

No. 24-1234

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 NEW YORK STATE RIFLE &
PISTOL ASSOCIATION, INC. AS *AMICUS
CURIAE* IN SUPPORT OF RESPONDENT**

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INTEREST OF AMICUS CURIAE¹

New York State Rifle & Pistol Association, Inc. (“NYSRPA”) is a nonprofit member organization organized in 1871 in New York City. NYSRPA is the oldest firearms advocacy organization in the United States, and it is the largest firearms organization in the State of New York. NYSRPA provides education and training in the safe and proper use of firearms, promotes the shooting sports, and supports the right to keep and bear arms through both legislative and legal action.

Although NYSRPA’s work is rooted in the protection of the Second Amendment, the organization files this brief not to litigate the Second Amendment directly, but to address independent constitutional defects in 18 U.S.C. § 922(g)(3) that implicate fundamental principles governing the scope and limits of federal criminal law. NYSRPA has a substantial institutional interest in ensuring that statutes regulating firearms and firearm possession adhere to constitutional requirements of clarity, fairness, and restraint.

NYSRPA submits this brief to assist the Court by providing its perspective on how vague and status-based criminal prohibitions can undermine those constitutional principles and put lawful conduct at risk of criminal punishment.

¹ No party’s counsel authored this brief in whole or in part. No party or party’s counsel, and no person other than amicus, its members, or its counsel contributed money that was intended to fund preparation or submission of this brief.

SUMMARY OF ARGUMENT

This case implicates foundational limits on the federal government's power to define crimes and impose severe criminal penalties. Section 922(g)(3) of Title 18 crosses those limits by attaching felony liability to an ill-defined status, rather than to clearly specified conduct, in a manner incompatible with the Fifth and Eighth Amendments and longstanding principles of statutory interpretation.

First, § 922(g)(3) violates the Due Process Clause of the Fifth Amendment. Criminal statutes must provide citizens with fair notice of what conduct is prohibited and must supply objective standards that constrain enforcement discretion. Section 922(g)(3) does neither. Its operative terms, “unlawful user” and “addicted to any controlled substance,” are undefined and unbounded. The statute provides no temporal limitation, no quantitative threshold, and no conduct-based anchor that would allow an ordinary person to determine when lawful firearm possession becomes a federal felony. Therefore, it leaves citizens to guess at the reach of the statute and invites arbitrary and discriminatory enforcement.

The statute's lack of limiting principles also renders it unconstitutionally overbroad as a matter of due process. Section 922(g)(3) provides no clear standards defining which individuals fall within its reach, when disqualification attaches, or how closely any drug use must relate to firearm possession. This indeterminacy substantially magnifies the risk that the statute will be applied to nonviolent individuals who are not impaired, pose no heightened risk of misuse, and fall well outside the core historical justifications for disarmament, thereby burdening

Second Amendment rights through an overbroad and standardless prohibition.

Second, § 922(g)(3), as applied here, violates the Eighth Amendment’s prohibition on status-based criminal punishment, as incorporated through the Due Process Clause. This Court has long held that criminal punishment may not be imposed solely based on who a person is, rather than what a person has done. In fact, Section 922(g)(3) dispenses with the requirement of a culpable act. It does not require proof of contemporaneous drug use, intoxication, possession of controlled substances, dangerous behavior, or misuse of a firearm. Instead, it authorizes felony punishment for the passive possession of a firearm—otherwise lawful conduct—based entirely on an allegation of status.

As applied to Respondent, the statute operates in precisely the manner the Eighth Amendment forbids. Respondent was not alleged to be intoxicated, impaired, or engaged in any unlawful conduct at the time of possession. The government’s theory of criminal liability rests wholly on an asserted status as an “unlawful user” of a controlled substance at some undefined point in time. Under this Court’s precedent, criminal punishment untethered from a culpable act exceeds constitutional bounds.

Third, and independently, the rule of lenity requires § 922(g)(3) to be construed in favor of liberty. The statute remains irreducibly ambiguous even after application of ordinary interpretive tools. When a felony statute turns on undefined status terms and exposes individuals to serious criminal penalties, ambiguity must be resolved narrowly—not expanded through judicial inference.

Lenity serves as a safeguard for the constitutional values at stake here. It prevents vague statutes from becoming instruments of discretionary enforcement, constrains the expansion of status-based criminal liability through interpretation, and ensures that courts do not rewrite criminal laws to supply limits Congress itself failed to enact. Where, as here, broad constructions would raise serious Fifth and Eighth Amendment concerns, lenity confirms that the statute must be narrowly construed or held invalid.

The government acknowledges that the Second Amendment forecloses overbroad restrictions that “would eviscerate the general right to . . . carry arms.” U.S. Br. 14 (citing *N.Y. State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1, 31). It likewise concedes that “restrictions cannot be so sweeping or open-ended as to cover most ordinary citizens.” U.S. Br. 14. The government nevertheless contends that limiting Section 922(g)(3) to so-called “habitual” drug users demonstrates the statute’s “limited scope.” U.S. Br. 10-11. But layering an undefined notion of “habitual” onto the statute’s already indeterminate term of “unlawful user” does not cure the problem. Rather, it compounds it, amplifying the statute’s vagueness and deepening the risk of constitutional overreach, as respondent’s case vividly demonstrates.

For these reasons, § 922(g)(3) cannot be reconciled with the Constitution’s requirements of clarity, culpability, and restraint, and the judgment below should be affirmed.

ARGUMENT

I. Section 922(g)(3) Violates the Fifth Amendment's Due Process Clause

The Due Process Clause requires criminal laws to “give ordinary people fair notice of the conduct it punishes” and to cabin enforcement discretion so the law does not become “so standardless that it invites arbitrary enforcement.” *Johnson v. United States*, 576 U.S. 591, 595 (2015); *Kolender v. Lawson*, 461 U.S. 352, 357 (1983). Those requirements apply with special force where, as here, Congress (or a state legislature under Fourteenth Amendment due process) disturbs constitutional rights and attaches severe felony penalties to a statutory label whose boundaries are left to prosecutors and agents to define case by case. *See Connally v. General Constr. Co.*, 269 U.S. 385 (1926); *Lanzetta v. New Jersey*, 306 U.S. 451 (1939).

Section 922(g)(3) fails both core due-process functions. Its operative categories, “unlawful user” and “addicted to any controlled substance,” are undefined, unbounded by time, dosage, frequency, or conduct, and incapable of consistent application. 18 U.S.C. § 922(g)(3). That indeterminacy produces exactly what this Court’s vagueness cases forbid: ordinary citizens must guess at the line between lawful possession and a federal felony, while enforcement officials are handed an open-ended delegation to decide who qualifies as a prohibited person. *Papachristou v. City of Jacksonville*, 405 U.S. 156 (1972); *Smith v. Goguen*, 415 U.S. 566 (1974); *Kolender*, 461 U.S. 352.

A. The Statute Is Unconstitutionally Vague

i. “Unlawful user” and “addicted to” are undefined

A criminal statute is void if it is written “in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application.” *Connally*, 269 U.S. 385, 391. This Court has repeatedly invalidated laws that hinge criminal liability on elastic descriptors—“credible and reliable” identification, *Kolender*, 461 U.S. at 353, “contemptuous treatment”, *Goguen*, 415 U.S. at 579, “gangster”, *Lanzetta*, 306 U.S. at 452 —because such terms do not supply the public with an ascertainable rule of conduct and instead invite ad hoc enforcement.

Section 922(g)(3) does the same thing. It criminalizes firearm possession by any person who is an “unlawful user of” or “addicted to” a controlled substance, yet the statute itself provides no definition, no fixed elements, and no objective criteria to distinguish lawful from unlawful possession. The resulting questions (When is someone an “unlawful user”? And for how long?) are not peripheral. They provide the entire trigger for felony liability.

Due process does not tolerate criminal prohibitions that turn on a statutory status label that is itself undefined. This Court’s cases make clear that when the line between lawful and unlawful conduct is left to intuition, the law “fails to give a person of ordinary intelligence fair notice” and creates a serious risk of discriminatory enforcement. *Papachristou*, 405 U.S. at 162.

ii. No temporal, quantitative, or behavioral limits exist

Vagueness is not cured by insisting that some applications are clear. A statute is invalid when it leaves the public uncertain as to the conduct it prohibits and supplies no standard to guide those charged with enforcement. *Kolender*, 461 U.S. 352; *Goguen*, 415 U.S. 566. That defect is acute where the statute does not define when a person's conduct falls within the prohibition.

Section 922(g)(3) contains no express temporal limitation (How recent must use be?), no quantitative threshold (How frequent or intense?), and no behavioral anchor (Does it require intoxication, impairment, dependence, or diagnosis?). The public is left to speculate whether the prohibition turns on a single episode, a sporadic pattern, a diagnosis, a self-reported admission, or mere suspicion.

This Court's void for vagueness doctrine exists precisely to prevent criminal laws from operating as traps for the unwary. *Connally*, 269 U.S. 385; *Papachristou*, 405 U.S. 156. Where Congress chooses to impose a felony disability based on a person's relationship to a substance, due process demands a rule that ordinary people can apply to themselves before they risk criminal liability. *Lanzetta*, 306 U.S. 451.

iii. Ordinary citizens cannot know when lawful firearm possession becomes a felony

Due process is fundamentally concerned with "fair" warning or notice and the principle that criminal punishment must not be imposed under standards so indefinite that the citizen has no

meaningful chance to conform conduct to law. *See Bouie v. City of Columbia*, 378 U.S. 347, 350 (1964); *Johnson*, 576 U.S. at 595.

That problem is magnified when a statute criminalizes otherwise commonplace, non-violent conduct based on a status determination that is neither announced in advance nor reliably knowable. In *Lambert v. California*, 355 U.S. 225 (1957), the Court recognized that due process is offended when a person is punished for passive conduct under a regime that provides no meaningful notice and no reason to suspect criminal liability. While § 922(g)(3) is not a registration ordinance, its structure creates a comparable notice problem: it converts ordinary possession into a felony based on a legal classification (“unlawful user”/“addicted to”) that the statute does not define and that an ordinary person cannot self-assess with confidence.

This Court has emphasized that vague laws do more than surprise the public; they also “encourage arbitrary and erratic arrests and convictions.” *Papachristou*, 405 U.S. at 162. Where the boundary line is unknown, the same conduct may be treated as lawful for one person and felonious for another, based not on statutory criteria but on the unguided judgments of individual officers, agents, or prosecutors. That is precisely what the void for vagueness doctrine forbids. *Kolender*, 461 U.S. 352; *Goguen*, 415 U.S. 566.

iv. The statute invites arbitrary enforcement

This Court has repeatedly explained that “the more important aspect of the vagueness doctrine” is not merely notice, “but the other principal element of

the doctrine—the requirement that a legislature establish minimal guidelines to govern law enforcement.” *Kolender*, 461 U.S. at 358. A statute is constitutionally defective when it authorizes law enforcement to decide, without meaningful statutory constraints, what conduct is prohibited. *Goguen*, 415 U.S. 566; *Papachristou*, 405 U.S. 156.

Section 922(g)(3) supplies no minimal guidelines for deciding who is an “unlawful user” or “addicted to” controlled substances. That is not an incidental imperfection. It shifts the core legislative judgment—from Congress to enforcement officials—about which citizens are subject to a felony prohibition. This Court has condemned precisely that kind of “standardless sweep,” which effectively delegates to police the authority to decide which individuals will be investigated, arrested, and prosecuted. *Kolender*, 461 U.S. at 358.

Recent void for vagueness decisions underscore that the Due Process Clause forbids criminal liability tied to indeterminate classifications that require courts to guess, after the fact, whether the statute covered the defendant. *United States v. Davis*, 588 U.S. 445 (2019). Even where the government asserts a public-safety rationale, the Constitution does not permit Congress to accomplish that goal through undefined and shifting terms. *See Johnson*, 576 U.S. 591; *Sessions v. Dimaya*, 584 U.S. 148 (2018); *Davis*, 588 U.S. 445.

B. The Statute Is Unconstitutionally Overbroad

“Overbreadth” is often used as a term of art in First Amendment doctrine. But even outside that specialized context, due process bars criminal statutes

that, by failing to define their reach, sweep in substantial amounts of plainly non-culpable conduct and thereby magnify the risks of arbitrary enforcement and lack of notice. *See FCC v. Fox Television Stations, Inc.*, 567 U.S. 239 (2012) (noting “even when speech is not at issue . . . precision and guidance are necessary so that those enforcing the law do not act in an arbitrary or discriminatory way); *see also Papachristou*, 405 U.S. 156; *Kolender*, 461 U.S. 352; *Lanzetta*, 306 U.S. 451. Section 922(g)(3)’s lack of limiting principles is not just unclear; it is expansive in a way that disconnects felony liability from any concrete, ascertainable conduct standard.

i. The government’s application of section 922(g)(3) unconstitutionally criminalizes nonviolent individuals

Due process does not require Congress to criminalize only violent conduct. But where Congress imposes a felony ban that turns on an indeterminate status label, the statute’s breadth becomes constitutionally relevant because it expands the universe of persons who cannot know they are committing a felony and expands the discretion of enforcement officials to decide who qualifies. *See Papachristou*, 405 U.S. 156; *Kolender*, 461 U.S. 352.

A law that can be applied to wide swaths of nonviolent citizens without any limiting criteria is the paradigmatic vagueness problem: the broader the sweep, the more inevitable it becomes that ordinary people will be unable to determine whether they are inside or outside the law. *See Connally*, 269 U.S. 385; *Fox*, 567 U.S. 239.

ii. The government’s reading of the statute unconstitutionally reaches occasional or past users

Because § 922(g)(3) contains no temporal line, it is capable of being applied to citizens whose alleged use is intermittent, remote, or not meaningfully connected to the period of firearm possession. When Congress criminalizes conduct based on a classification whose duration is undefined, it invites the very guesswork this Court has deemed incompatible with due process. *See Connally*, 269 U.S. 385; *Lanzetta*, 306 U.S. 451.

This Court has also warned against interpretations of criminal statutes that depend on elastic, after-the-fact reconstructions of a person’s status. Due process requires that the criminal law be knowable *ex ante*; it cannot rest on standards so indeterminate that liability depends on “unforeseeable” expansions of meaning. *Bouie*, 378 U.S. at 352.

iii. The government unconstitutionally extends the statute to people who are not impaired and posing no heightened risk

Whatever one thinks about the policy case for barring impaired persons from possessing firearms, § 922(g)(3) is not framed as an impairment-based law. It is framed as a status-based prohibition, keyed to “unlawful user” or “addicted to,” without any statutory requirement of contemporaneous intoxication, actual impairment, or misuse. That absence of statutory constraints matters as a due-process issue because it confirms that the statute does not supply an objective,

conduct-based line that citizens can follow and that officers can enforce neutrally. *See Kolender*, 461 U.S. 352; *Goguen*, 415 U.S. 566; *Papachristou*, 405 U.S. 156.

The statute's indeterminate "unlawful user"/"addicted to" classifications also implicate a related constitutional concern this Court has addressed in the context of status-based criminal liability. *Robinson v. California*, 370 U.S. 660 (1962) (finding cruel and unusual punishment under Fourteenth Amendment due process). The same indeterminacy that makes § 922(g)(3) vague also raises the distinct constitutional concern—addressed in Part II—that the statute effectively attaches criminal liability to an ill-defined status.

**iv. The government's application of
the statute is untethered from
any concrete showing of
dangerousness or misuse**

This amicus does not advance Second Amendment merits arguments. But due process principles do not depend on Second Amendment theory. Even in areas where Congress has broad power to regulate, criminal statutes must be drafted with an "ascertainable standard of guilt." *Connally*, 269 U.S. at 390.

The government and supporting amici emphasize categorical "dangerousness" and historical analogies. But due process demands something more basic: the statute must define who is covered in terms that ordinary citizens can understand and that do not hand enforcement officials open-ended discretion. *See Kolender*, 461 U.S. 352; *Goguen*, 415 U.S. 566; *Papachristou*, 405 U.S. 156. A criminal prohibition

cannot be rescued by post hoc assurances that prosecutors will exercise discretion wisely, or that agencies can create boundaries through internal policy. The Constitution requires that boundaries be supplied by law. *See Fox*, 567 U.S. 239; *Johnson*, 576 U.S. 591; *Dimaya*, 584 U.S. 148; *Davis*, 588 U.S. 445.

II. Section 922(g)(3), as Applied, Violates the Eighth Amendment by Imposing Criminal Punishment Without a Culpable Act

“Haec enim tacita lex est humanitatis, ut ab homine consili, non fortunae poena repetatur.”

Marcus Tullius Cicero, *Pro Tilio*.

It is axiomatic that American citizens possess a fundamental right to keep and bear arms. U.S. Const. amend. II. It is equally clear that 18 U.S.C. § 922(g)(3), as applied to Mr. Hemani, places that right in jeopardy. However, the constitutional infirmity of § 922(g)(3) is not limited to the Second Amendment and framing this case solely through this lens severely understates the constitutional harm at issue. As applied here, § 922(g)(3) also violates the Eighth Amendment by imposing criminal punishment without requiring proof of any contemporaneous culpable act. U.S. Const. amend. VIII. The government's effort to justify the statute by emphasizing “habitual use” is unavailing because frequency or duration of past drug use does not satisfy the constitutional requirement of a culpable act at the time punishment is imposed. *See* U.S. Br. 4, 32. Section 922(g)(3) operates by making the exercise of a

fundamental constitutional right illegal based wholly and entirely on one's status. This is violative of the most basic principles of justice and fairness which undergird not only American law but all of its progenitors from Babylonia to Rome to England. Radin, Intent, Criminal, 8 Encyc. Soc. Sci. 126, 126–27.

In narrow circumstances, this Court has recognized that the Eighth Amendment also limits the imposition of criminal punishment where no culpable act is required. This substantive component of the Eighth Amendment, often referred to as the “status crime doctrine,” demands that statutes be directed toward an unlawful act (*actus reus*). And under this Court’s longstanding precedent, when a statute authorizes punishment without requiring proof of a culpable act, it exceeds constitutional limits. *See City of Grants Pass, Oregon v. Johnson*, 603 U.S. 520, 545–48 (2024); *Morissette v. United States*, 342 U.S. 246, 251–52 (1952).

A. The Eighth Amendment Forbids Criminal Punishment Based Solely on Status

This Court first articulated the “status crime” doctrine in *Robinson v. California*, holding that the Eighth Amendment forbids criminal punishment imposed solely on the basis of a person’s status, absent any culpable act. 370 U.S. at 666–67. There, California made it a crime to “be addicted to the use of narcotics.” *Id.* at 660–61 (citing Cal. Health & Safety Code § 11721). The statute did not require proof that a criminal defendant had used, possessed, or distributed narcotics within the state or even engaged in any dangerous or antisocial behavior. *Id.* at 666. The statute only required that prosecutors allege that

the defendant used narcotics in the past (whether in California or not) and the defendant would be thereby branded “continuously guilty” under the statute. *Id.* at 666–67.

The *Robinson* Court held the statute unconstitutional under the Eighth Amendment. *Id.* at 666–67. Critically, the constitutional defect in *Robinson* was not that California regulated drugs, or because the defendant’s drug use was occasional or “habitual,” but rather that it dispensed with the requirement of a culpable act that can be reasonably tied to the arrest and prosecution altogether. *See id.* at 662–67. This is because criminal punishment may not be imposed unless the accused has engaged in some wrongful conduct. *Id.*; *Powell v. State of Texas*, 392 U.S. 514, 533 (1968) (“The entire thrust of Robinson’s interpretation of the Cruel and Unusual Punishment Clause is that criminal penalties may be inflicted only if the accused has committed some act[.]”).

Robinson thus unearthed a fundamental principle: criminal **punishment may not be imposed absent some identifiable *actus reus*.** This principle reflects a deep and enduring feature of Anglo-American law. While modern doctrine does not require proof of subjective moral blameworthiness in every case, it has always been required that punishment be tethered to conduct. *Powell*, 392 U.S. at 533; Radin, Intent, Criminal, 8 Encyc. Soc. Sci. 126, 126–27. Therefore, the Eighth Amendment forbids statutes that allow conviction based solely on who a person is, rather than on what a person has done and as applied to Mr. Hemani—this is exactly what § 922(g)(3) does.

B. The Eighth Amendment Inquiry Focuses on Whether a Statute Requires Proof of a Culpable Act

After *Robinson*, this Court revisited the status crime doctrine in *Powell*. 392 U.S. at 533. *Powell* was convicted under a Texas statute that prohibited being intoxicated in a public place. *Id.* at 517. *Powell* argued that, because he suffered from chronic alcoholism, his public intoxication was involuntary and therefore could not constitutionally be punished. *Id.*

The *Powell* Court rejected that argument, but critically, it did so by reaffirming—rather than narrowing—the core holding of *Robinson*. *Id.* at 533. The Court explained that the Texas statute at issue in *Powell* punished conduct, not status. *Id.* at 532–33. It did not criminalize the condition of alcoholism, but rather the act of public intoxication. *Id.* That distinction holds regardless of how persistent or how severe the underlying condition may be; the operative factor is whether the statute requires proof of an act, not whether the defendant’s status is characterized as chronic or “habitual.” As the Court emphasized, it was the presence of an identifiable act that placed the statute outside *Robinson*’s prohibition. *Id.* at 533.

Most recently, in *City of Grants Pass, Oregon v. Johnson*, the Court declined to reconsider or overrule *Robinson v. California*, explaining that the resolution of the case did not require revisiting *Robinson*’s validity. *Grants Pass*, 603 U.S. at 546. There, homeless individuals challenged city ordinances that prohibited camping and sleeping in public spaces. *Id.* at 537–39. The Court rejected the Eighth Amendment challenge, holding that the ordinances were generally applicable and did not criminalize homelessness as a status. *Id.* at 546–47.

While members of the Court emphasized that the Eighth Amendment historically regulates punishment rather than the definition of crimes, and expressed reservations about extending *Robinson* beyond its facts, the Court nonetheless declined to disturb *Robinson* and analyzed the case within its framework. *Id.* at 546–49. The dispositive factor, as explained, was that the challenged laws applied regardless of a person’s condition: “[u]nder the city’s laws, it makes no difference whether the charged defendant is homeless, a backpacker on vacation passing through town, or a student who abandons his dorm room to camp out in protest.” *Id.* at 546–47. Because the ordinances regulated conduct rather than status, they fell outside *Robinson*’s narrow prohibition. *Id.*

Therefore, because the city ordinance only operated to punish conduct—regardless of status—the Court declined the plaintiff’s invitation to expand *Robinson* to cover conduct alleged to be “involuntary.” *Id.* In doing so, the Court cautioned that such an expansion would transform *Robinson*’s “small intrusion” into a broad reworking of substantive criminal law. *Id.* The Court thus made clear that *Robinson* applies only to a limited category of statutes that impose criminal punishment without requiring proof of any culpable act.

Together, *Robinson*, *Powell*, and *Grants Pass* establish a narrow doctrinal rule: the Eighth Amendment forbids statutes that criminalize status while permitting statutes that regulate conduct—even if certain individuals have a greater propensity to engage in a particular act because of their status or condition. Therefore, the question under this rule does not ask whether a law disproportionately affects a

group, nor how frequently a defendant may have engaged in conduct, but **whether the statute requires proof** of a culpable act.

Unlike the ordinances upheld in *Grants Pass*, § 922(g)(3), as applied here, does not regulate generally applicable conduct. It imposes felony punishment without requiring proof of intoxication, drug use, or any contemporaneous unlawful act, attaching criminal liability solely to an alleged status as an “unlawful user” or “addict.” Even under the restrained understanding of *Robinson* articulated in *Grants Pass*, a statute that authorizes punishment in the absence of any culpable act remains constitutionally suspect.

C. As Applied to Mr. Hemani, Section 922(g)(3) Operates as a Status-Based Criminal Prohibition

This case falls within the narrow category observed by *Robinson*, *Powell*, and *Grants Pass*. Section 922(g)(3), as applied to Mr. Hemani, operates as a status based criminal prohibition indistinguishable in principle from the statute invalidated in *Robinson*.

Section 922(g)(3) makes it a felony for any person who is an “unlawful user of or addicted to any controlled substance” to possess a firearm. 18 U.S.C. § 922(g)(3). The statute does not require proof that the defendant used drugs at or near the time of possession or at any time, that drugs were present, or that his possession of a firearm was otherwise unlawful. Nor does the statute require proof that the defendant posed any danger to himself or others.

As this case illustrates, a person may be convicted solely for possessing a firearm—conduct

that is otherwise lawful—based entirely on an allegation of prior drug use or addiction. The government need not prove that the defendant engaged in any contemporaneous unlawful act. A mere allegation of status suffices. *See Br. in Opp.* 2; *Pet. App.* 5a-6a. The government attempts to avoid this conclusion by characterizing Mr. Hemani as a “habitual” user. *See U.S. Br.* 4, 32. But habitual use, like addiction itself, describes a status or condition—not a culpable act—and does not supply the temporal nexus that the Eighth Amendment requires.

In this respect, § 922(g)(3) mirrors the California statute in *Robinson*, which permitted conviction without proof of any narcotics use, possession, or criminal behavior. 370 U.S. at 666. Like the statute in *Robinson*, § 922(g)(3) authorizes conviction without proof of any contemporaneous unlawful act. *Id.* Even more concerning—unlike *Robinson*, it does so while imposing felony punishment and disarming individuals engaged in otherwise lawful conduct.

Indeed, § 922(g)(3) is even more punitive than the statute invalidated in *Robinson*. The California law imposed a misdemeanor sentence of up to ninety days’ imprisonment. *Id.* at 661. Section 922(g)(3), by contrast, imposes felony liability, carries significant prison exposure, and strips individuals of a core constitutional right without a need for a prior conviction or finding of dangerousness.

D. Section 922(g)(3) Punishes Mr. Hemani Solely for Alleged Status as a Prior or Habitual Drug User, Not for Any Culpable Act

The application of § 922(g)(3) to Mr. Hemani

clearly illustrates the constitutional defect. The record shows that Mr. Hemani was not alleged to be intoxicated at the time the firearm was discovered. *See* Br. in Opp. 2, 13; Pet. App. 2a-3a, 5a-6a. Nor was he charged with any drug-related offense in connection with the firearm. Pet. App. 2a-3a, 5a-6a. And no controlled substances were found in his possession at the time of arrest. *See id.*; Br. in Opp. 2.

The federal grand jury returned a single-count indictment charging Mr. Hemani only with possession of a firearm. Pet. App. 3a. The government's theory of criminal liability rests entirely on an allegation that Mr. Hemani was, at some undefined point, an "unlawful user" of a controlled substance. There is no statutory requirement that the alleged drug use bear any temporal or causal relationship to the firearm possession. That defect is not remedied by asserting that the alleged drug use was frequent or "habitual," because the statute still dispenses with any requirement that an unlawful act occur at the time of possession.

This falls squarely within the category of punishment prohibited by *Robinson*. Like *Robinson*, Mr. Hemani is subject to criminal punishment not for any act he committed at the time of arrest, but for who the government claims he is. As in *Robinson*, the statute allows the government to prosecute "at any time before he reforms," regardless of whether any unlawful conduct is occurring. 370 U.S. at 666.

Unlike *Powell* or *Grants Pass*, the case before the Court is not one where a generally applicable law incidentally burdens individuals with a particular condition. Mr. Hemani is not being punished for public intoxication, for dangerous behavior, or for violating a

neutral conduct-based rule. He is being punished for possessing a firearm—a constitutionally protected activity—solely because of his alleged status as a prior drug user.

**E. Because Section 922(g)(3)
Dispenses with the Act
Requirement, It Cannot Be
Enforced Consistent with the
Eighth Amendment**

Under this Court’s precedent, criminal punishment may not be imposed absent a culpable act. *Robinson*, 370 U.S. at 666; *Powell*, 392 U.S. at 533. Section 922(g)(3), as applied to Mr. Hemani, dispenses with that requirement entirely. It authorizes felony punishment without proof of intoxication, use, possession of drugs, or any contemporaneous unlawful conduct. And recasting status as “habitual conduct” cannot transform a penal prohibition, where there is no identifiable *actus reus*, into a constitutionally valid criminal offense.

That result cannot be reconciled with the Eighth Amendment. The Constitution does not permit the government to transform a person’s alleged condition or past behavior into a continuing criminal offense. Because § 922(g)(3), as applied here, imposes punishment without a culpable act, it violates the Eighth Amendment and cannot constitutionally be enforced against Mr. Hemani.

**III. The Rule of Lenity Requires
Construction in Favor of Liberty**

The rule of lenity reflects a basic premise of American criminal law: no one should lose liberty unless Congress has spoken clearly. This principle of statutory construction ensures that “fair warning

should be given to the world in language that the common world will understand, of what the law intends to do if a certain line is passed” and prevents courts from expanding liability by inference where Congress has not clearly drawn the line. *United States v. Bass*, 404 U.S. 336, 348 (1971). When a criminal statute remains ambiguous after applying ordinary interpretive tools, the Court resolves that ambiguity in favor of lenity. The rule of lenity “requires ambiguous criminal laws to be interpreted in favor of the defendants subjected to them.” *United States v. Santos*, 553 U.S. 507, 514 (2008).

Section 922(g)(3) triggers that rule. It imposes serious felony consequences based on undefined and unstable status terms (“unlawful user” and “addicted to”). If Congress wishes to criminalize firearm possession on that basis, it must do so with clear, objective limits—not language that leaves courts and citizens guessing where the felony line falls. *Bass*, 404 U.S. at 348 (noting “to make the warning fair, so far as possible the line should be clear”) (citing *McBoyle v. United States*, 283 U.S. 25, 27 (1931))

A. Section 922(g)(3) Is Irreducibly Ambiguous

Lenity applies when ambiguity persists at the point that interpretation becomes guesswork. *Bass*, 404 U.S. 348. Section 922(g)(3) presents exactly that problem because its central trigger is not defined in the statute and cannot be made determinate without importing extra-textual limits.

i. Temporal nexus.

The statute does not say how close in time drug use must be to firearm possession. The absence of a temporal anchor produces multiple plausible

readings—each carrying radically different criminal consequences, precisely the ambiguity that lenity proscribes. *Bass*, 404 U.S. 336.

ii. Degree of use.

The statute supplies no threshold for frequency, quantity, or pattern that transforms a person into an “unlawful user.” With no textual boundary, interpretation risks becoming a choice among competing policy judgments rather than a faithful application of enacted law. *Bass*, 404 U.S. 348; *Bifulco v. United States*, 447 U.S. 381, 387 (1980).

iii. Evidentiary threshold.

Because the terms are undefined, the statute supplies no objective standard for what evidence suffices to establish prohibited status. That uncertainty is not merely inconvenient; it is a classic marker of criminal ambiguity that lenity exists to resolve. *Bass*, 404 U.S. 336.

When Congress writes a felony prohibition that turns on an undefined status label, and courts cannot identify stable, text-based limits on that label, the statute remains ambiguous in the sense that matters: it does not announce a rule of conduct with the clarity required for criminal punishment. *McBoyle*, 283 U.S. at 27; *Bifulco*, 447 U.S. 381, 387 (noting “this policy of lenity means that the Court will not interpret a federal criminal statute so as to increase the penalty that it places on an individual when such an interpretation can be based on no more than a guess as to what Congress intended”).

B. Lenity Protects Fifth and Eighth Amendment Values

Lenity is not just a tiebreaker. It is a liberty-

preserving doctrine that operates alongside due process and related constitutional guarantees.

i. Lenity prevents ambiguity from becoming an enforcement tool.

This Court has warned against interpreting federal criminal statutes in ways that increase punishment based on no more than a guess as to what Congress intended. *Bass*, 404 U.S. 336. That warning carries particular weight where ambiguity would otherwise allow the government to define the statute's reach through prosecution choices rather than through text. *McBoyle*, 283 U.S. 25.

ii. Lenity constrains status-based expansion through interpretation.

This Court has recognized constitutional limits on imposing criminal consequences tied to status. *Robinson*, 370 U.S. at 666–67. Whatever the ultimate force of those principles here, the interpretive point is straightforward: when a statute can plausibly be read either narrowly (as conduct-linked) or broadly (as status-driven), lenity requires the narrower reading. *Bass*, 404 U.S. 336; *Bifulco*, 447 U.S. 381.

iii. Where serious constitutional concerns are at stake, the Court should not enlarge criminal liability by interpretation.

This Court's constitutional-avoidance cases reinforce that courts should not adopt broad readings that create needless constitutional conflict when a narrower reading is fairly available. *Edward J. DeBartolo Corp. v. Fla. Gulf Coast Bldg. & Constr. Trades Council*, 485 U.S. 568, 575 (1988)

(emphasizing “where an otherwise acceptable construction of a statute would raise serious constitutional problems, the Court will construe the statute to avoid such problems unless such construction is plainly contrary to the intent of Congress”). In criminal cases, that same judicial restraint is reflected—and enforced—through lenity. *Bass*, 404 U.S. 336.

C. The Court Should Decline to Rewrite the Statute

To save statutes such as § 922(g)(3), courts are often invited to add limiting elements: a judicially imposed time window, a minimum frequency requirement, or an elevated evidentiary standard. But that is not interpretation. It is revision.

This Court has been explicit: courts are not at liberty to rewrite a statute to supply what Congress omitted. *Lamie v. U.S. Trustee*, 540 U.S. 526, 538 (2004) (distinguishing between “filling a gap left by Congress’ silence and rewriting rules that Congress has affirmatively and specifically enacted”) (citing *Mobil Oil Corp. v. Higginbotham*, 436 U.S. 618, 625 (1978)). And “to supply omissions transcends the judicial function.” *Iselin v. United States*, 270 U.S. 245, 251 (1926). When a criminal statute lacks clear limits, the proper response is not judicial surgery that adds elements Congress never enacted; it is to apply the traditional safeguards of narrow construction and lenity of and leave legislative repair to Congress. *Bass*, 404 U.S. 336; *Bifulco*, 447 U.S. 381.

CONCLUSION

This Court should affirm the decision below.

Dated this 30th day of January, 2026.

Respectfully submitted,

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