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 NATIONAL ASSOCIATION FOR GUN RIGHTS AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENT AND AFFIRMANCE

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INTEREST OF AMICUS

The right to keep and bear arms is a fundamental right that existed prior to the Constitution. The right is not in any sense granted by the Constitution. Nor does it depend on the Constitution for its existence. Rather, the Second Amendment declares that the pre-existing "right of the people to keep and bear Arms shall not be infringed." The National Association for Gun Rights ("NAGR")[1] is a nonprofit membership and donor-supported organization with hundreds of thousands of members nationwide. The sole reason for NAGR's existence is to defend American citizens' right to keep and bear arms. In pursuit of this goal, NAGR has filed numerous lawsuits seeking to uphold Americans' Second Amendment rights. NAGR has a strong interest in this case because the guidance the Court will provide in its resolution of this matter will have a major impact on NAGR's ongoing litigation efforts in support of Americans' fundamental right to keep and bear arms.

SUMMARY OF ARGUMENT

The founding generation recognized many of the societal problems stemming from the abuse of intoxicating substances, and they enacted regulations to address those problems, including prohibiting so-called "tavern haunters" from using alcohol in taverns. None of those regulations contemplated disarming those users. Thus,

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1. No counsel for a party authored this brief in whole or in part, and no entity or person, other than amicus curiae, its members, and its counsel, made a monetary contribution intended to fund the preparation or submission of this brief.

to address similar societal problems, the Founders could have enacted a law similar to 18 U.S.C. § 922(g)(3) disarming illegal users of intoxicants, but they did not. Instead, they employed substantially different means to address the problem. That is powerful evidence that the challenged statute does not comport with the Nation's history and tradition of firearms regulation. See *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 26-27 (2022).

According to the federal Substance Abuse and Mental Health Services Administration, approximately 52.5 million people used marijuana in 2021. Meanwhile, last year murders plummeted more than 20%—the single-largest one-year drop on record—to perhaps the lowest murder rate since 1900. According to FBI statistics, there were 1,221,345 violent crimes reported in 2024. Even in the unlikely event that all of those violent offenders were also marijuana users, the offenders would constitute only *2.3%* of the users. Therefore, while it is probably true that some of the tens of millions of people who use marijuana are dangerous, it is absurd to suggest that, as a category, they are particularly dangerous when nearly 98% of them did not commit any violent crime. The government argues that its categorical ban is constitutional even though the overwhelming majority of the people in that category have never hurt anyone. That is inconsistent with the principles the Court identified in *United States v. Rahimi*, 602 U.S. 680 (2024), for categorically stripping citizens of their Second Amendment rights.

Finally, the government states that Section 922(g)(3) disarms a dangerous category of people—i.e., "habitual drug users." But the word "habitual" does not appear

in the statute. The statute disarms "users," and courts have struggled for decades to understand what that term means. Thus, Respondent's vagueness arguments are sound.

ARGUMENT

A. In the Founding Era, Unlawful "Users" of Intoxicating Substances Were Never Stripped of Their Second Amendment Rights

Under *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 24 (2022), the government has the burden of showing that 18 U.S.C. § 922(g)(3)'s "user" provision is consistent with the Nation's historical tradition of firearm regulation. As applied to Respondent, the statute provides that a user of a certain intoxicant (i.e., marijuana) may be stripped of their right to keep a firearm for self-defense even if there is no evidence that they have *ever* been intoxicated, much less intoxicated at the time they were charged. The fact that the founders could have passed a similar statute to address a practically identical societal problem—and didn't—is powerful evidence that the modern statute does not meet constitutional muster.

The consumption of alcohol has been a feature of American life from the beginning. The Puritan settlers who dropped anchor in Massachusetts Bay in 1630 had with them 12 gallons of distilled spirits, 10,000 gallons of beer, and 120 hogsheads of brewing malt. Thomas R. Pegram, *Battling Demon Rum: The Struggle for a Dry America, 1800-1933* (Ivan R. Dee 1998). Kindle Ed., loc. 122. By the founding period and shortly thereafter, the consumption of alcohol reached astonishing peaks.

Between 1800 and 1830, Americans drank alcohol at a rate higher than at any other time in the nation's history, consuming on average between 6.6 and 7.1 gallons of pure alcohol per person each year. *Id.* at loc. 117-118. By comparison, current American consumption is about 2.8 gallons annually. *Id.*

Prominent members of the founding generation believed that the widespread use of spirits was harmful. For example, Dr. Benjamin Rush was a signer of the Declaration of Independence and the Surgeon General of the Middle Department of the Continental Army. In 1791, the year the Second Amendment was ratified, he published the third edition of his influential temperance tract, *An Inquiry into the Effects of Spirituous Liquors upon the Human Body, and Their Influence upon the Happiness of Society*,[2] in which he inveighed against the multitude of harms resulting from the consumption of liquor. Rush went so far as to suggest that the widespread consumption of liquor was a danger to the Republic itself. He wrote:

> I shall conclude what has been said of the effects of spiritous liquors with two observations.—I. A people corrupted with strong drink cannot long be a *free* people. The rulers of such a community will soon partake of the vices of that mass from which they were selected, and all our laws and governments will sooner or later bear the same marks of the effects of spirituous liquors which were described formerly upon individuals. *I*

2. Benjamin Rush, *An Inquiry into the Effects of Spirituous Liquors Upon the Human Body, and Their Influence upon the Happiness of Society*, 3rd ed. (John McCulloch 1791).

> *submit it therefore to the consideration of our rulers, whether more laws should not be made to increase the expense and lessen the consumption of spiritous liquors . . .*

Id. at 11 (first emphasis in the original; second emphasis added).

The States have always had plenary police power to discourage or even prohibit the "use of intoxicating liquors," *Walling v. People*, 116 U.S. 446, 459–60 (1886), and they did not hesitate to exercise that power in the founding era and in the period shortly after that era. Most temperance reformers at the turn of the nineteenth century emphasized personal self-control. *Demon Rum,* loc. 85-87. But the persistence of social disorder tied to alcohol, and anxieties associated with increased immigration and economic downturns, influenced temperance organizations in the 1830s and 1840s to demand that the power of law and the authority of the state be used to force temperance onto those who refused to adopt it voluntarily. *Id.* This, in turn, led to America's first experiment with prohibition. In 1851, Maine passed a law banning the manufacture and sale of alcoholic beverages.[3] And between 1852 and 1855, twelve additional states—Massachusetts, Minnesota, Rhode Island, Vermont, Michigan, Connecticut, New York, Indiana, Delaware, Iowa, Nebraska, and New Hampshire—adopted so-called "Maine Laws." *Id.* at loc. 440-41.

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3. An Act for the Suppression of Drinking Houses and Tippling Shops, ch. 211, 1851 Me. Laws 210.

Of particular relevance to this matter, during the founding era, "tippling" laws addressed the problem of alcohol usage by requiring people to stop drinking at taverns after a specified amount of time had passed, even if they were not inebriated. Connecticut's founding-era tippling law, for instance, stated that "[No] tavernkeeper [shall] suffer any inhabitants of such town where he dwells . . . to sit drinking or tippling in his or her house . . . or to continue there for the space of one hour at one time." An Act for Licensing and Regulating Houses of Public Entertainment, or Taverns, and for Suppressing Unlicensed Houses, 1784 Conn. Acts, 242 (printed by Timothy Green, 1784). Under this and similar statutes, so-called "tavern haunters" were prohibited from drinking alcohol (i.e., "using" the intoxicant) in taverns. *Id.*

Thus, during the founding era, regulators perceived a social problem—namely, the various harms caused by alcohol consumption. They enacted laws to address these issues, including laws that prohibited certain "users" of alcohol ("tavern haunters") from continuing to do so, even if they were not intoxicated or addicted. Penalties were imposed on violators of the prohibition on use, but those penalties never included taking away their right to keep arms for self-defense.

Bruen alluded to two situations in which differences between founding-era regulations and modern regulations would indicate that the modern regulation is unconstitutional:

> [I] [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.
>
> [II] Likewise, if earlier generations addressed the societal problem, but did so through materially different means, that also could be evidence that a modern regulation is unconstitutional.

Id., 597 U.S. at 26–27. Both situations apply in this case. The general societal problem implicated by the challenged regulation (abuse of intoxicants) has persisted since the eighteenth century. And eighteenth-century regulators addressed that problem in various ways, including by prohibiting users of alcohol known as "tavern haunters" from continuing to use. But nothing in these statutes indicated that the founding generation considered even for a moment stripping the lawbreakers of their right to keep arms for self-defense. Instead, they addressed the problem through materially different means. The Connecticut statute, for example, assessed a small fine of twenty shillings or required the tavern haunter to post a bond assuring his good behavior while in a tavern. The statute did not contemplate disarming anyone.

B. The Government's Argument is Inconsistent with *Rahimi*

The law must comport with the principles underlying the Second Amendment. *United States v. Rahimi*, 602 U.S. 680, 692 (2024). *Rahimi* identified two principles pursuant to which people may be constitutionally disarmed. First,

when there has been an individualized determination that a particular person poses a clear threat of physical violence to another, the threatening individual may be disarmed. *Id.* at 698. Second, certain categories of people who present a special danger of misuse may be disarmed. *Id.* (citing *D.C. v. Heller*, 554 U.S. 570, 626 (2008), where the Court held that felons and the mentally ill may be disarmed). Section 922(g)(3) does not require an individualized determination of dangerousness. Therefore, the first principle does not apply. The government latches onto the second principle, however, and argues that "Section 922(g)(3) falls well within Congress's authority to temporarily disarm categories of dangerous persons—here, habitual drug users." Pet.Br. 10. This is wrong because, as discussed in detail below, the citizens in the category at issue in this case (i.e., marijuana users) demonstrably do not present a "special danger of misuse."

The day *Bruen* was decided in 2022, all of the major groups advocating greater gun control issued statements predicting an impending paroxysm of violent crime:

Everytown: "Let's be clear: the Supreme Court got this decision wrong, choosing to put our communities in even greater danger with gun violence on the rise across the country."[4]

4. Press Release, Everytown for Gun Safety, Everytown Responds to Decision in *NYSRPA v. Bruen* (June 23, 2022), available at https://bit.ly/3M0QIVp (last accessed January 28, 2026).

Brady: "This is extremist judicial activism at its worst, and Americans may die as a result of what the Court issued in the sanctity of its protected chambers."[5]

Giffords: "This extreme ruling by the Supreme Court's conservative supermajority imposes the gun lobby's dangerous 'guns everywhere' agenda on all of us, thwarting the will of the people, their elected representatives, and rejecting scientific research demonstrating the danger of guns in our public spaces."[6]

Despite these breathless prognostications, exactly the opposite happened. Earlier this month, the Council on Criminal Justice issued its report on crime trends in 2025.[7] Their key finding, which was widely reported in the media, is as follows:

> When nationwide data for jurisdictions of all sizes is reported by the FBI later this year, there is a strong possibility that homicides in 2025 will drop to about 4.0 per 100,000 residents. *That would be the lowest rate ever*

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5. Press Release, Brady, Brady Urges Action Following Supreme Court Ruling in *NYSRPA v. Bruen* (June 23, 2022), available at https://bit.ly/4bV4zHp (last accessed January 28, 2026).

6. Press Release, Giffords Law Center, Giffords Law Center Condemns Ahistorical, Extremist Ruling from Supreme Court Conservatives in *Bruen*, (June 23, 2022), available at https://bit.ly/4tdiXRN (last accessed January 28, 2026).

7. Lopez, E., & Boxerman, B. (2025), Crime trends in U.S. cities: Year-end 2025 update. Council on Criminal Justice, available at https://counciloncj.org/crime-trends-in-u-s-cities-year-end-2025-update/ (last accessed on January 28, 2026).

> *recorded in law enforcement or public health data going back to 1900, and would mark the largest single-year percentage drop in the homicide rate on record.*

(emphasis added).

The gun control lobby predicted that violence, death, and destruction would follow in *Bruen's* wake. Instead, less than four years later, the murder rate has plummeted to historic lows.

This is significant for the government's claims in this case because the violent crime rate among users of marijuana reflects that same trend. According to SAMHSA, marijuana is the most commonly used federally illegal drug in the country, with **52.5 million** people having used it at least once in 2021.[8] According to the FBI, in 2024, 1,221,345 violent crimes were reported.[9] Even in the unlikely event that all of those violent offenders were also marijuana users, the offenders would constitute only *2.3%* of the users. Therefore, while it is probably true that

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8. Substance Abuse and Mental Health Services Administration. Key substance use and mental health indicators in the United States: Results from the 2021 National Survey on Drug Use and Health (HHS Publication No. PEP22-07-01-005, NSDUH Series H-57). Center for Behavioral Health Statistics and Quality, Substance Abuse and Mental Health Services Administration. 2022, 15-16 (available https://www.samhsa.gov/data/sites/default/files/reports/rpt39443/2021NSDUHFFRRev010323.pdf) (last accessed January 27, 2026).

9. Federal Bureau of Investigation, UCR Summary of Reported Crimes in the Nation, 2024, 3, available at https://bit.ly/4ak8QD8 (last accessed January 29, 2026).

some of the tens of millions of people who use marijuana are dangerous, it is absurd to suggest that, as a category, they are particularly dangerous.

The Section 922(g)(3) categorical ban on users of marijuana sweeps in vastly more peaceful citizens than dangerous people. Nevertheless, the government argues that its categorical ban is constitutional even though the overwhelming majority of the people subject to the ban have never hurt anyone. Marijuana users simply do not "present a special danger of misuse." Therefore, a categorical ban based on marijuana use is inconsistent with the principles justifying categorically stripping citizens of their Second Amendment rights identified in *Rahimi*.

C. Section 922(g)(3)'s "User" Ban is Unworkable in Practice

In its brief, the government uses the word "habitual" literally dozens of times to modify the phrase "drug user." But "habitual" does not appear in Section 922(g)(3). Rather, the statute forbids a person from possessing a firearm if he "is an unlawful *user* of or addicted to any controlled substance." 18 U.S.C. 922(g)(3) (emphasis added). As Respondent ably argues in his brief, no one seems to know what the term "user" means in this context. Resp.Br. 15-24. One thing is certain, however: From 1997 until literally days ago, ATF's regulations took the position that even a single use within the previous year could meet the definition. Last week, ATF released an interim final rule entitled "Revising Definition of 'Unlawful User of or Addicted to Controlled Substance.'" 91 Fed. Reg. 2,698 to 2,708 (Jan. 22, 2026). The ATF stated:

> The 1997 final rule added factual examples supporting an inference of current use . . . These additions included inferences based on a positive drug test within the past year and military nonjudicial or administrative actions based on drug use—both of which could result from a single unlawful use. The regulatory definition thus described what ATF at the time understood the term "unlawful user" to mean and, as relevant here, it included an understanding that *a single incident of unlawful use could make a person an "unlawful user*."

91 Fed. Reg. 2,699-2,700 (emphasis added).

To its credit, ATF recognized that the 1997 regulation was not tenable, and one of the purposes of the revised rule was to end the "disconnect" between ATF's regulations and judicial interpretations of the statute. *Id.* at 2702. While this is progress, it remains the case that courts have struggled to interpret the phrase "user" and as a "result, whether individuals may be convicted of a crime carrying up to 15 years in prison depends entirely on a diverse array of judge-made, atextual glosses on §922(g)(3)." Resp.Br. 19.

CONCLUSION

For the reasons set forth herein, NAGR respectfully requests the Court to affirm the circuit court's decision.

Respectfully submitted this 30th day of January 2026.

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