No. 24-1248

IN THE

SUPREME COURT OF THE UNITED STATES

UNITED STATES OF AMERICA,

Petitioner,

v.

PATRICK DARNELL DANIELS, JR.,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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BRIEF IN OPPOSITION

Omodare Jupiter
FEDERAL PUBLIC DEFENDER
NORTHERN AND SOUTHERN
DISTRICTS OF MISSISSIPPI
Leilani L. Tynes
Counsel of Record
Victoria E. McIntyre
2510 14th Street, Suite 902
Gulfport, MS 39501
Tel: (228) 865-1202
Email: Leilani_tynes@fd.org

QUESTION PRESENTED

Whether respondent's conviction under 18 U.S.C. § 922(g)(3), which prohibits the possession of firearms by a person who "is an unlawful user of or addicted to any controlled substance," violated his Second Amendment rights where the jury instructions did not require proof of when Daniels used the controlled substance relative to his possession of the firearm.

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INTRODUCTION

Everyone agrees this case does not present the appropriate vehicle for review. Respondent Patrick Darnell Daniels, Jr. currently faces retrial on charges of violating 18 U.S.C. § 922(g)(3) after his conviction was vacated by the United States Court of Appeals for the Fifth Circuit and remanded to the district court due to jury instructional error. The appellate court made no determination as to the constitutionality of § 922(g)(3) under the Second Amendment as it applies to him. The interlocutory posture of this case counsels against this Court's intervention.

Moreover, in the wake of *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022), only three circuit courts have announced precedential decisions evaluating the unlawful user firearm ban imposed by § 922(g)(3). *See United States v. Connelly*, 117 F.4th 269 (5th Cir. 2024); *United States v. Cooper*, 127 F.4th 1092 (8th Cir. 2025); *United States v. Harris*, --- F.4th ---, No. 21-3031, 2025 WL 1922605 (3d Cir. July 14, 2025). The courts that have considered the constitutionality of § 922(g)(3) are largely in agreement. No court has found the statute facially unconstitutional, and the circuit courts are currently considering as-applied challenges to create a workable governing standard. Additional time and opinions from other courts of appeal are required to assist the Court's ultimate decision making on this issue. Furthermore, the Fifth Circuit's decision in this case correctly applied this Court's Second Amendment precedent and there was no error below.

The Court should deny the petition and the Government's request to hold the case in this posture.

STATEMENT OF THE CASE

1. Title 18 U.S.C. § 922(g)(3) prohibits an individual from possessing a firearm if he is an "unlawful user" of a controlled substance.

2. In April 2022, Daniels was pulled over for driving without a license plate. App. 2a. When an officer approached Daniels's vehicle, he claimed to smell marijuana. App. 2a. A search of the vehicle revealed two firearms and old marijuana cigarette butts in the ashtray. App. 2a. Daniels was taken into custody and transported to the local Drug Enforcement Administration office. App. 2a. The record contains no evidence of his alleged drug use relative to his possession of a firearm. No officers reported that Daniels appeared intoxicated. App. 3a. Daniels admitted he had smoked marijuana since high school and was a regular user. App. 3a. A grand jury indicted him with one count of § 922(g)(3). App. 3a.

After this Court's decision in *Bruen*, Daniels moved to dismiss the indictment, arguing that § 922(g)(3) was unconstitutional under the Second Amendment and void for vagueness. App. 3a, 4a n.3. The district court denied his motion, and the case proceeded to a jury trial. *See* App. 74a-84a.

3. At trial, the jury was instructed that in order to convict Daniels and determine that he was an "unlawful user," it did not need to find "that he used the controlled substance at the precise time he possessed the firearm" because "[s]uch use is not limited to the use of drugs on a particular day, or within a matter of days or weeks before." App. 12a. It was further instructed that it needed to find only "that the unlawful use has occurred recently enough to indicate that the individual is actively engaged in such conduct." App. 12a-13a. With these instructions, the jury

found Daniels guilty "beyond a reasonable doubt of knowingly possessing a firearm . . . while knowingly being an unlawful user of a controlled substance." App. 13a. Crucially, the jury did not necessarily find that Daniels had used marijuana "'within a matter of . . . weeks before' his arrest, but only that his use 'occurred recently enough' to indicate Daniels was 'actively engaged' in unlawful use." App. 13a. He was sentenced to 46 months of imprisonment and three years of supervised release. Judgment 2-3.

4. Daniels appealed and reasserted the Second Amendment challenge, as well as a void-for-vagueness challenge and a challenge to the sufficiency of the evidence. App. 5a. Applying *Bruen*, the Fifth Circuit determined that the Government failed to demonstrate sufficient history and tradition supporting the constitutional application of § 922(g)(3) to Daniels. *United States v. Daniels*, 77 F.4th 337, 355 (5th Cir. 2023), *cert. granted, judgment vacated,* 144 S. Ct. 2707 (2024) (*Daniels I*); App. 57a-58a. It reversed his conviction and rendered judgment dismissing the indictment against him. App. 58a. The court emphasized the "narrowness" of its holding. App. 58a. It did not invalidate the statute "in all its applications, but, importantly, only as applied to Daniels." App. 58a.

The Government petitioned for a writ of certiorari. *See United States v. Daniels*, 144 S. Ct. 2707 (2024). Eleven months later, after deciding *United States v. Rahimi*, 602 U.S. 680 (2024), this Court granted the Government's petition, vacating the judgment, and remanding the case for further consideration in light of *Rahimi*. 144 S. Ct. 1889.

5. By this time, the Fifth Circuit had enunciated a legal framework governing Second Amendment challenges to § 922(g)(3) in *United States v. Connelly*, 117 F.4th 269 (5th Cir. 2024). There, the court again held that § 922(g)(3) was not facially unconstitutional because our history can support gun regulations banning a presently intoxicated person from carrying firearms. *Id.* at 282-83. However, it held the statute unconstitutional—and unsupported by our history and tradition of firearms regulation—as applied to an individual solely "based on habitual or occasional drug use." *Id.* at 282.

Applying *Connelly* to this case on remand, the Fifth Circuit again found § 922(g)(3) unconstitutional as applied to Daniels "unless the government can show that Daniels was disarmed for reasons above and beyond habitual or occasional [marijuana] use." *United States v. Daniels*, 124 F.4th 967, 974-75 (5th Cir. 2025); App. 11a-12a. The error was instructional: "the jury instruction employed in Daniels's trial was too open-ended to support his conviction because it left open the possibility that Daniels had not even unlawfully used a controlled substance in several weeks." App. 17a. The court acknowledged that "[w]hat precisely [actively engaged in unlawful use] means is nebulous," but under the instructions given, "the jury could have found Daniels guilty even while believing that he had not used [marijuana] for several weeks." App. 13a. Such instructions rendered the government's burden of proof too low. App. 13a.

The majority emphasized that although Judge Higginson, concurring, viewed *Connelly* as requiring a temporal nexus of contemporaneity between possession and

active unlawful drug use, it did "not read *Connelly* so narrowly." App. 17a. Its decision was based on the history and tradition presently compiled by the Government in that case. *See* App. 17a-18a. The court did not advance a bright line rule and emphasized the necessity of "letting Second Amendment doctrine develop more fully as more cases involving different fact patterns arise." App. 19a. The Fifth Circuit remanded the case to the district court, explaining that it was not deciding "that § 922(g)(3) could never cover the conduct of which Daniels stands accused." App. 20a.

6. Daniels is again actively being prosecuted in the district court for an alleged violation of § 922(g)(3). *See United States v. Daniels*, No. 1:22-cr-58-1 (S.D. Miss.).

REASONS TO DENY THE PETITION

I. This case is in an interlocutory posture and is thus inappropriate for review.

As an initial matter, this Court's review is unwarranted because the case is in an interlocutory posture. The court of appeals vacated Daniels's conviction and remanded the case for a new trial. App. 2a, 20a. It clarified that the Government remained "free to reprosecute Daniels under a theory consistent with a proper understanding of the Second Amendment." App. 17a. The proceedings against Daniels are actively ongoing in the district court. That posture "alone furnishe[s] sufficient ground for the denial of" the petition. *Hamilton-Brown Shoe Co. v. Wolf Bros. & Co.*, 240 U.S. 251, 258 (1916); *see Wilson v. Hawaii*, 145 S. Ct. 18, 18 (2024) (Thomas, J., respecting the denial of certiorari) (noting that "the interlocutory posture of the petition weighs against" correcting any error now); *Mount Soledad Memorial Ass'n v. Trunk*, 567 U.S. 944, 944 (2012) (Alito, J., respecting the denial of the petitions for writs of certiorari) ("The current petitions come to us in an interlocutory posture. The Court of Appeals remanded the case to the District Court to fashion an appropriate remedy, and, in doing so, the Court of Appeals emphasized that its decision [did not expressly resolve the constitutional issue]"); *see also Virginia Military Institute v. United States*, 508 U.S. 946, 946 (1993) (Scalia, J., respecting the denial of the petition for writ of certiorari); Eugene Gressman et al., *Supreme Court Practice* § 4.18, 281 n.63 (9th ed. 2007).

What the Government deems a "procedural wrinkle" in this case presents an insurmountable hurdle to this Court's review. App. at 4. As it acknowledges, the

district court has not yet had the opportunity to consider and provide jury instructions in line with this Court's Second Amendment guidance following *Bruen* and *Rahimi*. The Fifth Circuit held the error resulting in remand was purely instructional. App. 17a, 22a. The court of appeals did not express an opinion on whether the jury *could have* convicted Daniels if instructed in a manner that complied with the Second Amendment. App. 20a. In "emphasizing the narrowness of [its] holding," it left the ultimate question of whether § 922(g)(3) can be constitutionally applied to Daniels wide open. App. 14a (internal quotation marks omitted) (citing *Daniels I*, 77 F.4th at 355).

Avoiding needless intervention is why this Court does "not issue a writ of certiorari to review" an interlocutory order "unless it is necessary to prevent extraordinary inconvenience and embarrassment in the conduct of the cause." *Am. Constr. Co. v. Jacksonville, Tampa & Key W. Ry. Co.*, 148 U.S. 372, 384 (1893); *see also Hamilton-Brown*, 240 U.S. at 258. The Government alleges no valid reason to justify the Court's intervention at this time. The petition should be denied without holding the petition to allow the district court to perform its essential factfinding function and to provide the lower courts the opportunity to apply and construe the Court's recent Second Amendment precedent.

II. The Court's review would be premature.

This Court decided *Bruen* on June 23, 2022, rejecting the two-step means-end scrutiny that previously governed Second Amendment challenges as "one step too many." 597 U.S. at 19, 24 (quote at 19). Nearly two years later, on June 21, 2024, this Court applied *Bruen* to 18 U.S.C. § 922(g)(8) in *United States v. Rahimi*, 602 U.S.

680, 693 (2024), holding that the statute could be constitutionally applied to the defendant. Following the decision in *Rahimi*, the Court granted the petitions for writ of certiorari filed by the Government in cases addressing Second Amendment challenges to § 922 (including this case), vacating the judgments below, and remanding for further consideration in light of *Rahimi*. *See United States v. Daniels*, 144 S. Ct. 2707 (2024); *see, e.g., Garland v. Range*, 144 S. Ct. 2706 (2024); *United States v. Perez-Gallan*, 144 S. Ct. 2707 (2024); *Vincent v. Garland*, 144 S. Ct. 2708 (2024); *Antonyuk v. James*, 144 S. Ct. 2709 (2024); *Doss v. United States*, 144 S. Ct. 2712 (2024); *Cunningham v. United States*, 144 S. Ct. 2713 (2024).

The message was clear: lower courts needed the opportunity to consider Second Amendment challenges with the additional guidance provided by this Court in *Rahimi*. Thus far, only three circuits have considered § 922(g)(3) after *Rahimi*, and they are in general agreement.[1] Members of this Court have instructed that "[o]pinions from other Courts of Appeals should assist this Court's ultimate decisionmaking" in Second Amendment cases. *Snope v. Brown*, 145 S. Ct. 1534 (2025) (Kavanaugh, J., respecting the denial of certiorari). The Court's review would be premature in the absence of additional input from other circuits.

Moreover, in the context of the felon possession ban, 18 U.S.C. § 922(g)(1), which makes up the majority of criminal prosecutions[2] and where the circuit courts

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[1] After the Government filed its petition in this case, the United States Court of Appeals for the Third Circuit announced its decision in *United States v. Harris*, --- F.4th ---, No. 21-3031, 2025 WL 1922605 (3d Cir. July 14, 2025).

[2] Public data suggests prosecutions under § 922(g)(3) make up only 2.7% of all prosecutions under § 922. *See* Emily Tiry et al., Prosecution of Federal Firearms

are truly in disagreement as to the appropriate test, the Solicitor General has opposed requests for this Court's intervention, and the Court has apparently indicated that additional percolation is required before it intervenes. *See, e.g., Jackson v. United States*, --- S. Ct. ---, No. 24-6517, 2025 WL 1426707 (U.S. May 19, 2025) (denying the petition for writ of certiorari); *Hunt v. United States*, --- S. Ct. ---, No. 24-6818, 2025 WL 1549804 (U.S. June 2, 2025) (denying the petition for writ of certiorari); *Diaz v. United States*, --- S. Ct. ---, No. 24-6625, 2025 WL 1727419 (U.S. June 23, 2025) (denying the petition for writ of certiorari). While circuit courts have employed distinct standards when considering Second Amendment challenges to § 922(g)(1), in contrast, there is no true split amongst the limited circuit courts that have considered § 922(g)(3).

A. *There is no true circuit split.*

The circuits to have considered Second Amendment challenges to § 922(g)(3) have agreed that the provision is facially constitutional, recognizing that it has at least some constitutional applications. The courts are likewise in general agreement about how the statute might infringe upon protected Second Amendment conduct. In

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Offenses 2000-16 at 5, Table 2 (Urban Institute Oct. 2021), available at https://www.ojp.gov/pdffiles1/bjs/grants/254520.pdf. Prosecutions under the felon possession ban, § 922(g)(1), constitute 90.8% of all prosecutions under the section. *Id.*

A search of the Sentencing Commission's Individual Offenders datafile indicates that in fiscal years 2019-2023, 39,034 individuals were sentenced with at least one conviction under § 922(g). Of those convictions, 33,765 individuals were sentenced with a conviction under (g)(1), compared to 1,697 individuals sentenced with a conviction under (g)(3). 299 individuals were sentenced with both (g)(1) and (g)(3) convictions.

its petition for a writ of certiorari filed in *United States v. Hemani*, No. 24-1234 (U.S. June 2, 2025), the Government urges that the Fifth Circuit's decision in *Hemani* "forms part of a three-way circuit conflict" with *United States v. Yancey*, 621 F.3d 681 (7th Cir. 2010) (per curiam) and *United States v. Cooper*, 127 F.4th 1092 (8th Cir. 2025). *Hemani*, Pet. 24. Contrary to the Government's assertion, no true conflict exists to warrant the Court's intervention at this time.

i. *United States v. Yancey*, 621 F.3d 681 (7th Cir. 2010) (per curiam)

The Government claims that although *Yancey* was decided over a decade before this Court's decision in *Bruen*, it remains good law and constitutes one arm of the alleged split. It maintains that the *Yancey* court "relied on the history-and-tradition test that *Bruen* approved, not on the levels-of-scrutiny approach that *Bruen* rejected." *Hemani*, Pet. 24. In *Yancey*, however, the Seventh Circuit clearly applied means-end scrutiny. 621 F.3d at 683 (explaining that the exclusion of certain categories of persons from firearm possession "must be more than merely 'rational'" and that when evaluating other § 922(g) challenges, "we evaluated whether the government had made a strong showing that the challenged subsection of § 922(g) was substantially related to an important governmental objective. . . . We apply that same analytical framework here"). The "history-and-tradition" cited by the *Yancey* court was not the analysis mandated by *Bruen*, but it was instead in furtherance of establishing "the nexus between Congress's attempt to keep firearms away from habitual drug abusers and its goal of reducing violent crime"—*i.e.*, that the ends justified the means. *Id.* at 686. *Yancey* went on to endorse a theory "that the right to bear arms was tied to the concept of a virtuous citizenry and that, accordingly, the government could disarm

'unvirtuous citizens,'" relying on this logic, at least in part, to uphold the categorical disarmament under § 922(g)(3). *Id.* at 648-85 (internal citation omitted); *but cf. Rahimi*, 602 U.S. at 701-02 (rejecting the Government's contention that an individual could be disarmed simply because he was not "responsible").

Regardless of the analysis applied in *Yancey*, the Seventh Circuit has yet to consider a preserved as-applied challenge to § 922(g)(3) under the Second Amendment since *Bruen*. In the absence of the Seventh Circuit's continued endorsement of *Yancey* after *Bruen* and *Rahimi*, *Yancey* should not be included in any alleged circuit split.

ii. *United States v. Hemani*, No. 24-40137, 2025 WL 354982 (5th Cir. 2025) (per curiam)

The Government claims that *Hemani*, an unpublished per curiam opinion where the parties agreed summarily affirming the dismissal of the indictment below was appropriate, forms part of a three-way circuit conflict. *Hemani*, Pet. 24. The Fifth Circuit's governing § 922(g)(3) analysis arose in *Connelly*, however.[3] That framework was applied in this case, *Hemani*, and *United States v. Sam*, No. 23-60570, 2025 WL 752543 (5th Cir. Mar. 10, 2025), where the Government has also filed petitions for writs of certiorari to this Court. *See Hemani* Pet., No. 24-1234 (U.S. June 2, 2025); Petition for Writ of Certiorari, *United States v. Sam*, No. 24-1249 (U.S. June 6, 2025).

[3] The Government did not file a petition for writ of certiorari in *Connelly*, although *Connelly* established the governing framework for Second Amendment challenges to § 922(g)(3) in the Fifth Circuit after *Bruen*.

In *Connelly*, the Fifth Circuit rejected the Government's proffered historical analogues of laws disarming the mentally ill and "dangerous" individuals, as well as intoxication laws. 117 F.4th at 274-75. It determined that restrictions on the mentally ill or more generalized traditions of disarming "dangerous persons" did not apply to "nonviolent, occasional drug users when of sound mind." *Id.* at 272. The court distinguished Connelly, a "non-violent, marijuana smoking gunowner" from the historical traditions which "may support some limits on a *presently* intoxicated person's right to carry a weapon . . . but [] do not support disarming a sober person based solely on past substance usage." *Id.*

The Fifth Circuit recognized that Founding-era governments removed guns from those perceived to be dangerous, but as applied to a marijuana user, the Government failed to identify a class of persons at the Founding who were "dangerous" for comparable reasons. *Id.* at 278. And "not all members of the set 'drug users' are violent" or predisposed to armed conflict. *Id.* at 278-79. Although the Founders purportedly institutionalized and disarmed "lunatics" who may have presented a danger to themselves or others, alcoholics were allowed to carry firearms while sober and generally possess them. *Id.* at 275-76. Thus, there could be historical justification for disarming citizens "so intoxicated as to be in a state comparable to 'lunacy,'" but "[j]ust as there is no historical justification for disarming citizens of sound mind, there is no historical justification for disarming a sober citizen not presently under an impairing influence." *Connelly*, 117 F.4th at 275-76.

The court determined that while Connelly could potentially be lawfully disarmed under § 922(g)(3) consistent with the Second Amendment under certain circumstances, the Government failed to meet its burden of proof to disarm her. "While intoxicated, [Connelly] *may* be comparable to a severely mentally ill person whom the Founders would disarm. But, while sober, she is like a repeat alcohol user between periods of intoxication, whom the Founders would *not* disarm." *Id.* at 277. The Fifth Circuit noted that it was possible that the Government could have succeeded had they demonstrated that the drugs Connelly used were powerful enough to render her permanently impaired in a way comparable to mental illness or if it were able to show that her drug use was so regular and heavy that she was rendered continued impaired. *Id.* But in the absence of that evidence, the statute violated the Second Amendment as applied to her. *Id.* at 282.

Taken together, the Government's proffered analogues only supported "banning the *carry* of firearms *while actively intoxicated*." *Id.* at 281 (emphasis in original). Yet, § 922(g)(3) goes further, banning *all* possession for an undefined set of users even while they are sober. *Id.* at 282.

iii. *United States v. Cooper*, 127 F.4th 1092 (8th Cir. 2025)

The Government claims that the Eighth Circuit's decision in *Cooper* comprises the final arm of the alleged circuit split, *Hemani*, Pet. 24, but *Cooper* is not squarely at odds with the Fifth Circuit's analysis.[4] Although the Eighth Circuit identified

[4] Indeed, in *Cooper*, the Eighth Circuit cited *Connelly* approvingly as "coming up with a similar list" of relevant analogues. 127 F.4th at 1096.

different Founding-era analogues to justify the lawful application of the statute, the result was functionally the same: both circuits have applied commonsense limitations to the application of the statute to limit those who may actively cause a danger to themselves or others from possessing firearms.

Like the Fifth Circuit, the Eighth Circuit determined that § 922(g)(3) was too broad to be lawfully imposed on the broad set of all drug "users" without proof that the defendant fell within a group that had historically been disarmed. In *Cooper*, the court determined Founding-era analogues addressing "confinement of the mentally ill" and the "criminal prohibition on taking up arms to terrify the people" justified some applications of § 922(g)(3). 127 F.4th at 1095 (citing *United States v. Veasley*, 98 F.4th 906, 912, 916 (8th Cir. 2024)). But § 922(g)(3) was "relevantly similar" to the analogue of confining the mentally ill only where the disarmament of drug users and addicts is limited to those who pose a danger to others. *Cooper*, 127 F.4th at 1095. "The analogy is complete, in other words, for someone whose regular use of PCP induces violence, but not for a frail and elderly grandmother who uses marijuana for a chronic medical condition." *Id.* (cleaned up). The Terror of the People analogue was likewise relevantly similar where it "applied to drug users who engage in terrifying conduct." *Id.* at 1096 (internal quotation marks and citation omitted).

B. *Courts are still considering as-applied challenges to § 922(g)(3) and working out the contours of the statute's constitutional applications.*

As applied constitutional challenges necessarily turn on their particular facts. The Circuits that have addressed the application of § 922(g)(3) after *Bruen* have coalesced around general principles derived from *Rahimi* allowing disarmament of

those whose drug use poses a real danger to others, such as the Second Amendment potentially allowing the disarmament of the violent regular PCP-user, but not the non-violent marijuana user. *See, e.g., Cooper*, 127 F.4th at 1095; *Connelly*, 117 F.4th at 277; *Harris*, 2025 WL 1922605, at *2. The courts are also in agreement that there is no brightline rule governing the statute's lawful application. *See Cooper*, 127 F.4th at 1097 ("Nor has our review of the historical tradition surrounding [drug users and addicts], to the extent one exists, turned up any brightline rules. Sometimes disarming drug users and addicts will line up with the case-by-case historical tradition, but other times it will not."); *Daniels*, 124 F.4th at 978 (noting "[w]e sympathize with the desire to articulate a bright-line rule that district courts could apply going forward," but declining to do so).

The appellate courts anticipated district courts working out the nuances of constitutional applications of the statute and performing their essential factfinding role. The Government claims without justification that "[t]he Fifth Circuit's approach . . . invalidates Section 922(g)(3) in the lion's share of its applications." *Hemani*, Pet. 23. Yet, in emphasizing the narrowness of its decision in *Daniels*, as well as in *Connelly*, the Fifth Circuit has intentionally created space to develop and determine the contours of prosecutions that comply with the Second Amendment. *See Daniels*, 124 F.4th at 976; *Connelly*, 117 F.4th at 283. The court recognized the necessity of "letting Second Amendment doctrine develop more fully as more cases involving different fact patterns arise," *Daniels*, 124 F.4th. at 978, and it even outlined the different pathways available to the Government to prove a violation of § 922(g)(3)

comporting with the Second Amendment, *see id.* at 976-77. Indeed, it is a "fundamental principle of judicial restraint . . . that courts should neither anticipate a question of constitutional law in advance of the necessity of deciding it nor formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied." *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 450 (2008) (internal quotation marks omitted). The other circuits to have considered the issue have also declined to impose their own determinations, allowing the district court's "to take the first crack at" deciding whether § 922(g)(3) may constitutionally be applied to a defendant under its constitutional framework. *Cooper*, 127 F.4th at 1098;[5] *Harris*, 2025 WL 1922605, at *8.

Moreover, in *Daniels*, the Fifth Circuit explained that it did not read *Connelly* to restrict § 922(g)(3) prosecutions "only to situations where a defendant is caught using unlawful drugs while simultaneously carrying a firearm." *Id.* at 978; *see id.* ("*Connelly* contemplates other potential applications of § 922(g)(3) beyond prosecutions solely targeting active use"). The limiting factor was the historical evidence presented by the Government. "If more analogous research reveals that the states routinely disarmed drunkards or drug addicts even when they were not actively intoxicated, for example," it would "not read *Connelly* to foreclose a future court from considering that evidence and rejecting a § 922(g)(3) defendant's as-applied challenge on that basis." *Id.*

[5] On remand, the district court granted Cooper's motion to dismiss. *United States v. Cooper*, No. 6:23-cr-2040-CJW-MAR, ECF 105 (N.D. Iowa July 2, 2025).

There is no urgency justifying this Court's premature intervention in this case. Other circuits are currently considering Second Amendment challenges to § 922(g)(3) and formulating their own analyses. *See, e.g., United States v. Worster, et al.*, No. 25-1229 (1st Cir.) (appellant's brief due 07/23/2025); *United States v. Alston*, No. 23-4705 (4th Cir.) (appellant's reply brief due 07/24/2025); *United States v. Stennerson*, No. 23-1439 (9th Cir.) (submitted 09/24/2024); *United States v. Harrison*, No. 23-6028 (10th Cir.) (submitted 11/21/24); *United States v. Mondragon*, No. 24-12385 (11th Cir.) (appellee's brief due 08/25/25). And the courts to have considered as-applied challenges have remanded to the district courts for additional factual findings. *See* App. 2a, 20a; *Cooper*, 127 F.4th at 1098; *Harris*, 2025 WL 1922605, at *8. "A piecemeal approach to laws such as § 922(g)(3), determining the contours of acceptable prosecutions through the resolution of continual as-applied challenges, is what *Bruen* and *Rahimi* require." *Daniels*, 124 F.4th at 978; *see* William Baude & Robert Leider, *The General-Law Right to Bear Arms*, 99 Notre Dame L. Rev. 1467, 1511 (2024) ("Exactly where in between to draw the line [in § 922(g)(1) cases] is something the courts are currently debating and would eventually resolve in common-law fashion."); *id.* at 1514 ("[T]his kind of general common-law exposition is what *Bruen* calls for—not blanket deference to the legislature or the mindless parsing of historical analogies.").

III. There is no reason to hold this case pending the outcome in *Hemani*.

A. *The question presented in* Hemani *will not resolve the issue here.*

The Government urges this Court to hold its petition pending the disposition of the petition for writ of certiorari filed in *United States v. Hemani*, No. 24-1234.

App. 4. But the cases are only connected by the charging statute, and the question presented in *Hemani* does not address the specific question at issue here.

In this case, Daniels's motion to dismiss the indictment was denied and he was convicted following a jury trial. He is now actively facing retrial. In *Hemani*, the parties agreed that the indictment against Hemani was unconstitutional under the Second Amendment, *Hemani*, Pet. 3a-4a, and they also agreed that summary affirmance was appropriate on appeal, *id.* 2a.

While the issue in *Hemani* is whether § 922(g)(3) is unconstitutional as specifically applied to Hemani, *Hemani*, Pet. I, the question here concerns the adequacy of the jury instructions given. Indeed, in its per curiam opinion affirming the dismissal of the indictment against Hemani, the Fifth Circuit distinguished the two cases: "*Daniels* did not address whether the government's evidence was deficient, holding only that the jury was improperly instructed." *Hemani*, 2025 WL 354982, at *1. In *Hemani*, however, "the Government concede[d] its evidence is deficient under *Connelly*'s binding precedent and that this deficiency is dispositive." *Id.*

Whether the evidence is sufficient to constitutionally convict Hemani under § 922(g)(3) is an entirely different question from whether the jury was properly instructed in *Daniels*. The Fifth Circuit has had no opportunity to opine on the sufficiency of the evidence as applied to Daniels, and the issue of whether the Government had adequate proof to constitutionally convict Hemani has no bearing on the question presented here. This case will not allow the Court to decide the full scope of constitutional applications of § 922(g)(3) under the Second Amendment, and

the as-applied challenge raised by Hemani is necessarily different than that applied to the facts of Daniels's case. There is accordingly no reason to hold this petition pending the disposition of Hemani's petition for writ of certiorari.

B. *The Fifth Circuit's decision was correct.*

The Government offers no explanation as to how the Fifth Circuit erred in the instant case. *See* App. 4-5. In its decision reversing and remanding Daniels's conviction, the Fifth Circuit explained that based on its governing precedent in *Connelly*, § 922(g)(3) is unconstitutional "where it seeks to disarm an individual solely based on habitual or occasional drug use." App. 11a (internal quotation marks and citation omitted). It accordingly found the statute unconstitutional as applied to Daniels "*unless the government can show* that Daniels was disarmed for reasons above and beyond habitual or occasional marihuana use." App. 11a (emphasis added).

The question the Government presents to the Court is whether § 922(g)(3) violates the Second Amendment as applied to Daniels, App. I, but the Fifth Circuit has not yet squarely resolved that question, *see* App. 20a ("[N]or do we decide that § 922(g)(3) could never cover the conduct of which Daniels stands accused."). Crucially, the court did not determine whether the evidence was sufficient to convict Daniels had the jury been correctly instructed, and it instructed the Government that it could "reprosecute Daniels under a theory consistent with a proper understanding of the Second Amendment." App. 12a-17a (quote at 17a); *see* App. 22a (Higginson, J., concurring) ("Here, the error was instructional, not evidentiary.").

The historical analogues proffered by the Government failed to demonstrate a historical tradition of routinely disarming those not actively intoxicated. Therefore, the Second Amendment could not support a conviction lacking in any meaningful temporal element of proof. App. 11a-13a; 12a n.7 (indicating that the "government invokes the same historical regulations to justify the application of § 922(g)(3) against Daniels as it did against Connelly"). This finding is supported by the analogical reasoning in both *Bruen* and *Rahimi*, thoroughly considered in the opinion in *Connelly*, as the history and tradition presented by the Government "support[s], at most, a ban on carrying firearms while an individual is *presently* under the influence." *Connelly*, 117 F.4th at 274-82 (quote at 282).

The Government imposes its own limiting interpretation on § 922(g)(3) and references thinly veiled policy judgments supporting the statutory interpretation it prefers. Hemani, Pet. 22-23; *see Bruen*, 597 U.S. at 23 ("[T]he Second Amendment does not permit . . . judges to assess the costs and benefits of firearms restrictions under means-end scrutiny"); *Rahimi*, 602 U.S. at 712 (Gorsuch, J., concurring) ("In *Bruen*, we rejected [a policy-based] approach for one guided by constitutional text and history."); *id.* at 717 (Kavanaugh, J., concurring) ("History, not policy, is the proper guide."). The Government urges that the statute targets only "habitual users of unlawful drugs" and that it "bars their possession of firearms only temporarily and leaves it within their power to lift the restriction at any time; anyone who stops

habitually using illegal drugs can resume possessing firearms."[6] *Hemani*, Pet. 9. Yet § 922(g)(3) does not require "habitual use." On its face, it allows for a conviction based on proof of possession of a firearm by any "unlawful user," regardless of the type of controlled substance, frequency, or amount of use. § 922(g)(3); *see Connelly*, 117 F.4th at 282 (internal quotation marks and citation omitted) ("Stunningly, an inference of 'current use' can be drawn even from a conviction for use or possession of a controlled substance *within the past year*."); *contra Hemani*, Pet. 20 (claiming that "a person can regain his ability to possess arms at any time").

What constitutes an "unlawful drug user" and when one ceases to be an unlawful drug user are not defined. *See Connelly*, 117 F.4th at 282 ("The statutory term 'unlawful user' captures regular marijuana users, but the temporal nexus is most generously described as vague—it does not specify how recently an individual must 'use' drugs to qualify for the prohibition."). Without limitation of scope, the statute "imposes a far greater burden on [] Second Amendment rights than our history and tradition of firearms regulation can support," *id.* at 282, and it applies to and burdens the rights of far more than "a discrete category of individuals," *Hemani*, Pet. 20, drawing a "principle at such a high level of generality that it waters down

[6] Not only is the Government's claim that the statute applies only to "habitual users" erroneous, but its limiting construction is also irrelevant. *See Abramski v. United States*, 573 U.S. 169, 191 (2014) ("The critical point is that criminal laws are for courts, not for the Government, to construe."); *United States v. Apel*, 571 U.S. 359 (2014) ("[W]e have never held that the Government's reading of a criminal statute is entitled to any deference").

the right [to keep and bear arms]," *Rahimi*, 602 U.S. at 740 (Barrett, J., concurring). The Government's arguments to the contrary

The Fifth Circuit's decision to reverse Daniels's conviction and remand to the district court followed this Court's guidance in *Bruen* and *Rahimi*. Where the Government failed to present relevantly similar historical analogues to support the broad jury instructions supporting Daniels's conviction under § 922(g)(3), the Fifth Circuit found the conviction inconsistent with our Nation's "history and tradition" of gun regulation. App. 20a (quoting *Bruen*, 597 U.S. at 22). The court made clear that it was not deciding "that § 922(g)(3) could never cover the conduct of which Daniels stands accused," but that application of the statute "must accord with our nation's history of firearm regulations." App. 20a. This approach held the Government to its heavy burden while allowing it to reprosecute Daniels in a manner consistent with this Court's precedent and "letting Second Amendment doctrine develop more fully as more cases involving different fact patterns arise." App. 19a. Moreover, it allows the district court to continue to determine "the contours of acceptable prosecutions through the resolution of continual as-applied challenges, [which] is what *Bruen* and *Rahimi* require." App. 19a; *see also Bruen*, 597 U.S. at 25 n.6 ("The job of judges is not to resolve historical questions in the abstract; it is to resolve *legal* questions presented in particular cases or controversies.").

CONCLUSION

This Court should deny the Government's petition and refuse to hold the case pending the outcome in *Hemani*, No. 24-1234.

Respectfully submitted,

Omodare Jupiter
Federal Public Defender
NORTHERN AND SOUTHERN
DISTRICTS OF MISSISSIPPI
Leilani L. Tynes
Counsel of Record
Victoria E. McIntyre
Office of the Federal Public Defender
Southern District of Mississippi
2510 14th Street, Suite 902
Gulfport, MS 39501
Tel: (228) 865-1202