

No. 24-1249

IN THE
SUPREME COURT OF THE UNITED STATES

UNITED STATES OF AMERICA,

Petitioner,

v.

KINDLE TERRELL SAM,

Respondent.

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

BRIEF IN OPPOSITION

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QUESTION PRESENTED

The Government did not seek to show that Sam was intoxicated or unlawfully using a controlled substance at the time he was found in possession of a firearm. Nor did the Government attempt to prove that Sam's marijuana use was so extensive as to render him a danger to himself or others. The question presented is:

Whether 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," is unconstitutional under the Second Amendment as applied to Sam.

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INTRODUCTION

Everyone agrees this case does not present the appropriate vehicle for review. As the Government concedes, it failed to offer any proof concerning the nature and extent of Sam's alleged drug use, especially as it relates to the firearm found in his home. *See* App. 3. In the proceedings below, 18 U.S.C. § 922(g)(3) was not deemed facially unconstitutional, but instead unconstitutional as applied specifically to Sam. App. 2a. An as-applied challenge necessarily involves consideration of the specific facts, of which the record in this case is sparse. The Government failed to meet its burden of proof in the district court and its ruling, affirmed by the Fifth Circuit on appeal, should not be disturbed.

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.

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 2021, law enforcement found marijuana, drug paraphernalia, a Glock pistol, and ammunition in Sam’s bedroom. C.A. ROA.71; *United States v. Sam*, No. 23-60570, ECF 28-2, ECF 48, 22 (5th Cir. 11/14/2024). Sam admitted that the marijuana and pistol belonged to him. *Id.* He further admitted that he had been smoking marijuana for approximately five years. *Id.* A grand jury charged Sam with one count of § 922(g)(3). App. 1a.

3. Sam moved to dismiss the indictment, arguing that § 922(g)(3) was unconstitutional under the Second Amendment as applied to him. App. 3a. The district court denied his motion, and Sam moved to reconsider. App. 3a; *see* App. 7a. The district court stayed consideration of his motion pending the United States Court of Appeal for the Fifth Circuit’s decision in *United States v. Daniels*, 77 F.4th 337 (5th Cir. 2023), *cert. granted, judgment vacated*, 144 S. Ct. 2707 (2024) (*Daniels I*). App. 3a.

4. After the Fifth Circuit’s opinion in *Daniels I*, finding § 922(g)(3) unconstitutional under the Second Amendment as applied to Daniels, the district court granted Sam’s motion to dismiss. App. 4a. It determined that the facts charged in Sam’s case were substantially similar to those presented in *Daniels*, and the Government did not contend that Sam was intoxicated at the time charged in the indictment. App. 4a.

5. The Government appealed, App. 1a, and the appeal was stayed pending the disposition of the Government’s petition for a writ of certiorari in *Daniels I, Sam*, No. 23-60570, ECF 28-2 (5th Cir. 11/24/2023). While the appeal was pending, this Court granted the Government’s petition in *Daniels I*, vacating the judgment, and remanding the case for further consideration in light of its decision in *United States v. Rahimi*, 602 U.S. 680 (2024). 144 S. Ct. 1889.

6. 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.

7. The Fifth Circuit affirmed the district court’s dismissal of the indictment against Sam in an unpublished per curiam opinion, finding that the Government failed to attempt to prove that Sam was intoxicated or unlawfully using a controlled substance at the time he possessed a firearm. App. 1a-2a.

REASONS TO DENY THE PETITION

I. This 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*, this Court granted the petitions for writ of certiorari filed by the Government in cases addressing Second Amendment challenges to § 922, vacating the judgments below, and remanding for further consideration in light of *Rahimi*. See *United States v. Daniels*, 144 S. Ct. 2707 (2024); *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*.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.

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).

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 prosecutions² and where the circuit courts 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

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 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.

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 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).

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

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*.

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 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

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.

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.”); *United States v. Daniels*, 124 F.4th 967, 978 (5th Cir. 2025) (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

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).

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.*

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.”).

II. 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. 3. 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 *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. The issue in *Hemani* is whether § 922(g)(3) is unconstitutional as specifically applied to Hemani. *Hemani*, Pet. I.

The Government concedes that this case is not the proper vehicle review, and that “[t]he record in *Hemani* includes more detail about the nature and extent of the defendant’s drug use than the record in this case.” App. 3. It fails to explain how the outcome in *Hemani* would affect the outcome here, where the Government failed to offer any evidence of Sam’s drug use and possession of a firearm beyond his admission that he had used marijuana for five years, and that he had drugs, drug paraphernalia, a Glock pistol, and ammunition in his bedroom. C.A. ROA.71. 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 Sam’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. 3. In its decision affirming the dismissal of the indictment against Sam, the Fifth Circuit relied on its governing precedent in *Connelly* where it “concluded that, because there was no effort to show that Connelly, despite being a regular drug user, was intoxicated at the time she was arrested for possessing a firearm, applying § 922(g)(3) to her was unconstitutional.” App. 2a (citing *Connelly*, 117 F.4th at 282). It accordingly found the statute unconstitutional as applied to Sam where the Government did not show that Sam was intoxicated or unlawfully using a controlled substance at the time he was found in possession of a firearm, nor did it attempt to show that his marijuana use was so extensive to render him akin to “the dangerously mentally ill or a danger to others.” App. 2a.

This interpretation was correct. 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.”). It 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 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”).

The historical analogues proffered by the Government failed to demonstrate a historical tradition of disarming someone like Sam. 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); *see Daniels*, 124 F.4th at 977 n.12

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”).

(recognizing the court must follow the principle of party presentation and limit itself to the record amassed by the district court and the parties); *Bruen*, 597 U.S. at 25 n.6; *United States v. Sineneng-Smith*, 590 U.S. 371, 375 (2020).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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