Americans using marijuana for medicinal purposes more than doubled (8 million patients)

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[27] James C. Anthony et al., *Comparative Epidemiology of Dependence on Tobacco, Alcohol, Controlled Substances, and Inhalants: Basic findings from the National Comorbidity Survey*, 2(3) Experimental and Clinical Psychopharmacology 244-68 (Aug. 1994)

[28] See SAMHSA, Detailed Tables, *supra*, note 9.

[29] Center for Disease Control, Cannabis Facts and Stats, https://www.cdc.gov/cannabis/data-research/facts-stats/index.html

between 2013 and 2020.[30] In general, "the majority of drug use is episodic, transient and generally non-problematic." Anne Katrin Schlag, *Percentages of problem drug use and their implications for policy making: A review of the literature*, 6 Drug Sci., Pol'y & L. 1 (2020). In fact, only 15 percent of lifetime marijuana users met criteria for a cannabis use disorder in the past year.[31] Of those, more than half were considered to have a mild substance use disorder, meaning they only met two or three of the 11 possible criteria for a substance use disorder.[32] Put differently, only a small fraction of American marijuana users develop a problematic relationship with it.

"Empirical studies demonstrate that marijuana users are not necessarily violent people." Ira Robbins, *Guns N' Ganja: How Federalism Criminalizes the Lawful Use of Marijuana*, 51 U.C. Davis L. Rev. 1783, 1816 (June 2018). As with other drugs, the vast majority of marijuana users do not commit violence.[33] "At most…we can say that this relationship [between marijuana use and violence] is correlational, and the

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[30] Greg T. Rhee, Increasing Use of Cannabis for Medical Purposes Among U.S. Residents, 2013–2020, 65(3) Am. J. of Prev. Med., 528-33 (Sep 2023), https://www.ajpmonline.org/article/S0749-3797(23)00132-0/abstract

[31] See SAMHSA, Detailed Tables, *supra*, note 9.

[32] *Id.*

[33] Shaoling Zhong et. al., *Drug Use Disorders and Violence: Associations with Individual Drug Categories*, Epidemiol Rev. 2020 Jan 31; 42(1): 103-116, https://doi.org/10.1093/epirev/mxaa006.

strength of this relationship varies depending on the population. For example, there is a stronger association between cannabis use and violence in populations with [severe and persistent mental illness (SPMI)] or [cannabis use disorder (CUD)], but this association is much weaker among individuals without SPMI or CUD."[34] The correlation between drug use and violence is also confounded by factors like poverty, trauma, and exposure to violence.[35]

Studies attempting to link marijuana use with homicides or mass casualty events tend to cherry-pick a small number of overall violent acts, fail to account for pre-existing factors that may have increased risk of violence, and ignore overwhelming data that the vast majority of the 130 million lifetime marijuana users have not committed acts of violence.[36] By targeting marijuana and other drug users to keep firearms away from presumptively risky people, the Statute fails to include other indicators of violence that are stronger than marijuana consumption. For instance, studies reveal that those who consume

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[34] Dorsa Rafiei et. al., *Fact or Faction Regarding the Relationship Between Cannabis Use and Violent Behavior,* Journal of the American Academy of Psychiatry and the Law Online Dec 2021, JAAPL.210034-21; https://doi.10.29158/JAAPL.210034-21.

[35] *See supra* at note 32.

[36] *See* Jolene Forman, Drug Policy Alliance, What Not to Tell Your Children: Five Things Alex Berenson Gets Wrong About Marijuana (2019).

alcohol are at an elevated risk of committing violence.[37]

Some people with mental health conditions, including schizophrenia, use controlled substances like marijuana. The relationship between schizophrenia and marijuana is complicated,[38] but the possible overlap of those who have used marijuana in the past year (over 23 percent of American adults)[39] and those with a lifetime history of schizophrenia spectrum disorders (less than two percent of American adults)[40] is minimal. Even dubiously assuming a complete overlap, that would translate to less than 10 percent of lifetime marijuana users have a lifetime history of schizophrenia. Restricting the fundamental rights of the remaining 90 percent based on a correlation that impacts a small minority is indicative of the Statute's breadth.[41]

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[37] Ellicott C. Matthay et. al., "Assessing Links Between Alcohol Exposure and Firearm Violence: A Scoping Review Update." *Alcohol Research : Current Reviews* 2025 Jan 10;45 (1): 01, https://doi/10.35946/arcr.v45.1.01.

[38] Sriram Ramaswamy et. al., *Cannabis and Schizophrenia: A Complex Relationship*, Current Psychiatry 22(12), https://doi.10.12788/cp.0417

[39] SAMHSA Detailed Tables, *supra* at note 9.

[40] Edlund H. Ringeisen et. al., *Mental and Substance Use Disorders Prevalence Study: Findings Report*, RTI International (2023), https://www.rti.org/publication/mental-substance-use-disorders-prevalence-study-findings-report/fulltext.pdf

[41] Further complications are added by the complex relationship between schizophrenia and violence. Most people with schizophrenia are not violent and violence committed accounts for a small fraction of overall violent crime, Steven M.

This case, however, is not about mental illness. Congress already prohibits gun possession by anyone who "has been adjudicated as a mental defective or has been committed to any mental institution at 16 years of age or older." 18 U.S.C. § 922(d)(4). Further, all 50 states and the District of Columbia have some form of firearm prohibition tied to serious mental health adjudications or commitments.[42] The tiny subset of Americans with serious mental health disorders who use marijuana are already prohibited from firearm possession.

Whatever its policy aims, § 922(g)(3) does not condition criminal liability on any finding of dangerousness, impairment, or misuse of a firearm. The Government's attempt to justify the Statute by reference to generalized correlations asks this Court to supply limiting principles that Congress did not enact. This Court's vagueness doctrine forbids that exercise.

III. ARBITRARY ENFORCEMENT OF THE VAGUE STATUTE WILL EXACERBATE RACIAL DISPARITIES.

Generalized drug prohibition-based policies are not deeply embedded in the historical tradition of the United States. *Cf. Davis*, 588 U.S. at 479 (Kavanaugh, J., dissenting) (noting that "substantial-risk

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Silverstein et. al, Schizophrenia and violence: realities and recommendations, Reviewing Crime Psychology, (2020).

[42] National Conference of State Legislatures, Possession of Firearms by People with Mental Illness, https://www.ncsl.org/civil-and-criminal-justice/possession-of-firearms-by-people-with-mental-illness

standards like the one in [18 U.S.C.] § 924(c)(3)(B) are a traditional and common feature of criminal statutes"). While there were early attempts by some states and localities to restrict access to certain drugs, primarily for specifically targeted classes of people, there were no significant legal restrictions on the distribution of drugs until around the beginning of the twentieth century. Richard C. Boldt, *Drug Policy in Context: Rhetoric and Practice in the United States and the United Kingdom*, 62 S.C.L. Rev. 261, 263 (2011); *see also* Shelia P. Vakharia, *The Harm Reduction Gap: Helping Individuals Left Behind by Conventional Drug Prevention and Abstinence-Only Addiction Treatment* (2024). Throughout the last century, political and economic motivations—often rooted in racial animus—have driven federal drug policy. *See* Michael Vitiello, *The War on Drugs: Moral Panic and Excessive Sentences*, 69 Clev. St. L. Rev. 441, 455 (2021), *see also* Craig Reinarman & Harry G. Levine, *Crack in America: Demon Drugs and Social Justice* (1997).

While some substances are accessible through the American medical system—largely to more socioeconomically privileged consumers—other substances are prohibited, stigmatized, and criminalized. *See* David Herzberg, *White Market Drugs: Big Pharma and the Hidden History of Addiction in America* (2020).

The overcriminalization of drug use and how it results in mass incarceration and economic disenfranchisement, with disproportionally heavier impacts on communities of color, are well known. *See* Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (2010).

Black people, who represent 14 percent of the American population,[43] make up 28 percent of all drug arrests.[44] Considering only marijuana, Black people are 3.6 times more likely than white people to be arrested for marijuana possession.[45]

Since the enactment of the Controlled Substances Act, punitive drug policies have "subjected millions to criminalization, incarceration, and lifelong criminal records, disrupting or altogether eliminating access to adequate resources and support to live healthy lives." Aliza Cohen et al., *How the War on Drugs Impacts Social Determinants of Health Beyond the Criminal Legal System*, 54:1 Annals of Medicine 2024-2038 (2022). Drug offenses remain the leading cause of arrest in the nation. Over 1.1 million drug-related arrests were made in 2020, and the majority were for personal possession.[46]

Drug enforcement efforts have long been inequitable and disproportionately levied on

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[43] U.S. Census Bureau, Population Estimates, Jul 1, 2024, https://www.census.gov/quickfacts/table/PST045215/00

[44] FBI Uniform Crime Reporting Program, Crime Data Explorer (2024), https://cde.ucr.cjis.gov/LATEST/webapp/#/pages/explorer/crime/arrest

[45] ACLU, *A Tale of Two Countries: Racially Targeted Arrests in the Era of Marijuana Reform* (2020), https://www.aclu.org/publications/tale-two-countries-racially-targeted-arrests-era-marijuana-reform

[46] FBI Uniform Crime Reporting Program, Crime Data Explorer (2024), https://cde.ucr.cjis.gov/LATEST/webapp/#/pages/explorer/crime/arrest.

communities of color. "Abundant data show that Black people and other communities of color have been disproportionately harmed by decades of addressing drug use as a crime rather than as a matter of public health." Nora Volkow, National Institute on Drug Abuse, *Addiction Should Be Treated, Not Penalized* (May 7, 2021), https://nida.nih.gov/about-nida/noras-blog/2021/05/addiction-should-be-treated-not-penalized. "Although statistics vary by drug type, overall, White and Black people do not significantly differ in their use of drugs, yet the legal consequences they face are often quite different." *Id*.

Given the dramatic disparities that our system of drug control and enforcement produce, it is unsurprising that a statute that relies on classifications of licit and illicit drug use would itself be prone to arbitrary application. That problem is compounded by the unclear terms of the Statute, inviting arbitrary and selective enforcement, with profound consequences for those to whom it is applied.

This case is a paradigmatic example: Mr. Hemani's possession of a small quantity of marijuana, ordinarily, would be subject to misdemeanor penalties under 21 U.S.C. § 844. But, because of his constructive possession of a safely secured firearm in his mother's house, his admission of occasional marijuana use suddenly transforms his exercise of a constitutionally protected right into a federal felony. Fundamental rights should not be subject to the whims of "policemen, prosecutors, and juries [pursuing] their personal predilections." *Goguen*, 415 U.S. at 575; *accord City of Chicago v. Morales*, 527 U.S. 41, 65-66 (1999) (O'Connor, J., concurring) (noting a constitutional defect of a loitering ordinance was that

it granted "absolute discretion to police officers" to determine when someone might or might not have a permissible purpose for remaining in an area).

The notion that a person may be vaguely labeled as an "unlawful user" and subsequently deprived of a fundamental liberty is irrational. Nor is it rooted in any equitable historical tradition of the United States. The Statute operates as an unbounded, indiscriminate deprivation of fundamental liberties and should not be tolerated.

CONCLUSION

For all the reasons recited above, this Court should affirm.

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Respectfully submitted,

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