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 THE NATIONAL RIFLE ASSOCIATION OF AMERICA, FPC ACTION FOUNDATION, AND INDEPENDENCE INSTITUTE AS *AMICI CURIAE* IN SUPPORT OF RESPONDENT

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INTEREST OF *AMICI CURIAE*[1]

The National Rifle Association of America (NRA) is America's oldest civil rights organization and foremost defender of Second Amendment rights. It was founded in 1871 by Union veterans—a general and a colonel—who, based on their Civil War experiences, sought to promote firearms marksmanship and expertise amongst the citizenry. Today, the NRA is America's leading provider of firearms marksmanship and safety training for both civilians and law enforcement. The NRA has approximately four million members, and its programs reach millions more.

FPC Action Foundation (FPCAF) is a nonprofit organization dedicated to preserving the rights and liberties protected by the Constitution. FPCAF focuses on litigation, research, education, and other related efforts to inform the public about the importance of constitutionally protected rights—why they were enshrined in the Constitution and their continuing significance. FPCAF is determined to ensure that the freedoms guaranteed by the Constitution are secured for future generations. FPCAF's research and *amicus curiae* briefs have been relied on by judges and advocates across the nation.

Founded in 1985 on the eternal truths of the Declaration of Independence, the Independence Institute is a 501(c)(3) public policy research organization based in Denver, Colorado. The briefs

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[1] No counsel for any party authored this brief in any part. No person or entity other than *amici* funded its preparation or submission.

and scholarship of Research Director David Kopel have been cited in seven opinions of this Court, including *Bruen*, *McDonald* (under the name of lead *amicus* Int'l Law Enforcement Educators & Trainers Association (ILEETA)), and *Heller* (same). Kopel has also been cited in 140 opinions of lower courts.

Amici are interested in this case because the complete disarmament of marijuana users contradicts our nation's historical tradition of firearm regulation.

SUMMARY OF ARGUMENT

To justify firearms prohibition for marijuana users when they are not intoxicated, the government must prove that the ban is consistent with our nation's historical tradition of firearm regulation. That tradition supports restrictions on the use of firearms *while* intoxicated, but it does not support disarming individuals when they are sober merely because they sometimes use intoxicants.

Throughout American history, legislatures recognized that intoxication could temporarily increase the danger of firearms misuse. But they did not respond by entirely disarming people based on their status as users. Instead, historical intoxication laws regulated conduct: restricting the carrying, discharge, or purchase of firearms only while a person was intoxicated and only for as long as that condition lasted. The historical record thus reflects a consistent tradition of narrow, situational restrictions rather than categorical disarmament.

Moreover, because the combination of intoxicants and firearms is a problem that has persisted since the eighteenth century, the government must provide a distinctly similar historical regulation addressing it. Hemp and alcohol were both widespread and well known during the Founding Era. Hemp was extensively cultivated, widely discussed, and understood to have intoxicating properties, while alcohol abuse was pervasive and deeply troubling to the Founders themselves. Firearms and intoxicants routinely intersected—in militia service, social gatherings, celebrations, and military campaigns—making their combination a familiar and

longstanding societal problem. The historical record shows that legislatures confronted these risks through narrow, conduct-based regulations rather than broad prohibitions on firearm possession.

Bereft of relevant support, the government elides the historical tradition of "*firearm* regulation," and instead offers strained analogies to civil-commitment laws for alcoholics who could not manage their affairs and to vagrancy laws that detained people in forced labor for loafing, juggling, or wearing the clothes of the opposite sex.

The government also cites surety laws, but those laws undermine its case because they required an individualized judicial finding of dangerousness.

Besides contradicting the specific American historical tradition about regulating firearms and intoxicants, the prosecution of Hemani for marijuana use violates a broader rule: individual disarmament must be based on dangerousness. Yet the government has made no serious effort to establish a connection between marijuana use and dangerousness. Rather than focusing on marijuana, it discusses drugs in the abstract and relies primarily on violent incidents involving methamphetamine, heroin, tranquilizers, quaaludes, and PCP.

ARGUMENT

I. Historical intoxication laws forbade using firearms *while* intoxicated.

Legislatures throughout American history sought to prevent the dangers posed by the combination of intoxicants and firearms, "but disarmament was not the remedy for it."[2] Rather, "earlier generations addressed that societal problem by restricting when and how firearms could be used, not by taking them away."[3]

Like all historical firearm restrictions that applied to individuals, intoxication laws were grounded in concerns about dangerousness—specifically, that firearm use while intoxicated heightened the danger of misuse.[4] For substances such as alcohol or marijuana, however, that danger is temporary and disappears once one is sober.

A. Restrictions on shooting while drinking.

Early American laws addressing firearms and intoxicants aimed to preserve gunpowder and prevent false alarms of Indian attacks. A 1624 Virginia law mandated that "no commander of any plantation do either himselfe or suffer others to spend powder

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[2] *United States v. Cooper*, 127 F.4th 1092, 1097 (8th Cir. 2025).

[3] *Id.* (quotation and brackets omitted).

[4] *See State v. Shelby*, 90 Mo. 302, 2 S.W. 468, 469 (1886) (law restricting the carry of certain weapons while intoxicated was intended to prevent "[t]he mischief to be apprehended from an intoxicated person").

unnecessarily in drinking or entertainments, &c."[5] Then in 1656, Virginia forbade "shoot[ing] any gunns at drinkeing (marriages and ffuneralls onely excepted)," to prevent "that beastly vice spending much powder in vaine" and because "the only means for the discovery of [an Indian attack] is by allarms, of which no certainty can be had in respect of the frequent shooting of gunns in drinking."[6]

Preventing accidental injuries was another reason for prohibiting shooting while intoxicated. In 1655, New Netherland forbade "all firing of Guns" on "New Years or May days" because "experience hath demonstrated and taught that … much Drunkenness and other insolence prevail on New Years and May days, by firing of guns," resulting in "deplorable accidents such as wounding."[7]

As a Dutch colony, New Netherland's laws generally do not inform the English tradition adopted by America's Founders. But its 1665 restriction resembles a 1771 law enacted long after it became the British colony New York. Explaining that "persons going from House to House, with Guns and other Fire Arms and being often intoxicated with Liquor, have not only put the Inhabitants in great Terror, but committed many Mischiefs" on "the last Day of

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[5] 1 THE STATUTES AT LARGE; BEING A COLLECTION OF ALL THE LAWS OF VIRGINIA, FROM THE FIRST SESSION OF THE LEGISLATURE, IN THE YEAR 1619, at 127 (William Waller Hening ed., 1823).

[6] *Id.* at 401–02.

[7] LAWS AND ORDINANCES OF NEW NETHERLAND, 1638–1674, at 205 (E. B. O'Callaghan ed., 1868).

December, and on the first and second Days of January," New York forbade the "discharge of any Gun [or] Pistol" in "any House Barn or other Building or before any Door or in any Garden, Street, Lane, or other Inclosure on the said Eve or Days within the County of Richmond; and in the Precincts of Haverstraw and Orange Town in the County of Orange."[8] Notably, this law applied to a limited area—only one county and two towns—and it did not restrict keeping or carrying arms.

At the end of the nineteenth century, in 1899, South Carolina forbade "discharg[ing] any gun, pistol or other firearms while upon or within fifty yards of any public road, except upon his own premises" while "under the influence of intoxicating liquors."[9] The law did not affect anyone's ability to keep or bear arms.

B. Limitations on alcohol use by militiamen.

Colonial- and Founding-Era governments frequently limited alcohol use by militiamen to ensure sobriety, discipline, and competence during militia service. These laws regulated conduct while militiamen were training or on duty and did not apply to the general population.

During the colonial period, three English colonies and New Netherland penalized militiamen for on-duty intoxication. In 1643, New Netherland fined "any one, on the Burgher guard," who "comes fuddled or

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[8] 5 THE COLONIAL LAWS OF NEW YORK FROM THE YEAR 1664 TO THE REVOLUTION 244–45 (1894).

[9] 1899 S.C. Acts 97.

intoxicated on guard."[10] A 1746 New Jersey law authorized a "Captain or Commanding Officer to disarm" a soldier who "appear[ed] in Arms disguised in Liquor."[11] A 1756 Maryland law fined "any Person of the Militia who shall get drunk on any Muster-day before or at Muster."[12] In 1775, Connecticut punished any militiaman "found drunk on his Guard, Party, or other Duty under Arms."[13]

Pennsylvania and South Carolina enacted similar laws in the Founding Era. Under Pennsylvania's 1780 law, "any non-commissioned officer or private" who was "found drunk" while "parading the company to which he belongs" was to "be disarmed and put under guard by order of the commanding officer present until the company is dismissed."[14] Additionally, the law provided that "[n]o company or battalion shall meet at a tavern on any of the days of exercise, nor shall march to any tavern before they are discharged; and any person who shall bring any kind of spiritous liquor to such place of training shall forfeit such liquors so brought for the use of the poor belonging to the township where such offender lives."[15] In 1782, South Carolina punished any officer or private "found

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[10] LAWS AND ORDINANCES OF NEW NETHERLAND, 1638–1674, at 35.

[11] 2 BACKGROUNDS OF SELECTIVE SERVICE: MILITARY OBLIGATION: THE AMERICAN TRADITION, pt. 8, at 25 (Arthur Vollmer ed., 1947).

[12] *Id.* pt. 5, at 93.

[13] *Id.* pt. 2, at 188.

[14] *Id.* pt. 11, at 97.

[15] *Id.* at 100.

drunk on guard, or at any other time of duty."[16] As with the colonial-era militia laws, the Founding-Era laws were intended to ensure that militiamen safely and competently fulfilled their duties. They applied only to militiamen while on-duty and had no application to the general population.

States continued to restrict alcohol use by militiamen in the nineteenth century. Maine in 1837,[17] Massachusetts in 1837,[18] Rhode Island in 1840,[19] Pennsylvania in 1864,[20] the District of Columbia in 1871,[21] and the Utah Territory in 1894[22] prevented "common drunkards" from enrolling or holding certain positions in the militia—but did not prevent them from keeping or carrying arms.

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[16] 1782 S.C. Acts 22.

[17] THE REVISED STATUTES OF THE STATE OF MAINE, PASSED OCTOBER 22, 1840, at 140 (1841).

[18] 14 LAWS OF THE COMMONWEALTH OF MASSACHUSETTS PASSED BY THE GENERAL COURT, IN THE YEAR 1837 AND 1838, at 273 (1839); *see also* ACTS AND RESOLVES PASSED BY THE GENERAL COURT OF MASSACHUSETTS, IN THE YEAR 1873, at 760 (1873) (similar 1873 law).

[19] 1840 R.I. Pub. Laws 16; *see also* 1844 R.I. Pub. Laws 503.

[20] LAWS OF THE GENERAL ASSEMBLY OF THE STATE OF PENNSYLVANIA, PASSED AT THE SESSION OF 1864, at 222 (1864).

[21] LAWS OF THE DISTRICT OF COLUMBIA 1871–1872, pt. 2, at 59 (1872).

[22] LAWS OF THE TERRITORY OF UTAH, PASSED BY THE LEGISLATIVE ASSEMBLY AT ITS THIRTY-FIRST SESSION 64 (1894).

Additionally, three colonies and six states restricted alcohol sales near military gatherings.[23]

C. Prohibition on selling firearms to an intoxicated person.

In 1878, Mississippi forbade "any person to sell to any … person intoxicated" any "bowie knife, pistol, brass knuckles, slung shot or other deadly weapons of like kind or description."[24] This law did not restrict the keeping or bearing of arms already owned and it applied only while the person was intoxicated.

D. Prohibitions on carrying firearms while intoxicated.

California in 1856 disarmed "dangerous and suspicious persons," including "common drunkards," but *only if* they "go armed, and are not known to be peaceable and quiet persons, and who can give no good account of themselves."[25]

Three states forbade carrying arms while intoxicated in the late nineteenth century. Kansas, in 1867, prohibited "any person under the influence of intoxicating drink" from "carrying on his person a

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[23] 2 BACKGROUNDS OF SELECTIVE SERVICE, pt. 3, at 13 (1756 Delaware); *id.* pt. 5, at 93 (1756 Maryland); *id.* pt. 8, at 35 (1757 New Jersey); 1852 Vt. Acts & Resolves 25; 1853 R.I. Pub. Laws 238; 1859 Conn. Acts 62; 1875 Pa. Laws 48; 1886 Ohio Gen. and Local Acts 100; 1896 Iowa Acts 104.

[24] LAWS OF THE STATE OF MISSISSIPPI, PASSED AT A REGULAR SESSION OF THE MISSISSIPPI LEGISLATURE, HELD IN THE CITY OF JACKSON, COMMENCING JAN. 8TH, 1878, AND ENDING MARCH 5TH, 1878, at 175 (1878).

[25] 2 THE GENERAL LAWS OF THE STATE OF CALIFORNIA FROM 1850 TO 1864, INCLUSIVE 1076–77 (Theodore H. Hittell ed., 1868).

pistol, bowie-knife, dirk or other deadly weapon."[26] Missouri, in 1879, made it illegal to carry "any kind of firearm, bowie-knife, dirk, dagger, slung-shot, or other deadly weapon" "upon or about his person when intoxicated or under the influence of intoxicating drinks."[27] Wisconsin, in 1883, made it "unlawful for any person in a state of intoxication, to go armed with any pistol or revolver."[28] These laws applied only to the carrying of arms, and only while intoxicated.

Relatedly, the New Mexico Territory and Oklahoma Territory targeted alcohol sales to armed persons. "Any person desiring to give a Ball or Fandango" in the New Mexico Territory in 1852 had to bar entry to anyone carrying arms if alcohol was sold.[29] The Oklahoma Territory, in 1890, forbade carrying certain concealable weapons at "any place where intoxicating liquors are sold."[30] Also in 1890, the Oklahoma Territory prohibited "any public officer" from "carrying" certain arms, including a pistol or revolver, "while under the influence of intoxicating drinks."[31]

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[26] THE LAWS OF THE STATE OF KANSAS, PASSED AT THE SEVENTH SESSION OF THE LEGISLATURE, COMMENCED AT THE STATE CAPITAL ON TUESDAY, JAN. 8, 1867, at 25 (1867).

[27] 1 THE REVISED STATUTES OF THE STATE OF MISSOURI 224 (1879).

[28] 1883 Wis. Sess. Laws 290.

[29] 1852 N.M. Laws 67–69.

[30] THE STATUTES OF OKLAHOMA 1890, at 496 (Will T. Little et al. eds., 1891).

[31] *Id.*

In sum, many historical laws addressed problems of firearms misuse by intoxicated persons. But they did not disarm individuals when they were sober simply because they chose to become intoxicated when not carrying or shooting firearms. "The lesson here is that disarmament is a modern solution to a centuries-old problem. The fact that 'earlier generations addressed the societal problem ... through materially different means ... [is] evidence that' disarming *all* drug users, simply because of who they are, is inconsistent with the Second Amendment."[32]

II. The combination of intoxicants and firearms is a problem that has persisted since the eighteenth century.

A "general societal problem that has persisted since the 18th century" demands "a distinctly similar historical regulation" addressing it.[33] The dangers caused by mixing firearms and intoxicants such as marijuana or alcohol constitute such a problem.

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[32] *United States v. Veasley*, 98 F.4th 906, 912 (8th Cir. 2024) (quoting *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 26 (2022)).

[33] *Bruen*, 597 U.S. at 26.

A. Alcohol abuse was rampant in the Founding Era.

"[A]lcoholic beverages have been … abused by humans for thousands of years."[34] Early Americans were no exception.

Alcohol was ubiquitous in early America. According to Benjamin Franklin's *The Drinkers Dictionary*, by 1737 Americans coined over 225 phrases signifying drunkenness.[35]

Alcohol use reached its peak during the colonial, Founding, and early republic periods. "[I]n 1770 the annual per capita intake of alcohol from all sources was 3.5 gallons. In the years following the Revolution the amount declined [to about 3.0 gallons] as consumption of spirits declined [due to high import duties]. But after 1800, as the quantity of spirits consumed increased, the total quantity of alcohol consumed from all sources increased until it reached a peak of nearly 4 gallons per capita in 1830."[36]

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[34] Hanan Hamdi et al., *Early historical report of alcohol hepatotoxicity in Minooye Kherad, a Pahlavi manuscript in Ancient Persia, 6th century CE*, 13 CASPIAN J. INTERNAL MED. 431, 431 (2022); *see generally* Li Liu et al., *Fermented Beverage and Food Storage in 13,000-Y-Old Stone Mortars at Raqefet Cave, Israel*, 21 J. ARCHAEOL. SCI.: REP. 783 (2018).

[35] THE PENNSYLVANIA GAZETTE, Jan. 13, 1737.

[36] W. J. Rorabaugh, THE ALCOHOLIC REPUBLIC: AN AMERICAN TRADITION 10 (1979).

Americans' alcohol use has never again reached such rates.[37]

The Founders were alarmed by Americans' rampant drinking. George Washington, who later operated one of America's largest whiskey distilleries, called alcohol "the source of all evil—and the ruin of half the workmen in this Country."[38] John Adams asked, "is it not mortifying beyond all expression that we, Americans, should exceed all other and millions of people in the world in this degrading, beastly vice of intemperance?"[39] Thomas Jefferson lamented that "liquor is spreading through the mass of our citizens."[40] Benjamin Rush, a physician and signer of the Declaration of Independence, warned that some drinkers "afford scarcely any marks of remission, either during the day or the night."[41] Thus, "[t]he Founding Fathers, fearful that the American republic

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[37] *See Alcohol consumption per capita from all beverages in the U.S. from 1850 to 2021*, STATISTA.COM, May 26, 2023, https://www.statista.com/statistics/442818/per-capita-alcohol-consumption-of-all-beverages-in-the-us/.

[38] Letter from George Washington to Thomas Green, Mar. 31, 1789, *in* 11 THE WRITINGS OF GEORGE WASHINGTON 1785–1790, at 377 (Worthington Chauncey Ford ed., 1891).

[39] Letter from John Adams to William Willis, Feb. 21, 1819, *in* 10 THE WORKS OF JOHN ADAMS, SECOND PRESIDENT OF THE UNITED STATES 365 (Charles Francis Adams ed., 1856).

[40] Letter from Thomas Jefferson to Samuel Smith, May 3, 1823, *in* 10 THE WRITINGS OF THOMAS JEFFERSON 252 (Paul Leicester Ford ed., 1899).

[41] 1 Benjamin Rush, MEDICAL INQUIRIES AND OBSERVATIONS 341 (2d ed. 1805).

would be destroyed in a flood of alcohol, were anguished and perplexed."[42]

The concern persisted into the nineteenth century. An address published by the Reverend Herman Humphrey in 1813 declared that "no other people ever indulged, so universally from the highest to the lowest, in their use of ardent spirits, as the people of this country.... Not only do men drink, but women also; and even children are early initiated into the schools of intemperance."[43]

B. Hemp has been cultivated in America since Jamestown.

Marijuana, unlike some modern synthetic drugs, does not present a "dramatic technological change[]."[44] Rather, hemp has been abundant throughout American history.[45]

In 1609, settlers at Jamestown were required to cultivate hemp.[46] America's first legislative body, Virginia's General Assembly of 1619, "enjoine[d] all householders of this Colony, that have any of those

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[42] Rorabaugh, at 6.

[43] AN ADDRESS, TO THE CHURCHES AND CONGREGATIONS OF THE WESTERN DISTRICT OF FAIRFIELD COUNTY 6 (1813).

[44] *Bruen*, 597 U.S. at 27; *see also Veasley*, 98 F.4th at 912.

[45] This brief's use of the term "hemp" is primarily for historical parity and accuracy. "Marijuana" and "cannabis" were not terms that the Founding generation used. At the time, hemp could be consumed as an intoxicant and should therefore be understood as tantamount to marijuana.

[46] 3 THE RECORDS OF THE VIRGINIA COMPANY OF LONDON 22 (Susan Myra Kingsbury ed., 1933).

seeds," to cultivate "both *Englishe* & Indian" "hempe."[47] By 1620, "hempe and flaxe" were reported to be "the most growinge thinges in the country" and "the best in the world."[48]

Massachusetts in 1639 and Connecticut in 1640 also mandated hemp cultivation.[49] Some colonies authorized the repayment of certain debts in hemp.[50]

In *Common Sense*, Thomas Paine noted, "In almost every article of defence we abound. Hemp flourishes even to rankness, so that we need not want cordage.... Our small arms equal to any in the world."[51] George Washington and Thomas Jefferson were among the many Americans who grew hemp.[52]

Americans read about people in other nations using hemp as an intoxicant. As part of the famous French scientific expedition to Egypt under Napoleon,

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[47] 1 JOURNALS OF THE HOUSE OF BURGESSES OF VIRGINIA 1619–1658/59, at 10 (H. R. McIlwaine ed., 1915).

[48] 3 THE RECORDS OF THE VIRGINIA COMPANY OF LONDON, at 305.

[49] THE COMPACT WITH THE CHARTER AND LAWS OF THE COLONY OF NEW PLYMOUTH 63 (William Brigham ed., 1836) ("hemp or flax"); THE PUBLIC RECORDS OF THE COLONY OF CONNECTICUT, PRIOR TO THE UNION WITH NEW HAVEN COLONY, MAY, 1665, at 61 (J. Hammond Trumbull ed., 1850).

[50] *See, e.g.*, 2 THE STATUTES AT LARGE, at 506 (Virginia 1682).

[51] Thomas Paine, *Common Sense; Addressed to the Inhabitants of America* 56 (1776).

[52] *See, e.g.*, 1 THE DIARIES OF GEORGE WASHINGTON 340 (Donald Jackson ed., 1976); THOMAS JEFFERSON'S FARM BOOK 250–53 (Edwin Morris Betts ed., 1953).

renowned botanist Charles-Nicolas-Sigisbert Sonnini de Manoncourt reported: "For want of intoxicating liquors, the Arabs and the Egyptians compose several preparations from this plant, with which they procure for themselves a sort of pleasing drunkenness, a state of reverie which inspires gaiety, and produces agreeable dreams."[53] American newspaper articles headlined Sonnini's report that hemp can be intoxicating, and were soon reporting about other regions around the world where hemp was used as an intoxicant.[54]

Nineteenth-century Americans understood that hemp, when ingested, could produce intoxicating effects. As hemp cultivation expanded beyond fiber and cordage, American physicians documented its psychoactive properties in authoritative medical references.[55] At the time, *The Dispensatory of the*

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[53] 3 C. S. Sonnini, TRAVELS IN UPPER AND LOWER EGYPT, UNDERTAKEN BY ORDER OF THE OLD GOVERNMENT OF FRANCE 92 (Henry Hunter trans., 1799).

[54] *See, e.g.*, *Extract from Sonnini's Travels in Egypt, Respecting the Use of a Preparation of Hemp, as a Narcotic*, LITERARY GAZETTE, May 26, 1801, at 4; *Intoxicating Quality of Hemp*, CHARLESTON COURIER, May 20, 1803, at 2; CHARLESTON MERCURY, Dec. 8, 1825, at 1.

[55] George B. Wood & Franklin Bache, THE DISPENSATORY OF THE UNITED STATES OF AMERICA 339 (10th ed. 1854) ("Extract of hemp is a powerful narcotic, causing exhilaration, intoxication, delirious hallucinations, and, in its subsequent action, drowsiness and stupor, with little effect upon the circulation. It is asserted also to act as a decided aphrodisiac, to increase the appetite, and occasionally to induce the cataleptic state. In overdoses it may produce poisonous effects. In morbid states of the system, it has been found to produce sleep, to allay spasm, to compose nervous inquietude, and to relieve pain.").

United States of America was the standard American pharmacological treatise of the era. It described preparations derived from hemp as capable of producing "exhilaration" and disturbances of perception, with stronger doses leading to marked cognitive impairment.[56] *The Dispensatory* cautioned that these effects varied by quantity and individual susceptibility, reflecting an understanding that hemp was not merely inert plant matter but a substance capable of intoxicating the mind.[57] By 1860, English botanist and writer Mordecai Cubitt Cooke wrote of Americans adopting an intoxicating preparation of hemp—"the 'bang,' so popular among the Hindoos"—consisting of "a mixture of bruised hemp tops and the powder of the betel, rolled up like a quid of tobacco."[58] Thus, hemp's intoxicating effects were understood when legislatures nevertheless confined firearm regulation to narrow, conduct-based restrictions rather than broad prohibitions on possession.

C. The simultaneous use of intoxicants and firearms has been problematic throughout American history.

Inevitably, firearms and alcohol mixed. The combination may have led to "the shot heard round the world," which sparked the Revolutionary War. At Lexington, many British "Regulars thought that the first shot came from" the Buckman Tavern, where

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[56] *Id.* at 339–40.

[57] *Id.*

[58] M. C. Cooke, THE SEVEN SISTERS OF SLEEP: POPULAR HISTORY OF THE SEVEN PREVAILING NARCOTICS OF THE WORLD 255–56 (1860).

several "armed men … had partaken liberally of the landlord's hospitality."[59]

Alcohol was present at the subsequent battle in Concord. Elias Brown, "a madman [who] wandered unmolested through the center of the action," spent the day "happily pouring hard cider for men on both sides."[60]

Throughout the war, alcohol was commonly used by armed American troops. A surgeon who disparaged New England's troops as "a drunken … rabble" asserted in May 1775 that "without New-England rum, a New-England army could not be kept together … they drink at least a bottle of it a man a day."[61]

During the Whiskey Rebellion of 1794, "[d]runkenness was widespread" among the volunteers.[62]

Drinking while armed was especially common during militia musters. Noah Worcester (under the pseudonym "Philo Pacificus")—a pioneer of pacifism in America—explained that near the end of the eighteenth century, "the officers were in the habit of distributing large quantities of rum to the soldiers," and the militiamen would then "honor[the] officers by

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[59] David Hackett Fischer, PAUL REVERE'S RIDE 193 (1994).

[60] *Id.* at 216. Brown's "Concord cider had fermented all winter and was twenty proof by April." *Id.*

[61] LETTERS ON THE AMERICAN REVOLUTION 1774–1776, at 120 (Margaret Wheeler Willard ed., 1925).

[62] Stephen E. Ambrose, UNDAUNTED COURAGE 40 (1996).

the discharge of muskets near their heads or their feet."[63]

In 1803, the famous circuit-riding Bishop, Francis Asbury, wrote about encountering a drunken mob of militiamen returning—with their arms, no doubt—from a muster: "We met people coming from a militia muster, drunk, and staggering along the lanes and paths; these unhappy souls have had their camp-meeting, and shout forth the praises of the god of strong drink."[64]

The early American poet William Cullen Bryant, born in 1794, recalled a militia company drinking with their officer's approval in his "early years":

> It was, to be sure, esteemed a shame to get drunk; but, as long as they stopped short of this, people, almost without exception, drank grog and punch freely with out much fear of a reproach from any quarter.…
>
> I remember an instance of this kind. There had been a muster of a militia company on the church green for the election of one of its officers, and the person elected had treated the members of the company and all who were present to sweetened rum and water,

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[63] 4 Philo Pacificus, THE FRIEND OF PEACE 379 (1827).

[64] 3 THE JOURNAL OF THE REV. FRANCIS ASBURY, BISHOP OF THE METHODIST EPISCOPAL CHURCH, FROM AUGUST 7, 1771, TO DECEMBER 7, 1815, at 121 (1821).

> carried to the green in pailfuls, with a tin cup
> to each pail for the convenience of drinking.[65]

A retired officer who had served in the War of 1812 later wrote that his "habit of drinking" was then "less thought of, since it was the universal custom … for the officers, on every muster day, to get gloriously drunk in their country's service."[66] An account of an 1840 militia muster in Racine County, Wisconsin, explains that the militiamen "all got so drunk they couldn't muster at all in the afternoon!"[67] Likewise, a story from antebellum North Carolina notes that "Mountain Lager Beer," a "mildly intoxicating drink," was "quite common in the days of … big musters" and that "many men got drunk" at "[t]he Big Musters."[68]

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[65] 1 THE LIFE AND WORKS OF WILLIAM CULLEN BRYANT 16 (1883).

[66] Bellerophon Burdock, *Reminiscences of a Retired Militia Officer*, *in* 3 THE NEW-ENGLAND MAGAZINE 111 (J. Buckingham et al. eds., 1832).

[67] Charles E. Dyer, HISTORICAL ADDRESS, DELIVERED BEFORE THE OLD SETTLERS SOCIETY, OF RACINE COUNTY, WISCONSIN 43 (1871).

[68] John Preston Arthur, WESTERN NORTH CAROLINA: A HISTORY (FROM 1730 TO 1913), at 271, 284 (1914).

Militia musters had long served as an excuse for heavy drinking. England's first official Poet Laureate, John Dryden, suggested in 1700 that the English militia was more concerned with drinking than fulfilling its duties:

> Stout once a Month they march a blust'ring Band,
> And ever, but in times of Need, at hand:
> This was the Morn when issuing on the Guard,
> Drawn up in Rank and File they stood prepar'd
> Of seeming Arms to make a short essay,

A popular tradition in America starting in the eighteenth century was "wishing-in and shooting-in the New Year":[69]

> Beginning at sunset on New Year's Eve a group of men known as New Year's shooters, carrying guns loaded only with gunpowder, make the rounds of the homes in their community. When they arrive at a home, one of the group, the wisher, calls out to the man of the house and … addresses a New Year's wish to him. After the wish the shooters fire their guns and are then invited in for refreshments. After a short stay, they proceed to the next home on their rounds, which last until dawn of New Year's Day.[70]

"Sometimes … when making their rounds, it would happen that one or more of the party indulged too freely in the refreshments offered by their hosts,

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Then hasten to be Drunk, the Business of the Day.

John Dryden, *Cymon and Iphigenia, From Boccace*, *in* FABLES, ANCIENT AND MODERN 556 (1700).

[69] *See* Walter L. Robbins, *Wishing in and Shooting in the New Year among the Germans in the Carolinas*, *in* AMERICAN FOLKLIFE 257–80 (Don Yoder ed., 1976); Walter L. Robbins, *Christmas Shooting Rounds in America and Their Background*, 86 THE J. OF AM. FOLKLORE 48, 50–51 (no. 339, 1973); 8 THE PENNSYLVANIA-GERMAN, JAN.–DEC. 1907, at 16 (1907).

[70] Robbins, *Wishing in and Shooting in the New Year*, at 257.

especially the *Dram un Seidereil*, and came home in a condition ill befitting a New Year's celebration."[71]

During the nineteenth century, Christmas shooting rounds became popular. This tradition was somewhat similar to caroling, except instead of singing the group would fire guns outside the home and expect to be reciprocated with liquor and sweets. Gert Göbel, a German immigrant, described the tradition in Missouri around the 1830s:

> Even less known was the fine German custom of decorating a Christmas tree. There was just shooting. On Christmas Eve, a number of young fellows from the neighborhood banded together, and, after they had gathered together not only their hunting rifles but also old muskets and horse pistols from the Revolutionary War and had loaded them almost to the bursting point, they went from house to house. They approached a house as quietly as possible and then fired a mighty volley, to the fright of the women and children, and, if someone did not appear then, another volley no doubt followed. But usually the man of the house opened the door immediately, fired his own gun in greeting and invited the whole company into the house. There the whiskey

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[71] THE PENNSYLVANIA-GERMAN, vol. 8, Jan.-Dec. 1807, at 16. A "dram" is "a small drink of liquor." RANDOM HOUSE WEBSTER'S COLLEGE DICTIONARY 405 (1995). "'Seidereil' is boiled cider with honey added." 33 THE PENNSYLVANIA-GERMAN SOCIETY: PROCEEDINGS AND ADDRESSES AT READING, PA., OCTOBER 6, 1922, at 231 (1923).

> jug made the rounds, and some pastry was also handed around. After everyone had chatted for a little while, the whole band set out for the next farm, where the same racket started up anew. In this way, this mischief was carried on until morning, and since, as a rule, a number of such bands were out and about, one could often hear all night the roaring and rattling of guns from all directions.[72]

South Carolinians practiced this tradition in the 1830s, too. There, citizens would:

> ramble throughout the night of Christmas Eve, in companies of a dozen persons, from house to house, firing heavily charged guns, and having thus aroused the family they would enter the domicile with stamping scramble to the blazing fire, greedily eat the *praetzilies* and *schneckilies*, imbibe, with many a rugged joke and ringing peal of laughter, heavy draughts of a compound liquor made of rum and sugar, butter and alspice stewed together, and then, "With monie an eldritch screetch an' hollo," rush out into the night to visit the next neighbor.[73]

Similarly, in Indiana in the 1850s, "[b]ands of young men armed with muskets, horns and conch-

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[72] Robbins, *Christmas Shooting Rounds*, at 48 (quoting 3 Gert Göbel, LANGER ALS EIN MENSCHENLEBEN IN MISSOURI 80–81 (1877)).

[73] John Belton O'Neall & John Abney Chapman, THE ANNALS OF NEWBERRY 660 (1892).

shells made the rounds of the neighborhood on Christmas eve, shooting in front of houses and demanding treats of liquor, apples, pies or cakes."[74]

Whether in entertainment, celebration, or war, early Americans used firearms while also using intoxicants. As demonstrated in Part I, the historical record shows that legislatures confronted these risks through narrow, conduct-based regulations rather than broad prohibitions on firearm possession. For instance, when concerns arose about militiamen mixing alcohol and arms, legislatures focused on those concerns through targeted measures—such as prohibiting the distribution or consumption of alcohol at militia musters—rather than by disarming militia members altogether. Likewise, reckless celebratory shooting by intoxicated individuals was addressed through laws forbidding the carry or discharge of firearms while intoxicated, not through categorical disarmament.

III. The government's non-firearm analogues are not distinctly similar.

Although *Bruen* requires the government to prove that its ban on marijuana users "is consistent with the Nation's historical tradition of *firearm* regulation,"[75] the government cites conspicuously few *firearm* regulations to justify its law.[76] Instead, the

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[74] 2 Logan Esarey, HISTORY OF INDIANA FROM ITS EXPLORATION TO 1922, at 595 (1922).

[75] 597 U.S. at 24 (emphasis added).

[76] *See* Pet. Br. 14–16.

government relies on regulations that at most incidentally affected firearm possession: civil-commitment, vagrancy, and surety laws.

Attempting to shoehorn these regulations into a historical tradition of disarmament, the government claims that they targeted "people who presented well-recognized dangers."[77]

Civil-Commitment Laws

The government cites 22 nineteenth-century laws that allowed habitual drunkards "to be committed to asylums, placed in the custody of guardians, or both, in the same manner as lunatics."[78] Those laws, however, applied only to habitual drunkards who had become functionally incompetent—that is, judicially determined to be incapable of managing their own affairs or caring for themselves.[79] The government

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[77] *Id.* at 15.

[78] *Id.* at 21 & n.12. The government's description is imprecise. Even when the statutes addressed both lunatics and habitual drunkards, they did not always treat them "in the same manner." *Id.* at 21. For example, Georgia allowed both groups to be appointed a guardian, but only "Guardians of insane persons are authorized to confine them, or place them in the asylum, if such course is necessary either for their own protection or the safety of others." THE CODE OF THE STATE OF GEORGIA 360 (R. H. Clark et al. eds., 1861).

[79] *See, e.g.*, REVISED STATUTES OF THE STATE OF ARKANSAS, ADOPTED AT THE OCTOBER SESSION OF THE GENERAL ASSEMBLY, A.D. 1837, at 456 (William M. Ball & Sam C. Roane eds., 1838) ("incapable of conducting their own affairs"); THE GENERAL STATUTES OF THE STATE OF KANSAS 552 (John M. Price et al. eds., 1868) ("incapable of managing his affairs"); THE CODE OF THE STATE OF GEORGIA, at 358 ("incapable of managing their own

offers no evidence that marijuana users generally, or Hemani in particular, are rendered functionally incompetent as a result of marijuana use. Accordingly, those laws are inapplicable.

Vagrancy Laws

The government also cites vagrancy laws, which compelled people—by means that could include whipping or starvation[80]—to work if the government deemed them unproductive members of society.

Vagrancy laws are not analogous to 18 U.S.C. § 922(g)(3) in how or why they regulate arms-bearing conduct.[81] As to the "how," any effect vagrancy laws had on arms-bearing was incidental to detention or compelled labor, not a deliberate prohibition on firearm possession. As to the "why," vagrancy laws functioned as tools of social and economic control,

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estates"); THE REVISED STATUTES, OF THE TERRITORY OF MINNESOTA, PASSED AT THE SECOND SESSION OF THE LEGISLATIVE ASSEMBLY, COMMENCING JANUARY 1, 1851, at 278 (1851) ("mentally incompetent to have the care and management of their own property"); 1870 Wis. Gen. Laws 197 ("unable to attend to business," "lost to self control," "an unsafe person to remain at large," "greatly endanger[s] his health, life or property," "exposes himself or his family to danger of want or suffering").

[80] 1 THE ACTS AND RESOLVES, PUBLIC AND PRIVATE, OF THE PROVINCE OF THE MASSACHUSETTS BAY 378 (1869); 2 LAWS OF NEW HAMPSHIRE 267 (Albert Stillman Batchellor ed., 1913); THE PUBLIC RECORDS OF THE COLONY OF CONNECTICUT, FROM MAY, 1726, TO MAY, 1735, INCLUSIVE 128 (Charles J. Hoadly ed., 1873); THE REVISED STATUTES OF MONTANA, ENACTED AT THE REGULAR SESSION OF THE TWELFTH LEGISLATIVE ASSEMBLY OF MONTANA 82 (1881).

[81] *See United States v. Rahimi*, 602 U.S. 680, 681 (2024).

punishing perceived idleness or nonconformity rather than addressing dangerousness or misuse of firearms.

Additionally, the government's argument would lead to absurd results, as it would also allow for the disarmament of a sweeping array of other peaceable persons covered by vagrancy laws, including: people who juggle,[82] play the fiddle,[83] play the bagpipes,[84] read palms,[85] "neglect their callings,"[86] "misspend

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[82] 1 THE ACTS AND RESOLVES, PUBLIC AND PRIVATE, OF THE PROVINCE OF THE MASSACHUSETTS BAY, at 378; 2 LAWS OF NEW HAMPSHIRE, at 266; THE PUBLIC RECORDS OF THE COLONY OF CONNECTICUT, FROM MAY, 1726, TO MAY, 1735, at 128; LAWS OF THE STATE OF NEW-JERSEY 474 (1821).

[83] 1 THE ACTS AND RESOLVES, PUBLIC AND PRIVATE, OF THE PROVINCE OF THE MASSACHUSETTS BAY, at 378; 2 LAWS OF NEW HAMPSHIRE, at 266; THE PUBLIC RECORDS OF THE COLONY OF CONNECTICUT, FROM MAY, 1726, TO MAY, 1735, at 128.

[84] 1 THE ACTS AND RESOLVES, PUBLIC AND PRIVATE, OF THE PROVINCE OF THE MASSACHUSETTS BAY, at 378; 2 LAWS OF NEW HAMPSHIRE, at 266; THE PUBLIC RECORDS OF THE COLONY OF CONNECTICUT, FROM MAY, 1726, TO MAY, 1735, at 128.

[85] 1 THE ACTS AND RESOLVES, PUBLIC AND PRIVATE, OF THE PROVINCE OF THE MASSACHUSETTS BAY, at 378; 2 LAWS OF NEW HAMPSHIRE, at 266; THE PUBLIC RECORDS OF THE COLONY OF CONNECTICUT, FROM MAY, 1726, TO MAY, 1735, at 128; LAWS OF THE STATE OF NEW-JERSEY, at 474.

[86] 1 THE ACTS AND RESOLVES, PUBLIC AND PRIVATE, OF THE PROVINCE OF THE MASSACHUSETTS BAY, at 378; 2 LAWS OF NEW HAMPSHIRE, at 266; THE PUBLIC RECORDS OF THE COLONY OF CONNECTICUT, FROM MAY, 1726, TO MAY, 1735, at 128; *see also* ACTS OF THE SESSION OF 1865–6, OF THE GENERAL ASSEMBLY OF ALABAMA 116 (1866).

what they earn,"[87] "do not provide for themselves,"[88] "do[] not for the space of ten days seek employment,"[89] "roam[] from place to place without any lawful business,"[90] are "stubborn servant[s],"[91] or "appear in the streets or in public in apparel usually worn exclusively by the opposite sex."[92]

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[87] 1 THE ACTS AND RESOLVES, PUBLIC AND PRIVATE, OF THE PROVINCE OF THE MASSACHUSETTS BAY, at 378; 2 LAWS OF NEW HAMPSHIRE, at 266; THE PUBLIC RECORDS OF THE COLONY OF CONNECTICUT, FROM MAY, 1726, TO MAY, 1735, at 128.

[88] 1 THE ACTS AND RESOLVES, PUBLIC AND PRIVATE, OF THE PROVINCE OF THE MASSACHUSETTS BAY, at 378; 2 LAWS OF NEW HAMPSHIRE, at 266; THE PUBLIC RECORDS OF THE COLONY OF CONNECTICUT, FROM MAY, 1726, TO MAY, 1735, at 128; LAWS OF THE STATE OF NEW-JERSEY, at 474.

[89] REVISED STATUTES OF ARIZONA 753 (1887); 2 THE CODES AND STATUTES OF THE STATE OF CALIFORNIA 1288 (Theodore H. Hittell ed., 1876); GENERAL LAWS OF THE TERRITORY OF IDAHO, PASSED AT THE THIRTEENTH SESSION OF THE TERRITORIAL LEGISLATURE 200 (1885); THE COMPILED LAWS OF THE TERRITORY OF UTAH 647 (1876); *see also* THE REVISED STATUTES OF MONTANA, at 81; STATUTES OF THE STATE OF NEVADA, PASSED AT THE SIXTH SESSION OF THE LEGISLATURE, 1873, at 189 (1873).

[90] REVISED STATUTES OF ARIZONA, at 753; 2 THE CODES AND STATUTES OF THE STATE OF CALIFORNIA, at 1288; THE COMPILED LAWS OF THE TERRITORY OF UTAH, at 647; STATUTES OF THE STATE OF NEVADA, at 189.

[91] THE PUBLIC RECORDS OF THE COLONY OF CONNECTICUT, FROM MAY, 1726, TO MAY, 1735, at 128; ACTS OF THE SESSION OF 1865–6, OF THE GENERAL ASSEMBLY OF ALABAMA, at 116.

[92] PUBLIC LAWS OF THE STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS, PASSED AT THE SESSIONS OF THE GENERAL ASSEMBLY, FROM AND AFTER JAN. 1863, TO JAN. 1865, INCLUSIVE 366 (1866).

Surety Laws

The government further cites surety laws. But surety laws did not provide for disarmament. Notably, in *Rahimi*, it was the "going armed" laws, not the surety laws, that justified disarmament under 18 U.S.C. § 922(g)(8)—because "going armed laws provided for imprisonment … the lesser restriction of temporary disarmament that Section 922(g)(8) imposes is also permissible."[93]

Moreover, the reasons surety laws helped justify Section 922(g)(8) in *Rahimi* do not apply here. In *Rahimi*, the Court emphasized that surety laws were analogous to Section 922(g)(8) because they "applie[d] to individuals found to threaten the physical safety of another";[94] "involved judicial determinations of whether a particular defendant likely would threaten or had threatened another with a weapon";[95] were intended "to mitigate demonstrated threats of physical violence";[96] and presumed "that the Second Amendment right may only be burdened once a defendant has been found to pose a credible threat to the physical safety of others."[97] None of these features is present in Section 922(g)(3), which imposes a categorical prohibition untethered from any judicial finding of dangerousness or threatening conduct.

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[93] *Rahimi*, 602 U.S. at 699.

[94] *Id.* at 698.

[95] *Id.* at 699.

[96] *Id.* at 698.

[97] *Id.* at 700.

IV. The government's failure to establish dangerousness renders Section 922(g)(3) unconstitutional as applied to Hemani.

The only historical justification for disarmament of "the people" is dangerousness.[98] Like surety and going armed laws,[99] disarmament laws throughout American history—including those targeting loyalists,[100] tramps,[101] insurrectionists,[102] the mentally ill,[103] and even discriminatory laws or

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[98] *See, e.g.*, *Kanter v. Barr*, 919 F.3d 437, 454–64 (7th Cir. 2019) (Barrett, J., dissenting); *Folajtar v. Attorney Gen. United States*, 980 F.3d 897, 913–20 (3d Cir. 2020) (Bibas, J., dissenting).

[99] *Rahimi*, 602 U.S. at 698–99.

[100] Joseph G.S. Greenlee, *Disarming the Dangerous: The American Tradition of Firearm Prohibitions*, 16 DREXEL L. REV. 1, 49–69 (2024).

[101] Joseph G.S. Greenlee, *The Historical Justification for Prohibiting Dangerous Persons from Possessing Arms*, 20 WYO. L. REV. 249, 269–71 (2020); *see also State v. Hogan*, 63 Ohio St. 202, 215–16 (1900) ("the genus tramp" is "dangerous," "a public enemy," and "a thief, a robber, often a murderer," who uses "vicious violence" to "terroriz[e] the people"—including "unprotected women and children").

[102] Greenlee, *The Historical Justification*, at 268–69.

[103] *See, e.g.*, *Parman v. Lemmon*, 119 Kan. 323, 244 P. 227, 229 (1925) ("Can it be said that a Winchester rifle or repeating shotgun, placed in the hands of an insane or incompetent person, is not a weapon that is inherently dangerous to himself and his associates? The answer is obvious." (Discussing 1883 restriction on transfers of weapons "to any person of notoriously unsound mind." 1883 Kan. Sess. Laws 159)).

practices against slaves,[104] free blacks,[105] American Indians,[106] Catholics,[107] Antinomians,[108] and Puritans[109]—were "designed to disarm people who were perceived as posing a danger to the community."[110] By contrast, peaceable citizens were always understood to fall outside the government's power to disarm.[111]

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[104] Greenlee, *Disarming the Dangerous*, at 27–28.

[105] *Id.*

[106] *Id.* at 29–30.

[107] *Id.* at 35–46.

[108] *Id.* at 46–48.

[109] *Id.* at 48–49.

[110] *Id.* at 81. To be sure, *Bruen* makes clear that discriminatory laws cannot form a historical tradition. *See id.* at 26. Indeed, it would be "the height of irony to cite a law that was enacted for exactly the purpose of preventing someone from exercising" the right to keep and bear arms "as an example of what the Second Amendment protects." Transcript of Oral Argument at 99–100, *Wolford v. Lopez*, No. 24-1046 (U.S. Jan. 20, 2026).

[111] *See, e.g.*, 6 THE DOCUMENTARY HISTORY OF THE RATIFICATION OF THE CONSTITUTION 1453 (John P. Kaminski & Gaspare J. Saladino eds., 2000) (Samuel Adams's proposed constitutional provision ensuring "that the said constitution be never construed … to prevent the people of the United States, who are peaceable citizens, from keeping their own arms."); John Holmes, THE STATESMAN, OR PRINCIPLES OF LEGISLATION AND LAW 186 (1840) ("A free citizen, if he demeans himself peaceably, is not to be disarmed."); *State Convention of the Suffrage men of Rhode Island*, VERMONT GAZETTE, Dec. 13, 1842 (resolving that the Second Amendment forbids "taking from peaceable citizens their arms"); *Kansas Legislature: Some Criticisms on Pending Bills*, THE TOPEKA DAILY CAPITAL, Feb. 2, 1883 (mentioning the

This is another reason why the application of 18 U.S.C. § 922(g)(3) is unconstitutional in this case. Besides contradicting the specific historical tradition regarding intoxicants and firearms, the prosecution here also violates the historical rule that disarmament of individuals must be based on demonstrated danger. Indeed, the government does not make a serious effort to carry its burden.

Instead, the government discusses drugs generally, and relies on violent incidents involving methamphetamine, heroin, tranquilizers, quaaludes, alcohol, and PCP.[112] But all drugs are not equal. Some drugs may cause dangerous behavior. For example, "PCP toxicity may include combative hostility, paranoia, depersonalization, and violence" and "can also precipitate a psychotic state that may last for a month or more."[113] "Chronic marijuana use," by contrast, "may cause a prolonged toxicity characterized by … passivity."[114] And as the government stated, "[t]his prosecution rests on respondent's habitual use of marijuana."[115]

"constitutional right of every peaceable citizen to carry arms for his own defense"); A.J. Grover, *Impeachment of Franklin Pierce* (Aug. 1, 1856), *in* THE LIBERATOR, Aug. 22, 1856, at 140 (calling for President Pierce's impeachment for attempting to disarm "peaceable citizens").

[112] Pet. Br. 33 n.27.

[113] Mim J. Landry, UNDERSTANDING DRUGS OF ABUSE: THE PROCESSES OF ADDICTION, TREATMENT, AND RECOVERY 108 (1994).

[114] *Id.*

[115] Pet. Cert. 5.

In addition to being unsupported by the government's evidence, the assertion that marijuana users are dangerous is belied by the fact that at least 40 states have legalized some form of marijuana use.[116]

The Smart Approaches *amicus* brief in support of Petitioner lists some social science reports, not always accurately. According to the brief, "A literature review covering studies of more than 1 million adolescents found a consistent positive association between marijuana use and engaging in bullying."[117] Actually, the literature review looked at marijuana users being *victimized* by bullies. For example, do bullying victims use marijuana to cope? The result was, "Across studies, there was conflicting evidence for a significant relationship between cannabis use and peer victimization in adolescence."[118] The brief

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[116] *See Marijuana Legality Map*, DISA, https://disa.com/marijuana-legality-by-state/ (last visited Jan. 29, 2026).

[117] Smart Approaches to Marijuana Amicus Br. 9.

[118] Robert Maniglio, *Association between peer victimization in adolescence and cannabis use: A systematic review*, 25 AGGRESSION AND VIOLENT BEHAVIOR 252, 252 (2015) (abstract).

The brief states that a 2008 Australian Ph.D. thesis about Aborigines in remote communities found "marijuana users were four times more likely than non-users to experience violent trauma." Smart Approaches to Marijuana Amicus Br. 10. The actual "four times" finding of the Australian thesis is: "heavy cannabis users were four times more likely than the remainder of the sample to report moderate–severe depressive symptoms." Kim Lee, *Heavy cannabis use in three remote Aboriginal communities in Arnhem Land, Northern Territory, Australia*, at

accurately states that marijuana potency is greater than before. The same has been true ever since people began measuring marijuana potency.[119] The Smart Approaches brief is dire, yet a study funded by the National Institute of Justice examined the effects of legalization on crime in Colorado and Washington:

> Our results suggest that marijuana legalization and sales have had minimal to no effect on major crimes in Colorado or Washington. We observed no statistically significant long-term effects of recreational cannabis laws or the initiation of retail sales on violent or property crime rates in these states.[120]

CONCLUSION

This Court should hold 18 U.S.C. § 922(g)(3) unconstitutional as applied to Hemani because the government failed to demonstrate that disarming him based on marijuana use is consistent with the nation's historical tradition of firearm regulation.

The judgment below should be affirmed.

63-202 (Ph.D. thesis in Public Health, James Cook University, 2008).

[119] *See, e.g., A More Potent Marijuana Is Stirring Fresh Debates*, N.Y. TIMES, Dec. 28, 1978.

[120] Rubin Lu et al., *The Cannabis Effect on Crime: Time-Series Analysis of Crime in Colorado and Washington State*, 38 JUSTICE Q. 565, 565 (2019) (abstract).

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