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 *Amicus Curiae* of Gun Owners of America, Gun Owners Foundation, Gun Owners of California, Heller Foundation, Tennessee Firearms Association, Tennessee Firearms Foundation, Virginia Citizens Defense League, Virginia Citizens Defense Foundation, America's Future, U.S. Constitutional Rights Legal Defense Fund, and Conservative Legal Defense and Education Fund in Support of Respondent

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MISCELLANEOUS

INTEREST OF THE *AMICI CURIAE*[1]

Amici Gun Owners of America, Inc., Gun Owners Foundation, Gun Owners of California, Inc., Heller Foundation, Tennessee Firearms Association, Tennessee Firearms Foundation, Virginia Citizens Defense League, Virginia Citizens Defense Foundation, America's Future, U.S. Constitutional Rights Legal Defense Fund, and Conservative Legal Defense and Education Fund are nonprofit organizations, exempt from federal income tax under sections 501(c)(3) or 501(c)(4) of the Internal Revenue Code.

These entities, *inter alia*, participate in the public policy process, including conducting research, and informing and educating the public on the proper construction of state and federal constitutions, as well as statutes related to the rights of citizens, and questions related to human and civil rights secured by law. Some of these *amici* have filed *amicus* briefs in *United States v. Daniels*, U.S. Court of Appeals for the Fifth Circuit, No. 22-60596, Brief *Amicus Curiae* of Gun Owners of America, *et al.* (July 6, 2023) and Letter *Amicus* Brief of Gun Owners of America, *et al.* (July 29, 2024).

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[1] It is hereby certified that no counsel for a party authored this brief in whole or in part; and that no person other than these *amici curiae*, their members, or their counsel made a monetary contribution to its preparation or submission.

STATEMENT OF THE CASE

The procedural history of this case is atypical. In 2022, Respondent Ali Danial Hemani allegedly possessed a firearm while being an admitted user of marijuana. Petition Appendix ("Pet.App.") 1a, 9a. The firearm in question — a Glock 19 handgun found "in the closet of [Respondent's] parents' home" (Pet.App.18a) — is the "quintessential" and "most popular weapon chosen by Americans for self-defense," which "all Americans" presumptively may possess. *District of Columbia v. Heller*, 554 U.S. 570, 629, 581 (2008). However, a provision of the Gun Control Act criminalizes possession by anyone "who is an unlawful user of or addicted to any controlled substance." 18 U.S.C. § 922(g)(3). The Government's single-count indictment alleges only that Respondent possessed this handgun as an "unlawful user" of marijuana, not that he possessed the firearm while intoxicated. *See* Petition at 5.

In early 2023, Respondent moved to dismiss his indictment on Second Amendment and vagueness grounds. Pet.App.5a. The Government initially opposed, claiming Respondent's possession of a handgun fell outside the Second Amendment's plain text because "'[a]nyone who violates § 922(g)(3) is, by definition, not a law-abiding, responsible citizen who enjoys the Second Amendment's protection....'" Pet.App.7a. In the alternative, the Government posited that Section 922(g)(3) was analogous to historical "statutes [1] penalizing those who use firearms while intoxicated, … [2] disarming the

mentally ill, and … [3] disarming the 'untrustworthy' or 'potentially dangerous persons.'" Pet.App.22a.

In July 2023, a U.S. magistrate judge issued a Report and Recommendation to the district court, rejecting the Government's textual and historical arguments and recommending dismissal.[2] Pet.App.5a. The magistrate judge rejected the Government's "'virtuous citizen' theory" of presumptive textual protection as inconsistent with both precedent and logic. Pet.App.19a-22a.[3] Then, addressing the Government's proffer of historical laws, the magistrate judge found them to be either irrelevant or disanalogous to Section 922(g)(3) under *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022).

First, the magistrate judge explained that the Government's intoxication laws "were passed between 1880 and 1900" and "[we]re therefore minimally persuasive" given this Court's focus on Founding-era history. Pet.App.24a. Moreover, intoxication laws only regulated the possession of firearms "*while intoxicated*," and only imposed "fines and imprisonment — not disarmament," rendering them

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[2] With respect to Respondent's vagueness challenge, the magistrate judge noted that contrary "Fifth Circuit law … remains undisturbed" and declined "to consider such a challenge" at the time. Pet.App.16a.

[3] Thereafter, in *United States v. Rahimi*, 602 U.S. 680 (2024), "[n]ot a single Member of the Court adopt[ed] the Government's theory" that "the Second Amendment allows Congress to disarm anyone who is not 'responsible' and 'law-abiding.'" *Id.* at 772-73 (Thomas, J., dissenting).

disanalogous to Section 922(g)(3) under *Bruen*'s "how" and "why" metrics. Pet.App.27a, Pet.App.26a. The magistrate judge found that the Government's three colonial laws from Virginia (1655), New York (1771), and New Jersey (1746) failed for similar reasons. The Virginia law regulated the "discharge[]" of firearms "while intoxicated," and was enacted to prevent false alarms of "Indian attacks." Pet.App.28a, Pet.App.29a. The New York law likewise regulated only the discharge of firearms "on three [holi]days of the year" to prevent "great Damages" from New Year revelries. Pet.App.30a, Pet.App.31a.[4] Finally, the New Jersey law prohibited intoxication in the militia via either disarmament or fine, for the stated purpose of "preserv[ing] order within military ranks." Pet.App.32a. As the magistrate judge concluded, these laws featured a markedly different "how" and "why" compared to Section 922(g)(3). *Id.*

Second, the magistrate judge rejected the Government's reliance on "laws prohibiting the possession of firearms by the mentally ill," finding the "difference in duration" of impairment to be "critical." Pet.App.35a, Pet.App.34a. Moreover, the magistrate judge observed a historical distinction in the treatment of mental illness and intoxication under criminal law. Indeed, "'lunatics' were imprisoned on the principle they were an inherent danger to society." Pet.App.34a. The same was never true for substance users. *See id.*

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[4] The New York law was also short-lived, having been "only in effect for two years...." Pet.App.31a.

Third, the magistrate judge rejected the Government's colonial laws disarming "untrustworthy or potentially dangerous persons." Pet.App.35a. These laws disarmed, *inter alia*, "political enemies and Catholics," "felons," "those who did not swear allegiance to the newly formed states," "slaves," and "Native Americans," on the theory that each group was categorically too "dangerous" to be armed. *Id.*; Pet.App.36a. But as the magistrate judge explained, "allowing for a generalized analogy to 'dangerousness' would create a 'regulatory blank check,'" which would allow legislatures to "avoid constitutional protections" simply by "declar[ing] that a class of individuals, even those within 'the people,' are 'dangerous.'" Pet.App.36a. Finding such a broad disarmament principle untenable, the magistrate judge likewise noted that Respondent could not be disarmed even under a narrower reading, because the Government's "cited laws [we]re not directed towards a class of people of which [Respondent] is a member." Pet.App.35a. No such law disarmed mere users of intoxicating substances.

Following the magistrate judge's Report and Recommendation that Respondent's charge be dismissed, the Fifth Circuit decided *United States v. Daniels*, 77 F.4th 337 (5th Cir. 2023), holding Section 922(g)(3) unconstitutional as applied to a marijuana user's simple possession of a firearm while sober. Rejecting as inapposite the same categories of historical laws the Government cited against Respondent, the Fifth Circuit observed that "there was little regulation of drugs (related to guns or otherwise) until the late-19th century...." *Id.* at 344-45.

Following *Daniels*, the Government conceded in Respondent's case that the district court would be bound by the Fifth Circuit's reasoning. Accordingly, the Government sought and obtained an agreed order dismissing Respondent's charge, but preserved the issue for appeal. Pet.App.3a-4a.

Shortly after the Government appealed this case to the Fifth Circuit, this Court granted a petition for writ of certiorari in *Daniels*, vacated its judgment, and remanded to the Fifth Circuit for further consideration in light of *United States v. Rahimi*, 602 U.S. 680 (2024). *See United States v. Daniels*, 144 S. Ct. 2707 (2024). Then, within two months of *Daniels*' vacatur, the Fifth Circuit decided *United States v. Connelly*, 117 F.4th 269 (5th Cir. 2024), another Section 922(g)(3) case concerning a "non-violent, marijuana smoking gunowner" who possessed a firearm while presently sober. *Id.* at 272. Evaluating the historical record in light of *Rahimi*, the Fifth Circuit, as it had in *Daniels*, rejected "(1) laws disarming the mentally ill, (2) laws disarming 'dangerous' individuals, and (3) intoxication laws" as disanalogous. *Id.* at 275.

With *Daniels*' holding reiterated in *Connelly*, the Government once again found its arguments foreclosed by Fifth Circuit precedent. Thus, the Government moved for summary affirmance in Respondent's case, again "reserv[ing] the right for further review" in this Court. Pet.App.2a n.2. The Fifth Circuit granted the Government's Motion in early 2025. Pet.App.1a. Thereafter, the Fifth Circuit reaffirmed its earlier holding in *Daniels*, finding it "largely controlled by

Connelly." *United States v. Daniels*, 124 F.4th 967, 971 (5th Cir. 2025).

Now before this Court, the Government has abandoned the historical approach it took below and in *Daniels* and *Connelly*. Relying instead on "founding-era history" regulating "habitual drunkards," the Government asserts that this history alone "suffices to uphold Section 922(g)(3)," "even during intervals between intoxication." Brief for the United States ("U.S.Br.") at 4, 10. First, the Government begins with a foundational assertion that legislatures broadly may disarm "'categories of persons' who 'present a special danger of [firearm] misuse.'" *Id.* at 13. In support, the Government cites colonial laws disarming "loyalists," "those who had been convicted of certain crimes," and those who "failed to swear allegiance to the United States," before fast-forwarding to Reconstruction, when certain states disarmed "rebels," "persons of unsound mind," and "tramps." *Id.* at 14, 15 & nn.6-8. Based on this history, the Government posits that modern "habitual drug users" also may be disarmed by virtue of their categorical dangerousness, because Founding-era "drunkards" were subject to "criminal vagrancy laws, civil-commitment laws, and surety laws." *Id.* at 17, 19. Taken together, the Government asserts this history supports Section 922(g)(3).

SUMMARY OF ARGUMENT

Intoxicating substances and the societal problems they pose are nothing new. But the statute challenged here — Section 922(g)(3) — *is new*. This provision of the Gun Control Act of 1968 prohibits any "unlawful

user" of a controlled substance from possessing a firearm, even when not presently under the influence. In order to comport with the Second Amendment, this broad prohibition requires a similarly broad Founding-era analogue. But no such analogue exists, and the Government's arguments to the contrary fail four times over.

First, the Government builds its argument on the shakiest of historical foundations. It posits that legislatures may disarm categories of people deemed to be "dangerous." Thus, because Congress made that assessment with respect to drug users, the Government claims Section 922(g)(3) passes muster. But the historical laws the Government cites in support of categorical disarmament do not stand for so broad a proposition. The Government's short-lived colonial enactments all sought to disarm *British loyalists* during the Revolutionary War, not *Americans*. That presents a problem beyond flunking *Bruen*'s analogical test — pre-Founding practices cannot evince a Founding-era tradition on their own. Without any Founding-era analogues identified to support categorical disarmament, the Government's historical theory topples.

Second, the Government attempts to tie its disarmament theory to regulation of Founding-era "drunkards," which took the form of vagrancy, civil-commitment, and surety laws. But the first two out of three categories of laws were not even "*firearm regulations*" or "*gun laws*." Accordingly, they are irrelevant under this Court's precedents, and the

remaining surety laws cannot do the analogical heavy lifting the Government needs.

Third, the Government fails to consider the complete historical record, and its litany of examples of a *contrary* tradition — one that accommodated alcohol and drug use together with firearm possession free from criminal penalty. Indeed, it was the "universal custom" of Founding-era militias to imbibe. Likewise, Thomas Jefferson, Abraham Lincoln, and famous Americans possessed firearms while being users of drugs ranging from opium to cocaine. It seems unlikely that these previous generations ever would have approved of a law like Section 922(g)(3).

Fourth, the Government cannot continue its pattern of handpicking unsympathetic criminal defendants to justify its preferred gun control. The Framers understood that "[o]ur Constitution was made only for a moral and religious People. It is wholly inadequate to the government of any other." The Government's use of problematic defendants to broadly undermine the rights of tens of millions of Americans defies the plan of the Framers. This Court should decide the easy question presented and ignore the Government's irrelevant character assassination of the Respondent here.

ARGUMENT

I. THIS COURT SHOULD REJECT THE GOVERNMENT'S FLAWED THEORY OF CATEGORICAL DISARMAMENT, WHICH WOULD ALLOW LEGISLATURES TO DISARM ALL MANNER OF DISFAVORED GROUPS BASED ON PURPORTED "DANGEROUSNESS."

In *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 19 (2022), this Court explained that firearm regulations must comport with "the Second Amendment's text, as informed by history." To that end, this Court has "generally assumed" that the Second Amendment's scope is "pegged to the public understanding of the right when the Bill of Rights was adopted in 1791" (*id*. at 37), and so courts "must … 'apply[] faithfully the balance struck by the founding generation to modern circumstances.'" *United States v. Rahimi*, 602 U.S. 680, 692 (2024). In contrast, prior practices "cannot be indiscriminately attributed to the Framers of our own Constitution" (*Bruen*, 597 U.S. at 35), because "[t]he Framers drafted and approved many provisions of the Constitution precisely to depart from rather than adhere to certain pre-ratification laws, practices, or understandings." *Rahimi*, 602 U.S. at 720 (Kavanaugh, J., concurring). Likewise, 19th-century and later history "'cannot overcome or alter th[e] text,'" and "[i]s 'treated as mere confirmation of what the Court thought had already been established.'" *Bruen*, 597 U.S. at 36, 37. In other words, pre- and post-Founding history can confirm the

intent of the Framers, but such history alone cannot speak for them.

Of course, to be applicable, Founding-era history also must be *relevant*. As this Court instructed, historical laws are proper analogues to modern firearm regulations only if they share the same "how and why." *Bruen* at 29. Thus, a challenged regulation must regulate conduct to a similar "extent" and for a similar "reason" as historical precursors. *Rahimi* at 692. To allow otherwise would offer the Government a "regulatory blank check." *Bruen* at 30.

Contrary to these bedrock principles, the Government advances a theory of categorical disarmament based exclusively on disanalogous pre-Founding history and irrelevant post-Founding history. Specifically, the Government posits that legislatures may disarm "'categories of persons'" based on a perception of their collective "'danger'" — apparently including all unlawful users of drugs (an estimated 24.9 percent of Americans over the age of 12).[5] U.S.Br. at 13. In support, the Government first cites colonial laws enacted between 1775 and 1777 which disarmed British "loyalists," "certain crim[inals]," and those who "failed to swear allegiance

[5] *Drug Abuse Statistics*, NCDAS, https://tinyurl.com/yhtxxba6 (last visited Jan. 28, 2026). Relatedly, an estimated 7.2 percent of U.S. residents ages 16 and older have recently driven a vehicle under the influence of alcohol. *Drunk Driving Statistics in U.S. 2023*, Birch Tree Recovery (Sept. 11, 2023), https://tinyurl.com/bp8xerrs. Given this "dangerous" behavior, the Government's theory would appear to support these persons' categorical disarmament, too.

to the United States." *Id.* at 14-15 & nn.2-5. Then, absent any showing that these laws persisted into the Founding era or the decades beyond, the Government jumps to laws enacted in the mid-to-late 19th century. As the Government observes, these later enactments placed firearm restrictions on "rebels," "persons of unsound mind," and "tramps" between 1855 and 1899. *Id.* at 15-16 & nn.6-8. Of course, none of these historical examples, or the Government's subsequent 20th-century evidence,[6] "sheds … light on how to properly interpret the Second Amendment" *at the Founding*. *Bruen* at 49.[7] But the Government's temporal problem is just the tip of the iceberg.

Consider the historical context underlying the Government's earliest disarmament laws — the closest enactments to the Founding. Each colonial law was enacted during the American Revolution, a period of wartime exigency that saw the exchange of gunfire across American cities and towns. *See* U.S.Br. at 14-15 nn.2-4. Indeed, "[t]he spark that ignited the American Revolution was struck at Lexington and Concord, when the British governor dispatched soldiers to seize the local farmers' arms and powder

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[6] *See* U.S.Br. at 16 (citing federal laws from the 1930s to the 1990s); *cf. Bruen*, 597 U.S. at 66 n.28 (discounting 20th-century evidence).

[7] Indeed, the Government later admits the "Founding … supplies the most important evidence of the Second Amendment's meaning...." U.S.Br. at 18.

stores." *Rahimi* at 690.[8] Given this uncomfortably close proximity to Americas' enemies, early legislatures sought to disarm members of — and those sympathetic to — Great Britain's occupying force. Thus, rather than evincing some broad principle of disarming dangerous *Americans*, these laws only reached *foreign combatants and their cobelligerents*. Talk about a different "why" compared to Section 922(g)(3). *See Bruen* at 29; *cf.* Brief for Respondent at 7 ("Mr. Hemani was born and raised in the Dallas area.").

Even the Government's colonial laws "disarm[ing] those … convicted of certain crimes" were Revolutionary War-specific. U.S.Br. at 14. For example, the Government's proffered 1776 South Carolina resolution provided that "all persons who shall hereafter bear arms against, or shall be active in opposing the measures of the Continental or Colony Congress, and upon due conviction thereof … shall be disarmed...."[9] Likewise, the Government's 1775 New York resolution provided that "any person … [who] shall be found guilty … of having furnished the ministerial army or navy … with provisions or other

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[8] *See also* Brief *Amicus Curiae* of Gun Owners of America, Inc., *et al.* at 27, *District of Columbia v. Heller*, No. 07-290 (U.S. Feb. 11, 2008), https://tinyurl.com/utmzvfc5 (detailing the "pattern of British efforts to disarm the colonists, so as to prevent them from resisting an increasingly oppressive government, which … le[d] directly to the American Revolution").

[9] Resolution of Mar. 13, 1776, *Journal of the Provincial Congress of South Carolina, 1776*, at 77 (1776), https://tinyurl.com/ymutdbjt.

necessaries, … shall be disarmed, and forfeit double the value of the provisions … to be applied to the public exigencies of this Colony....”[10] In other words, these early laws did not even disarm dangerous criminals as a general matter. These laws, like the colonial “loyalty” and “allegiance” laws, sought to ensure that *Americans* were armed, and that the *British* were not.

It should be of little surprise, then, that these wartime exigencies were transient in nature and could not have survived adoption of the Constitution. *See Bruen* at 69 (noting “passing regulatory efforts by not-yet-mature jurisdictions on the way to statehood, rather than part of an enduring American tradition of state regulation”). Consider another resolution listed on the same page of the Government’s 1775 New York source:

> Although this Congress have a tender regard to the freedom of speech, the rights of conscience, and personal liberty, … if any person … shall hereafter oppose or deny the authority of the Continental or of this Congress, … or dissuade any person or persons from obeying the recommendations of the

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[10] Resolutions of Sept. 1, 1775, 1 *Journals of the Provincial Congress, Provincial Convention, Committee of Safety and Council of Safety of the State of New-York* 132 (1842), https://tinyurl.com/3vxn6axk.

> Continental or this Congress, … such offenders [shall] be disarmed....[11]

Not only did this resolution punish *speech* — particularly, criticism of the Government — with disarmament, but also subsequent offenses carried the penalty of "close confinement."[12] It seems unlikely that the Framers' codification of the First and Second Amendments would have accommodated these practices. To the contrary, "some pre-ratification history can be probative of what the Constitution does *not* mean." *Rahimi* at 720 (Kavanaugh, J., concurring).[13]

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[11] *Id.*

[12] *Id.*

[13] The historical record contains many acknowledgments by the Framers that certain wartime practices were not to be repeated. During the 1788 debates on the adoption of the Constitution, Virginia Governor Edmund Randolph recounted the "striking and shocking" execution of one Josiah Philips, a loyalist legislatively attainted of treason by the Virginia General Assembly in 1778. 3 The Debates in the Several State Conventions, on the Adoption of the Federal Constitution 66 (2d ed. 1836), https://tinyurl.com/y9zse87w; *see also* M.J. Steilen, *The Josiah Philips Attainder and the Institutional Structure of the American Revolution*, 60 HOWARD L.J. 413, 414 (2017). Responding to Governor Randolph's concerns the following day, Patrick Henry explained that Philips had been executed "at a time when the war was at the most perilous stage." 3 Debates, *supra*, at 140. Thus, despite being "a friend to legal forms and methods," Henry believed "the occasion warranted the measure." *Id.* Ultimately, the Constitution banned this wartime practice, declaring that "[n]o Bill of Attainder or ex post facto Law shall be passed." U.S. Const. art. I, § 9.

The risks of uncritically attributing these pre-Constitution practices to the Framers are evident. The Government relies on this paltry record to suggest that legislatures are free to disarm any category of people deemed to be "dangerous" — a crucial analytical step in its argument that "habitual drug users" are one such permissible category. U.S.Br. at 17. But if legislative determinations of "dangerousness" are all it takes to disarm whole categories of "the people," then the Government's theory may have (presently) unintended consequences. Just a few short years ago, the Biden-era FBI labeled gun owners and political conservatives "militia violent extremists,"[14] going so far as to target Catholic churches suspected of fostering verboten ideas.[15] Could these groups be disarmed under the Second Amendment? One would hope not. But under the Government's theory, unreasonable legislatures may beg to differ.

At bottom, the Government's early disarmament laws stand only for the proposition that, when war

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[14] *Militia Violent Extremism*, FBI (2022), https://tinyurl.com/y2adhzs3. Similarly, during the Obama years, the IRS subjected conservative groups applying for nonprofit status to heightened scrutiny and processing delays. The IRS later "expresse[d] its sincere apology" for this political discrimination, but "[n]o criminal charges were ever filed against IRS officials." *Justice Department Settles with Conservative Groups over IRS Scrutiny*, Reuters (Oct. 26, 2017), https://tinyurl.com/2ytrh376.

[15] *Interest of Racially or Ethnically Motivated Violent Extremists in Radical-Traditionalist Catholic Ideology Almost Certainly Presents New Mitigation Opportunities*, FBI (Jan. 23, 2023), https://tinyurl.com/n66zxpsy.

came to the home front, early Americans disarmed their enemies.[16] As the magistrate judge explained below, adopting a broader, "generalized analogy to 'dangerousness' would create a 'regulatory blank check,' … and render the protections of 'the people' largely meaningless." Pet.App.36a. Indeed, if a legislature "need only declare that a class of individuals … are 'dangerous'" in order to disarm them, then "there would be no limiting principle on the legislature's authority" to "avoid constitutional protections" entirely. *Id.* Such a "high level of generality" would "water[] down the right," and this Court should decline the Government's invitation here. *Rahimi* at 740 (Barrett, J., concurring).

II. THIS COURT'S PRECEDENTS REQUIRE ANALOGOUS FOUNDING-ERA "FIREARM REGULATIONS" DISARMING DRUG USERS, NOT THE SCATTERSHOT RECORD COMPILED HERE.

Having asserted a tradition of "disarm[ing] categories of dangerous persons," the Government claims "habitual drug users" fall into one such historical category, because the Founders placed some restrictions on "habitual drunkards." U.S.Br. at 17

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[16] Of course, this nation's actions during war are hardly probative of the scope of constitutional rights. Relying on Revolutionary War-era exigencies here would be as misguided as citing General Sherman's scorched-earth Georgia campaign during the Civil War, the internment of Japanese Americans during World War II, or the shooting of Vietnam War protesters at Kent State University to justify broad exceptions to the Second, Fourth, and Fifth Amendments.

(capitalization omitted). But the Government never identifies a *categorical* law — such as the wartime loyalist, criminal, or allegiance laws discussed above — that expressly disarmed "drug users" or "drunkards" at the Founding. Instead, the Government cobbles together what it calls "anti-drunkard laws" (*id.* at 19), hoping that this Court will recognize a tradition greater than the sum of its parts. Indeed, the Government's "criminal vagrancy laws, civil-commitment laws, and surety laws" are no analogues to Section 922(g)(3). *Id.* In fact, the first two types of laws are not even the "*firearm regulations*" that *Bruen* and *Rahimi* require at the threshold.

When this Court reiterated *Heller*'s textual and historical approach in *Bruen*, it instructed that the "government must demonstrate that [its] regulation is consistent with this Nation's historical tradition of *firearm regulation*." *Bruen* at 17 (emphasis added). This Court's logical requirement of historical *gun laws* to uphold a modern *gun law* was not some one-off statement. Rather, this Court reiterated variations of the term "firearm regulation" seven more times throughout *Bruen*'s majority opinion. *See id.* at 17-67. And in *Rahimi*, this Court was even more specific. There, this Court upheld a federal statute temporarily disarming those "who threaten physical harm to others" because, "[s]ince the founding, our Nation's *firearm laws* have included provisions preventing individuals" from doing just that. *Rahimi* at 690 (emphasis added). Thus, when this Court analyzes the original meaning of the Second Amendment as applied to firearms, it "review[s] the history of American *gun*

laws extensively," just as it did "in *Heller* and *Bruen*." *Id.* at 693 (emphasis added).

In stark contrast to this Court's subject matter-specific approach, the Government's proffered vagrancy laws are not "firearm regulations," "gun laws," or anything close. The Government's 1700 Massachusetts law exemplifies the breadth of the historical vagrancy prohibition and the analytical problems applying it here. *See* U.S.Br. at 19 n.9. That law permitted authorities "to send and commit unto the [correction] house … all rogues, vagabonds and idle persons going about … begging, … persons … feigning themselves to have knowledge in physiognomy, … common pipers, fidlers, runaways, … common drunkards, [and] common nightwalkers," among others.[17] But rather than expressly *disarming* those sorts of persons, the vagrancy law provided that they should "be kept and governed according to the rules" of the correction house — that is, imprisoned.[18] In other words, the vagrancy law made it illegal to be *poor, homeless*, a *street musician*, a *public drunk*, a *prostitute*, or, perhaps most amusingly, a *person who attempts to guess the character traits or ethnicity of another*. If this qualifies as a "firearm regulation" under this Court's "rigorous" and "robust" test (U.S.Br. at 18), then the Second Amendment is in great danger.

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[17] Act of June 29, 1700, ch. 8, § 2, 1 The Acts and Resolves of the Province of the Massachusetts Bay 378 (1869), https://tinyurl.com/49zvhbfv.

[18] *Id.*

Yet the Government suggests that vagrancy laws are proper analogues to Section 922(g)(3) because "drunkards" could be imprisoned — and therefore disarmed *in the process*. *See* U.S.Br. at 19. But if *imprisonment* is a valid analytical proxy for disarmament, then almost any historical law with temporary imprisonment as the penalty could justify the wholesale disarmament of any person. Under this limitless logic, Congress's 1790 Crimes Act, which punished perjury with imprisonment,[19] would justify the disarmament of liars today. Once again, the Government "read[s] a principle at such a high level of generality that it waters down the right." *Rahimi* at 740 (Barrett, J., concurring).

Moreover, even if vagrancy laws were "firearm regulations," they fail this Court's "how and why" analogical metrics. *Bruen* at 29. As to the "how," the vagrancy laws only reached certain persons in public — those "going about in any town or county" in a "disorderly" manner.[20] Thus, it is doubtful that "drunkards" sitting within the confines of their own homes would have been hauled off to join the homeless in these houses of correction. The "why" confirms these laws' public focus — they sought to "suppress[]" the "disorderly" from public view, and "set[] the poor to

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[19] 1 Stat. 112, 116.

[20] 1 Acts and Resolves, *supra*, at 378; *see also* A. Scalia & B.A. Garner, Reading Law: The Interpretation of Legal Texts 195 (2012) ("Associated words bear on one another's meaning....").

work."[21] In contrast, Section 922(g)(3) extends far beyond the public realm, and it does not seek to remove or reform "unlawful users." It reaches Respondent's handgun *stored in a home closet.*

The Government's civil-commitment laws suffer from similar defects. For starters, civil-commitment laws also provided for the confinement of drunkards in asylums, or their placement "in the custody of guardians...." U.S.Br. at 21. On their face, these laws were not "firearm regulations" or "gun laws." Nor did they share the same object or purpose — the "why" — as Section 922(g)(3). As the Government explains, civil-commitment laws sought to "produce[] … 'a permanent reformation'" — the cessation of dependency on alcohol. *Id.* Meanwhile, Section 922(g)(3) is agnostic towards the welfare of "unlawful users." In fact, it exists only to punish them.

That leaves the Government with surety laws. *See* U.S.Br. at 22. As this Court explained, these laws did indeed "target[] the misuse of firearms." *Rahimi* at 696. But they did so narrowly, using individualized markers of dangerousness — a "complaint … made to a judge or justice of the peace" based on "reasonable cause" to fear harm, the "tak[ing]" of "evidence," and the opportunity to "post a bond" to retain one's firearms. *Id.* at 696; *see also Bruen* at 56. "How" Section 922(g)(3) regulates firearm possession is

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[21] 1 Acts and Resolves, *supra*, at 378.

completely different and far more onerous.[22] Indeed, it broadly prohibits firearm possession by all "unlawful users," irrespective of their individualized dangerousness. And it offers no similar means for Respondent to retain possession of his handgun — via evidentiary hearing, financial assurance, or otherwise.[23]

All told, the Government's historical showing fails this Court's rigorous standard. Two out of three types of laws the Government proffers are not "firearm regulations" at all, and this Court should discount them on that ground alone. But even taking vagrancy, civil-commitment, and surety laws together, these laws are disanalogous to Section 922(g)(3). Accordingly, the Government has failed to meet its "rigorous burden" (U.S.Br. at 18) here, and this Court should affirm the judgment below.

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[22] *See Rahimi* at 692 ("Even when a law regulates arms-bearing for a permissible reason, though, it may not be compatible with the right if it does so to an extent beyond what was done at the founding.").

[23] The Government notes that "a drug user can restore his ability to possess firearms by forgoing his drug use." U.S.Br. at 25. But even those credibly found to have posed a threat under the suretyship regime could have retained their firearms by posting a bond. *See Rahimi* at 695. In other words, surety laws allowed continued possession even if one fell within the laws' ambit. No such feature exists in Section 922(g)(3).

III. THE HISTORICAL RECORD EVINCES A CONTRARY TRADITION OF TOLERATING FIREARM POSSESSION AND DRUG USE.

The Government claims that Section 922(g)(3) complies with the Second Amendment, even "as applied to those who are not presently intoxicated." U.S.Br. at 17. But the Government's assertion of a historical tradition of disarming mere *users* of intoxicants runs headlong into widespread historical practice to the contrary. Indeed, from the Founding through the 19th century, numerous examples of substance use and unimpeded firearm possession exist. These examples dispel any notion that the Framers would have tolerated a restriction such as Section 922(g)(3).

Contrary to the Government's reliance on laws tangentially affecting "drunkards," firearms and alcohol often mixed during the late-18th and early-19th centuries. For instance, one pastor recounted meeting "people coming from a militia muster, drunk, and staggering along the lanes and paths" in 1802.[24] Similarly in 1840, the militia of Racine County, Wisconsin was reported to have "gallantly trained till noon, when they adjourned to the Fulton House for dinner, where they all got so

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[24] 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), https://tinyurl.com/4n4drash.

drunk they couldn't muster at all in the afternoon."[25] A different source recounted that, in early 19th-century Massachusetts, "[t]here had been a muster of a militia company on the church green" where "the members of the company" had been "treated … to sweetened rum...."[26] Indeed, "[a]t that time, … it was the universal custom, in all regiments of the militia, … for the officers, on every muster day, to get gloriously drunk in their country's service."[27] To the extent that early militia laws prohibited this "universal custom" (*see* Pet.App.31a-32a), there is "little evidence that authorities ever enforced" those prohibitions. *Bruen* at 58.

Even with respect to drugs, several early American figures possessed firearms while using such substances. Thomas Jefferson was a "fierce advocate of the right to keep and bear arms," and he "owned firearms nearly all his life."[28] Even so, historical evidence suggests that Jefferson was addicted to

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[25] 1 F.S. Stone, Racine: Belle City of the Lakes and Racine County Wisconsin: A Record of Settlement, Organization, Progress and Achievement 476 (1916), https://tinyurl.com/594j6cw3.

[26] 1 P. Godwin, A Biography of William Cullen Bryant, with Extracts from His Private Correspondence 16 (1883), https://tinyurl.com/49vswxc2 (the date of this event is unclear, but Bryant was born in 1797).

[27] *Reminiscences of a Retired Militia Officer No. IV, in* 3 The New-England Magazine 111 (1832), https://tinyurl.com/56h3ja7c.

[28] F. Lee Francis, *The Addiction Restriction: Addiction and the Right to Bear Arms*, 127 W. VA. L. REV. 135, 143, 144 (2024).

"laudanum, an opium-based drug."[29] Likewise, John Randolph of Roanoke, a notable politician from Virginia in the early 19th century, suffered from an opium addiction during the latter half of his life. Randolph, too, "possessed firearms during his period of addiction."[30] And perhaps most notably, some historical records suggest that Abraham Lincoln treated his depression — then known as "melancholy" — using mercury-based medicines and cocaine products.[31] Despite this substance use, Lincoln participated in a live-fire demonstration of a seven-shot repeating rifle near the unfinished Washington Monument in 1863.[32] There is no evidence that Americans during these periods would have permitted a law that disarmed a person who occasionally used marijuana — and unrelatedly kept a firearm in a closet at home.

Not only has the Government failed to demonstrate a relevant historical tradition of firearm regulation in support of Section 922(g)(3) (*see* Section

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[29] *Id*. at 144.

[30] *Id*. at 144-45.

[31] *See, e.g.*, H.E. Pratt, The Personal Finances of Abraham Lincoln 153 (1943) (describing a pharmacy ledger reflecting the purchase of 50 cents' worth of cocaine); N. Hirschhorn, R.G. Feldman & I. Greaves, *Abraham Lincoln's Blue Pills: Did Our 16th President Suffer from Mercury Poisoning?*, 44 PERSPS. BIOLOGY & MED. 315, 315 (2001).

[32] H. Holzer, Dear Mr. Lincoln: Letters to the President 188 (1993).

II, *supra*), but also the historical record is replete with evidence supporting Respondent. Accordingly, this Court should affirm the judgment below.

IV. THE CONSTITUTION "WAS MADE ONLY FOR A MORAL AND RELIGIOUS PEOPLE," AND THE GOVERNMENT'S PRACTICE OF HANDPICKING IMMORAL CRIMINAL DEFENDANTS TO UNDERMINE THE ENUMERATED RIGHTS OF "ALL AMERICANS" VIOLATES THE INTENT OF THE FRAMERS.

Despite comparatively few Second Amendment cases finding their way to this Court during the last several decades, a worrying trend has begun to emerge. It would appear that, when private plaintiffs challenge firearm regulations, these "ordinary, law-abiding, adult citizens" tend to succeed. *Bruen* at 31; *District of Columbia v. Heller*, 554 U.S. 570 (2008); *McDonald v. City of Chicago*, 561 U.S. 742 (2010); *see also Caetano v. Massachusetts*, 577 U.S. 411, 413 (2016) (Alito & Thomas, JJ., concurring in the judgment) (detailing a sympathetic criminal defendant's "encounter with her violent ex-boyfriend" in which she used a stun gun in self-defense). But when the Government seeks this Court's review in a criminal case with both an unsympathetic defendant and difficult facts, gun control tends to prevail. *See United States v. Miller*, 307 U.S. 174 (1939); *Rahimi*.

If "bad facts make bad law"[33] for gun owners, now is the time to dissuade the Government from requesting more bad law.

This Court's 1939 *Miller* decision upheld the National Firearms Act's onerous felony restrictions on short-barreled shotguns with "[n]ot a word *(not a word)* about the history of the Second Amendment." *Heller* at 624. The defendant, Jack Miller, was a known "career criminal," gangster, and serial bank robber.[34] Charged with transporting an unregistered short-barreled shotgun, Miller demurred on Second Amendment grounds. Presiding U.S. District Judge Hiram Heartsill Ragon, "a vocal advocate of federal gun control," granted Miller's demurrer, penning a "memorandum opinion [that] presented no facts and no argument."[35] With Judge Ragon's help, "*Miller* was a Second Amendment test case arranged by the government and designed to support the constitutionality of federal gun control."[36] And the Government ultimately got what it wanted. *See Miller* at 178.

The Government's more recent efforts to undermine this Court's *Bruen* decision have followed

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[33] *Tharpe v. Sellers*, 583 U.S. 33, 35 (2018) (Thomas, Alito & Gorsuch, JJ., dissenting).

[34] B.L. Frye, *The Peculiar Story of* United States v. Miller, 3 N.Y.U. J.L. & LIBERTY 48, 50, 52-58 (2008).

[35] *Id*. at 64, 65.

[36] *Id*. at 50.

a similar path. Following *Bruen*'s publication, then-President Joe Biden expressed his "deep[] disappoint[ment]" in this Court, claiming the "ruling contradicts both common sense and the Constitution, and should deeply trouble us all."[37] A few months later, the Biden Department of Justice petitioned this Court in *Rahimi*, describing the respondent as a trigger-happy "drug dealer" with a penchant for beating his girlfriend and repeatedly taking pot shots at passersby.[38] Once again, the Government got what it wanted — gun control was upheld over a dissent by *Bruen*'s own author. *See Rahimi* at 702.

Now in this case, the Government takes a similar track. Despite resting on Respondent's "habitual use of marijuana," the Government has spilled much ink on presenting Respondent to this Court in the worst possible light. U.S.Br. at 7. Indeed, the Government alleges that Respondent is a terrorist sympathizer, attempted fraudster, and drug dealer. *Id.* at 6-7. Of course, none of these distractions has any bearing on the question presented. But the reason for their inclusion in briefing is apparent.

If petitioning unsympathetic criminal cases is the Government's strategy for constitutionalizing its preferred gun control, this Court should decline to

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[37] *Statement by President Joe Biden on Supreme Court Ruling on Guns*, White House (June 23, 2022), https://tinyurl.com/4wmwx6uh.

[38] Petition for a Writ of Certiorari at 2-3, *United States v. Rahimi*, No. 22-915 (U.S. Mar. 17, 2023).

indulge this approach here. In a 1798 letter, President John Adams famously observed that "[o]ur Constitution was made only for a moral and religious People. It is wholly inadequate to the government of any other."[39] Benjamin Franklin likewise stated in a 1787 letter that "[o]nly a virtuous people are capable of freedom."[40] And in George Washington's 1796 Farewell Address, the first President explained that, "[o]f all the dispositions and habits which lead to political prosperity, religion and morality are indispensable supports."[41] So long as moral, religious, and virtuous people remain in America, the Constitution has a "people" to protect. And this Court should not permit the Government to undermine the rights of "all Americans" (*Heller* at 581) merely because bad persons exist at the margins. The scope of Second Amendment protections should not turn on the actions of the immoral.

CONCLUSION

For the foregoing reasons, the judgment below should be affirmed.

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[39] Letter from John Adams to the Officers of the First Brigade of the Third Division of the Militia of Massachusetts (Oct. 11, 1798), https://tinyurl.com/2z6hfrz6.

[40] L.S. Pangle, *Benjamin Franklin on Keeping a Republic*, National Affairs (2025), https://tinyurl.com/53fm7xdx.

[41] G. Washington, Farewell Address to the People of the United States 16 (Sept. 1796), https://tinyurl.com/yf7vb6ut.

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