

No.

In the Supreme Court of the United States

UNITED STATES OF AMERICA, PETITIONER

v.

BRIANI L. DOUCET

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether 18 U.S.C. 922(g)(1), the federal statute that prohibits the possession of a firearm by a person who has been convicted of a crime punishable by imprisonment for a term exceeding one year, violates the Second Amendment as applied to a defendant with a predicate conviction for attempted cultivation of marijuana.

RELATED PROCEEDINGS

United States District Court (W.D. La.):

United States v. Doucet, No. 21-cr-285
(Oct. 17, 2024)

United States Court of Appeals (5th Cir.):

United States v. Doucet, No. 24-30656 (Dec. 8, 2025)

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OPINIONS BELOW

The opinion of the court of appeals (App., *infra*, 1a-16a) is available at 2025 WL 3515404. The memorandum ruling of the district court (App., *infra*, 17a-23a) is available at 2024 WL 1496883.

JURISDICTION

The judgment of the court of appeals was entered on December 8, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. In 2016, respondent was convicted in Louisiana state court of producing, manufacturing, distributing, or dispensing a controlled substance, in violation of La. Rev. Stat. § 40:966 (2015). App., *infra*, 2a. Her conviction, which rested on the attempted cultivation of marijuana, *ibid.*, triggered 18 U.S.C. 922(g)(1), the federal

statute that bars convicted felons from possessing firearms.

In 2020, police officers conducting a traffic stop searched respondent's car and found a firearm, \$1695 in currency, a digital scale, and jars and bags containing marijuana. Presentence Investigation Report (PSR) ¶¶ 9-10. In another traffic stop of respondent's car later that year, police officers found a different firearm and a digital scale, PSR ¶¶ 11-12, along with a jar, shoebox, and bags containing a total of 290 grams of marijuana (valued at a total of \$5800), PSR ¶ 12.

2. A federal grand jury indicted respondent on two counts of possessing a firearm as a convicted felon, in violation of Section 922(g)(1). See App., *infra*, 3a. The district court denied respondent's motion to dismiss the indictment, rejecting her contention that Section 922(g)(1) violates the Second Amendment. *Id.* at 17a-23a. Respondent then entered a conditional plea of guilty. *Id.* at 4a. The court sentenced her to 32 months of imprisonment, to be followed by three years of supervised release. Am. Judgment 2-3.

3. A divided panel of the Fifth Circuit reversed and remanded. App., *infra*, 1a-16a.

The court of appeals concluded that Section 922(g)(1) violates the Second Amendment as applied to respondent. App., *infra*, 1a-16a. It rejected the government's contention that Section 922(g)(1) is analogous to historical laws restricting firearm possession by categories of dangerous persons. *Id.* at 7a-13a.

The court of appeals invoked *United States v. Connelly*, 117 F.4th 269 (5th Cir. 2024), an earlier case in which it had held 18 U.S.C. 922(g)(3), the federal statute disarming habitual unlawful users of controlled sub-

stances, unconstitutional as applied to a defendant who was not under the influence of drugs while possessing a firearm. App., *infra*, 10a. The court observed that, in *Connelly*, it had concluded that “marijuana use did not justify disarmament” because “‘not all members of the set ‘drug users’ are violent.’” *Ibid.* (quoting *Connelly*, 117 F.4th at 278-279). Applying *Connelly*’s logic, it concluded that attempted marijuana cultivation likewise does not justify disarmament because convictions for that offense are not limited “to violent offenders.” *Id.* at 11a. The court stated that “[t]his offense—unlike drug-trafficking crimes—does not necessarily signify involvement in the drug trade” because “individuals often cultivate marijuana for personal use.” *Ibid.*

Judge Duncan dissented. App., *infra*, 14a-16a. He reasoned that respondent’s predicate felony conviction was for conduct that resembles “drug trafficking,” an activity that the Fifth Circuit “ha[d] held ‘inherently dangerous’ for Second Amendment purposes.” *Id.* at 15a. Judge Duncan perceived “no basis for equating [the] predicate felony with mere marijuana use or possession.” *Id.* at 16a.

REASONS FOR GRANTING THE PETITION

This case presents the question whether Section 922(g)(1) violates the Second Amendment as applied to a defendant with a predicate conviction for attempted cultivation of marijuana. In *United States v. Hemani*, cert. granted, No. 24-1234 (oral argument scheduled for Mar. 2, 2026), this Court is considering the constitutionality of 18 U.S.C. 922(g)(3), the statute that prohibits possession of a firearm by a habitual unlawful user of controlled substances. The Court should hold the petition for a writ of certiorari in this case pending the res-

olution of *Hemani*. If appropriate, the Court should then grant certiorari in this case, vacate the court of appeals' judgment, and remand the case for further consideration.

That course is warranted because there is a “reasonable probability that the decision below rests upon a premise that the lower court would reject if given the opportunity for further consideration” in light of *Hemani*. *Lawrence v. Chater*, 516 U.S. 163, 167 (1996) (per curiam). The Fifth Circuit relied on its reasoning in *United States v. Connelly*, 117 F.4th 269 (2024), where it had invalidated Section 922(g)(3) as applied to habitual unlawful drug users who were not under the influence of drugs while possessing firearms, reasoning that “not all members of the set “drug users” are violent.” App., *infra*, 10a (quoting *Connelly*, 117 F.4th at 278-279). But the government is arguing in *Hemani* that, contrary to the Fifth Circuit’s decision in *Connelly*, Section 922(g)(3) is constitutional as applied to such drug users and that the Second Amendment permits Congress to temporarily restrict the possession of firearms by certain categories of dangerous individuals. See Gov’t Br. at 12-35, *Hemani*, *supra* (No. 24-1234). The Court’s resolution of those issues in *Hemani* thus could affect the resolution of this case.

CONCLUSION

This Court should hold the petition for a writ of certiorari pending the resolution of *United States v. Hemani*, cert. granted, No. 24-1234 (oral argument scheduled for Mar. 2, 2026). If appropriate, the Court should then grant the petition, vacate the court of appeals' judgment, and remand the case for further consideration in light of *Hemani*.

Respectfully submitted.

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APPENDIX

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 24-30656

UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

v.

BRIANI L. DOUCET,
DEFENDANT-APPELLANT

Filed: Dec. 8, 2025

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 2:21-CR-285-1

Before DENNIS, GRAVES, and DUNCAN, *Circuit Judges*.

PER CURIAM:*

A federal grand jury indicted Briani Doucet for unlawfully possessing a firearm as a convicted felon, in violation of 18 U.S.C. § 922(g)(1). Doucet moved to dismiss the indictment on the ground that § 922(g)(1) is unconstitutional. The district court denied the motion; Doucet entered a conditional plea of guilty; and this timely appeal followed. Because the Government has not carried its burden to show a history or tradition of

* This opinion is not designated for publication. *See* 5th Cir. R. 47.5.

permanently disarming individuals guilty of attempted marijuana cultivation (Doucet’s predicate felony offense), we REVERSE the district court’s judgment and REMAND for further proceedings not inconsistent with this opinion.

I

On two separate occasions in August and September 2020, members of the Lafayette Police Department discovered a handgun while searching Doucet’s vehicle after traffic stops. Doucet had previously pleaded guilty in 2016 to a Louisiana felony. *See* LA. REV. STAT. § 40:966. Although the parties agree on the nature of Doucet’s conviction, the dissent expresses uncertainty about what the 2016 predicate offense actually was.

The presentence investigation report repeatedly designates Doucet’s 2016 offense as the “attempted cultivation of marijuana.” Doucet, however, pleaded guilty under a Louisiana statute that criminalizes those who “produce” or “manufacture” a controlled substance, as well as those who “distribute or dispense.” *Id.* § 40:966(A)(1). Because this statute covers multiple drug crimes, the dissent resists describing the predicate felony as “attempted cultivation of marijuana,” and instead posits—*sua sponte*—that Doucet may have pleaded guilty to a different offense, such as drug distribution. The Government does not advance this argument. Although it urges us to describe her offense as the “production” or “manufacturing” of marijuana, it concedes that Doucet was “charged under the ‘production/manufacturing’ language of the statute,” not for distribution or dispensing.

The dissent’s theory contravenes the principle of party presentation, which instructs courts to “rely on the parties to frame the issues for decision and assign to

the courts the role of neutral arbiter of matters the parties present.” *United States v. Sineneng-Smith*, 590 U.S. 371, 375 (2020) (“In our adversarial system of adjudication, we follow the principle of party presentation.”). It also conflicts with the district court’s uncontested finding that “[r]ecords revealed that Briani L. Doucet was convicted on December 8, 2016, for Attempted Cultivation of Marijuana,” as well as the Government’s admission that Doucet’s offense was limited to production/manufacturing. The dissent’s concerns are therefore untethered to the arguments and record before us.

Consistent with Louisiana practice and the district court’s finding, we use the term “attempted cultivation of marijuana” to describe Doucet’s predicate offense. Louisiana courts commonly refer to attempted production/manufacturing as “attempted cultivation of marijuana.” *State v. Hebert*, 2008-542, p.2 (La. App. 3 Cir. 11/5/08), 996 So.2d 688, 689. The terminology is interchangeable, and the choice between them does not affect our analysis. *See, e.g.*, La. Rev. Stat. § 40:989.1(C)(5) (defining “production” to include the “cultivation” of a controlled substance).

Because Doucet had a prior felony conviction and possessed a firearm, a federal grand jury indicted her with two counts of possession of a firearm by a convicted felon, in violation of 18 U.S.C. § 922(g)(1). Doucet moved to dismiss the indictment. She argued that § 922(g)(1) violated the Second Amendment, both on its face and as applied to her under the Supreme Court’s decision in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022). The district court denied Doucet’s motion, reasoning that it was “still bound by

pre-*Bruen* Fifth Circuit precedent” upholding the constitutionality of § 922(g)(1).

Doucet entered a conditional plea agreement with the Government but preserved her right to appeal the denial of her motion to dismiss the indictment. The district court accepted the plea agreement, which dismissed one of her § 922(g)(1) counts, and sentenced her to thirty-two months of imprisonment followed by three years of supervised release.¹ Doucet timely appealed.

Doucet concedes that her Second Amendment facial challenge is foreclosed and raises this issue only to preserve it for possible future review. See *United States v. Diaz*, 116 F.4th 458, 472 (5th Cir. 2024) (foreclosing facial challenge to § 922(g)(1)). Accordingly, we focus on whether § 922(g)(1) violates the Second Amendment as applied to Doucet, which we review de novo. *United States v. Howard*, 766 F.3d 414, 419 (5th Cir. 2014) (citing *United States v. Clark*, 582 F.3d 607, 612 (5th Cir. 2009)).

II

The Second Amendment guarantees that “the right of the people to keep and bear Arms[] shall not be infringed.” U.S. Const. amend. II. In *Bruen*, the Supreme Court established a two-step framework to analyze whether a particular firearm regulation violates the Second Amendment. 597 U.S. at 17. First, we look to whether the Second Amendment’s plain text covers the

¹ Doucet has served her term of imprisonment. But because Doucet is challenging her conviction, which can have adverse consequences, her appeal is not moot. *United States v. Hill*, No. 23-20244, 2025 WL 2542167, at *1 n.1 (5th Cir. Sept. 4, 2025) (citation omitted).

conduct the Government seeks to regulate. *Id.* at 24. Then, if it does, the Government must “justify its regulation by demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation.” *Id.* “Only then may a court conclude that the individual’s conduct falls outside the Second Amendment’s ‘unqualified command.’” *Id.* (quoting *Konigsberg v. State Bar of Cal.*, 366 U.S. 36, 49 n.10 (1961)).

Because the plain text of the Second Amendment covers the conduct prohibited by § 922(g)(1), *Diaz*, 116 F.4th at 467, the Government carries the burden of proof to show that lifetime disarmament of Doucet for her predicate offense is “consistent with the Nation’s historical tradition.” *Bruen*, 597 U.S. at 24; accord *Diaz*, 116 F.4th at 467. To satisfy its burden, the Government must “identify a well-established and representative historical analogue” that is “relevantly similar” to § 922(g)(1) as applied to Doucet, but it need not provide its “historical twin.” *Diaz*, 116 F.4th at 467.

The Government advances two sets of Founding-era analogues to support its contention that § 922(g)(1)’s lifetime disarmament for attempted cultivation of marijuana is consistent with our Nation’s history and tradition: (A) severe punishment for those who produced or trafficked in contraband or illicit goods; and (B) disarmament for those who legislatures deem a “dangerous” threat to the safety of others.² We address and reject each theory in turn.

² The Government additionally argues that Doucet’s conduct could support her conviction under 18 U.S.C. § 922(g)(3). But this is a § 922(g)(1) case, and we decline to justify Doucet’s conviction based on a theory and statutory provision for which she was never

The Government first asserts that the attempted cultivation of marijuana is analogous to several crimes involving trafficking contraband or illicit goods—namely, knowing receipt of a stolen horse, mail theft, and counterfeiting—that were punishable in the Founding era with death and permanent forfeiture of an individual’s estate.³ But Fifth Circuit precedent forecloses this argument.

In *United States v. Kimble*, we rejected the Government’s appeal to those same Founding-era felonies as relevant historical analogues to modern laws prohibiting drug trafficking. 142 F.4th 308, 314 (5th Cir. 2025). Although recognizing that both “advance a common goal of eliminating traffic in illicit goods,” we found the comparison to operate at too “high [a] level of generality” and “stretches the analogical reasoning prescribed by *Bruen* and *Rahimi* too far.” *Id.* (citing *United States v. Connelly*, 117 F.4th 269, 282 (5th Cir. 2024)). Those Founding-era offenses—knowing receipt of a stolen horse, mail theft, and counterfeiting—“concern theft, fraud, or deceit,” not the “use and sale of addictive drugs.” *Id.* at 313. *Kimble* thus dictates that the Government’s proffered analogues are not sufficiently similar to Doucet’s attempted marijuana cultivation offense,

charged or convicted. See *United States v. Greenlaw*, 84 F.4th 325, 358 (5th Cir. 2023) (“[A] court cannot permit a defendant to be tried on charges that are not made in the indictment against him.” (citation omitted)), *cert. denied*, 144 S. Ct. 2518 (2024).

³ Under *Diaz*, laws punishing serious crimes or estate forfeiture—in addition to express permanent disarmament—satisfy the “how” inquiry because those laws “achieved their goals by permanently punishing offenders, as does § 922(g)(1).” 116 F.4th at 469.

which likewise targets the production of intoxicating substances rather than the trade in illicit goods more generally.

B

The Government next contends that lifetime disarmament of Doucet fits within the Nation’s history and tradition of disarming those whose past criminal conduct demonstrates a special danger of misusing firearms. We disagree.

“The Second Amendment allows Congress to disarm . . . people it reasonably deems dangerous.” *Id.* at 314-15. This capacity, however, is limited: Congress may do so only if “such a disarmament regime [is] consistent with *Bruen*’s ‘why’ and ‘how’ test.” *Id.* at 315. Thus, the “shifting benchmark” of felony status does “not define the limits of the Second Amendment.” *Diaz*, 116 F.4th at 469. Instead, we must determine if the Government has “identified a ‘class of persons at the Founding who were dangerous for reasons comparable to’ those Congress seeks to disarm today.” *Kimble*, 142 F.4th at 315 (quoting *Connelly*, 117 F.4th at 278); see, e.g., *United States v. Rahimi*, 602 U.S. 680, 698 (2024) (“[Section 922(g)(8)’s] prohibition on the possession of firearms by those found by a court to present a threat to others fits neatly within the tradition the surety and going armed laws represent.”).

But before assessing historical analogues, we must touch on a different question: by what means can the Government show the “dangerousness” of Doucet? We have offered inconsistent answers to this question post-*Bruen*. See *United States v. Mancilla*, 155 F.4th 449, 454 (5th Cir. 2025) (Elrod, C.J., concurring) (“Our caselaw in this area is developing very quickly by neces-

sity, and it has sometimes done so in broad swathes[.]”). In *Kimble*, we applied a “[c]lass-wide” approach to disarmament, 142 F.4th at 315, and found the defendant’s predicate drug trafficking offense to be categorically “an inherently dangerous activity,” *id.* at 317. In doing so, we rejected the need for “an individualized assessment that [the defendant] is dangerous.” *Id.* at 317-18; *see also Mancilla*, 155 F.4th at 452 (same). But in *United States v. Morgan*, we assessed the defendant’s dangerousness based on the individual conduct underlying his predicate offense—a “vicious drive-by shooting”—rather than the categorical dangerousness of those convicted for illegal use of a weapon. 147 F.4th 522, 528 (5th Cir. 2025). And in *United States v. Reyes*, we determined that the defendant posed a “credible threat to the safety of others” based on the totality of his criminal history, including convictions that occurred after the § 922(g)(1) conduct that was the subject of his appeal. 141 F.4th 682, 686 (5th Cir. 2025).

We need not wade in such muddy waters here. Doucet’s only felony conviction was for attempted marijuana cultivation in 2016, and the Government does not provide any evidence detailing the conduct underlying her offense, much less any indication that it involved actual or threatened violence, victims,⁴ or weapons.⁴ As a

⁴ The Government urges us to consider Doucet’s misdemeanor offenses, arrest record, and other uncharged conduct. We cannot. *See, e.g., Kimble*, 142 F.4th at 318 (“The relevant consideration is a defendant’s ‘prior convictions that are punishable by imprisonment for a term exceeding one year,’ not unproven conduct charged contemporaneously with a defendant’s [§ 922(g)(1)] indictment or prior conduct that did not result in a felony conviction.” (quoting *Diaz*, 116 F.4th at 467)). We acknowledge persuasive concurrences and dissents advocating for a different rule. *See, e.g., Mancilla*, 155 F.4th

matter of circumstance then, our review is limited to a categorical assessment of the dangers of attempted marijuana cultivation, and the Government must therefore identify a class of persons at the Founding who were considered “dangerous” for reasons comparable to those convicted of Doucet’s predicate offense.

* * *

There are two strains of cases in which we have found that a predicate felony fit a defendant within the class of persons considered dangerous enough to warrant disarmament in the Founding era. The first includes offenses that expressly involve dangerous or violent acts. *See, e.g., United States v. Schnur*, 132 F.4th 863, 870 (5th Cir. 2025) (holding that defendant’s conviction for aggravated battery justified disarmament as a dangerous person); *United States v. Bullock*, 123 F.4th 183, 185 (5th Cir. 2024) (per curiam) (same, but aggravated assault and manslaughter). Doucet’s offense clearly does not fit in this category: the Government does not dispute that there is nothing dangerous or violent in attempting to grow a marijuana plant. *Cf. Connelly*, 117 F.4th at 278-79.

The second encompasses non-violent offenses that often lead to, or are associated with, acts of violence. For example, in *Kimble*, we held that Congress reasonably deemed felon drug traffickers categorically “too dangerous to trust with weapons,” consistent with Founding-era laws excluding “dangerous persons” who “threatened violence and the risk of public injury,” because

at 455-56 (GRAVES, J., dissenting); *Kimble*, 142 F.4th at 321 (GRAVES, J., concurring in part and in the judgment). Under our rule of orderliness, we are bound to apply the panel majority’s holdings.

drug trafficking is “an inherently dangerous activity.” 316 F.4th at 316 (quoting *Kanter v. Barr*, 919 F.3d 437, 452 (7th Cir. 2019) (Barrett, J., dissenting)). The Government anchors its position in this second strain.

But we have found the dangerous persons analogue to be inappropriate where an act is non-violent and fails to indicate a sufficient connection to violence. In *United States v. Connelly*, we rejected the Government’s argument that non-violent marijuana users fit within a class of persons considered to be “dangerous” at the Founding in the context of § 922(g)(3). 117 F.4th at 278. Because “not all members of the set ‘drug users’ are violent” —and the Government had not shown how “marijuana use predisposed” an individual to “armed conflict”—we concluded that marijuana use did not justify disarmament. *Id.* at 278-79; *see also United States v. Daniels*, 124 F.4th 967, 976 (5th Cir. 2025) (“Analogies to historical [disarmament] laws . . . will likely find stronger footing if the government can establish a connection between defendant’s active or regular drug use and violent or dangerous conduct.”).

Applying these precepts here, the Government fails to show that Doucet’s offense is comparable to a class of persons at the Founding who were considered “dangerous.” *Kimble* makes clear courts can infer the dangerousness of drug traffickers only because of the “*inherent violence* of the trade.” 142 F.4th at 316 (quoting *United States v. Yanez Sosa*, 513 F.3d 194, 202 (5th Cir. 2008)). Even though “drug dealing” alone is “not necessarily violent,” it is “dangerous” because it “often lead[s] to violence.” *Folajtar v. Att’y Gen. of the United States*, 980 F.3d 897, 922 (3d Cir. 2020) (Bibas, J., dissenting). *Kimble* therefore held that *all* drug-trafficking offenses

warrant disarmament, including non-violent ones, because the business itself is categorically dangerous: violence is likely to emerge in the illicit transactions of an illegal and clandestine industry. 142 F.4th at 316; *see also Harmelin v. Michigan*, 501 U.S. 957, 1002-03 (Kennedy, J., concurring in part) (discussing how the “nexus between illegal drugs and crimes of violence” arises from “drug business or culture” and users seeking “to obtain money to buy drugs”).

The Government fails to show how this rationale applies to individuals convicted of attempted marijuana cultivation. This offense—unlike drug-trafficking crimes—does not necessarily signify involvement in the drug trade: individuals often cultivate marijuana for personal use, not illicit profit. *See, e.g.*, Mo. Const. art. XIV § 2.10(1)(b) (legalizing cultivation of up to six flowering marijuana plants for registered, non-commercial use); Okla. Stat. Ann. 63 § 420 (legalizing cultivation of up to six marijuana plants for personal use by licensed medical marijuana patients). Nor are convictions limited in practice to violent offenders or those involved in trafficking: Louisiana prosecutes and convicts individuals for attempted cultivation of marijuana regardless of whether they grew the plants for sale or personal use. *See, e.g., State v. Broadway*, 40-569, p. 2 (La. App. 2 Cir. 1/25/06), 920 So.2d 960, 961 (affirming seven-and-a-half-year sentence for attempted cultivation of marijuana after discovery of “one marijuana plant” in a five-gallon bucket near defendant’s trailer); *State v. Insley*, 2004-1006, p. 2-3 (La. App. 3 Cir. 2/2/05); 893 So.2d 209, 211-12 (affirming four-year sentence for attempted cultivation of “five marijuana plants” even though “the plants were grown” for wheelchair-bound defendant’s “own personal use”).

What's more, the Government fails to identify any class of persons at the Founding deemed "dangerous" for reasons comparable to marijuana producers.⁵ Because there was "very little regulation of drugs (related to firearm possession or otherwise until the late 19th century)," we have previously looked to Founding-era regulations of alcohol as the "next-closest 'historical analogue'" for the historical treatment of intoxicating substances. *Connelly*, 117 F.4th at 279. We do the same here.

In *Connelly*, we found that although several Founding-era laws narrowly prohibited the use of firearms while a person was actively intoxicated, there was no relevant "Founding-era tradition or regulation disarming ordinary citizens who consumed alcohol." *Id.* at 281. Likewise, the Government fails to identify any laws treating the illegal production or manufacturing of alcohol as dangerous or worthy of disarmament. Congress punished illegal distilling in early America only with a fine of "one hundred dollars" and the forfeiture of "all the spirits which he or she shall keep therein," not disarmament. Act of Mar. 3, 1791, ch. 15 § 25, 1 STAT. 199; *see also* Sarah Brady Siff, *Burn, Sell, or Drive: Forfeiture*

⁵ Indeed, the Government fails to address Doucet's assertion that even "the Founders grew hemp"—the same species botanically as marijuana. *United States v. Daniels*, 77 F.4th 337, 343 (5th Cir. 2023) (citing THOMAS PAINE, *Common Sense* (1776), in 1 THE POLITICAL WRITINGS OF THOMAS PAINE 15, 52 (Charlestown, George Davidson 1824)); *vacated*, 144 S. Ct. 2707 (2024); *see also* Letter from Thomas Jefferson to George Fleming (Dec. 29, 1815), *reprinted by* NAT'L ARCHIVES: FOUNDERS ONLINE, <https://perma.cc/P5H8-KAL6> (describing mechanical invention to ease the work of the "the cultivaters [sic] of hemp," which beneficially "is abundantly productive and will grow for ever [sic] on the same spot").

in the History of Drug Law Enforcement, 80 OHIO ST. L.J. 859, 861-62 (2019) (discussing the punishment of asset forfeiture in early America). The Government has not carried its burden to show that lifetime disarmament of Doucet fits within the Nation’s history and tradition of disarming individuals whose past criminal conduct demonstrates a special danger of misusing firearms.

*

In sum, on this record, the Government’s two proposed analogues—severe historical punishments for producers or traffickers of contraband and the disarmament of those legislatively labeled “dangerous”—do not justify § 922(g)(1)’s lifetime disarmament for attempted marijuana cultivation. Neither analogue satisfies the Government’s burden under *Bruen*.

III

For the foregoing reasons, we REVERSE the district court’s judgment and REMAND for further proceedings not inconsistent with this opinion.

STUART KYLE DUNCAN, *Circuit Judge*, dissenting:

The majority concludes that applying 18 U.S.C. § 922(g)(1) to Briani Doucet violates the Second Amendment. Its premise is that Doucet’s predicate felony was merely for “attempted marijuana cultivation,” a mantra the majority repeats seventeen times. *See Op.* at 2, 3, 5, 6, 8, 10, 12. I disagree for two reasons.

First, the statute under which Doucet pled guilty encompasses criminal activity far more serious than “attempted marijuana cultivation.” Start with the title: “Penalty for distribution or possession with intent to distribute narcotic drugs listed in Schedule I; possession of marijuana, synthetic cannabinoids, and heroin.” La. Rev. Stat. § 40:966. The statute itself never mentions “cultivation” of marijuana (or “attempted cultivation,” whatever that means). Instead, it outlaws the following:

- (1) To produce, manufacture, distribute or dispense or possess with intent to produce, manufacture, distribute, or dispense, a controlled dangerous substance or controlled substance analogue classified in Schedule I.
- (2) To create, distribute, or possess with intent to distribute, a counterfeit controlled dangerous substance classified in Schedule I.
- (3)(a) To produce, manufacture, distribute, or dispense or possess with intent to produce, manufacture, distribute, or dispense a consumable hemp product, as defined in R.S. 3:1481, in violation of R.S. 3:1483.

Id. § 40:966(A)(1)-(3)(a).

So, simply put, the statute criminalizes producing, manufacturing, distributing, or dispensing Schedule I controlled dangerous substances and their analogues.¹ Those prohibited activities strongly resemble an activity—drug trafficking—which we have held “inherently dangerous” for Second Amendment purposes. *See United States v. Kimble*, 142 F.4th 308, 317 (5th Cir. 2025) (“[T]he Legislative, Executive, and Judicial Branches agree that drug trafficking is an inherently dangerous activity, and Congress has responded to that threat by disarming convicted drug traffickers via § 922(g)(1).”).

Second, the information we have about Doucet’s crime suggests, again, that it was quite a bit worse than “attempted marijuana cultivation.” Here are the details from her Presentence Investigation Report:

39. 05/11/2016 (Age 19)	Attempted Cultivation/Manufacturing Marijuana/15th Judicial District Court; Lafayette Parish, Lafayette, LA; Docket No.: 156925	12/08/2016: Sentenced to serve 2 years Hard Labor, suspended, 2 years supervised probation.	4A1.1(a) 3
		Probation began: 12/08/2016. Probation Revoked: 07/12/2017: Sentence to serve original sentence.	
		11/01/2017: Pa-	

¹ The statute also criminalizes unauthorized possession of those substances, La. Rev. Stat. § 40:966(C), but that subsection is not relevant to Doucet’s criminal history, as her PSR shows. *See infra*.

role began.
08/29/2018: Pa-
role terminated
early.

To be sure, the PSR uses the phrase “Attempted Cultivation/Manufacturing Marijuana” as a generic description of Doucet’s criminal activity. But the PSR goes on to specify that Doucet intentionally “produce[d], manufacture[d], distribute[d], or dispense[d]” (or possessed with such intent) “a controlled dangerous substance, to-wit: Marijuana.”

As the majority concedes, Op. at 8, that is all we know about Doucet’s predicate felony. So, I am at a loss to understand how the majority somehow intuits that Doucet’s crime did not “involve[] actual or threatened violence, victims, or weapons,” *ibid.*, that Doucet was simply attempting to grow a marijuana plant for personal use, *id.* at 10, or that Doucet was, like the founders, perhaps only attempting to produce hemp, *id.* at 11 n.5.

All of that is speculation. What the record actually tells us is that Doucet pled guilty under a statute that criminalizes producing, manufacturing, distributing, or dispensing Schedule I controlled dangerous substances. Consequently, there is no basis for equating her predicate felony with mere marijuana use or possession. *Cf.* Op. at 9 (discussing *United States v. Connelly*, 117 F.4th 269, 278-79 (5th Cir. 2024)).

Because I would uphold Doucet’s § 922(g)(1) conviction, I respectfully dissent.

APPENDIX B

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION

Criminal No. 2:21-CR-00285 (01)

UNITED STATES OF AMERICA

v.

BRIANI L. DOUCET

Filed: Apr. 5, 2024

MEMORANDUM RULING

JUDGE JAMES D. CAIN, Jr.

Magistrate Judge LEBLANC

Before the Court is a Motion to Dismiss Indictment (Doc. 45) filed by the defendant, Briani L. Doucet (“Doucet”), based on the United States Supreme Court’s decision in *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022). The government opposes the motion. Doc. 47.

BACKGROUND INFORMATION

The charges against Doucet stem from two traffic stops by the Lafayette, Louisiana Police Department occurring on August 16, 2020, and September 18, 2020. In both traffic stops, Doucet was found with a firearm in

her vehicle. On November 18, 2021, a federal grand jury returned a two-count indictment against Doucet charging her with two counts of possession of a firearm by a convicted felon in violation of 18 U.S.C. § 922(g)(1). Doc. 1. The indictment also contains a forfeiture allegation pursuant to 18 U.S.C. § 924(d) and 28 U.S.C. § 2461(c). *Id.* Doucet moves to dismiss the November 18, 2021, indictment charging her with violations of 18 U.S.C. § 922(g)(1) on the grounds that the statute is unconstitutional post-*Bruen*. Doc. 45.

LAW AND ANALYSIS

The Second Amendment to the United States Constitution provides that “[a] well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.” U.S. Const. amend. II. The Supreme Court has previously held that “the Second and Fourteenth Amendments protect the right of an ordinary, *law-abiding citizen* to possess a handgun in the home for self-defense.” *Bruen*, 142 S. Ct. at 2122 (citing *District of Columbia v. Heller*, 554 U.S. 570 (2008); *McDonald v. Chicago*, 561 U.S. 742 (2010)) (emphasis added). The Supreme Court’s recent decision in *Bruen* expanded upon *Heller* to hold that the Second Amendment also protects an individual’s right to possess a gun outside of the home for self-defense. *Id.* at 2122. However, it is also established that “the right secured by the Second Amendment is not unlimited.” *Heller*, 554 U.S. at 626.

The issue presented in *Bruen* concerned a licensing regime instituted by the state of New York under which an applicant for a public-carry handgun license was required to demonstrate a special need for self-defense. *Bruen*, 142 S. Ct. at 2122-23. The Supreme Court re-

jected the licensing regime, finding that New York’s requirements prevented “law-abiding citizens with ordinary self-defense needs from exercising their right to keep and bear arms.” *Id.* at 2156. *Bruen* provides the courts with a two-part test to determine if a restriction on the Second Amendment, like the New York licensing regime, is constitutional. *Id.* at 2129-30. First, a court must ask whether the “Second Amendment’s plain text covers an individual’s conduct.” *Id.* If the answer is yes, the court must then ask whether “the regulation is consistent with this Nation’s historical tradition of firearm regulation.” *Id.* A regulation is constitutional only when it is “consistent with the Second Amendment’s text and historical understanding.” *Id.* at 2131.

Bruen’s expansion of Second Amendment protections for law-abiding citizens to possess a handgun outside of the home did not expressly find that section 922(g)(1) is unconstitutional. Indeed, both Justice Alito and Justice Kavanaugh, who was joined by Chief Justice Roberts, expressed in their concurrent opinions in *Bruen* that government regulations prohibiting possession of a firearm by a felon should be left undisturbed. Justice Alito stated: “Our holding decides nothing about who may lawfully possess a firearm . . . Nor have we disturbed anything that we said in *Heller* or *McDonald* [] about restrictions that may be imposed on the possession or carrying of guns.” *Id.* at 2157 (Alito, J., concurring). Justice Kavanaugh noted that the Second Amendment allows “a ‘variety’ of gun regulations” and quoted language from Justice Scalia in *Heller*, and reiterated by Justice Alito in *McDonald* as follows:

Like most rights, the right secured by the Second Amendment is not unlimited. From Blackstone

through the 19th-century cases, commentators and courts routinely explained that the right was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose. . . . Nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.”

Id. at 2162 (Kavanaugh, J., joined by Roberts, C.J., concurring).^{1 2}

Since its issuance, courts at all levels are “struggling at every stage of the *Bruen* inquiry.” *United States v. Daniels*, 77 F.4th 337, 358 (5th Cir. 2023) (Higginson, J., concurring). This is demonstrated by the divergent conclusions concerning the application of *Bruen* to section 922(g)(1) by the Third and Eighth Circuits. The Eighth Circuit has rejected challenges to the constitutionality of section 922(g)(1). *See United States v. Jackson*, 69 F.4th 495 (8th Cir. 2023). Conversely, the Third Circuit

¹ Doucet argues that this passage is dicta and does not control the outcome of this case post *Bruen*. Doc. 45 at 4. Lower courts “are generally bound by Supreme Court dicta, especially when it is ‘recent and detailed.’” *Hollis v. Lynch*, 827 F.3d 436, 448 (5th Cir. 2016) (citing *Gearlds v. Entergy Servs. Inc.*, 709 F.3d 448, 452 (5th Cir. 2013)).

² Justice Breyer in his dissenting opinion also stated “Like Justice Kavanaugh, I understand the Court’s opinion today to cast no doubt on that aspect [prohibitions on the possession of firearms by felons and the mentally ill] of *Heller’s* holding.” *Bruen*, 142 S. Ct. at 2189 (Breyer, J., joined by Sotomayor and Kagan, J.J., dissenting).

has found the provision unconstitutional as applied post-*Bruen*. See *Range v. Attorney Gen.*, 69 F.4th 96 (3rd Cir. 2023).

The Fifth Circuit has yet to rule on the effect of *Bruen* on section 922(g)(1).³ However, it has analyzed 18 U.S.C. § 922(g)(8), the criminal statute prohibiting the possession of a firearm while under a domestic violence restraining order, finding that statute unconstitutional as applied post-*Bruen*. *United States v. Rahimi*, 61 F.4th 443, 461 (5th Cir. 2023). Therein, the panel examined “the extent to which the Court’s ‘law-abiding’ qualifier constricts the Second Amendment’s reach.” *Id.* at 451. Of note, based on the underlying record, the panel noted that *Rahimi* did not fall, at the time he was charged under section 922(g)(8), into one of the groups historically stripped of their Second Amendment rights, i.e., felons or the mentally ill, “whose disarmament the Founders ‘presumptively’ tolerated or would have tolerated.” *Id.* at 452. “While he was *suspected* of other criminal conduct at the time, *Rahimi* was not a convicted felon or otherwise subject to another ‘longstanding prohibition on the possession of firearms’ that would have excluded him.” *Id.* (citing *Heller*, 554 U.S. at 626-27) (emphasis in original). This point was also noted in an unpublished Fifth Circuit decision involving the plain-error review of a post-conviction appeal where the defendant argued that section 922(g)(1) is now unconstitutional. *United States v. Washington*, 2023 WL 5275013

³ It appears that the Fifth Circuit is waiting to issue a ruling on the constitutionality of section 922(g)(1) until the Supreme Court decides the appeal of *Rahimi v. United States*, No. 22-915 (argued Nov. 7, 2023). See *United States v. Collette*, No. 22-51062, Rec. Doc. 57 (5th Cir. Aug. 16, 2023) (holding that matter in abeyance pending a decision by the Supreme Court in *Rahimi*).

(5th Cir. Aug. 16, 2023). Therein, the panel stated: “we have yet to address the constitutionality of section 922(g)(1)—and, in fact, *Rahimi* suggests that *Bruen*’s logic may not extend to this provision.” *Id.* at *1.

Despite the complexity of the test presented in *Bruen*, more than one hundred district courts within the Fifth Circuit have rejected constitutional challenges to section 922(g)(1) based on *Bruen*. See *United States v. Bazile*, 2023 WL 7112833, at *3-4 (collecting cases). While lesser in number, there are also district courts within the Fifth Circuit that have held section 922(g)(1) unconstitutional post-*Bruen*. See *United States v. Le-Blanc*, 2023 WL 8756694 (M.D. La. Dec. 19, 2023); *United States v. Bullock*, 2023 WL 4232309 (S.D. Miss. June 28, 2023).

This Court believes that it is still bound by pre-*Bruen* Fifth Circuit precedent upholding section 922(g)(1) until a decision is issued by the Fifth Circuit or Supreme Court regarding the constitutionality of section 922(g)(1) post-*Bruen*.⁴ “[T]he authority to determine whether the Fifth Circuit’s pre-*Bruen* precedent regarding the constitutionality of section 922(g)(1) has been overturned by an intervening change in the law lies with the Fifth Circuit alone.” *United States v. Morgan*, 2024 WL 150340, at *3 (W.D. La. Jan. 12, 2024) (quoting *United States v. Thompson*, 2023 WL 3159617 at *4 (E.D. La. Apr. 27, 2023)). As such, this Court finds that section

⁴ Prior to *Bruen*, the Fifth Circuit reaffirmed its own jurisprudence that section 922(g)(1) does not violate the Second Amendment. *United States v. Scroggins*, 599 F.3d 433, 451 (5th Cir. 2010) (reaffirming constitutionality of section 922(g)(1) in light of *Heller*); *United States v. Darrington*, 351 F.3d 632, 633-34 (5th Cir. 2003).

922(g)(1) remains constitutionally sound at this time under current Fifth Circuit precedent.

CONCLUSION

For the reasons stated above, the Court will **DENY** the defendant's Motion to Dismiss Indictment (Doc. 45).

THUS DONE AND SIGNED in Chambers on this 5th day of April, 2024.

/s/ **JAMES D. CAIN, JR.**
JAMES D. CAIN, JR.
UNITED STATES DISTRICT JUDGE