

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 WILLIAM R. WEINSTEIN
AS *AMICUS CURIAE*
IN SUPPORT OF RESPONDENT**

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INTEREST OF *AMICUS CURIAE*¹

Amicus is a 71 year old attorney who resides in Arizona and has been practicing law for more than 40 years. *Amicus* is admitted to the courts of three states, four federal district courts, six federal appeals courts and this Court, is in good standing with each of these courts, and has never had any disciplinary action taken against him in any of them.

Amicus also regularly possesses a small amount of marijuana purchased solely from Arizona licensed dispensaries that he safely and responsibly uses in his home, usually once or twice a week or more as needed. *Amicus* uses marijuana for relief from pain (caused, *inter alia*, by severe spinal stenosis), to aid with sleep, and on occasion to spend an afternoon or evening relaxing while enjoying music and film. *Amicus*'s possession and use of marijuana is legal and authorized under the laws of Arizona. *See Murphy v. National Collegiate Athletic Ass'n*, 584 U.S. 453, 468-69 & n.28 (2018).

Amicus moved to Tucson, Arizona on a permanent basis in mid-2021. He chose Arizona for a number of reasons, including its extraordinary natural beauty. Two additional factors, among others, also materially contributed to his choice.

One reason was because in November, 2020, the people of Arizona, by more than 60% of the vote, passed

1. *Amicus* affirms under Rule 37.6 that no counsel for a party authored this brief in whole or in part and that no person other than *amicus* made a monetary contribution intended to fund the preparation or submission of the brief.

Proposition 207, also known as the Smart and Safe Arizona Act (“SSAA”), a statewide ballot initiative fully legalizing the possession and use of marijuana by adults 21 and over (“Adult Use marijuana”). *See* Ariz. Rev. Stat., Title 36, Chapter 28.2, entitled “Responsible Adult Use of Marijuana.”² The passage of the SSAA confirmed to *amicus* the libertarian commitment of the people of Arizona to individual freedom through the exercise of state sovereignty. *See* Full Text of Ballot Initiative, Section 2(1):

The People of the State of Arizona find and declare as follows:

1. In the interest of the efficient use of law enforcement resources, enhancing revenue for public purposes, and individual freedom, the responsible adult use of marijuana should be legal for persons twenty-one years of age or older, subject to state regulation, taxation, and local ordinance.³

Cf. Gonzales v. Raich, 545 U.S. 1, 42 (2005) (O’Connor, J., joined by Rehnquist, C.J. and Thomas, J., dissenting)

2. *Amicus* uses the term “Adult Use marijuana” rather than “recreational marijuana” for several reasons. One is because the SSAA refers to “Responsible Adult Use” and not “recreational.” Another is because the term “recreational marijuana” is a misnomer in connection with its use without a prescription for pain, as an aid to sleep, and other medical benefits. *Amicus* concededly does, however, use it occasionally for enhanced enjoyment when listening to music or watching film.

3. <https://www.azcourts.gov/Portals/0/0/Prop%20207/Arizona-Prop-207-Ballot-Initiative-Measure.pdf?ver=2021-06-01-194330-600> (all website links last visited January 29, 2026).

(“a single courageous State may, if its citizens choose, serve as a laboratory, and try novel social and economic experiments without risk to the rest of the country”) (quoting *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting)).⁴

Another reason *amicus* was attracted to Arizona was because of its and the Old West’s colorful gun history, which several decades before played a large part in persuading him that firearm ownership is a fundamental right under the Second Amendment. *Amicus* had never actually handled or learned to handle a handgun, but he specifically intended to take a handgun course after moving to Arizona, and possibly purchase one to keep in his home.

In the middle of 2024, after *amicus* had begun to actively investigate handgun courses as a precursor to purchasing a handgun to keep in his home, he was surprised to learn that although his possession and use of marijuana is legal and authorized under Arizona law, *amicus* is an “unlawful user of … any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. § 802))” (“CSA”) who is prohibited under 18 U.S.C. § 922(g)(3) and 27 C.F.R. § 478.11 (defining “unlawful user”) from purchasing and possessing his chosen handgun. *See Standing Akimbo LLC v. United States*, 141 S. Ct. 2236, 2238 (2021) (mem.) (Thomas, J.,

4. Arizona had previously passed the Arizona Medical Marijuana Act (“AMMA”) legalizing marijuana for designated medical uses (“Medical marijuana”) in 2010. *See* Ariz. Rev. Stat., Title 36, Chapter 28.1, https://apps.azsos.gov/election/2010/info/PubPamphlet/Sun_Sounds/english/prop203.htm.

Statement respecting denial of certiorari) (“A marijuana user similarly can find himself a federal felon if he just possesses a firearm. § 922(g)(3).”).

In January 2025, *amicus* completed a “Basic Pistol—Fundamental Foundations” class where he was instructed on safe gun handling and storage, types of ammunition, handgun features, functions, cleaning, maintenance, and live-fire marksmanship fundamentals using two different 9mm semi-automatic pistols.

Thereafter, in April 2025, having satisfied the professional and character fitness requirements (including fingerprint and background checks) and being admitted to the bars of the State of Arizona and the United States District Court for the District of Arizona, *amicus* commenced an action for declaratory judgments and corresponding injunctive relief in the District of Arizona federal court challenging this prohibition on firearm possession as unconstitutional under the Second Amendment, as well as separate challenges under the Ninth Amendment, Tenth Amendment and Commerce Clause to the constitutionality of the federal criminalization of marijuana which is legally possessed and used by *amicus* under Arizona law. *See Weinstein v. Bondi*, CV-25-00202-TUC-JCH (D. Ariz.). *Amicus*’s District Court case has now been stayed by agreement of the parties and order of the District Court pending the issuance of this Court’s decision in this case (Dkt. # 17).⁵

5. With his District Court action, *amicus* has utilized the procedure expressly sanctioned by the government—“fil[ing] a civil suit seeking ‘protection from prosecution under [Section 922(g)(3)] for any future possession of a firearm’” (U.S. Br. 42).

INTRODUCTION

Because the government in its brief attempts to justify its position by references to marijuana collectively with addictive and potentially deadly illegal narcotic and other illegally used drugs like cocaine, heroin, fentanyl, and methamphetamine (U.S. Br. 6, 33), it is necessary to place this case in the proper context for full consideration of the issues by the Court.⁶

1. This case *solely* involves the constitutionality of § 922(g)(3) in connection with the use of marijuana, which currently is illegal and wholly prohibited under CSA § 812(a), Schedule I §§ (c)(10) & (c)(17). *See* U.S. Br. 7 (“Respondent told the FBI that he used marijuana about every other day”) (respondent’s “prosecution rests on respondent’s habitual use of marijuana”). *See also* Resp. Br. 1. The same is true of *United States v. Connelly*, 117 F.4th 269, 272 (5th Cir. 2024), the prior Fifth Circuit decision finding § 922(g)(3) unconstitutional under the Second Amendment that the government conceded controlled this case (U.S. Br. 8-9). And the same is true

6. The definition of “narcotic drug” under the CSA does not include marijuana, *see* § 802(17). According to the Drug Enforcement Administration (“DEA”), “[n]o deaths from overdose of marijuana have been reported.” <https://www.dea.gov/factsheets/marijuana>. Hundreds of thousands of deaths have been reported from the other drugs. <https://nida.nih.gov/research-topics/trends-statistics/overdose-death-rates#Fig2>. For that matter, “addict” under CSA § 802(1) does not include marijuana, but is defined to mean “any individual who habitually uses any narcotic drug so as to endanger the public morals, health, safety, or welfare.” And contrary to the government (U.S. Br. 6), fentanyl is a § 812(c), Schedule II (b)(6) drug, not Schedule I.

of a number of other Circuit Court decisions, including some for which certiorari is pending or has been denied, all involving only regular marijuana use.⁷

2. The legal status of marijuana is radically different than the illegal narcotic and other illegally used addictive and potentially deadly drugs like cocaine, heroin, fentanyl, and methamphetamine that the government lumps together with marijuana. Unlike these other drugs, which generally are illegal at both the federal and state levels, Adult Use and/or Medical marijuana are legal and their use authorized⁸ for the vast majority of Americans across the United States.

7. See *United States v. Harris*, 144 F.4th 154, 156 (3d Cir. 2025), *petition for cert. pending*, No. 25-372 (filed Sept. 26, 2025); *United States v. Daniels*, 124 F.4th 967, 970 (5th Cir. 2025), *petition for cert. pending*, No. 24-1248 (filed June 5, 2025); *United States v. Cooper*, 127 F.4th 1092, 1094 (8th Cir.), *cert. denied*, 146 S. Ct. 348 (Oct. 20, 2025) No. 24-1247; *United States v. Baxter*, 127 F.4th 1087, 1089 (8th Cir.), *cert. denied*, 146 S. Ct. 294 (Oct. 14, 2025), No. 24-1328. See also *United States v. VanOchten*, 150 F.4th 552, 557 (6th Cir. 2025) (rejecting government argument that § 922(g)(3) can be applied to all marijuana users) (“Congress [cannot] categorically disarm entire classes of people ... simply because it judged them to present a threat to public safety.”); *Florida Commissioner of Agric. v. Attorney General of the United States*, 148 F.4th 1307, 1311, 1313, 1314 (11th Cir. 2025) (§ 922(g)(3) as applied to Medical marijuana users violates Second Amendment because they “cannot be fairly compared with felons or those the government deems dangerous”) (rejecting government argument that relevant statutes and regulations “are constitutional as applied to all unlawful users of a controlled substance”), *government application for extension of time until December 17, 2025 to file cert. petition granted November 7, 2025 sub nom. Bondi v. Cooper*, No. 25A537, *no petition filed*.

8. See *Murphy*, 584 U.S. at 468-69 & n.28.

Despite the total federal marijuana prohibition, forty States (including Arizona) and the District of Columbia have now legalized a comprehensive program for the intrastate production, distribution, possession and use of Medical marijuana.⁹ Another eight States have legalized a more limited Medical marijuana program based on low-dose tetrahydrocannabinol (“THC”) and/or cannabidiol (“CBD”) products.¹⁰ These 48 States comprise 98.5% of the U.S. population (based on the 2020 Census). And the list of qualifying conditions in a State for which Medical marijuana may be prescribed can vary from less than ten (Alaska) to almost fifty (Illinois) (both Alaska and Illinois have also legalized Adult Use marijuana).¹¹

Furthermore, in little more than a decade starting in November 2012 through November 2023, twenty-four States (including Arizona) and the District of Columbia, which together comprise 54.5% of the U.S. population, have now fully legalized the intrastate production, distribution, possession and use of both Medical and Adult Use marijuana.¹² Marijuana is fully illegal under

9. <https://www.ncsl.org/health/state-medical-cannabis-laws>

10. *Id.* THC is the chemical compound generally responsible for marijuana’s intoxicating and euphoric effects, as well as reducing pain, inflammation and anxiety, promoting relaxation, and aiding in sleep. CBD does not produce intoxicating and euphoric effects, but can also reduce pain, inflammation and anxiety, and aid in sleep. THC and CBD interact with the body in different ways individually and working together.

11. <https://www.compassionatecertificationcenters.com/news/list-of-qualifying-health-conditions-for-medical-marijuana-in-each-state/>

12. <https://www.ncsl.org/health/state-medical-cannabis-laws>.

state law for all purposes including medical use in only two states—Kansas and Idaho, but medical marijuana legislative proposals are in the pipelines there as well¹³

There are almost 15,000 marijuana dispensaries in the United States, and 79% of Americans live in a county with at least one dispensary.¹⁴ In the District of Columbia, where Congress enabled the decriminalization of Medical marijuana under local ordinance in 2009 (*see Standing Akimbo*, 114 S. Ct. at 2237 & n.3), there are more than 70 licensed Medical marijuana dispensaries¹⁵—including several within approximately one mile walking distance of the Supreme Court¹⁶ In reality, “[i]n a State that chooses

13. *Id. See also, e.g.*, <https://legiscan.com/KS/bill/SB294/2025>; <https://odp.idaho.gov/issues-trends/marijuana/>

14. <https://www.flowhub.com/cannabis-industry-statistics>. This site provides substantial nationwide information and statistics about the scope and characteristics of marijuana use by Americans, as well as their views.

15. <https://abca.dc.gov/service/find-medical-cannabis-retailer#gsc.tab=0>. Adult Use marijuana, however, must be purchased outside the District.

16. *E.g.*, RELVA DC, 311 H Street NW, <https://relvadc.com/>; Up 'N Smoke II, 427 8th Street SE (Eastern Market), <https://upnsmokellc.com/eastern-market/eastern-market-shop/>. Similarly, the D2 Dispensary from which *amicus* usually purchases his marijuana has a downtown location less than a mile's walk from the Tucson federal District Court. <https://d2dispensary.com/downtown/>.

The substantially similar websites for these three dispensaries provide significant relevant information about how government-regulated legal marijuana is dispensed and purchased by consumers. The marijuana products are organized by category

to legalize marijuana, possession is wrongful only if the defendant is on federal property.” *Rehaif v. United States*, 588 U.S. 225, 258 (2019) (Alito, J., dissenting) (cited U.S. Pet. at 3, 25, omitted from U.S. Br.).

It is estimated that 61.5 million Americans used marijuana in 2024.¹⁷ Figures vary, but total retail sales of legal marijuana are estimated to have been \$34 billion in 2025, and are estimated to exceed \$60 billion by 2030.¹⁸ States with legal Adult Use marijuana have collected almost \$25 billion in taxes, as of May, 2025, since Adult Use marijuana sales began.¹⁹

(e.g., flower, pre-roll, edibles), lineage (indica, which offers relaxing effects that may also help to reduce pain, increase appetite and aid sleep; sativa, which produces a more mood-boosting, euphoric and stimulating effect; and hybrids of lineages), strain (there are more than 700 strains, including crafted hybrid strain combinations, *see* <https://www.webmd.com/pain-management/cannabis-weed-strains>), weight (usually in grams or ounces), and brand (which vary by dispensary). Additionally, information is provided regarding a product’s concentrations of compounds including THC, CBD and terpenes (e.g., Beta-caryophyllene, a terpene known for health benefits including treating pain and inflammation), and the product’s effects (e.g., calm, happy, relaxed, energetic, creative, focused, inspired, sleepy) so consumers can make informed decisions as to which product to buy.

17. <https://drugabusestatistics.org/marijuana-addiction/>

18. [https://whitneyeconomics.com/press-detail/whitneyeconomics-reduces-its-u.s.-cannabis-retail-forecast-by-\\$21.1-billion-from-2025-2030-](https://whitneyeconomics.com/press-detail/whitneyeconomics-reduces-its-u.s.-cannabis-retail-forecast-by-$21.1-billion-from-2025-2030-)

19. [https://www.mpp.org/news/press/states-collected-nearly-\\$25-billion-from-legal-adult-use-cannabis-sales/](https://www.mpp.org/news/press/states-collected-nearly-$25-billion-from-legal-adult-use-cannabis-sales/); <https://www.flowhub.com/cannabis-industry-statistics>

Arizona itself has seen total retail Medical and Adult Use marijuana sales of more than \$4.8 billion, and has collected more than \$1.3 billion of taxes from their sale, since the sale of Adult Use marijuana began in Arizona in July 2021.²⁰ More than \$770 million of these taxes are Excise Taxes imposed on the sale of Adult Use (but not Medical) marijuana, which are allocated under the SSAA as follows: (a) 33% to community college and provisional community college districts; (b) 31.4% to public safety, including police and sheriffs, fire departments, fire districts and first responders; (c) 25.4% to the Arizona Highway User Revenue Fund; and (d) 10% to the justice reinvestment fund, which is dedicated to providing public health services, counseling, job training and other social services for communities that have been adversely affected and disproportionately impacted by marijuana arrests and criminalization. A.R.S. § 36-2856, § 36-2863.

Compared to these numbers, the federal enforcement efforts are *de minimis*. In fiscal year 2025, total marijuana seizures by the federal government equaled approximately 185,000 pounds, or 2,960,000 ounces (16 ounces to the pound).²¹ Assuming a retail value of \$300 an ounce, the total retail value of the marijuana seized was \$880,000,000, versus \$34 billion for the government-regulated legal state markets – about 2.6%.²²

20. https://azdor.gov/sites/default/files/document/MJ_byPeriodCovered.pdf.

21. <https://www.cbp.gov/newsroom/stats/drug-seizure-statistics> (select marijuana as only drug type)

22. Ounces of mid-tier flower at D2 Dispensary here in Tucson, however, can be \$80 or less (in half ounce increments) when on sale, usually held every Friday through Monday. <https://>

3. The federal marijuana prohibition has ensnared the government in an inextricable Gordian knot. Section 922(g)(3) prohibits not just *amicus* but tens of millions of other law-abiding Americans from purchasing and possessing firearms, or renders them felons,²³ because of their regular use of Medical and Adult Use marijuana which is legal under state law.²⁴ The conduct isn't dangerous

d2dispensary.com/east-shop-rec/?dtche%5Bweight%5D=1-2oz&dtche%5Bcategory%5D=flower

23. Although the exact number of marijuana users who currently possess guns is not known, we do know that in 2025 42% of Americans reported living in a gun-owning household. *See* <https://news.gallup.com/poll/1645/guns.aspx>; *Case v. Montana*, No. 24-624, 2026 WL 96690 at *7 n.1 (S. Ct. Jan. 14, 2026) (Sotomayor, J., concurring). And more than 61 million adults used marijuana in 2024, <https://drugabusestatistics.org/marijuana-addiction/>. So the cross-over of current felons is likely in the millions or more.

24. *See* September 21, 2011 "OPEN LETTER TO ALL FEDERAL FIREARM LICENSEES" from Arthur Herbert, Alcohol, Tobacco and Firearms ("ATF") (users of Medical marijuana legally under State law prohibited by § 922(g)(3) and 27 C.F.R. § 478.11 from possessing firearms or ammunition), <https://www.pennlago.com/wp-content/uploads/September-21-2011-OPEN-LETTER-TO-ALL-FEDERAL-FIREARMS-LICENSEES.pdf>; *see also* ATF Form 4473, "Firearms Transaction Record," used to determine whether a transferee/buyer is prohibited from receiving a firearm (all Medical and Adult Use marijuana users are prohibited because "[t]he use or possession of marijuana remains unlawful under Federal law regardless of whether it has been legalized or decriminalized for medicinal or recreational purposes in the state where you reside").

Apparently ATF last week proposed changes to 27 C.F.R. § 478.11 construing § 922(g)(3)'s "unlawful user" prong to require "a pattern of ongoing use." 91 Fed. Reg. 2,698, 2,703 (Jan. 22,

enough to have merited active federal enforcement by the Executive Branch over the past 15 years with respect to tens of millions of legal users under State law.²⁵ And for the past decade Congress affirmatively prohibited the expenditure of funds by the Department of Justice to enforce the federal prohibition against State-regulated Medical marijuana. *See Standing Akimbo*, 141 S. Ct. at 2237 & n.4. But if the users of marijuana that is legal under State law possess arms they become gun-wielding criminals primed to inflict violence on and endanger the safety of others and their communities.

And the knot keeps tightening. The legal landscape has been changing so rapidly that the government's brief filed on December 12, 2025 is already stale regarding the "determination" by "Congress and the Executive" that marijuana should be classified as a Schedule I drug because of its purported "lack of accepted safety for use ... under medical supervision" (U.S. Br. 23). On December 18, 2025 President Trump issued his Executive Order directing Attorney General Bondi to reschedule marijuana to Schedule III "in the most expeditious manner"—based on a completed FDA review of scientific support for

2026). The change is irrelevant to *amicus* and the tens of millions of regular marijuana users. Indeed, 42% of marijuana users are considered "intensive users," meaning they consume daily or near-daily. <https://www.flowhub.com/cannabis-industry-statistics>

25. *See* August 29, 2013 Memorandum by Deputy Attorney General James M. Cole at 3. *See also* October 29, 2009 Memorandum by Deputy Attorney General David Ogden; June 29, 2011 Memorandum by Cole; February 14, 2014 Memorandum by Cole. The Ogden and Cole Memos are collected as Exhibit 2 to *amicus*'s First Amended Complaint in his District Court action (Dkt. # 9-1). *See also Standing Akimbo*, 114 S. Ct. at 2237 nn.2-4.

marijuana's medical benefits, as well as anecdotal evidence from veterans and seniors.²⁶ President Trump's action followed President Biden's 2022 and 2023 Presidential proclamations directing rescheduling and pardoning thousands of federal defendants convicted of simple marijuana possession.²⁷ The actions of both Presidents contradict the government's assertion regarding "the Executive" and the inclusion of marijuana in Schedule I.

The government's defense of the constitutionality of the categorical disarmament of *amicus* and these tens of millions of other Americans, or rendering them as felons, further confirms the *de minimis* relationship between the government and marijuana "enforcement." According to the government, "[i]n recent years, *over 300 defendants* have been charged with violating Section 922(g)(3) each year" (U.S. Br. 6) (emphasis added)—although the government doesn't state how many of the charged defendants used marijuana as opposed to all the other controlled substances that are illegal at both the federal and state level, or how many of those charged were actually convicted. In addition to these 300 charged defendants, the government supports the scope of the firearm prohibition with citations to a few cases over the years when convicted criminals had used marijuana (usually in connection with dangerous narcotics or other

26. <https://www.whitehouse.gov/presidential-actions/2025/12/increasing-medical-marijuana-and-cannabidiol-research/>

27. <https://www.govinfo.gov/content/pkg/DCPD-202200883/pdf/DCPD-202200883.pdf>; <https://www.federalregister.gov/documents/2023/12/28/2023-28805/granting-pardon-for-the-offense-of-simple-possession-of-marijuana-attempted-simple-possession-of>.

illegal drugs) contemporaneously with their dangerous crimes (U.S. Br. 32-33). These numbers are even more *de minimis* than the ratio of total federal government seizures to total government-regulated legal sales discussed, *supra*.

The government is hiding from the extreme overbreadth of § 922(g)(3). It could have filed its certiorari petition in *Bondi v. Cooper*, No. 25A537, after its extension request was granted so that the Court could consider the constitutionality of the application of § 922(g)(3) to Medical marijuana users along with this case, but it did not. Hemani raised the implications of § 922(g)(3) on the tens of millions of legal marijuana users under state law in his brief in opposition to the government's petition (Resp. Cert. Opp. 17), and again in his January 23, 2026 merits brief (*e.g.*, at 40). Harris did as well in his petition, No. 25-372 (pp. 33-35). The government is not just trying to hide an elephant in a mousehole, it's trying to hide a blue whale in a sardine can.

Respondent in his merits brief, and the decisions of the Circuit Court in this case and the other Circuit Courts (*see n.7, supra*) provide the Court with a roadmap to conclude that the application of § 922(g)(3) based on Hemani's use of marijuana is unconstitutional under the Second Amendment. These cases consistently confirm that the government does not have the right enforce § 922(g)(3) in the absence of any credible threat to the physical safety of others from the dangerous use or carry of a firearm (and not just possessing it) by a person whom the government can actually prove was impaired by marijuana at the time of such dangerous use or carry. *See, e.g., Connally*, 117 F.4th at 280 ("the government offers no Founding-

era law or practice of disarming ordinary citizens for drunkenness, even if their intoxication was routine”), *id.* at 282 (“our history and tradition of firearms regulation show [some] circumstances where § 922(g)(3) would be valid, such as banning presently intoxicated persons from carrying weapons”). *Accord Cooper*, 127 F.4th at 1097 (“intoxication has been prevalent throughout our nation’s history, but ‘earlier generations addressed th[at] societal problem’ by restricting when and how firearms could be used, not by taking them away”) (quoting *N.Y. State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1, 26 (2022)).

That addresses the Second Amendment issue on an individual, as-applied basis. *Amicus* respectfully submits, however, that the issues created by the vastly larger, unconstitutionally overbroad scope of § 922(g)(3) can and should be resolved by the Court as well. Striking down the statute as unconstitutionally overbroad will provide the same relief as striking it down for unconstitutional vagueness advocated by Hemani (Resp. Br. 16 n.6, quoting *Thigpen v. Roberts*, 468 U.S. 27, 30 (1984)). And the statute is unconstitutionally overbroad in the extreme.

SUMMARY OF ARGUMENT

The application of § 922(g)(3) to marijuana users is unconstitutionally overbroad. The relationship of the “over 300 defendants [that] have been charged with violating Section 922(g)(3) each year” (U.S. Br. 6)—of which some unspecified number are marijuana users—to the tens of millions of regular marijuana users in the United States is not just a “lopsided ratio,” it is infinitesimal. *See United States v. Hansen*, 599 U.S. 762, 769-70 (2023).

The primary justifications proffered by the government based on the purported relationship of marijuana use to crime are irrelevant to the vast majority of these marijuana users. The government's proffered "danger" justification and attempt to analogize marijuana users to "habitual drunkards" are completely untethered from any credible threat to the physical safety of others, *see United States v. Rahimi*, 602 U.S. 680, 702 (2024), or to "the public ... health, safety, or welfare" required for the application of § 922(g)(3) to narcotic addicts, are belied by relevant statistics and the actual facts about marijuana intoxication, and are totally speculative.

At bottom, the government's real purported justification is that § 922(g)(3) "applies only to *unlawfully used* drugs" (U.S. Br. 12) (emphasis in original), which is another way of saying that the tens of millions of "authorized" users of government-regulated marijuana which is legal under State law are not "law-abiding" or "responsible"—arguments squarely rejected by the Court in *Rahimi*, 602 U.S. at 701-02, *id.* at 772-73 (Thomas, J., dissenting).

To comply with the Second Amendment, Congress has to rewrite § 922(g)(3).

ARGUMENT

I. The Application of § 922(g)(3) to *Amicus* and the Tens of Millions of Marijuana Users across the United States Is Unconstitutionally Overbroad Under the Second Amendment

Amicus acknowledges that "[a] facial challenge to a legislative Act is ... the most difficult challenge to mount

successfully, since the challenger must establish that no set of circumstances exists under which the Act would be valid.” *United States v. Salerno*, 481 U.S. 739, 745 (1987). *Amicus* further acknowledges the Court’s express reliance on *Salerno* for that principle in *Rahimi*, 602 U.S. at 693.

This “rule” limiting a successful facial challenge, however, can be “broken” by the application of the “overbreadth doctrine,” which “instructs a court to hold a statute facially unconstitutional even though it has lawful applications, and even at the behest of someone to whom the statute can be lawfully applied.” *Hansen*, 599 U.S. at 769 (2023).²⁸ Where “a law’s unconstitutional applications [are] realistic, not fanciful, and their number [are] substantially disproportionate to the statute’s lawful sweep,” this “lopsided ratio” can support the doctrine’s legitimate application. *Id.* at 770.

Amicus also acknowledges that the “overbreadth doctrine” has generally been limited in its application to the First Amendment. *Id.* at 769-70. *Cf. Hodel v. Irving*, 481 U.S. 704, 724 (1987) (Stevens, J., concurring in the judgment) (“The Court’s grant of relief to appellees based on the rights of hypothetical decedents therefore necessarily rests on the implicit adoption of an overbreadth analysis that has heretofore been restricted to the First

28. *Amicus* has standing to challenge the unlawful application of § 922(g)(3). *See Bond v. United States*, 564 U.S. 211, 226 (2011) (Ginsburg, J., concurring) (“any [defendant] has a personal right not to be convicted under a constitutionally invalid law”); *id.* at 227 (“An offence created by [an unconstitutional law] ...is not a crime.”) (quoting *Ex parte Siebold*, 100 U.S. 371, 376 (1880)).

Amendment.”);²⁹ *id.* at 726 n.10 (“The Court generally does not grant relief [under the overbreadth doctrine] unless there has been a showing that the invalid applications of the statute represent a substantial portion of its entire coverage.”).

The application of the overbreadth doctrine to § 922(g)(3)’s prohibition and criminalization of firearm possession by marijuana users is, *amicus* submits, entirely appropriate under the Second Amendment. Factually, the math itself compels its application: some unspecified fraction of 300 defendants charged (not convicted) under § 922(g)(3) for marijuana use each year (U.S. Br. 6) versus tens of millions of non-violent marijuana users across the entire United States. Using the 61.5 million user figure described in the Introduction, *supra*, § 922(g)(3) prohibits or renders as felons more than 200,000 people for each defendant charged. Stated conversely, the ratio of government defendants charged to marijuana users approaches zero and is infinitesimal. The government’s description of the “scope” of § 922(g)(3) as “narrow” (U.S. Br. 35) or involving only “narrow circumstances” (U.S. Br. 2) is, respectfully, absurd.

The legal justification for applying the overbreadth doctrine to § 922(g)(3) is equally compelling. As the government concedes in the first sentence of its introduction (U.S. Br. 2), “[f]or the Founders, the Second Amendment stood second to none among the Bill of Rights.” Furthermore, the analyses employed by the

29. The injuries to the tens of millions of marijuana users who are unconstitutionally disarmed or rendered felons by § 922(g)(3) are not hypothetical.

Court in its Second Amendment jurisprudence includes “overbreadth” in essence and substance.” *See Bruen*, 597 U.S. at 31 (definition of “sensitive places” is “far too broad[d]”). *See also Rahimi*, 602 U.S. at 761 (Thomas, J., dissenting) (“The Government’s proposed justification is also far too general.”); *id.* at 762 (“far too broad[d]”) (quoting *Bruen*).

On their face, three of the principal justifications asserted by the government to support its position (U.S. Br. 33-35) are categorically irrelevant to the tens of millions of users of government-regulated marijuana that is legal under State law, and thus confirm § 922(g)(3)’s overbreadth: (1) that [d]rug users ... commit crime in order to obtain money to buy drugs” (quotations and citations omitted); (2) that “violent crime may occur as part of the drug business or culture” (citation omitted); and (3) that “armed drug users endanger police” because “drug users ... would be more likely than other citizens to have hostile run-ins with law enforcement officers” (citation omitted).

Arizona enacted the SSAA, among other reasons, to *eliminate* the criminal element from the marijuana market. *See* Full Text of Ballot Initiative, Section 2(2)(a):

The People of the State of Arizona find and declare as follows:

* * *

2. In the interest of the health and public safety of our citizenry, the legal adult use of marijuana should be regulated so that:

- (a) Legitimate, taxpaying business people, and not criminal actors, conduct sales of marijuana.

That's more than \$1 billion of government-regulated retail marijuana sales in Arizona in 2025,³⁰ and \$34 billion nationwide,³¹ for which organized crime and the criminal element has been eliminated. As compared to some unspecified number less than 300 defendants charged under § 922(g)(3) for marijuana use.³²

The fourth justification proffered by the government is that "marijuana ... presents grave risks of firearm misuse" (U.S. Br. 33). No one disputes that carrying and using a firearm while impaired by marijuana can be dangerous. But because the government asserts the justification as a basis to categorically disarm tens of millions of marijuana users, then in light of the vast expansion of the market for government-regulated legal Medical and Adult Use

30. https://azdor.gov/sites/default/files/document/MJ_byPeriodCovered.pdf

31. [https://whitneyeconomics.com/press-detail/whitney-economics-reduces-its-u.s.-cannabis-retail-forecast-by-\\$21.1-billion-from-2025-2030-](https://whitneyeconomics.com/press-detail/whitney-economics-reduces-its-u.s.-cannabis-retail-forecast-by-$21.1-billion-from-2025-2030-)

32. In Arizona, "criminal charges for black market sales, transportation and cultivation of marijuana have dropped significantly" since Adult Use marijuana was legalized in 2020. In Pima County where *amicus* resides, "the Pima County Attorney's Office, which has jurisdiction over a border county that covers a large swatch of southern Arizona, including Tucson, filed charges on just one felony case involving cultivation and sales of marijuana in 2023 [and the] office reported it filed no charges that year involving only sales." <https://www.azcentral.com/story/news/local/arizona-data/2024/05/27/arizona-marijuana-crime-data-shows-prosecutions-now-exceedingly-rare/73837655007/>

marijuana with tens of millions of users, *amicus* submits that it's appropriate to examine the statistics on a macro-basis to see if marijuana use has increased dangerous firearm use. And the answer is no, to the contrary, firearm murders and injuries have consistently gone down.³³ And serious crime rates, including gun assaults, have declined every year since 2022.³⁴

These statistics belie any implicit suggestion by the government that marijuana somehow fills *amicus* and the other tens of millions of “regular” marijuana users with the irresistible impulse to get their firearms from safe storage in their homes and run out to endanger the public.

Hemani addresses numerous defects in the government’s attempt to equate marijuana users with “habitual drunkards” (Resp. Br. 29-32). There are more. For one thing, the term “habitual drunkard” itself has been found to be unconstitutionally vague. *See Manning v. Caldwell*, 930 F.3d 264, 278 (4th Cir. 2019) (en banc); *id.* at 277 (“There are almost as many definitions for terms such as “common drunk” or “habitual drunkard” as there are courts that have attempted to formulate them.”). Which is evidenced by the fact that the government has tried

33. Since 2020, six states have newly legalized Medical marijuana and 14 states have newly legalized Adult Use marijuana. Despite the vast scope of the legality of Medical and Adult Use marijuana by the States, gun murders fell 14% from 20,958 in 2021 to 17,927 in 2023. *See* <https://www.pewresearch.org/short-reads/2025/03/05/what-the-data-says-about-gun-deaths-in-the-us/> Gun murders continued to decline in 2024, as did gun injuries. <https://www.thetrace.org/2024/12/data-gun-violence-shooting-stats-america/>

34. <https://counciloncj.org/crime-trends-in-u-s-cities-year-end-2025-update/>

to label every person who regularly uses marijuana as analogous to a “habitual drunkard.”

Regardless of how “habitual drunkard” is defined, we know it when we see it, and there are many examples of habitual drunkards in popular culture that fit the bill. Comical drunkards like Lee Marvin as Kid Shelleen in the western film *Cat Ballou* and Dudley Moore in *Arthur*.³⁵ Tragic drunkards like Jack Lemmon and Lee Remick in *Days of Wine and Roses*.³⁶ Even Otis Campbell, the “town drunk” in the fictional, rural, all-American town of Mayberry, North Carolina in *The Andy Griffith Show*³⁷—habitual drunkards are, for better or worse, part of the American tradition. And they all bear one important similarity—they look and act very drunk and, in some instances, do upset the peace or even create a credible threat to the physical safety of others—including when carrying a firearm.

Marijuana is different. “At low, usual ‘social’ doses, ... [t]o an unknowing observer, an individual [under the effects of marijuana] would not appear noticeably different from his normal state,” and “[a]t higher, moderate doses, these same [effects] are intensified but the changes in the individual would still be scarcely noticeable to an observer.”³⁸

35. https://en.wikipedia.org/wiki/Cat_Ballou;
[https://en.wikipedia.org/wiki/Arthur_\(1981_film\)](https://en.wikipedia.org/wiki/Arthur_(1981_film))

36. [https://en.wikipedia.org/wiki/Days_of_Wine_and_Roses_\(film\)](https://en.wikipedia.org/wiki/Days_of_Wine_and_Roses_(film))

37. https://en.wikipedia.org/wiki/Otis_Campbell

38. See United States National Commission on Marihuana and Drug Abuse (“Shafer Commission”), “Marihuana, A Signal

Other research showed that marijuana had “no influence on speech and coordination,” “that marijuana users are able to compensate nearly 100 percent for whatever adverse effects may result on ordinary psychomotor performance,” and that during driving “subjects under a ‘social marijuana high’ showed no significant differences from control subjects in accelerator, brake, signal, steering, and total errors.”³⁹ In Arizona, the SSAA prohibits driving “while impaired to even the slightest degree by marijuana.” A.R.S. § 36-2851(3). However, in Arizona, because marijuana is detectable in the body for much longer than the effects last,⁴⁰ it is not

of Misunderstanding,” (Mar. 22, 1972), <http://www.druglibrary.org/schaffer/Library/studies/nc/ncmenu.htm> (“Shafer Report”), at Chapter II, Marijuana Use and Effects, Subjective Effects, https://www.druglibrary.org/schaffer/Library/studies/nc/ncchap2_33.htm. The Shafer Commission was created in connection with the passage of the CSA to study marijuana use in the United States and report their findings to then-President Nixon, Congress and the public. The Shafer Report presented by the Commission’s chairman, former Pennsylvania Governor Raymond P. Shafer, favored ending marijuana prohibition and adopting other methods to discourage use. The recommendations of the Shafer Report were ignored by Nixon and the federal government.

39. Richard J. Bonnie & Charles H. Whitebread, II, *The Forbidden Fruit and the Tree of Knowledge: An Inquiry into the Legal History of American Marijuana Prohibition*, 56 Va. L. Rev. 971, 1107-08 & n.58 (1970). Charles Whitebread was also on the Shafer Commission and participated in its 1972 report. See Richard J. Bonnie & Charles H. Whitebread II, *The Marijuana Conviction* 1, ix (1999). Shafer wrote the forward, *id.* at xi.

40. Typically, THC is detectable for up to 90 days in hair, anywhere between 1 day to a month or longer in urine (depending on how often the individual uses it), up to 24 hours in saliva, and up to 12 hours in blood. <https://pmc.ncbi.nlm.nih.gov/articles/>

enough to merely show a positive blood test, and evidence of impairment is required. *Kirsten v. Arizona Dep't of Transp.*, 558 P.3d 969 (Ariz. Ct. App. 2024). Contrary to the government's argument (U.S. Br. 5), it cannot prove marijuana "intoxication" "by routinely administering drug tests solely to preserve evidence for potential Section 922(g)(3) prosecutions," but must identify other objective factors establishing impairment.

The fact that marijuana users aren't readily identifiable in public without other indicia of impairment creates a significant problem for the government, and it's not just proving intoxication. The range of effects experienced by a marijuana user described on dispensary websites across the Nation include: calm, happy, relaxed, energetic, sleepy, clear mind, inspired, creative, focused, and uplifted⁴¹—none of which standing alone or in combination are indicative of threatening or even unusual behavior, and as a general matter are not outwardly manifested and are known only to the user. If the government can't objectively identify a person who is under the influence from marijuana because he or she is acting normally and not impaired, then by definition that person isn't creating a credible threat to the physical safety of others because of marijuana use that would support disarming under the Second Amendment.

PMC4920965/ The effects of marijuana generally last from two to six hours, depending on factors including dose, how consumed (smoke, vape, edible), and the experience of the user.
[https://en.wikipedia.org/wiki/Cannabis_\(drug\)](https://en.wikipedia.org/wiki/Cannabis_(drug))

41. *See, e.g.*, Up 'N Smoke II, 427 8th Street SE (Eastern Market), Washington, D.C., <https://upnsmokellc.com/eastern-market/eastern-market-shop/> (n.16, *supra*).

Section 922(g)(3) is also overbroad because it imposes the firearm prohibition on regular marijuana users on a lesser standard than for addicts. The term “addict” under CSA § 802(1) (which does not apply to marijuana because it’s not included in the definition of “narcotic” under CSA § 802(17)) is defined to mean “any individual who habitually uses any narcotic drug so as to endanger the public morals, health, safety, or welfare.” Putting aside how someone endangers the “public morals,” an addict under § 922(g)(3) must actually “endanger the public … health, safety, or welfare,” which is a closer analogy to the requirement of a “credible threat to the physical safety of others” under *Rahimi*, 602 U.S. at 702. Section 922(g)(3) not only does not require proof of actual intoxication by marijuana use, it does not require any dangerous conduct at all.

Another reason § 922(g)(3) is overbroad is because it treats marijuana differently from all of the other intoxicating drugs not included in Schedule I of the CSA. Aside from dangerous non-Schedule I narcotics like fentanyl and stimulants like methamphetamine that the government tries to lump together with marijuana, the list is long of widely prescribed “habitually used” non-Schedule I pharmaceuticals that are euphoric and intoxicating in ways that could impair safe gun handling—including highly addictive sedative-hypnotic anti-anxiety benzodiazepines like Valium, Xanax and Klonopin, sedative-hypnotic sleep-aids like Ambien, Seconal and Placidyl, and stimulants like Adderall prescribed to treat Attention-Deficit Hyperactivity Disorder.⁴²

42. <https://en.wikipedia.org/wiki/Euphoria#Depressants>; <https://en.wikipedia.org/wiki/Adderall>; *See generally* <https://>

Which leads to the real reason for the government's attempt to disarm or render as felons *amicus* and tens of millions of marijuana users: According to the government, § 922(g)(3) "applies only to *unlawfully used* drugs, putting it on an even stronger footing than historical restrictions tied to the abuse of alcohol (which has been legal for most of American history)" (U.S. Br. 12) (emphasis in original). In other words, the real issue is not whether an intoxicating substance like marijuana could arguably render keeping firearms dangerous—it's the fact that the intoxicating substance is *illegal* ("unlawful user of ... any controlled substance").

Amicus illustrated above how marijuana is treated more severely than narcotics addiction and all of the other "intoxicating" non-Schedule I drugs. And without the "unlawfulness" of marijuana use, there is no legitimate basis for the government's attempt to distinguish marijuana from alcohol or imply that alcohol is somehow safer—a doubtful slippery slope for sure, although a large majority of Americans—73%—think marijuana is "healthier" than alcohol.⁴³

The government's distinction between marijuana and alcohol based on "unlawfulness" is really a veiled contention that *amicus* and tens of millions of regular marijuana users are not "law-abiding" or "responsible" because of the federal prohibition. Despite the fact the Medical marijuana use in some form is legal and "authorized" (see *Murphy*, 584 U.S. at 468-69 & n.28) in

en.wikipedia.org/wiki/Euphoria#List_of_euphoriants_by_mechanism_of_action

43. <https://www.flowhub.com/cannabis-industry-statistics>.

48 States and the District of Columbia, and Adult Use marijuana use is legal and authorized in 24 States and the District of Columbia.⁴⁴ The government avoids using the exact terms “law-abiding” and “responsible” because the Court shut down the government on that argument in *Rahimi*, 602 U.S. at 701-02; *see also id.* at 772-73 (Thomas, J., dissenting).

All of which leads us back to the words of the statute. Section 922(g)(3) prohibits gun possession by an “unlawful user of ... any controlled substance.” The prohibition thus rests on the Congressional declaration of illegality by the inclusion of marijuana in Schedule I in the CSA. And though it is beyond the scope of the instant case, there are substantial reasons to challenge the constitutionality of Congress’s declaration of “unlawfulness” without regard to the Second Amendment, which *amicus* addresses only briefly.⁴⁵

With respect to the constitutionality of the federal marijuana prohibition under the Commerce Clause, that prohibition cannot be “necessary and proper” where: (1) Congress and the Executive Branch have not actively enforced it for fifteen years, *see, e.g., Standing Akimbo*, 141 S. Ct. at 2236-38, and President Biden has pardoned all federal simple possession convictions (*see n.27, supra*); (2) the 48 State government-regulated, intrastate marijuana markets have rendered inapplicable and factually incorrect the “Congressional findings and declarations” in

44. <https://www.ncsl.org/health/state-medical-cannabis-laws>

45. *Bond, supra*, 564 U.S. at 227 (Ginsburg, J., concurring) (“An offence created by [an unconstitutional law] ...is not a crime.”).

CSA § 801 used to justify the extension of the reach of the prohibition to intrastate markets,⁴⁶—findings which were “without any supporting evidence—descriptive, statistical, or otherwise,” *see Raich*, 545 U.S. at 54 (O’Connor, J., dissenting); *id.* at 64 (Thomas, J., dissenting) (same); and (3) the Congressional classification of marijuana as a Schedule I drug because of its purported “lack of accepted safety for use … under medical supervision” and “no currently accepted medical use in treatment in the United States,” even if arguably true when the CSA was enacted,⁴⁷ has now been rejected by 48 States and disproven by a mountain of evidence confirming that it can be safely used medically, including the evidence identified by President Trump in his Executive Order, *supra*, directing the Attorney General to reschedule marijuana to Schedule III. And, for that matter, *amicus*’s personal experience in connection with pain relief and as an aid to sleep.⁴⁸

46. *See Leary v. United States*, 395 U.S. 6, 38 n.6 (1969) (“A statute based upon a legislative declaration of facts is subject to constitutional attack on the ground that the facts no longer exist; in ruling upon such a challenge a court must, of course, be free to re-examine the factual declaration.”); *United States v. Carolene Prods. Co.*, 304 U.S. 144, 153 (1938) (“[T]he constitutionality of a statute predicated upon the existence of a particular state of facts may be challenged by showing to the court that those facts have ceased to exist.”).

47. *See Raich*, 545 U.S. at 28 n.37 (“We acknowledge that evidence proffered by respondents in this case regarding the effective medical uses for marijuana, if found credible after trial, would cast serious doubt on the accuracy of the findings that require marijuana to be listed in Schedule I.”).

48. *See Leary*, *supra*, *Carolene Prods.*, *supra*. Cf. *Pennsylvania v. Wheeling & Belmont Bridge Co.*, 59 U.S. 421, 439 (1855) (“It was said by Chief Justice Marshall, many years

With respect to the constitutionality of the federal marijuana prohibition under the Tenth Amendment, Congress has attempted to preempt Arizona and the other States,⁴⁹ who by legalizing, regulating and taxing marijuana: (1) have eliminated the operations of the cartels and other criminal elements (that are the unavoidable result of the federal prohibition) by making available more than one hundred billion dollars of government-regulated legal marijuana purchased across the Nation; (2) have generated billions of dollars of tax revenues which can be used to benefit the citizens of the

ago, that congress could do many things, but that it could not alter a fact.”).

49. 21 U.S.C. § 903, “Application of State Law,” provides as follows:

No provision of this subchapter shall be construed as indicating an intent on the part of the Congress to occupy the field in which that provision operates, including criminal penalties, to the exclusion of any State law on the same subject matter which would otherwise be within the authority of the State, unless there is a positive conflict between that provision of this subchapter and that State law so that the two cannot consistently stand together.

The government—in its reply brief (at 4) in response to Hermani’s reference to the substantial legalization of marijuana by the States in his brief in opposition to the government’s petition (at 17)—made the sweeping assertion that “federal law takes precedence over contrary state law,” with a bald reference to the Supremacy Clause, U.S. Const. Art. VI, Cl. 2. Although the Court need not resolve the validity of that assertion to find § 922(g)(3) unconstitutional under the Second Amendment, it is nevertheless true that Congress’s declaration of illegality regarding marijuana cannot exceed its powers under the Constitution.

States by, *inter alia*, increasing and improving public safety, roads, and education, and providing public health services, counseling, job training and other social services for communities that have been adversely affected and disproportionately impacted by marijuana arrests and criminalization (*see, e.g.*, A.R.S. § 36-2856(D), § 36-2863); and (3) have provided marijuana users individually with a safe product tested for purity, strength and chemical composition by the licensing and registration of facilities that produce, test, distribute and sell Adult Use marijuana, as well as imposing dosage restrictions, warning labels, and child-resistant packaging (*see, e.g.*, A.R.S. §§ 36-2854, 2855, 2858). These are quintessential exercises of State sovereignty under the Tenth Amendment that Congress has unconstitutionally attempted to preempt.⁵⁰ By the democratic choice of the States and their people to legalize marijuana, they are safer, happier, and healthier.⁵¹ And still entitled to their rights under the Second Amendment.

50. “[A] law is not ‘proper for carrying into Execution the Commerce Clause’ ‘[w]hen [it] violates [a constitutional] principle of state sovereignty.’” *Raich*, 545 U.S. at 39 (Scalia, J., concurring in the judgment) (quoting *Printz v. United States*, 521 U.S. 898, 923-24 (1997)) (emphasis in original).

51. *Amicus* firmly holds the conviction that the pursuit of happiness and safety is “deeply rooted in this Nation’s history and tradition,” “implicit in the concept of ordered liberty,” and a fundamental right retained by the people under the Ninth Amendment, and hopes the Court will someday confirm what he believes is “self-evident.”

CONCLUSION

The Court should declare § 922(g)(3) unconstitutionally overbroad under the Second Amendment. Additionally the Court should affirm the judgment of the Fifth Circuit.

Respectfully submitted,

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