No. 24-1234

IN THE

Supreme Court of the United States

UNITED STATES OF AMERICA,

Petitioner,

v.

ALI DANIAL HEMANI,

Respondent.

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

BRIEF OF NATIONAL ORGANIZATION FOR THE REFORM OF MARIJUANA LAWS (NORML) AS *AMICUS CURIAE* SUPPORTING RESPONDENT

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CORPORATE DISCLOSURE STATEMENT

Statement Pursuant to Rule 29.6: The National Organization for the Reform of Marijuana Laws (NORML) is a nonprofit, nonstock corporation. It has no parent corporation, and no publicly held company owns 10% or more of its stock.

INTEREST OF AMICUS CURIAE

For more than fifty years, the National Organization for the Reform of Marijuana Laws (NORML) has worked to end the criminalization of responsible cannabis use by adults and to protect the rights and interests of cannabis patients and other consumers, and those who serve them. NORML has thousands of members nationwide and state affiliates in jurisdictions across the country.[1]

NORML frequently participates as *amicus curiae* in litigation involving the interaction between cannabis laws and other constitutional rights, including the Second Amendment. NORML has participated as amicus in related litigation, including *Daniels* and *Cooper*, and has studied the historical and scientific questions presented here.[2] NORML has also studied the history of cannabis

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

2. See Brief of Amicus Curiae Nat'l Org. for the Reform of Marijuana Laws (NORML), *United States v. Daniels*, No. 22-60596 (5th Cir. filed July 6, 2023); Briefs of Amicus Curiae Nat'l Org. for the Reform of Marijuana Laws (NORML), *United States v. Cooper*, No. 22-13893 (11th Cir. filed May 8, 2023, and July 12, 2024).

regulation in the colonies that later formed the United States, the modern scientific understanding of cannabis, and the consequences of federal policies that define cannabis as an illicit "controlled substance" while States increasingly legalize and regulate its use.

NORML has a strong interest in ensuring that infringement on the Second Amendment does not become a backdoor mechanism for punishing and disarming millions of otherwise law-abiding Americans solely because they use cannabis, especially where that use is lawful under state law, whether for medical or recreational use.

SUMMARY OF ARGUMENT

Section 922(g)(3) criminalizes firearm possession by anyone who "is an unlawful user of or addicted to any controlled substance." Applied to cannabis users, that prohibition is incompatible with the text and history of the Second Amendment as well as this Court's decisions in *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111 (2022), and *United States v. Rahimi*, 144 S. Ct. 1889 (2024).

1. The Second Amendment protects "the right of the people to keep and bear Arms." U.S. Const. amend. II. Cannabis users are plainly among "the people" to be afforded its protection. They are not aliens, enemy combatants, or some constitutionally excluded caste. They are ordinary citizens and residents, many of them veterans, workers, parents, and medical patients, who happen also to consume a plant that Congress still places in Schedule I, but partially protects and promotes in interstate commerce by means of spending appropriations measures.

2. Under *Bruen*, once the Second Amendment's text covers an individual's conduct, the government bears the burden of demonstrating that its restriction is consistent with the Nation's historical tradition of firearm regulation. *Bruen*, 142 S. Ct. 2111, 2126 (2022). Under *Rahimi*, the appropriate historical analogues are laws that disarm those judicially found to pose a credible threat of physical violence, not sweeping status-based bans untethered from any individualized determination of dangerousness. *Rahimi*, 144 S. Ct. at 1897–98 (2024).

3. The government cannot meet that burden here. The Fifth Circuit, in its decisions in *United States v. Connelly*, 117 F.4th 269 (5th Cir. 2024) and *United States v. Daniels*, 77 F.4th 337 (5th Cir. 2023), *cert. granted, judgment vacated*, 144 S. Ct. 2707 (2024), conducted a thorough review of the historical record and determined that § 922(g)(3) is unconstitutional when applied to individuals whose sole disqualifying factor is either occasional or regular cannabis use, absent any evidence of intoxication or firearm misuse. *Connelly*, 117 F.4th at 281–83; *Daniels*, 77 F.4th 352–55.

The closest historical analogues concern temporary restrictions on carrying or firing a weapon while actually intoxicated. Those laws did not impose a continuing disability on persons who drank alcohol or used other intoxicants, and they certainly did not strip those persons of their right to possess arms in their homes. *Connelly* and *Daniels* correctly recognize that § 922(g)(3) is much broader than those historical intoxication laws and therefore fails *Bruen's* test.

4. Cannabis underscores the historical mismatch at the heart of this case. Hemp was a familiar and

ubiquitous commodity from the colonial period through Reconstruction: colonial governments affirmatively promoted—and in Virginia required—its cultivation; members of the Founding generation grew it; and by the nineteenth century cannabis preparations were widely used medicinally and recognized in standard pharmaceutical compendia.[3] Yet neither the Founding era nor Reconstruction produced any tradition of disarming cannabis users as a class, or treating mere cannabis use as a proxy for dangerousness sufficient to justify categorical deprivation of the right to keep and bear arms. See *United States v. Daniels*, 77 F.4th 337, 353–56 (5th Cir. 2023).

5. Modern policy further underscores the irrationality of applying § 922(g)(3) categorically to cannabis users. A substantial majority of States now authorize the medical use of cannabis, and many also permit adult-use possession under comprehensive regulatory regimes. These widespread legislative judgments reflect the reality that cannabis use is both common and socially normalized, rather than a marker of dangerousness sufficient to justify the permanent deprivation of a fundamental constitutional right.[4] Congress itself has repeatedly reinforced that

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3. See, e.g., G. Melvin Herndon, Hemp in Colonial Virginia, Agricultural History, Vol. 37, No. 2, 86–93 (1963).

4. Forty States authorize the medical use of cannabis, and twenty-four permit adult-use possession. See Nat'l Conf. of State Legislatures, *State Medical Cannabis Laws* (2025); Nat'l Conf. of State Legislatures, *State Cannabis Laws* (2025); Jeffrey M. Jones, *Nearly Half of U.S. Adults Have Tried Marijuana*, Gallup (Aug. 17, 2021) (reporting that approximately half of American adults have used marijuana at some point in their lives); Substance Abuse & Mental Health Servs. Admin., *2023 National Survey on Drug Use and Health: Annual National Report* tbl. 2.1A (2024)

accommodation by prohibiting the Department of Justice from using appropriated funds to interfere with States' implementation of medical-cannabis laws.[5]

It is inconsistent for Congress to simultaneously protect state medical cannabis regimes and insist that all "unlawful users" of that same medicine are presumptively too dangerous to possess a firearm at any time. As such, there is no rational basis for that inconsistency.

6. *Rahimi* confirms that the relevant line of inquiry is dangerousness, proven with process. When a court has found an individual to "pose a credible threat to the physical safety of another," that person may be temporarily disarmed consistent with the Second Amendment. *Rahimi,* 144 S. Ct. at 1896.

Historically, going back 400 years, cannabis in and of itself has not been viewed a harmful plant or a threat. Only since the 1930s and beyond with its Schedule I designation under the Controlled Substances Act of 1970 has it been so relegated–which has been acknowledged as being for political reasons. To wit, John Ehrlichman, White House Counsel and Chief Domestic Advisor to Richard Nixon,

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(reporting that more than sixty million Americans used marijuana within the preceding year).

5. See, e.g., Consolidated Appropriations Act, 2023, Pub. L. No. 117-328, § 531, 136 Stat. 4459, 4550 (medical-cannabis appropriations rider, commonly known as the Rohrabacher–Blumenauer Amendment); Consolidated & Further Continuing Appropriations Act, 2015, Pub. L. No. 113-235, § 538, 128 Stat. 2130, 2217 (medical-cannabis appropriations rider, commonly known as the Rohrabacher–Farr Amendment).

unequivocally stated in an interview describing Nixon's political motivations for pursuing that designation: "did we know we were lying about the drugs? Of course we did."[6]

Further evidence that the origins of the federal prohibition of cannabis were political rather than based upon practical or demonstrable harms is underscored by Congress' more recent decisions to safeguard the sanctity of statewide medical cannabis access laws through the repeated passage of appropriation measures. These measures protect state-based medical marijuana programs, even though cannabis remains classified as a Schedule I substance. It is inconceivable that Congress would take such steps if it genuinely believed cannabis to be a substance that poses significant harms to the user and lacks any legitimate medical utility.

Section 922(g)(3), by contrast, operates automatically and indefinitely. It demands no judicial finding of danger, no intoxication or impairment, and no nexus between substance use and misuse of firearms.

7. As applied to respondent Hemani, § 922(g)(3) exhibits precisely the overbreadth *Bruen* and *Rahimi* reject. A grand jury indicted Hemani for possessing a pistol in 2022 while being an unlawful user of controlled substances, including marijuana. The district court dismissed the indictment, and the Fifth Circuit summarily

6. John Ehrlichman later acknowledged that federal drug policy in the early 1970s was intertwined with political objectives, including associating marijuana with antiwar activists and heroin with Black communities. See Dan Baum, Legalize It All: How to Win the War on Drugs, Harper's Mag. (Apr. 2016) (quoting Ehrlichman).

affirmed after *Connelly*, holding that § 922(g)(3) was unconstitutional as applied to him.

Because the Petitioner has limited their question to whether §922(g)(3) violates the Second Amendment "as applied to respondent," Pet'r Br. at I, and the prosecution rested on the Respondent's "habitual use of marijuana," Pet'r Br. at 7, the review is restricted to situations involving someone accused of being an "unlawful user" of marijuana several times per week. As a result, Hemani's case directly raises the issue of whether Congress can enforce a universal prohibition on all individuals who use cannabis, even without evidence that they are currently intoxicated, chronically impaired, or pose a danger.

The answer, under this Court's precedents and our history, is no. Cannabis users are part of "the people," and there is no historical tradition of disarming them simply because of their status as users rather than because of any conduct while impaired. Section 922(g)(3) is unconstitutional as applied to Hemani.

ARGUMENT

I. UNDER *BRUEN* AND *RAHIMI*, § 922(g)(3) REQUIRES A HISTORICAL ANALOGUE—NOT A MODERN STATUS-BASED BAN

The Second Amendment provides that "the right of the people to keep and bear Arms, shall not be infringed." U.S. Const. amend. II. This Court has repeatedly held that the Amendment codifies an individual's right to possess firearms for self-defense, particularly in the home. *District of Columbia v. Heller*, 554 U.S. 570, 592,

628–35 (2008); *McDonald v. City of Chicago*, 561 U.S. 742, 767-80 (2010).

In *N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, the Court clarified the framework governing Second Amendment challenges. 142 S. Ct. 2111, 2127 (2022). When the Second Amendment's text covers an individual's proposed conduct, "the Constitution presumptively protects that conduct," and the government "must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation." *Bruen*, 142 S. Ct. at 2126. That analysis is textual and historical; interest balancing is out of bounds. *Id.* at 2129–30.

Rahimi did not retreat from *Bruen*. Instead, it applied *Bruen* and explained how analogical reasoning works: modern regulations must be consistent with "the principles that underpin" the historical tradition but need not be "historical twin[s]." *Rahimi*, 144 S. Ct. at 1897–98. The government prevailed in *Rahimi* because § 922(g)(8) requires a judicial finding that the person "represents a credible threat to the physical safety" of another or is subject to a protective order containing specific prohibitions. *Id.* at 1896–97. That requirement maps onto a longstanding practice of disarming individuals adjudged dangerous, including those who had an order of protection issued against them to prevent further violence. *Id.* at 1897–99.

Nothing similar exists here. Section 922(g)(3) imposes a categorical disarmament on anyone who "is an unlawful user of or addicted to any controlled substance," with no requirement of judicial process, no individualized finding of dangerousness, and no temporal nexus to intoxication

or misuse of a firearm. It is the sort of broad status-based ban against which *Bruen* and *Rahimi* caution.

As *Connelly* and *Daniels* recognized, once the plain text of the Second Amendment covers the firearm possession at issue, the government must justify that status-based ban with historical evidence. *Connelly*, 117 F.4th at 279–82; *Daniels,* 77 F.4th at 345–49. The question is whether there is a grounded tradition of disarming people like Hemani: individuals who use controlled substances, including cannabis, without any proof that they were intoxicated or dangerous, when they possessed the firearm. There is none.

Congress enacted what is now 18 U.S.C. § 922(g)(3) as part of the Gun Control Act of 1968, Pub. L. No. 90-618, 82 Stat. 1213, to bar firearm possession by "unlawful user[s] of or [those] addicted to" controlled substances. When Congress later placed marijuana in Schedule I of the Controlled Substances Act, 21 U.S.C. §§ 801–971, § 922 (g)(3) came to encompass cannabis users as well. The statute thus reflects a generalized concern that illicit drug use and firearm possession may be a dangerous combination, but it imposes a continuing status-based firearms disability untethered to intoxication, misuse of a firearm, or any individualized showing of present dangerousness.

Recent scholarship has identified the eighteenth-century disarmament of Catholics in England and certain American colonies as among the closest historical analogues to a status-based firearms disability. See, e.g., Jared Daneher, *The Second Amendment's Catholic Problem*, 75 Duke L.J. 299, 300–01 (2025). That regime, however, did not rest on religious status in the abstract.

It arose in the specific wartime context of the French and Indian War, when lawmakers feared that armed Catholics might take up arms for a Catholic foreign monarch then in open conflict with the Crown. Those measures thus reflected a temporally bounded judgment about imminent danger, not a free-floating principle that an entire class of citizens could be disarmed indefinitely based on status alone.

Section 922(g)(3), as applied to occasional cannabis users such as Hemani, lacks any comparable temporal or situational catalyst. It imposes a blanket, open-ended prohibition based solely on the fact of unlawful use, without any requirement of actual intoxication or imminent risk to public safety. Under *Bruen*'s insistence on a "distinctly similar" historical analogue and *Rahimi*'s focus on those "found to pose a credible threat to the physical safety of another," that kind of free-floating status ban cannot be justified by reference to the narrowly tailored, war-time Catholic disarmament. See *N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2131–32 (2022); *United States v. Rahimi*, 144 S. Ct. 1889, 1897–98 (2024). Missing is any comparable temporal element of immediate danger that would justify such a blanket status ban here.

To the extent § 922(g)(3) once could be defended as an instrument of the "War on Drugs," subsequent federal and state practice has eroded any claim that cannabis use is inherently incompatible with responsible firearm ownership. Although marijuana formally remains in Schedule I, Congress and the Executive Branch have repeatedly declined to enforce that classification to its logical end. Since California enacted its Compassionate Use Act in 1996, States across the country have adopted comprehensive medical-cannabis regimes, reflecting

sustained legislative judgments that cannabis has accepted therapeutic uses. Many States have also gone further by authorizing regulated adult-use markets, embedding cannabis within ordinary systems of public health, taxation, and commercial regulation rather than treating its use as an inherently dangerous activity.[7]

Rather than preempt those regimes, federal authorities have exercised prosecutorial discretion and issued banking guidance for cannabis-related businesses. Most significantly, Congress has enacted appropriations riders prohibiting the Department of Justice from using funds to interfere with States' implementation of medical-cannabis laws. See, e.g., Consolidated & Further Continuing Appropriations Act, 2015, Pub. L. No. 113-235, § 538, 128 Stat. 2130, 2217; Consolidated Appropriations Act, 2023, Pub. L. No. 117-328, § 531, 136 Stat. 4459, 4550.

The Executive Branch has likewise moved away from treating cannabis as categorically comparable to the most dangerous narcotics. In December 2025, the President directed the Attorney General to "take all necessary steps" to complete the rulemaking process to reschedule marijuana to Schedule III "in the most expeditious manner," pursuant to 21 U.S.C. § 811. Increasing Medical Marijuana and Cannabidiol Research, Exec. Order

7. As of 2025, forty States authorize the medical use of cannabis. See Nat'l Conf. of State Legislatures, *State Medical Cannabis Laws* (2025). Consistent with those legislative determinations, a nationwide survey of U.S. clinicians found that 68.9% believe cannabis has medical utility and 26.6% reported having recommended cannabis to a patient. Grant L. Schauer, Rashid Njai & Alissa M. Grant, *Clinician Beliefs and Practices Related to Cannabis*, 7 Cannabis & Cannabinoid Research 508, 508–15 (2022).

No. 14,370, § 2(a), 90 Fed. Reg. 60,541 (Dec. 23, 2025). Schedule I classification is reserved for substances with "no currently accepted medical use" and a high potential for abuse, whereas Schedule III reflects accepted medical use and a materially lower abuse and dependence profile. 21 U.S.C. § 812(b)(1), (3). That directive followed a 2023 scientific and medical review by the Department of Health and Human Services concluding that botanical cannabis has a currently accepted medical use in the United States and poses comparatively low public-health risks relative to other drugs of abuse.[8]

To be sure, that directive does not itself amend § 922 (g)(3). But it powerfully undercuts the government's claim that cannabis users, as a class, may be categorically and indefinitely disarmed without any showing of intoxication or dangerousness. The Constitution does not permit a permanent status ban justified by a premise the government itself is rapidly abandoning. See *Rahimi*, 144 S. Ct. at 1897.

Most recently, in January 2026, ATF proposed amending its implementing regulation, 27 C.F.R. § 478.11, to narrow the definition of "unlawful user of or addicted to any controlled substance." *Revising Definition of "Unlawful User of or Addicted to Controlled Substance,"* 91 Fed. Reg. 2,698, 2,701–03 (Jan. 22, 2026). The proposed interim rule abandons prior "single-incident" inference examples and now defines an "unlawful user" as "a

8. U.S. Dep't of Health & Hum. Servs., *Basis for the Recommendation to Reschedule Marijuana Under the Controlled Substances Act* 2–4, 10–12 (Aug. 2023) (finding that marijuana has a currently accepted medical use and that "the risks to the public health posed by marijuana are low compared to other drugs of abuse").

person who regularly uses a controlled substance over an extended period of time continuing into the present," requiring evidence that the person has used the substance "with sufficient regularity and recency" to indicate active engagement in such conduct. *Id.* at 2,702–03. ATF explained that single-incident denials "create unnecessary constitutional questions" and that the revision is an "interim measure to address the harm to constitutional rights caused by erroneously denying a person a firearm" under § 922(g)(3). *Id.* at 2,702.

These decisions are difficult to reconcile with the proposition that cannabis users, as a class, are so dangerous that they must be categorically and indefinitely disarmed. At most, history and tradition support temporary restrictions during periods of actual intoxication, just as they do for alcohol and other lawful medications. Section 922(g)(3)'s status-based disarmament of cannabis users like Hemani goes much further, and is therefore "not consistent with the principles that underpin [this Nation's] regulatory tradition." *United States v. Rahimi*, 144 S. Ct. 1889, 1897–98 (2024) (quoting *N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2130 (2022)).

II. CANNABIS HAS BEEN A UBIQUITOUS PART OF AMERICAN LIFE SINCE THE FOUNDING, AND THERE IS NO HISTORICAL TRADITION OF DISARMING ITS USERS

The historical record confirms that hemp and cannabis products were familiar in America from the colonial period through Reconstruction. Colonial governments in Virginia and elsewhere affirmatively promoted—and at times required—hemp cultivation as a matter of public policy. Hemp was a staple agricultural commodity used

for rope, sailcloth, and other necessities; members of the Founding generation, including George Washington and Thomas Jefferson, cultivated it; and by the nineteenth century cannabis preparations were widely sold and used medicinally, appearing in recognized pharmaceutical compendia.[9] Throughout these centuries, there was no tradition of disarming cannabis cultivators or users as a class, or treating mere cannabis use as a proxy for dangerousness sufficient to justify categorical firearms disabilities.

Cannabis' ubiquity during the Founding and Reconstruction eras is reflected not only in commerce and medicine, but even in the most prosaic episodes of military history.[10] During World War II, the federal government

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9. See G. Melvin Herndon, Hemp in Colonial Virginia, 37 Agric. Hist. 86, 87–89 (1963); George Washington, Diary (Aug. 1765), in 1 The Diaries of George Washington 240 (Donald Jackson ed., 1976) (recording hemp cultivation at Mount Vernon); Thomas Jefferson, Farm Book, in Thomas Jefferson's Farm Book 20–21 (Edwin Morris Betts ed., 1953) (noting hemp planting and yields); The Pharmacopoeia of the United States of America 89–90 (3d ed. 1851) (listing *Cannabis Americana* as a recognized medicinal preparation). See also Brief of Amicus Curiae Nat'l Org. for the Reform of Marijuana Laws (NORML), *United States v. Daniels*, No. 22-60596 (5th Cir. filed July 6, 2023); Briefs of Amicus Curiae NORML, *Fla. Comm'r of Agric. v. Att'y Gen. of the United States*, No. 23-11528 (11th Cir. filed May 8, 2023 and July 12, 2024) (collecting historical sources regarding hemp's ubiquity and the absence of founding-era disarmament).

10. See Battle of Lexington State Historic Site, Mo. State Parks, https://mostateparks.com/park/battle-lexington-state-historic-site (last visited Jan. 29, 2026) (describing the 1861 "Battle of the Hemp Bales," in which hemp bales were used as improvised battlefield breastworks, underscoring hemp's ordinary commercial ubiquity in the mid-nineteenth century).

affirmatively suspended restrictions on hemp cultivation and actively encouraged its production through the "Hemp for Victory" campaign, recognizing hemp as an essential strategic resource for uniforms, bandages, rope, and other military supplies.[11]

Whatever else might be said about federal drug policy in the twentieth century, it is historically impossible to claim that cannabis use is a "new societal problem" of the sort *Bruen* treats differently. *Bruen*, 142 S. Ct. at 2132–33. Cannabis was familiar to the Founders and widely used in various forms well into the Reconstruction era. If the Framers or the Reconstruction Congress believed that cannabis use justified disarmament, they had many opportunities to say so.

They did not.

Significant federal restrictions on cannabis are a relatively modern development. Congress first imposed comprehensive federal controls through the Marihuana Tax Act of 1937 and later through the Controlled Substances Act of 1970—both enacted long after the Founding and Reconstruction eras. Statutes of such recent vintage cannot retroactively supply the historical tradition required to justify a firearms restriction under this Court's Second Amendment jurisprudence.[12]

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11. *See* U.S. Dep't of Agric., Hemp for Victory (1942) (wartime film and guidance encouraging farmers to cultivate hemp for the war effort); *see also* Congressional Research Serv., R44742, *Defining Hemp: A Fact Sheet* 6 (2019) (noting that federal restrictions on hemp were relaxed during World War II to increase production for military use).

12. See Marihuana Tax Act of 1937, Pub. L. No. 75-238, 50 Stat. 551; Controlled Substances Act, Pub. L. No. 91-513, tit. II,

Bruen and *Rahimi* direct courts to the regulatory landscape at those earlier times. In that landscape, cannabis was a commonplace crop and medicine, and its users were not singled out for firearm bans. That silence is telling.

III. FOUNDING ERA REGULATIONS TARGETED ACTIVE INTOXICATION, NOT STATUS AS A "USER" OF ANY SUBSTANCE

The government has pointed, in *Hemani* and other § 922 (g)(3) cases, to historical statutes regulating firearms and intoxication. Properly understood, those statutes reinforce the unconstitutionality of § 922(g)(3) as applied here.

As the Fifth Circuit explained in *Daniels*, historical analogues fall into two broad categories: (1) laws prohibiting firing or carrying firearms in public while intoxicated; and (2) laws targeting certain extreme habitual "drunkards" or persons adjudged mentally unfit, usually in the context of guardianship or support obligations. *Daniels*, 77 F.4th at 344–49.

Neither category resembles § 922(g)(3).

First, intoxication laws were typically narrow and temporary. They criminalized the act of carrying or using firearms while drunk or under the influence. They did not

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84 Stat. 1236 (1970) (codified as amended at 21 U.S.C. §§ 801–971); see also *N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2137–38 (2022) (explaining that regulations enacted long after the Founding cannot define the original meaning of the Second Amendment).

strip sober individuals of the ability to own a firearm; they did not impose lifetime disabilities; and they did not treat the mere fact of consuming alcohol at some other time as a basis for permanent disarmament.

The historical record confirms the point. As *United States v. Harrison* explained, early American law included a few scattered provisions addressing the carrying or discharge of firearms while actively intoxicated, but "none imposed a total firearms ban on persons who merely used intoxicants." *United States v. Harrison*, 654 F. Supp. 3d 1191, 1202–10 (W.D. Okla. 2023).

Second, the "drunkard" and mental-illness provisions the government invokes were tied to adjudications and specific findings of incapacity or dangerousness, typically in civil proceedings addressing guardianship, support, or institutionalization. They did not impose categorical firearms disabilities on all users of alcohol, opium, laudanum, or other intoxicants. Cf. *United States v. Rahimi*, 144 S. Ct. 1889, 1896–97 (2024) (emphasizing that historical analogues involved disarmament of persons judicially found to pose a credible threat of physical violence).

The Fifth Circuit in *Connelly* drew exactly this distinction. It recognized that historical intoxication laws disarmed only those who were actively intoxicated or who had been adjudged dangerous, and held that § 922(g)(3)—which sweeps in any person who uses illegal drugs with some regularity and in some temporal proximity to gun possession—is "much broader than historical intoxication laws" and therefore unconstitutional as applied. *United States v. Connelly*, 117 F.4th 269, 281–83 (5th Cir. 2024).

Daniels echoed this reasoning, emphasizing that the government's historical examples "support some limits on an intoxicated person's right to carry a weapon" but do not justify "disarming a sober citizen based exclusively on his past drug usage." *United States v. Daniels*, 77 F.4th 337, 340, 349-50 (5th Cir. 2023).

Hemani's case is indistinguishable in principle. The government does not allege that he possessed a firearm while actively intoxicated, discharged a weapon under the influence, or was ever adjudged a danger to others. The indictment instead rests on status alone: that he "was an unlawful user" of a controlled substance at the time he possessed a pistol.

History does not support disarming citizens on that basis.

IV. SECTION 922(G)(3) IMPOSES A SWEEPING, STATUS BASED, NEAR PERPETUAL DISARMAMENT REGIME THAT BEARS NO RESEMBLANCE TO THE NARROW, TEMPORARY RESTRICTIONS FOUND IN HISTORY

Section 922(g)(3) is not an intoxication law. It is a status law.

Once the government proves that a person is an "unlawful user" of any controlled substance, firearm possession becomes a felony offense. The statute does not require that the person be intoxicated at the time of possession, that the substance use be frequent, that the use be associated with violence, or that any court has found the person dangerous. In practice, the government

often proves "unlawful user" status through admissions of relatively regular cannabis use or minor drug related evidence far removed from any firearm misuse. *Daniels* is illustrative: the government proved that Daniels smoked marijuana "approximately fourteen days out of a month," but offered no evidence he was impaired when he possessed the guns. *Daniels*, 77 F.4th at 340–41.

As *Connelly* observed, the result is a regime "much broader than historical intoxication laws," because § 922 (g)(3) disarms a far wider swath of people, and for far longer periods, than any historical analogue. *Connelly*, 117 F.4th at 282–83.

Rahimi underscores the distinction. The Court accepted § 922(g)(8) because it targets a narrow subset of individuals: those subject to a protective order that includes factual findings of a "credible threat" to another's physical safety or specific restraints on the use of force. *Rahimi*, 144 S. Ct. 1889, 1896–97 (2024). The statute is also tied to the limited duration of the protective order. *Id.* at 1897-98.

Section 922(g)(3) lacks these limiting features. It:

- Contains no requirement of a judicial finding of dangerousness or threat;
- Applies regardless of whether the substance use is occasional or chronic;
- Imposes a potentially open-ended prohibition with no clear path to restoration of rights; and

- Treats all controlled substances alike, from marijuana to heroin, without regard to their vastly different risk profiles.

Taken together, those features place § 922(g)(3) far outside the narrow, temporary restrictions on dangerousness that history has tolerated. That is especially so when the statute is applied to individuals whose only disqualifying conduct is using cannabis in a jurisdiction where the State has legalized or regulated its medical or adult use, and Congress has repeatedly protected such medical programs.

In short, § 922(g)(3)'s breadth and status-based nature are constitutionally fatal under *Bruen* and *Rahimi*.

V. CANNABIS IS NOT COCAINE OR HEROIN, AND ITS RISK PROFILE IS DIFFERENT EVEN FROM ALCOHOL AND SOME PRESCRIPTION DRUGS; TREATING ALL "UNLAWFUL USERS" AS PER SE DANGEROUS IS HISTORICALLY AND EMPIRICALLYUNSOUND

The government's briefing in § 922(g)(3) cases has often leaned on sweeping and unproven assertions: that "habitual drug users" have a propensity for lawbreaking and that illegal drugs as a category pose unique risks of violence and impaired judgment. See Brief for the United States at 20–22, *United States v. Hemani*, No. 24-1234 (U.S. Dec. 12, 2025). That framing glosses over crucial distinctions—especially with respect to cannabis. See Alison Riddoch, *What's at Stake in Hemani? Supreme Court Grants Cert to Review Federal Restriction on Drug Users*, Duke Ctr. for Firearms Law (Oct. 21, 2025).

A. Cannabis is Pharmacologically and Socially Distinct from Hard Narcotics

Cannabis does not share the overdose risk, acute toxicity, or severe physical-dependence profile associated with heroin, fentanyl, or similar opioids. Nor does it reliably provoke the disinhibited aggression long associated with alcohol. To the contrary, modern medical and public-health literature reflects that cannabis's acute effects are more commonly sedating or anxiolytic, and that its risk profile differs materially from the Schedule I narcotics with which it is formally grouped.[13]

B. Alcohol, not Cannabis, has the Clear Historical and Empirical Link to Violence

Founding era legislatures were well aware of alcohol-related violence. Their decision to address that problem through temporary restrictions on carrying or firing weapons while intoxicated, rather than categorical disarmament of drinkers, is powerful evidence that the mere fact of using an intoxicant is not enough to strip

13. See, e.g., Ryan C. Shorey et al., *Acute Alcohol Use Temporally Increases the Odds of Male Perpetrated Dating Violence: A 90-Day Diary Analysis*, 39 Addictive Behaviors 365, 365–68 (2014) (finding alcohol use increased odds of aggression, while marijuana-use days did not); E.B. de Sousa Fernandes Perna et al., *Subjective Aggression During Alcohol and Cannabis Intoxication Before and After Aggression Exposure*, 233 Psychopharmacology 3331, 3331–40 (2016) (reporting alcohol increased aggression whereas cannabis decreased it); U.S. Dep't of Health & Hum. Servs., *Basis for the Recommendation to Reschedule Marijuana Under the Controlled Substances Act* 2–4 (Aug. 2023) (concluding marijuana poses comparatively low public-health risks relative to other drugs of abuse).

someone of Second Amendment rights. The logic applies with even greater force to cannabis, which lacks alcohol's deeply documented association with interpersonal violence.

Modern public-health and neuroscience literature links alcohol use—both acute intoxication and severe alcohol use disorder—to increased hostility and aggressive behavior, diminished cognitive control, and heightened risk-taking, all of which are recognized precursors to violence. By contrast, the empirical record for cannabis is materially different: prospective, day-level studies repeatedly find that alcohol use is associated with increased odds of dating violence or abuse, while same-day marijuana use is not. Laboratory evidence likewise indicates that alcohol intoxication increases subjective aggression, whereas cannabis intoxication decreases it. To be sure, the literature on cannabis and violence is not uniform; but leading reviews conclude that any observed cannabis–violence relationship is correlational and varies by population and thus is not comparable to the well-established alcohol–violence nexus. These realities underscore why § 922(g)(3)'s categorical disarmament of cannabis users—untethered from intoxication or contemporaneous dangerousness—cannot be defended as a sensible analogue to restrictions aimed at preventing imminent, intoxication-driven harm.[14]

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14. See supra, note 13; World Health Org., *Youth Violence and Alcohol* 1–2 (2006) (explaining that hazardous alcohol use can reduce self-control and increase impulsivity, making violence more likely); Dorsa Rafiei & Nathan J. Kolla, *Fact or Faction Regarding the Relationship Between Cannabis Use and Violent Behavior*, 50 J. Am. Acad. Psychiatry & L. 44, 44–55 (2022) (concluding any relationship between cannabis use and violence is correlational and varies by population).

C. Many Lawful Prescription Medications Can Produce Impairment Equal to or Greater Than Cannabis, Yet Their Use Does Not Trigger Categorical Firearms Disabilities

Benzodiazepines, certain sleep medications, and prescription opioids can affect cognition, motor function, and judgment, and commonly carry warnings against driving or operating machinery until the user understands their effects. Yet federal law does not disarm all persons who take such medications—even daily, even for extended periods, even where dependence develops. That contrast underscores the arbitrariness of § 922(g)(3) as applied to cannabis: the loss of Second Amendment rights turns not on intoxication or misuse, but on the federal classification of marijuana as categorically unlawful.

This Court's precedents do not permit such a result. The Second Amendment protects a fundamental right; Congress may not extinguish it for broad categories of citizens absent a historical tradition of disarmament or an individualized, danger-based justification. Section 922 (g)(3)'s undifferentiated treatment of cannabis alongside far more dangerous narcotics thus belies any claim that the statute reflects historically recognizable judgments about who may be disarmed.

D. The Specific Facts of this Case Illustrate the Statute's Overbreadth Rather Than Cure it

The specific facts of this case illustrate § 922(g)(3)'s overbreadth rather than cure it. The government alleges that Hemani used marijuana several times per week, but it has never contended that he possessed a firearm

while actively intoxicated, misused a weapon, or posed any individualized threat to others. The Fifth Circuit's summary affirmance instead rested on *Connelly*'s recognition that § 922(g)(3) cannot constitutionally be applied where the government makes no effort to prove intoxication or contemporaneous dangerous conduct. See *United States v. Connelly*, 117 F.4th 269, 281–83 (5th Cir. 2024).

Especially as applied to cannabis, § 922(g)(3) treats vast numbers of ordinary Americans as presumptively unfit for firearm possession based solely on status.[15] Nothing in this Nation's history supports disarming citizens on that basis.

VI. MODERN FEDERAL AND STATE POLICY TREATS CANNABIS AS A LEGITIMATE MEDICINE AND REGULATED COMMODITY, UNDERMINING THE CLAIM THAT CANNABIS USE IS INHERENTLY INCOMPATIBLE WITH RESPONSIBLE FIREARM POSSESSION

Finally, contemporary federal and state practice underscores the implausibility of the government's position that cannabis use makes a person so dangerous as to warrant categorical disarmament.

A. The Majority of States Authorize Cannabis Use

A strong majority of States now authorize cannabis use, either for medical purposes under physician

15. See supra, note 4 (summarizing state legalization and prevalence of cannabis use).

supervision or for regulated adult use.[16] Those States have concluded that cannabis can be used responsibly, whether as medicine or as a lawful commodity, without rendering users presumptively unfit to participate fully in civic life.

B. Congress Has Repeatedly Barred DOJ From Interfering with State Medical Cannabis Regimes

Beginning in 2014, Congress has prohibited the Department of Justice from using appropriated funds to interfere with States' implementation of medical-cannabis laws.[17] The Ninth Circuit has held that this restriction bars federal prosecution of individuals whose conduct complies with state medical-cannabis regimes, because such prosecutions would necessarily "prevent the implementation" of those state laws. *United States v. McIntosh*, 833 F.3d 1163, 1173–78 (9th Cir. 2016).

Through these repeated appropriations decisions, Congress has effectively instructed the Executive Branch to refrain from treating state-compliant medical-cannabis participants as targets of federal enforcement.

C. It is Incompatible with Those Policy Choices to Deem Cannabis Users Categorically Too Dangerous to Possess Firearms

If Congress believes that medical cannabis programs are sufficiently legitimate to warrant a decade of enforcement-restricting riders, then it cannot rationally

16. See supra, note 4.

17. See supra, note 5.

and simultaneously insist that all cannabis users are so inherently dangerous that they must be disarmed even when sober, even in their own homes, and even absent any history of violence.

This is not mere policy inconsistency; it reflects a constitutional defect. Under *Bruen*, modern firearms restrictions must be justified by this Nation's historical tradition, not by shifting enforcement priorities. And where Congress itself has repeatedly acted to prevent federal interference with state medical-cannabis regimes, the government's claim that cannabis users are *per se* analogous to violent felons or persons adjudged dangerous becomes even less plausible. See *Bruen*, 142 S. Ct. at 2126.

D. The Court Need Not Resolve Every Implication of Modern Cannabis Policy to Decide this Case

The Court need only recognize that § 922(g)(3), as applied to cannabis users like Hemani, goes far beyond anything in our historical tradition.

The question presented here is narrow: whether § 922 (g)(3) violates the Second Amendment as applied. The Court need not decide whether Congress could, consistent with history and tradition, enact a more tailored provision that temporarily disarms individuals shown to be actively intoxicated while armed, or adjudged dangerous based on serious substance-abuse disorder.

It is enough to hold that this statute, in this application, fails the test. When an individual's sole disqualifying factor is the use of a substance—whether frequent or occasional—that has been present in American society

since the Founding, is now regulated and authorized by many States, and whose medical use Congress has repeatedly chosen to protect, the government cannot justify permanent categorical disarmament under *Bruen* and *Rahimi*.

Finally, even if § 922(g)(3)'s "unlawful user" prong is not facially void for vagueness, it is unconstitutionally vague as applied in States that authorize medical or adult-use cannabis. In those jurisdictions, an ordinary citizen cannot reasonably determine whether conduct the State affirmatively permits nevertheless renders him a prohibited person under federal law—particularly given the federal government's longstanding accommodation of state cannabis regimes.

That as-applied defect is amenable to a narrow saving construction: the government could be required to prove that the defendant's cannabis use was unlawful under both federal and state law, and that it involved contemporaneous intoxication at the time of firearm possession.[18]

18. *See, e.g.*, *Skilling v. United States*, 561 U.S. 358, 405–06 (2010) (adopting a narrowing construction to avoid vagueness); *Clark v. Martinez*, 543 U.S. 371, 381–82 (2005) (same); *Jones v. United States*, 529 U.S. 848, 857–58 (2000) (construing statute narrowly to avoid constitutional doubts).

CONCLUSION

Cannabis users are among "the people" whose right to keep and bear arms the Second Amendment protects. For centuries, Americans cultivated, consumed, and prescribed cannabis without any suggestion that doing so warranted the loss of firearms rights. State-authorized medical cannabis patients continue to do so today, under regimes Congress has repeatedly chosen to protect.

The historical analogues the government identifies concern temporary restrictions on carrying or discharging weapons while actively intoxicated, or disarmament of persons adjudged dangerous—not blanket bans on all users of a disfavored substance.

Section 922(g)(3), as applied here, is a modern, status-based firearm prohibition of unprecedented breadth. It is not consistent with this Nation's historical tradition of firearm regulation. Under *Bruen* and *Rahimi*, that ends the inquiry.

The judgment of the court of appeals should be affirmed. The Constitution requires no less.

Respectfully submitted,

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