

No. 24-1328

In the
Supreme Court of the United States

UNITED STATES OF AMERICA,
PETITIONER,

v.

KESHON DAVEON BAXTER,
RESPONDENT,

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

BRIEF IN OPPOSITION

Gary Dickey Jr.
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Counsel of Record

OPINIONS BELOW

The original order of the district court is unreported.

The opinion of the court of appeals is reported at *United States v. Baxter*, 127 F.4th 1087 (8th Cir. 2025).

The order of the district court on remand is unreported but available at *United States v. Baxter*, 2024 U.S. Dist. LEXIS 143156 (S.D. Iowa July 23, 2025).

STATEMENT OF THE CASE

On July 18, 2023, a grand jury in the Southern District of Iowa returned a one-count indictment charging Keshon Baxter with being an unlawful user of a controlled substance in possession of a firearm in violation of 18 U.S.C. sections 922(g)(3) and 924(a)(8). D. Ct. Doc. 22. Baxter filed a motion to dismiss the indictment on the grounds that section 922(g)(3) was unconstitutional as applied to him in violation of the Second Amendment. D. Ct. Doc. 37. He also challenged the statute as being unconstitutionally vague. D. Ct. Doc. 37. The district court denied the motion in its entirety. D. Ct. Doc. 45. Thereafter, Baxter entered a conditional guilty plea to the indictment that preserved his right to appeal the court's ruling on his motion to dismiss. D. Ct. Docs. 50, 52. The district court sentenced Baxter to sixty-four months in prison. D. Ct Doc. 67.

The Eighth Circuit vacated and remanded with instructions to determine whether Baxter's motion to dismiss is appropriate for pretrial resolution under Federal Rule of Criminal Procedure 12. Pet. App. at 1a-9a, *Baxter*, 127 F.4th at 1091-92.

On June 2, 2025, the district court conducted a bench trial along with an evidentiary hearing on Baxter’s motion to dismiss pursuant to *United States v. Grubb*, 135 F.4th 604 (8th Cir. 2025). D. Ct. Doc. 105. The district court followed with a written ruling, finding that the “Government has established that prohibiting the possession of firearms by Baxter as an unlawful user of a controlled substance is consistent with the historical tradition of firearm regulation. D. Ct. Doc. 120 at 21. On September 3, 2025, the district court resentenced Baxter to sixty-four months in prison. (R. Doc. 128 at 2). Baxter filed a notice of appeal the same day. D. Ct. Doc. 130.

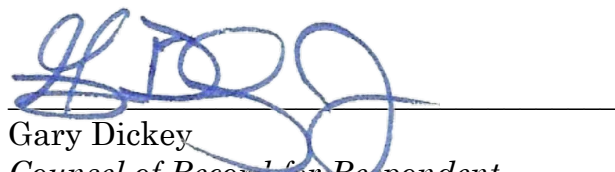
ARGUMENT

THE COURT'S REVIEW WOULD BE PREMATURE

The last sentence in the Government's Petition provides the best arguments for why certiorari should not be granted. First, "the lack of a final decision from the Eighth Circuit" means review from this Court would be premature. (Pet. at 5). Second, the decision in *United States v. Hemani*, No. 24-40137, 2025 WL 354982 (Jan. 31, 2025), "presents a better vehicle to review the question presented." (Pet. at 5). For these reasons, this case is an unsuitable vehicle for addressing matters raised in the Government's petition for a writ of certiorari.

CONCLUSION

The petition for a writ of certiorari should be denied.



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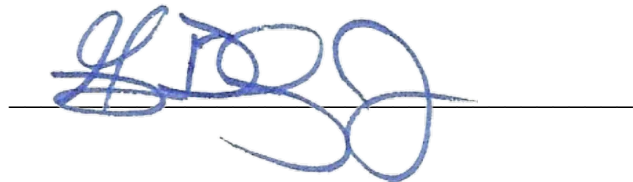
KESHON DAVEON BAXTER,
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RULE 33.2(b) CERTIFICATE OF COMPLIANCE

As required by Supreme Court Rule 33.2(b), I, Gary Dickey, certify that the Petition for Writ of Certiorari in the foregoing case contains 1 page.

Executed on September 11, 2025.

I declare under penalty of perjury that the foregoing is true and correct.

A handwritten signature in blue ink is written over a horizontal line. The signature is stylized and appears to be "G. Dickey".

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PROOF OF SERVICE

I, Gary Dickey, do swear or declare that on this date, September 11, 2025, as required by Supreme Court Rule 29, I have served the enclosed BRIEF IN OPPOSITION on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

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Executed on September 11, 2025

I declare under penalty of perjury that the foregoing is true and correct.

