

No. 25-1219

IN THE
SUPREME COURT OF THE UNITED STATES

UNITED STATES OF AMERICA,

Petitioner,

v.

CHARLES HEMBREE,

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 Mr. Hembree'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 tradition justifying his permanent disarmament based on his sole predicate felony conviction for simple drug possession.

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INTRODUCTION

Charles Hembree has a single prior felony conviction for simple possession of methamphetamine. App. 1a. The court of appeals found “that the government did not meet its burden to prove that history and tradition support simple possession as a valid felony predicate under § 922(g)(1).” App. 18a. It thus held that Mr. Hembree’s § 922(g)(1) conviction violated the Second Amendment as applied to him. App. 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 Mr. Hembree’s as-applied Second Amendment challenge. Instead, it asks the Court to hold its petition and, if appropriate, grant its petition, vacate the judgment of the court of appeals, and remand the case for further consideration in light of *United States v. Hemani*, 608 U.S. ---, No. 24-1234, 2026 WL 1751710 (June 18, 2026). App. 3, 4. This resolution is inappropriate, and the petition should be denied.

The government contends that its challenge in *Hemani* encompasses a challenge to the Fifth Circuit’s analysis in *United States v. Connelly*, 117 F.4th 269 (5th Cir. 2024), which would affect the court of appeals’ analysis below. App. 3. It maintains that in vacating Mr. Hembree’s conviction on Second Amendment grounds, the Fifth Circuit “expressly relied on its reasoning in [*Connelly*],” which rejected a broad Congressional authority “to temporarily restrict the possession of firearms by certain categories of dangerous individuals, including habitual drug users.” App. 3. Thus, it reasons that if the Court were to accept this argument, Mr. Hembree could be constitutionally disarmed because he “fits within Congress’s authority to disarm dangerous individuals.” App. 3. The government’s contention lacks merit.

The decision in *Hemani* does not affect the outcome here. The Court emphasized the narrow nature of its holding. It refused to “address 18 U.S.C. § 922(g)(1)’s provision disarming individuals convicted of felonies (often including drug-related ones).” 2026 WL 1751710, at *11. It did not disturb *Connelly*’s analysis, and it rejected the analogues proffered by the government in support of even the *temporary* disarmament of 18 U.S.C. § 922(g)(3), including those it alleged justified Congress’s ability to disarm broad groups categorically violent and dangerous without any further showing. *Id.* at *12. *Hemani* does not alter the Fifth Circuit’s holding that the government failed to meet its burden to demonstrate a history and tradition justifying Mr. Hembree’s permanent disarmament for simple possession under § 922(g)(1). The Court should deny the petition.

STATEMENT

1. Charles Hembree has a 2018 felony conviction for possession of methamphetamine, in violation of Mississippi law. App. 1a, 2a. In 2022, he was charged with possession of a firearm by a convicted felon in violation of § 922(g)(1). App. 2a.

2. Mr. Hembree moved to dismiss the indictment, arguing that § 922(g)(1) violated the Second Amendment as applied to him. App. 2a; App. 24a. The district court denied his motion. App. 2a; App. 24a. Mr. Hembree pleaded guilty subject to a conditional plea agreement, reserving his right to appeal the district court’s denial of his motion to dismiss the indictment. App. 2a. He was sentenced to a six-month term of imprisonment and three years of supervised release. App. 2a.

3. Mr. Hembree challenged the denial of his motion to dismiss the indictment and raised several other constitutional violations on appeal. App. 2a-3a. 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 did not meet its burden to prove that history and tradition support simple possession as a valid felony predicate under § 922(g)(1).” App. 18a. The court rejected the government’s proffered historical analogues of “severe punishment for possession of contraband” and “a tradition of disarming ‘dangerous persons.’” App. 12a-13a (quotes at 12a). Possession of contraband, which targeted the trade of illicit goods, generally, was not “sufficiently similar” to Mr. Hembree’s predicate conviction for simple possession. App. 13a-14a. The court of appeals declined to find that possession alone was “part and parcel with the drug trade” so as to render it inherently dangerous, and there was no evidence that Mr. Hembree’s crime was “dangerous.” App. 10a, 18a (quote at 18a).

The Fifth Circuit reversed Mr. Hembree’s conviction because it violated the Second Amendment as applied to him. App. 18a. Judge Willett filed a concurring opinion. App. 19a-23a.

REASONS TO DENY THE PETITION

The Court’s decision in *Hemani* does not affect the court of appeals’ analysis or ultimate decision in Mr. Hembree’s as-applied Second Amendment challenge to his permanent disarmament under § 922(g)(1). In its petition, the government asks the Court to grant certiorari, vacate the court of appeals’ judgment, and remand for further consideration in light of *Hemani* because *Hemani* challenged the analysis in

Connelly. App. 3-4. It argues that in the decision below, the Fifth Circuit “expressly relied on its reasoning in [*Connelly*]” and “rejected the government’s contention that Section 922(g)(1) is constitutional as applied to respondent because it fits within Congress’s authority to disarm dangerous individuals.” App. 3. The decision in *Hemani* does not affect the outcome here. It does not disrupt *Connelly*, and it does not endorse a finding that drug users—let alone those previously convicted of mere possession—are “categorically and unusually dangerous” to justify their permanent disarmament. The Court should deny the petition.

First, the *Hemani* Court expressly stated it was not considering the issue raised here: “We do not address [§ 922(g)(1)]’s provision disarming individuals convicted of felonies (often including drug-related ones).” 2026 WL 1127187 at *11. *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).

Second, *Hemani* did not disrupt the Fifth Circuit’s analysis in *Connelly* or its holding that “when there is no evidence of intoxication at the time of the § 922(g)(3) offense, regulating a defendant’s ‘habitual or occasional drug use [would impose] a far greater burden on her Second Amendment rights than our history and tradition of firearms regulation can support.” App. 17a (quoting *Connelly*, 117 F.4th at 282).

The Court expressly stated it was not considering “whether the government could bring a prosecution under § 922(g)(3) accompanied by individualized proof that the defendant’s use of marijuana (or any other drug) renders him a danger to himself or others.” *Hemani*, 2026 WL 1751710 at *11. And it refused to accept the same argument rejected in *Connelly* that “habitual drunkard” laws supported categorical disarmament. *Id.* at *6, *12; *see Connelly*, 117 F.4th at 280 (explaining that “the government offers no Founding-era law or practice of disarming ordinary citizens for drunkenness, even if their intoxication was routine”); *id.* at 281 (“Boiled down, § 922(g)(3) is much broader than historical intoxication laws.”). The government’s analogy failed under every measure. *Hemani*, 2026 WL 1751710 at *12.

The Court did not accept the government’s proffered connection between § 922(g)(3) and the protection of the public from a category of “unusually dangerous” persons. It doubted that § 922(g)(3) “confines its reach to those who are categorically and unusually dangerous.” *Id.* at *8, *10 (quote at *10). It also recognized the dangers of affording the government that kind of “broad power to designate any group as dangerous and thereby disqualify its members from having a gun.” *Id.* at *11 (internal quotation marks omitted) (quoting *Kanter v. Barr*, 919 F.3d 437, 465 (7th Cir. 2019) (Barrett, J., dissenting)). Additionally, the Court rejected the government’s contention that use of the substances that trigger application of § 922(g)(3) necessarily renders users dangerous, violent, or otherwise susceptible to misusing firearms. *Hemani*, 2026 WL 1751710 at *16-18. It refused “to conclude that anyone

who regularly uses marijuana is categorically violent and dangerous without any further showing.” *Id.* at *11.

Third, the decision below, concerning Mr. Hembree’s permanent dispossession under § 922(g)(1), was independent of *Connelly*, which addressed temporary dispossession under § 922(g)(3) and provided only persuasive authority. App. 17a (explaining the court of appeals was “draw[ing] on our court’s reasoning in the § 922(g)(3) context”). The Fifth Circuit reversed Mr. Hembree’s conviction because the government did not carry “its burden to prove that history and tradition support simple possession as a valid felony predicate under § 922(g)(1).” App. 18a.

Connelly’s comparison of Founding-era regulations of alcohol as the “next-closest historical analogue for the historical treatment of intoxicating substances,” and its holding that even habitual drug use alone does not support temporary disarmament in the absence of evidence of intoxication, bolstered the decision below. App. 16a (internal quotation marks and citation omitted). There was no historical tradition of justifying temporary disarmament under § 922(g)(3) based on “dangerousness,” let alone permanent disarmament under § 922(g)(1). App. 17a (citing *Connelly*, 117 F.4th at 277 (“Indeed, not one piece of historical evidence suggests that, at the time they ratified the Second Amendment, the Founders authorized Congress to disarm *anyone* it deemed dangerous.”)). The Fifth Circuit explained that “[r]ooted in history, our court has continued to find that there is no historical tradition regulating ‘ordinary citizens who consumed alcohol,’ nor the illegal production or manufacturing of alcohol.” App. 16a (citing *Connelly*, 117 F.4th

at 281 and *United States v. Doucet*, No. 24-30656, 2025 WL 3515404 (5th Cir. Dec. 8, 2025)). The government did not prove that possession was any different. It did not prove that “possession is inherently involved in the [drug] trade.” App. 17a. Nor did it prove any facts related to Mr. Hembree’s mere possession that evinced “dangerousness.” *See* App. 10a.

This Court refused to strip Mr. Hemani—even temporarily—of his Second Amendment right to possess a firearm despite his admission to regular marijuana use. *Hemani*, 2026 WL 1751710 at *11. *Hemani* does not affect the court of appeals’ analysis below. It does not alter the outcome as applied to Mr. Hembree’s permanent disarmament under § 922(g)(1) for mere drug possession.

The Court has refused to grant petitions for a writ of certiorari requesting the same relief here in challenges 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 possession of a firearm as an unlawful user under § 922(g)(3), *United States v. Mitchell*, 609 U.S. ---, No. 25-935 (June 29, 2026), 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), and as applied to a defendant with a predicate conviction for failure to pay child support, *United States v. Cockerham*, --- S. Ct. ---, No. 25-1029, 2026 WL 1640866 (June 8, 2026). The petition here should also be denied.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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