

No. 25-1029

IN THE
SUPREME COURT OF THE UNITED STATES

UNITED STATES OF AMERICA,

Petitioner,

v.

EDWARD COCKERHAM,

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

Whether Cockerham's conviction under 18 U.S.C. § 922(g)(1), which prohibits the possession of firearms by a person previously convicted of a crime punishable by a term of imprisonment exceeding one year, violated his Second Amendment rights where the government failed to prove a historical justification for his permanent disarmament based on his sole predicate felony conviction for failure to pay child support in violation of Mississippi law—an offense for which he was not sentenced to a single day in prison.

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INTRODUCTION

Cockerham’s “sole predicate offense under § 922(g)(1) is his failure to pay child support—an offense for which he was not sentenced to a single day in prison.” App. 4a. The court of appeals determined that the government failed to provide adequate historical justification to support his permanent disarmament based on his prior felony for failure to pay child support. App. 5a, 18a. It thus held that Cockerham’s § 922(g)(1) conviction violated the Second Amendment as applied to him. App. 5a, 18a.

The government does not argue that the decision below is wrong. Nor does it ask the Court to review the court of appeals’ § 922(g)(1) analysis of Cockerham’s as-applied Second Amendment challenge. Instead, it asks this Court to hold its petition for a writ of certiorari pending the resolution in *United States v. Hemani*, No. 24-40137, 2025 WL 354982 (5th Cir. Jan. 31, 2025) (per curiam), *cert. granted*, No. 24-1234 (oral argument heard Mar. 2, 2026) and if appropriate, grant its petition, vacate the judgment of the court of appeals, and remand the case for further consideration. App. 3-4, 6. The government contends that its argument in *Hemani* that “the Second Amendment allows Congress to restrict the possession of firearms by certain categories of dangerous individuals” is at odds with the Fifth Circuit’s failure to wholly endorse a “dangerousness” test for disarmament. App. 4. It thus urges that “there is a ‘reasonable probability’ that *Hemani* could affect the court of appeals’ analysis.” App. 4 (quoting *Lawrence v. Chater*, 516 U.S. 163, 167 (1996) (per curiam)). The government’s contention lacks merit.

The decision in *Hemani* will not affect the outcome here. Section 922(g)(1), which permanently dispossesses an individual previously convicted of a crime punishable by a term of imprisonment exceeding one year, is categorically different from the temporary ban of 18 U.S.C. § 922(g)(3) at issue in *Hemani*, and it thus requires the application of a different legal framework and analysis. Moreover, even if the Fifth Circuit endorsed a “dangerousness” test as the governing test for disarmament, the decision below would not change because the government did not prove that either Cockerham or his predicate non-violent felony were “dangerous.” The Court should deny the petition and the government’s request to hold the case pending the resolution of *Hemani*.

STATEMENT

1. Edward Cockerham has a previous felony conviction for failure to pay child support, in violation of Mississippi law. App. 5a; see MISS. CODE § 97-5-3. He was sentenced to five years of probation for the crime, and he was discharged from probation after he repaid his child support obligation. App. 5a. Cockerham was subsequently indicted for possessing a firearm, in violation of § 922(g)(1). App. 5a. “His sole predicate offense under § 922(g)(1) [was] his failure to pay child support—an offense for which he was not sentenced to a single day in prison.” App. 4a. Cockerham was no longer delinquent and had fully paid the child support debt for which he was convicted at the time he was found in possession of a firearm. App. 10a; see App. 5a.

2. Cockerham twice moved to dismiss the indictment against him, arguing that § 922(g)(1) violated the Second Amendment as applied to him and on its face. App. 5a; *see* App. 38a-45a; App. 46a-50a. The district court denied both motions. App. 6a; App. 45a; App. 50a. Cockerham pleaded guilty subject to a conditional plea agreement, reserving his right to appeal the district court’s denial of his Second Amendment claims. App. 6a. He was sentenced to a 26-month term of imprisonment and three years of supervised release. Judgment 2-3.

3. Cockerham appealed the denial of his motion to dismiss the indictment and raised several other constitutional violations. App. 6a. Applying *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1 (2022), *United States v. Rahimi*, 602 U.S. 680 (2024), and governing circuit precedent, the Fifth Circuit determined that the government failed to satisfy its burden of identifying a sufficient “historical basis for disarming Cockerham for the rest of his life [under § 922(g)(1)], just because he was once convicted of failure to pay child support.” App. 6a-17a (quote at 17a). The government’s analogy of failure to pay child support to theft failed. App. 4a-5a, 17a-18a. At the Founding, debtors were treated differently than thieves and could be only temporarily disarmed until discharge of their debt. App. 5a, 17a-18a. The government conceded that Cockerham was no longer delinquent of any failure to pay child support when he was found in possession of a firearm, and the court of appeals determined there was thus “no historical justification to disarm him at that moment—never mind for the rest of his life.” App. 5a; *see* App. 18a. The Fifth Circuit reversed his conviction. App. 18a. Judge Ho filed a concurring opinion. App. 19a-

23a. Judge Higginson filed a dissenting opinion. App. 24a-50a. The decision was “unanimous against affirmance.” App. 13a; *see* App. 24a-25a (Higginson, J., dissenting) (indicating the dissent “would do no more than remand”).

REASONS TO DENY THE PETITION

The government has not shown a “reasonable probability” that the Court’s decision in *Hemani* would affect the court of appeals’ analysis or ultimate decision in Cockerham’s as-applied Second Amendment challenge to his permanent disarmament under § 922(g)(1). The question presented in *Hemani* is “[w]hether 18 U.S.C. § 922(g)(3) . . . violates the Second Amendment as applied to respondent.” Petition for Writ of Certiorari at I, *United States v. Hemani*, No. 24-1234 (June 2, 2025). The government contends that grant, vacate, and remand is appropriate because there is a reasonable probability that the Court’s resolution of *Hemani* will affect the Fifth Circuit’s view of Congress’ ability to restrict the possession of firearms by certain categories of “dangerous” individuals. App. 4. It argues that if this Court agrees with its argument in *Hemani*, “the Fifth Circuit would need to revisit its analysis in this case.” App. 4. This argument lacks merit.

First, § 922(g)(3) and § 922(g)(1) impose different bans on firearm possession and are thus governed by different analyses. The government has argued and maintained that § 922(g)(3) imposes only a “temporary” ban. *See* Gov’t Br. at 10-12, 25, 37, *Hemani, supra* (No. 24-1234). Section 922(g)(1), in contrast, is a permanent ban. *See* App. 8a. Thus, the legal framework governing the Second Amendment analysis here is different from that at issue in *Hemani*. *See Rahimi*, 602 U.S. at 692 (explaining that “[w]hy and how the regulation burdens the right are central” to a

court's Second Amendment analysis and that "[e]ven when a law regulates arms-bearing for a permissible reason, . . . it may not be compatible with the right if it does so to an extent beyond what was done at the founding"). The government's failure to provide historical justification for Cockerham's *permanent* disarmament based on his prior failure to pay—and subsequent discharge of—child support debt compelled the court of appeals' decision. App. 5a, 17a-18a. The temporary ban at issue in *Hemani* has no bearing on the analysis here. The government's reference to the discretionary right restoration provision in 18 U.S.C. § 925(c), which it admits was inoperative at the time of Cockerham's offense, App. 5, does not change the analysis as applied to him.

Second, even if "dangerousness" was the ultimate test for disarmament in the Fifth Circuit, it would not change the outcome here. The Fifth Circuit acknowledged its own precedent that "[h]istorical tradition unquestionably permits the Government to disarm violent criminals." App. 2a (citing *United States v. Bullock*, 123 F.4th 183, 185 (5th Cir. 2024) (quoting *Kanter v. Barr*, 919 F.3d 437, 451 (7th Cir. 2019) (Barrett, J., dissenting) ("The historical record demonstrates 'that legislatures have the power to prohibit dangerous people from possessing guns.'")))). But the government did not prove or even allege that Cockerham was dangerous. App. 11a. (noting that the government did not rely on any allegedly violent previous arrests to affirm Cockerham's § 922(g)(1) conviction). Nor did it contend that failure to pay child support is a violent crime. App. 11a. Even under a "dangerousness" test, without more, Cockerham cannot categorically be deemed "dangerous" and permanently

disarmed based solely on his nonviolent predicate conviction for failure to pay child support.

Moreover, *Hemani* says nothing about nonviolent felons being categorically and permanently disarmed under § 922(g)(1). The Court has refused to grant certiorari on this point. *See, e.g., United States v. Diaz*, 145 S. Ct. 2822 (June 23, 2025) (denying petition for writ of certiorari); *United States v. Duarte*, --- S. Ct. --- , No. 25-425, 2026 WL 135692 (Jan. 20, 2026) (denying petition for writ of certiorari); *Vincent v. Bondi*, --- S. Ct. --- , No. 24-1155, 2026 WL 568283 (Mar. 2, 2026) (denying petition for writ of certiorari).

The government has not shown a “reasonable probability” that the Court’s resolution the government’s argument in *Hemani* that Congress has the authority to temporarily disarm “dangerous persons” under § 922(g)(3), including habitual drug users like Hemani, would affect the analysis or “determine the ultimate outcome” here as applied to Cockerham’s permanent disarmament under § 922(g)(1) for failure to pay child support. *Lawrence*, 516 U.S. at 167; *see* Gov’t Br. at 12-18, *Hemani, supra* (No. 24-1234). The Court has refused to grant a petition for a writ of certiorari requesting the same relief here as applied to the Fifth Circuit’s reversal of a § 922(g)(1) conviction as violative of the Second Amendment as applied to a defendant with a predicate conviction for attempted cultivation of marijuana. *United States v. Doucet*, --- S. Ct. --- , No. 25-1001, 2026 WL 1127187 (Apr. 27, 2026). There is likewise no reason to hold this petition pending the resolution of *Hemani*.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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