

No. 24-1234

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**In the Supreme Court of the United States**

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UNITED STATES OF AMERICA, PETITIONER

*v.*

ALI DANIAL HEMANI

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

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**REPLY BRIEF FOR THE UNITED STATES**

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It is indeed “critical to understand what this case is—and is not—about.” Resp. Br. 1. This case is about “[w]hether 18 U.S.C. 922(g)(3) \* \* \* violates the Second Amendment as applied to respondent,” who concededly used marijuana, a Schedule I controlled substance, every other day while possessing a firearm. Pet. I. That application of Section 922(g)(3) is constitutional. Laws disarming specific categories of people who “present a special danger of misuse” have a long pedigree. *United States v. Rahimi*, 602 U.S. 680, 698 (2024) (citing *District of Columbia v. Heller*, 554 U.S. 570, 626 (2008)). Historically, habitual drunkards were subject to temporary disarmament. Those laws are “relevantly similar” to Section 922(g)(3) in *why* and *how* they “burde[n] the right.” *Id.* at 692 (quoting *NYSRPA v. Bruen*, 597 U.S. 1, 29 (2022)).

As to the *why*, Congress undisputedly enacted Section 922(g)(3) because of public-safety concerns arising from particularly dangerous behavior: mixing habitual illegal drug use or addiction with firearms. For centuries, similar concerns have prompted restrictions on habitual drunkards through vagrancy, civil-commitment, and surety laws. The rise of illegal drugs similarly spurred laws temporarily disarming habitual drug users. And Congress did not simply generalize about dangers. Section 922(g)(3) builds from the Controlled Substances Act, whereby the Executive Branch classifies controlled substances on a five-tier schedule based on drug-by-drug findings, including evidence regarding dangers of abuse and public-health and safety risks, subject to judicial review. For decades—including when respondent violated Section 922(g)(3)—marijuana has been a Schedule I drug based on determinations that, *inter alia*, “marijuana had a high potential for abuse” and lacks “accepted safety.” 89 Fed. Reg. 44,597, 44,600 (May 21, 2024). The federal government is currently taking steps to reschedule marijuana under Schedule III to facilitate medical marijuana and CBD research “while preserving the Congress’s intent to restrict the sale of products that pose serious health risks,” but that process is not yet complete. Exec. Order No. 14,370, 90 Fed. Reg. 60,541, 60,542 (Dec. 23, 2025).

As to the *how*, Section 922(g)(3) imposes lesser burdens than habitual-drunkard laws authorizing imprisonment or confinement—penalties that involved limited judicial review in civil proceedings. Section 922(g)(3) disarms habitual users only during habitual use. Users can avoid prosecution by ceasing habitual use or can pursue prospective relief through 18 U.S.C. 925(c) or civil suits. Those who persist can be convicted only if a

jury finds beyond a reasonable doubt that they knowingly possessed firearms knowing they were habitual illegal drug users.

Respondent mounts methodologically incoherent facial attacks on Section 922(g)(3). His frontline position—that vagrancy, civil-commitment, and surety laws are too dissimilar in aim or operation to justify *any* firearms restrictions involving temporary disarmament or punishable by imprisonment—would facially invalidate Section 922(g)(3) using the dead-ringers-only approach that *Rahimi* repudiated. The Second Amendment demands apples-to-apples analogues, not inspecting Fujis and Honeycrisps for immaterial differences.

Respondent’s parsimonious approach to analogues also belies his concessions that historical habitual-drunkard laws may well justify disarming addicts, Br. 3, 50, and that a distinct tradition supports disarming intoxicated people, Br. 2-4, 13-14, 25-31. Why historical laws that purportedly “have nothing to do with” firearms (Br. 42) could justify disarming addicts—but not habitual users—is anyone’s guess. Similarly unclear is how to reconcile respondent’s concession that a valid tradition of temporarily disarming intoxicated people exists (Br. 25) with respondent’s methodology, which would rule out that founding-era evidence as too limited and mid-19th century laws as too late. See Br. 37-38.

Alternatively, respondent (Br. 39) seemingly proposes disarming habitual drug users based on individualized dangerousness determinations. Cf., *e.g.*, Center for Human Liberty Br. 8-22 (embracing this approach). That approach, too, facially attacks Section 922(g)(3), which requires no individualized determinations for unlawful users or addicts. That approach contradicts  *Heller*’s observation that category-by-category determina-

tions of dangerousness can be permissible and belies respondent's refusal (Br. 47) to rule out "categorical restrictions when it comes to controlled substances." That approach is also unworkable. Courts would hold mini-trials on how a drug affects impulse control, its potential for addiction or abuse, how much use enhances the risks, and other questions. See *United States v. Harris*, 144 F.4th 154, 165-166 (3d Cir. 2025), petition for cert. pending, No. 25-372 (filed Sept. 26, 2025). Because many of those issues underlie drug scheduling classifications, this process would end-run existing mechanisms for challenging those classifications while risking inconsistent results on whether once-a-week heroin use is dangerous for everyone; whether fentanyl is sufficiently debilitating for most; and how hazardous daily marijuana use is, at what concentrations of THC. How such armchair pharmacology could even be accomplished *before* prosecution, as amici propose (NACDL Br. 23-24; Cato Br. 9-10), is anyone's guess.

Respondent also urges (Br. 46-48) that even if habitual users of other drugs could be deemed categorically dangerous, marijuana is too ubiquitous. But millions of Americans also regularly abuse opioids and cocaine. Whether marijuana is properly scheduled and how dangerous it is are questions the Controlled Substances Act leaves to the Executive Branch.

Finally, this case is *not* about respondent's new lead argument (Br. 15-24) that Section 922(g)(3) is void for not giving "fair notice" of what "unlawful drug user" means. The only "fair notice" at stake is the notice this Court requires from parties. Respondent was "obligat[ed]" to "point out in the brief in opposition, and not later," any objection "bear[ing] on what issues properly would be before the Court if certiorari were granted."

Sup. Ct. R. 15.2. Yet his vagueness claim never appeared in his brief in opposition or the decisions below—perhaps because respondent urged the Fifth Circuit to affirm on as-applied Second Amendment grounds. Regardless, every circuit to consider vagueness has rightly rejected that claim. Section 922(g)(3) provides fair notice that it prohibits habitual unlawful drug users from possessing firearms while they remain habitual users. Far from a glaringly obvious “fatal” flaw, Resp. Br. 11, vagueness is a last-ditch distraction from a meritless Second Amendment challenge.

**A. Section 922(g)(3) Complies With The Second Amendment As Applied To Respondent**

Section 922(g)(3)’s temporary disarmament of habitual users of unlawful drugs comports with our historical tradition of disarming habitual drunkards and (when the problem emerged) habitual illegal drug users.

**1. Section 922(g)(3) is relevantly similar to founding-era habitual-drunkard laws**

a. The Second Amendment allows temporarily disarming limited “categories of persons thought by a legislature to present a special danger of misuse” of firearms. *Rahimi*, 602 U.S. at 698. Respondent thus concedes the validity of “categorical restrictions on who may possess firearms,” including “when it comes to controlled substances,” Br. 47, where “‘an analogous group was subject to similar or more severe limits at the founding,’” Br. 2 (citation omitted).

Here, the relevant analogue is America’s “historical tradition of ‘restricting the rights of habitual drunkards’” since “the Founding.” Resp. Br. 29-30 (brackets and citation omitted). As respondent admits (Br. 31), those historical restrictions were precautionary measures

that applied during sober intervals. They “focused on *how frequently* someone was intoxicated,” separate from historical laws “focus[ing] on whether someone was *presently* intoxicated.” *Ibid.* And respondent agrees (Br. 43) that while those laws involved alcohol, they can extend to substances not “widely available at the Founding,” like marijuana. That “convincing array of historical analogues” is “relevantly similar” to Section 922(g)(3). *United States v. Ledvina*, No. 24-2441, 2026 WL 321431, at \*7-\*8 (8th Cir. Feb. 6, 2026) (Colloton, C.J., concurring in part and dissenting in part).

First, all agree *why* Congress enacted Section 922(g)(3): “to keep firearms away from the persons Congress classified as potentially \* \* \* dangerous.” Resp. Br. 4 (citation omitted). In other words, “Congress concluded that drug addicts and drug users present a special danger of misuse.” *Ledvina*, 2026 WL 321431, at \*7 (opinion of Colloton, C.J.).

Historical legislatures enacted habitual-drunkard laws to address similar concerns.

- **Vagrancy laws.** States classified drunkards as vagrants—making them criminals subject to imprisonment or confinement in workhouses. Gov’t Br. 19-20. Those laws were contemporaneously framed as measures to preserve “publick order” by confining “disorderly persons.”<sup>1</sup>

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<sup>1</sup> *E.g.*, Samuel Freeman, *The Town Officer* 51 (6th ed. 1805); Act of Oct. 1727, *The Public Records of the Colony of Connecticut from May, 1727, to May, 1735, inclusive* 127-128 (Charles J. Hoadly ed., 1873); Act of June 10, 1799, § 2, *Laws of the State of New-Jersey* 474 (1821) (restraining persons found bearing “pistol[s]” or other arms “with intent to assault any person”).

- **Civil-commitment laws.** Many States committed drunkards, like lunatics, to asylums or guardians' custody. Gov't Br. 20-22. They did so because lunatics and drunkards "ought not to be suffered to go loose, to the terror of" the public. 4 William Blackstone, *Commentaries on the Laws of England* 25 (10th ed. 1787).
- **Surety laws.** The "consensus" of States required "all 'common drunkards'" to post surety for good behavior or face imprisonment. Gov't Br. 22 (citation omitted). Respondent (Br. 40) concedes that surety laws were "at a very high level animated by public safety." That considerably undersells *Rahimi*'s conclusion that surety laws "restrict[ed] gun use to mitigate demonstrated threats of physical violence, just as" Section 922(g)(8) did. 602 U.S. at 698.

Second, Section 922(g)(3) resembles habitual-drunkard laws in *how* it burdens the right; indeed, it imposes lesser burdens. "[T]emporary disarmament" during habitual use is a "lesser restriction" than "imprisonment" or confinement historically imposed on drunkards. *Rahimi*, 602 U.S. at 699. That makes temporary disarmament "also permissible." *Ibid.*; see *United States v. Veasley*, 98 F.4th 906, 913-915 (8th Cir.), cert. denied, 145 S. Ct. 304 (2024); *Harris*, 144 F.4th at 159-161.

Respondent contends that under *Rahimi*, greater punishments (like imprisonment) justify lesser-included restrictions (temporary disarmament) only "if imprisonment was permissible' as a response to 'the use of guns to threaten the physical safety of others.'" Resp. Br. 33 (citation and emphasis omitted); cf. Center for Human Liberty Br. 17. But that was true in *Rahimi* because surety and going-armed laws allowed "jail[ing]" individ-

uals in response to “threats of physical violence,” not specific uses of firearms in spousal abuse. 602 U.S. at 695, 698. And that is true here too: habitual-drunkard laws imprisoned or confined “categories of persons thought by a legislature to present a special danger.” *Ledvina*, 2026 WL 321431, at \*6 (opinion of Colloton, C.J.) (citation omitted).

Section 922(g)(3)’s “temporary restriction” is thus “well-grounded in history.” *Harris*, 144 F.4th at 162. Far from “broadly restrict[ing] arms use by the public generally,” Resp. Br. 32 (citation omitted), it temporarily disarms only habitual users, who may regain their rights by ceasing habitual use. By providing a “temporal stopping point (and put[ting] the onus on the drug user to relieve the burden),” Section 922(g)(3) operates “[j]ust like” historical laws. *United States v. Gould*, 163 F.4th 795, 806 (4th Cir. 2026).

b. Respondent’s cross-cutting attempts to discount habitual-drunkard laws contradict *Bruen* and *Rahimi*. Indeed, those objections would disqualify *all* habitual-drunkard laws as analogues for any firearm restrictions—including Section 922(g)(3)’s bar on possession by addicts, which many States adopted and respondent (Br. 3, 50) seemingly endorses. Respondent’s arguments would also invalidate other provisions of Section 922(g) and analogous state laws.

**Vagrancy laws.** In respondent’s telling (Br. 34), vagrancy laws are never valid analogues because they did not specifically “targe[t] the misuse of firearms.” That mirrors the Fifth Circuit’s reasoning that historical laws are not analogous where modern laws regulate “wider swath[s] of conduct.” *United States v. Rahimi*, 61 F.4th 443, 459 (2023). This Court rejected that reasoning, holding that laws are “sufficiently similar” where,

as here, they target “threat[s] to the physical safety of others.” *Rahimi*, 602 U.S. at 700.

Respondent (Br. 34-35) next confines the *why* of vagrancy laws to “economic policy,” citing modern sources portraying those laws as labor-control measures. But those sources acknowledge the laws’ “array of interrelated purposes,” Christopher Roberts, *Discretion and the Rule of Law*, 33 *Duke J. Compar. & Int’l L.* 181, 223 (2023), including “stop[ping] crimes before they were committed,” Risa Goluboff, *Vagrant Nation* 2-3 (2016). Indeed, the “commonest” justification is that vagrancy laws were “police regulations to prevent crime.” Caleb Foote, *Vagrancy-Type Law and Its Administration*, 104 *U. Pa. L. Rev.* 603, 625 (1956) (citation omitted).

Respondent also incorrectly cabins *how* vagrancy laws burdened rights, mentioning “forced labor” or “econom[ic]” sanctions (Br. 36) but omitting that vagrancy laws subjected drunkards to “jailing,” which “necessarily” disarmed them, *Ledvina*, 2026 WL 321431, at \*8 (opinion of Colloton, C.J.), or to workhouses, where “[n]o personal belongings could be taken,” Jenny Teichman, *Illegitimacy* 110 (1982).

Respondent (Br. 36) attacks vagrancy laws for “offend[ing] modern sensibilities and violat[ing] due process,” inaptly comparing them to Black Codes designed to disarm newly freed slaves in 1865. But Black Codes are irrelevant “outlier[s]” because unconstitutional, post-Civil War laws that pretextually disarmed black Americans cannot illuminate what the Second Amendment permits—if anything, they show the opposite. See U.S. Amicus Br. at 14, 31, *Wolford v. Lopez* (No. 24-1046). By contrast, vagrancy laws were widely adopted at “the founding,” *City of Chicago v. Morales*, 527 U.S. 41, 103 (1999) (Thomas, J., dissenting), and “remain ex-

tensively utilized” in “the United States,” Roberts 183; see *Hiibel v. Sixth Judicial District Court*, 542 U.S. 177, 183-185 (2004) (rejecting constitutional challenge). Moreover, vagrancy laws evince the “legal principle” that legislatures can disarm potentially dangerous people, which “remains valid” even if some applications would be indefensible today. See William Baude & Robert Leider, *The General-Law Right to Bear Arms*, 99 *Notre Dame L. Rev.* 1467, 1513 (2024).

Respondent’s contention (Br. 37) that relying on vagrancy laws would allow disarming “fortune-tellers” and other 17th- and 18th-century vagrants is thus fallacious. What matters is the principle defining dangerousness, not inflexibly preserving every application. Hence, *Rahimi*’s embrace of surety laws does not mean that everyone subject to sureties at common law—including “whoremasters,” “putative fathers of bastards,” and others “not of good fame”—could be disarmed today. 4 Blackstone 256. Like surety laws, vagrancy laws targeted people likely to disrupt the peace—including habitual drunkards. See p. 6, *supra*. The task is to identify “the principles that underpin our regulatory tradition,” *Rahimi*, 602 U.S. at 692, not mechanically to embrace specific past applications.

**Civil-commitment laws.** Respondent would categorically disregard civil-commitment laws too. Respondent (Br. 37) first dismisses them as too late in time, wrongly accusing the government of citing civil-commitment laws “only” from “the second half of the 19th century.” In reality, the cited laws date to (*inter alia*) 1827 and 1838, Gov’t Br. 21 n.12, and embodied “the doctrine of our antient law.” 4 Blackstone 25. Such laws emerged in “medieval England,” David Korostyshevsky, *Incapable of Managing His Estate*, *Law & Hist. Rev.* 1, 5

(2025), and continued in “early America,” as respondent elsewhere acknowledges (Br. 39).

Respondent (Br. 38) next confines the *why* of civil-commitment laws to “safeguarding property”—much like the Fifth Circuit distinguished going-armed laws as targeting “threat[s] to society generally,” *Rahimi*, 61 F.4th at 459, before it was reversed by this Court, 602 U.S. at 698. But civil-commitment laws also unquestionably aimed to prevent dangerous people from manifesting threats including “violence.” *Korostyshevsky* 14. Further, respondent’s approach—under which laws with multiple purposes never count as analogues—would disqualify all early felony statutes, where the penalty was death or lengthy imprisonment to deter other criminals, not just to incapacitate the offender.

Respondent (Br. 38) argues that civil-commitment laws placed habitual drunkards in guardians’ custody instead of outright barring firearm ownership. But just as imprisonment is incompatible with firearm ownership, so too there are no firearms in asylums. See *Veasley*, 98 F.4th at 913.

Finally, respondent (Br. 38-39) distinguishes civil-commitment laws’ “procedural protections.” But that comparison benefits Section 922(g)(3). Civil-commitment laws authorized “magistrates” unilaterally to deprive drunkards of liberty, *Rahimi*, 602 U.S. at 695, in “non-criminal” proceedings, *Korostyshevsky* 22. Under Section 922(g)(3), the government must prove to a unanimous jury beyond a reasonable doubt that the defendant was a habitual user of controlled substances when possessing a firearm. See, *e.g.*, 7th Cir. Pattern Crim. Jury Instructions 363 (2023). And respondent receives a full-dress criminal trial with all attendant protections. Gov’t Br. 26-27.

**Surety laws.** Though respondent acknowledges that “public safety concerns” underpinned surety laws, his objections (Br. 40-43) would categorically exclude those laws as analogues for restricting any drug users. Respondent would, at most, count only surety laws that required individual showings of likely firearms misuse; even then, he contends, surety laws cannot justify disarmament or criminal punishment for violations. But, like vagrancy and civil-commitment laws, surety laws broadly empowered justices of the peace to use discretion to require bond of all sorts of people deemed potentially dangerous or injurious to public peace and order.

Thus, many surety laws discussed in *Rahimi* focused on preventing underlying behavior (like spousal abuse) by requiring husbands to post bonds and promise not to engage in further abuse. 602 U.S. at 695-697. Those laws addressed “all forms of violence,” *id.* at 695, “includ[ing] the risk of violence due to intoxication,” as respondent’s amicus admits, Center for Human Liberty Br. 5; see *id.* at 9-12. They did not require evidence that threatened abuse might involve firearms, just like surety laws requiring habitual drunkards to eschew public drunkenness did not. Both sets of laws presumed that the underlying conduct (violence and habitual drunkenness) threatened public peace and safety, and imposed imprisonment (and concomitant disarmament) for failure to post bond. Gov’t Br. 22.

Respondent (Br. 41-42) also treats surety laws as distinguishable in *how* they restricted arms, saying that those laws never justify disarmament or criminal punishment. Respondent emphasizes those laws’ procedural protections, limited duration, and self-defense exceptions. But again, Section 922(g)(3) imposes even higher burdens of proof in criminal trials, p. 11, *supra*, and bars

possession only during habitual use. And because respondent has not attempted to assert a necessity defense, cf., e.g., *United States v. Gant*, 691 F.2d 1159, 1162-1165 (5th Cir. 1982), this case does not raise concerns about whether Section 922(g) “may be constitutionally enforced against a person who uses a firearm in self-defense,” *Rahimi*, 602 U.S. at 713 (Gorsuch, J., concurring). Further, *Rahimi* treated surety laws as analogues to a companion provision, Section 922(g)(8), that prescribes disarmament for domestic abusers under court orders and imposes criminal punishment for violations. *Id.* at 698-700 (majority opinion).

**2. *Post-ratification history confirms Section 922(g)(3)’s constitutionality***

Because Section 922(g)(3) relevantly resembles founding-era habitual-drunkard laws, this Court need look no further. Regardless, post-ratification history bolsters Section 922(g)(3)’s constitutionality. Nineteenth-century American legislatures categorically restricted firearm rights of rebels, persons of unsound mind, and tramps. Gov’t Br. 15-16. And temporary disarmament of illegal drug users dates to the early 20th century—as far as legislative recognition of the drug problem—and remains common. *Id.* at 27-32.

Respondent does not dispute that widespread practice of disarmament; he just dismisses early 20th-century laws and some state laws today because they disarm drug “addicts,” not “unlawful users.” See Br. 44-45. But addicts and habitual users are overlapping categories; laws disarming them impose “comparable” burdens at the level of generality *Bruen* requires. 597 U.S. at 29. Thus, respondent’s amici correctly concede that history supports disarming at least some “regular users.” Liberty Justice Center Br. 12; see Center for Hu-

man Liberty Br. 8. Regardless, respondent’s addicts-only approach would still invalidate at least 35 state and territorial laws (not 16, as he miscounts, Br. 44-45).<sup>2</sup>

Respondent skews the math further by selectively discounting jurisdictions that exclude marijuana or impose lesser firearm restrictions. Those fine-sliced distinctions fail because respondent’s methodology (under which historical habitual-drunkard laws purportedly have “nothing to do with” firearms, Br. 42) would invalidate all such laws no matter the drug or restriction. His amicus candidly admits that respondent’s theory would make Section 922(g)(3) (and laws like it) “facially unconstitutional,” Center for Human Liberty Br. 23 n.5, even for, *e.g.*, daily fentanyl users. The same would likely follow for other provisions of Section 922(g) and state-law counterparts. For example, respondent’s rejection of civil-commitment laws as Second Amendment analogues would also threaten the validity of Section 922(g)(4) and other measures temporarily disarming the mentally ill.

### **3. Remaining counterarguments lack merit**

Respondent’s remaining points underscore his arguments’ incompatibility with *Bruen*’s framework.

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<sup>2</sup> Respondent’s two eight-member lists of laws not limited to addicts inexplicably omit (Br. 45 & n.18) Missouri (which restricts the “habitually” intoxicated), Pennsylvania and Washington (which restrict those with multiple recent intoxication-related convictions), and other laws that do not require addiction, such as laws targeting drug “abuse” or habitual use (including by incorporating Section 922(g)(3)). See Gov’t Br. 30 n.19 (Hawaii, Ohio), n.20 (Oklahoma), n.21 (Alabama, Alaska, Arkansas, Florida, Guam, Indiana, Kentucky, Mississippi, Oregon, South Dakota, Wyoming), n.22 (Georgia); N.H. Rev. Stat. Ann. § 159:6(I)(a).

a. First is respondent's strawman objection (Br. 25-29) to reliance on laws prohibiting intoxicated carry. The government's argument does not depend on that distinct tradition, Gov't Br. 17-18, but that tradition further impugns respondent's methodology. Respondent concedes a historical tradition of temporarily disarming intoxicated people (Br. 25) but never explains how his methodology (which requires founding-era near-twins, see Br. 29-32, 37-38) would endorse those laws (which involve restrictions on holiday revelry and drunkenness at militia practice, plus surety laws, see Center for Human Liberty Br. 4-8) as analogues for disarming intoxicated people generally while carrying. Respondent also (Br. 15) treats the number of potential violators as proof of unconstitutionality. But laws temporarily disarming intoxicated drug or alcohol users could sweep in far more people, including one-time users, than Section 922(g)(3)'s restrictions on habitual drug users and addicts.

b. Respondent (Br. 29-32) contends that treating habitual drunkards as akin to habitual drug users adopts too high a "level of generality." Per respondent, habitual-drunkard laws might "have some purchase" for addicts or those who frequently *abuse* illegal drugs, but not habitual users. Even respondent's amici do not embrace that hair-splitting distinction, which rehashes the "historical twin" approach that *Rahimi* rejected. There, the Fifth Circuit refused to credit going-armed laws since many did not involve forfeiting arms or only did so upon convictions and targeted "those who had been adjudicated to be a threat to society generally," whereas Section 922(g)(8) disarms abusers adjudged to endanger "identified individuals." 61 F.4th at 459. This Court rejected such distinctions, instead demanding a focus on

whether historical analogues regulated firearms for similar reasons, to a similar or greater extent. *Rahimi*, 602 U.S. at 701. Here, drunkard laws reflect the judgment that frequent excess drinking creates heightened dangers vis-à-vis firearms. Congress permissibly concluded that the same dangers arise when someone uses controlled substances habitually, regardless of how incapacitated they become. Pp. 17-18, *infra*.

c. As a backup to rejecting temporary disarmament of all habitual drug users, respondent (Br. 38-42) seemingly suggests that habitual drug users could be disarmed only after individual dangerousness determinations, which respondent says were required under civil-commitment and surety laws. Accord, *e.g.*, Center for Human Liberty Br. 8-22; Liberty Justice Center Br. 12.

That position contradicts respondent's concession (Br. 47) that the Second Amendment permits "categorical," not individualized, restrictions on unusually dangerous persons. Regardless, Congress and the Executive have made any necessary findings of marijuana's dangerousness through the comprehensive scheme of the Controlled Substances Act, which provides for rigorous scientific evaluation of drugs' potential for abuse and threats to public health, backstopped by judicial review. See 21 U.S.C. 811, 812; *Americans for Safe Access v. DEA*, 706 F.3d 438 (D.C. Cir.) (upholding marijuana's Schedule I classification on substantial-evidence review), cert. denied, 571 U.S. 885, and 571 U.S. 1025 (2013). The way to challenge the relevant policy judgments is to invoke that process—not, as respondent would have it, to launch backdoor attacks in individual criminal cases re-litigating the same factors with potentially inconsistent results. Cf. *Harris*, 144 F.4th at 165-166. Respondent's argument also threatens the validity of other laws that

do not require individual determinations of dangerousness, such as Section 922(g)(2)'s temporary disarmament of fugitives.

Nor does it help respondent that American law has historically recognized the safety of moderate alcohol consumption—which would make modern departures from those laws difficult to justify, contrary to respondent's specter of disarming nighttime beer drinkers. Br. 3. In classifying marijuana as a Schedule I drug, subject to the Controlled Substances Act's most stringent restrictions, Congress and the Executive determined that usage every other day, like respondent's, *is* "excess[ive]" (Br. 32) when it comes to marijuana (or heroin), as opposed to alcohol.

If any constitutional concerns remain in other cases, additional procedural protections, including administrative and judicial review under 18 U.S.C. 925(c), address them. Respondent does not dispute that the Section 925(c) resembles historical individual "determination[s]" (Br. 42) or that he could have filed a civil suit seeking prospective relief. Respondent cannot "envision" that anyone would "voluntarily" seek legal relief, Br. 49, but others have, *e.g.*, *Florida Commissioner of Agriculture v. Attorney General*, 148 F.4th 1307 (11th Cir. 2025). Especially given these safety valves, "Section 922(g)(3)'s 'limited duration'" falls comfortably within the tradition of habitual-drunkard laws. *Harris*, 144 F.4th at 163.

d. Respondent (Br. 46-48) similarly proposes treating marijuana differently on the ground that marijuana is less dangerous and more ubiquitous than other Schedule I controlled substances. Again, the political branches evaluated similar facts and (as of now) have

scheduled marijuana under Schedule I.<sup>3</sup> Nor does respondent address crime and violence associated with the illegal drug trade, regardless of particular drugs' effects. Gov't Br. 32-35. Respondent's drug-by-drug approach also would be "impractical" for courts and law enforcement officers to administer, *Ledvina*, 2026 WL 321431, at \*9 (opinion of Colloton, C.J.), especially because many crimes "involve [multiple] substances" with dangerous interactions, Resp. Br. 46.

As to marijuana's ubiquity, respondent himself contemplates disarming millions of addicts, including 5.7 million Americans addicted to opioids alone.<sup>4</sup> Respondent's sources also discuss marijuana use generally, not the subset of habitual users, then fail to quantify the firearm owners within that subset. Furthermore, the government has long interpreted Section 922(g)(3) to cover habitual marijuana users, and until 2023, no circuit questioned its constitutionality. See Gov't Br. 8. The result is no tsunami of mass disarmament, but a stream

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<sup>3</sup> Marijuana remains a Schedule I drug, subject to the Controlled Substance Act's most stringent restrictions. The President recently directed the Attorney General to "take all necessary steps to complete the rulemaking process related to rescheduling marijuana to Schedule III." Exec. Order No. 14,370, 90 Fed. Reg. at 60,542. That future rescheduling does not affect respondent's constitutional defense against his conviction for a past offense. Regardless, Schedule III classification reflects that a drug "has a potential for abuse," albeit "less than" Schedules I and II, and that its abuse "may lead to moderate or low physical dependence or high psychological dependence." 21 U.S.C. 812(b)(3).

<sup>4</sup> See *The Staggering Cost of the Illicit Opioid Epidemic in the United States* (Mar. 26, 2025), <https://www.whitehouse.gov/articles/2025/03/the-staggering-cost-of-the-illicit-opioid-epidemic-in-the-united-states/>.

of prosecutions of weekly-or-more users of Schedule I and II substances. *Id.* at 24 & n.16.<sup>5</sup>

**B. Respondent’s Vagueness Challenge Is Procedurally Impermissible And Legally Meritless**

1. Rather than tackling the as-applied Second Amendment question presented, respondent leads (Br. 15-24) with a new claim: that Section 922(g)(3) is facially void for vagueness. But the Court rejects “invitation[s] to inject into [a] case significant issues that have not been fully presented.” *A.J.T. v. Osseo Area Schools*, 605 U.S. 335, 350 (2025); see, e.g., *Rahimi*, 602 U.S. at 701 n.2. Respondent’s late-breaking argument violates the Court’s rules.

- This Court considers “[o]nly the questio[n]” on which it has granted certiorari. Sup. Ct. Rule 14.1(a); see *Barnes v. Felix*, 605 U.S. 73, 83-84 (2025); *Warner Chappell Music, Inc. v. Nealy*, 601 U.S. 366, 371 n.1 (2024). Here, that is whether Section 922(g)(3) “violates the Second Amendment as applied,” not whether it facially violates vagueness doctrine. Pet. I; accord Br. in Opp. i (proposing as the sole question presented whether the Fifth Circuit erred in “granting summary affirmance” on as-applied Second Amendment grounds).
- Respondent had “an obligation to the Court to point out in the brief in opposition, and not later,” any objection “bear[ing] on what issues properly would be before the Court if certiorari were granted,” lest he forfeit alternative grounds for

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<sup>5</sup> Respondent’s solicitude for “sleep gummy” and “cannabis tea” enthusiasts, Br. 32, is also misplaced; many such products are federally legal since they are made with hemp-derived CBD with permissible THC concentrations.

affirmance. Sup. Ct. R. 15.2; see *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 930-931 (2011). His brief in opposition never raised a void-for-vagueness claim, instead identifying (at 3) vagueness as an argument raised only in district court.

- This Court declines to resolve arguments not addressed by lower courts “in the first instance.” *Ames v. Ohio Department of Youth Services*, 605 U.S. 303, 313 (2025). Here, no lower court addressed vagueness, Pet. App. 1a-4a, not least because respondent urged the Fifth Circuit to “summar[ily] affir[m]” under its Second Amendment precedent. C.A. Doc. 75, at 1 (Jan. 7, 2025).

Respondent’s counterarguments lack merit. Respondents may seek affirmance on alternative grounds (Br. 16 n.6)—but not when their certiorari-stage briefs fail to preserve them. *OBB Personenverkehr AG v. Sachs*, 577 U.S. 27, 37-38 (2015). Respondent did press a vagueness challenge in district court (Br. 16 n.6)—then abandoned it. The Fifth Circuit “had no occasion to consider [vagueness] because the government requested summary affirmance” (*ibid.*)—but also because respondent *agreed* with that request, C.A. Doc. 75, at 1, and filed his own summary-affirmance motion omitting vagueness, C.A. Doc. 31 (June 20, 2024).

Respondent cannot envision “how the Court could resolve the question presented without” assessing how Section 922(g)(3) “is fairly read” (Br. 16 n.6). But respondent’s vagueness claim attacks Section 922(g)(3)’s validity, not its scope—and the courts below and brief in opposition had no trouble avoiding the issue. Addressing vagueness in this posture would be “disruptive, inefficient, and unfair.” *Stanley v. City of Sanford*,

606 U.S. 46, 73 (2025) (Thomas, J., concurring in part and concurring in the judgment).

2. Regardless, every circuit to consider a vagueness challenge to Section 922(g)(3) has rejected it.<sup>6</sup> Due process requires that criminal statutes “provide a person of ordinary intelligence fair notice of what is prohibited.” *United States v. Williams*, 553 U.S. 285, 304 (2008). Section 922(g)(3) prohibits anyone “who is an unlawful user” of, or “addicted to,” “controlled substance[s]” from possessing firearms. People who use controlled substances habitually—*e.g.*, several times a week, not once monthly—are “unlawful users.”

Respondent deems “unlawful user” vague as to how often someone must use drugs, how intoxicated one must be, and how close in time the use must be to firearm possession. But the meaning is clear: “unlawful user” means someone who habitually takes drugs, without regard to how intoxicated he gets. That is no atextual gloss, *contra* Resp. Br. 2; the concept of habitual use inheres in the word “user.” In context, the verb “use” means “to take or consume (an alcoholic drink, a narcotic drug) regularly or habitually.” 19 *The Oxford English Dictionary* 354 (2d ed. 1989). That is why circuit cases overwhelmingly involve defendants who ad-

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<sup>6</sup> See, *e.g.*, *Harris*, 144 F.4th at 166-167; *United States v. Hasson*, 26 F.4th 610, 616-621 (4th Cir.), cert. denied, 143 S. Ct. 310 (2022); *United States v. Patterson*, 431 F.3d 832, 836 (5th Cir. 2005), cert. denied, 547 U.S. 1138 (2006); *United States v. Lundy*, No. 20-6323, 2021 WL 5190899, at \*5-\*6 (6th Cir. Nov. 9, 2021); *United States v. Cook*, 970 F.3d 866, 872-878 (7th Cir. 2020); *United States v. Baxter*, 127 F.4th 1087, 1091-1092 (8th Cir.), cert. denied, 146 S. Ct. 294 (2025); *United States v. Purdy*, 264 F.3d 809, 811-813 (9th Cir. 2001); *United States v. Morales-Lopez*, 92 F.4th 936, 940-946 (10th Cir.), cert. denied, 145 S. Ct. 241 (2024); *United States v. Monroe*, 233 Fed. Appx. 879, 881 (11th Cir. 2007) (*per curiam*).

mit to weekly-or-more use. Gov't Br. 24 & n.16. Nor is there any mystery in prohibiting possession while someone "is" an "unlawful user," *i.e.*, during the period of habitual use. Any fair-notice concerns in close cases are also addressed by *Rehaif v. United States*, 588 U.S. 225 (2019), which interprets Section 922(g)'s mental-state element to require proof "that the defendant knew he possessed a firearm and also that he knew he had the relevant status when he possessed it." *Id.* at 227.

Thus, courts of appeals have uniformly determined that Section 922(g)(3) prohibits firearm possession that coincides with the period of habitual use. See Gov't Br. 23-24 & n.15; contra Resp. Br. 17. Courts may dispute how that test applies in particular cases, but the lack of "pervasive disagreement about the nature of the inquiry" confirms that respondent exaggerates vagueness concerns. See *Johnson v. United States*, 576 U.S. 591, 601 (2015). And Section 922(g)(3) hardly resembles prohibitions on "unjust or unreasonable rate[s]," *United States v. L. Cohen Grocery Co.*, 255 U.S. 81, 86 (1921) (citation omitted), or statutes applying "imprecise" standards to "judge-imagined abstraction[s]," *Johnson*, 576 U.S. at 598.

That Section 922(g)(3) pairs "unlawful user" with "addicted" provides more clarity, not less. Contra Resp. Br. 21-22. The unlawful-user prong turns on external conduct (whether someone habitually uses unlawful drugs). The addict prong turns on his mental state (whether he has "lost the power of self-control with reference to the use"). *United States v. McCowan*, 469 F.3d 386, 392 (5th Cir. 2006) (citation omitted). Those prongs overlap, see pp. 13-14, *supra*, but are not redundant, contra Resp. Br. 21. A user is not necessarily an addict (*e.g.*, if

he can stop), and an addict is not necessarily a user (*e.g.*, if he cannot obtain drugs to which he is addicted).

History further rebuts vagueness. For centuries, legislatures have restricted habitual drunkards' rights. See Gov't Br. 18-23. The term "habitual drunkard" raises even more questions about how much, how often, and how long one must imbibe to qualify. Yet respondent accepts that habitual-drunkard laws had "ordinarily understood" meanings. Br. 30 (citation omitted). That history likewise refutes respondent's complaint (Br. 15-16) that Section 922(g)(3) does not enumerate precisely how often someone must use drugs to be an unlawful user. Neither did habitual-drunkard statutes. "[T]he law is full of instances where a man's fate depends on his estimating rightly" a "matter of degree," *Nash v. United States*, 229 U.S. 373, 377 (1913); it is "perfectly constitutional" to "use imprecise terms," *Sessions v. Dimaya*, 584 U.S. 148, 159 (2018), or "qualitative standard[s]," *Johnson*, 576 U.S. at 604.

Respondent (Br. 19-20) also incorrectly accuses the government of inconsistency. The government has long interpreted Section 922(g)(3) to apply only to people who possess firearms while habitually using controlled substances, as the facts of countless prosecutions confirm. Gov't Br. 23-24. The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), too, has long accepted that Section 922(g)(3) requires "recurring"—not merely occasional or one-off—drug use. See 91 Fed. Reg. 2698 (Jan. 22, 2026). What has changed is how ATF evaluates circumstantial evidence of habitual use for purposes such as federal background checks. For example, ATF previously inferred habitual use from a single drug-possession conviction or failed drug test within the past year, *id.* at 2699, but now considers such evidence

a less “accurate indicator of whether a person is a habitual user,” *id.* at 2705. That administrative change does not suggest vagueness.

Finally, it is immaterial whether “close cases can be envisioned” when this is not one. *Williams*, 553 U.S. at 305. Someone whose conduct “is clearly proscribed cannot complain of the vagueness of the law” for “others.” *Holder v. Humanitarian Law Project*, 561 U.S. 1, 20 (2010) (citation omitted). Respondent admitted he used marijuana “about every other day,” C.A. ROA 381, making him a “user” under any reasonable interpretation and every circuit’s precedent. True, *Johnson* allowed a facial vagueness challenge to the Armed Career Criminal Act’s residual clause regardless whether some hypothetical applications were constitutional—but there, applying the clause to the defendant’s conduct “open[ed] a new front of uncertainty.” 576 U.S. at 600. Here, respondent cannot mount a facial vagueness challenge when his own conduct is clearly prohibited—as every circuit to consider the availability of facial vagueness challenges has concluded. *Harris*, 154 F.4th at 166-167; *contra* Resp. Br. 22 n.8.

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This Court should reverse the judgment of the court of appeals.

Respectfully submitted.

D. JOHN SAUER  
*Solicitor General*

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