

In the Supreme Court of the United States

ANDRE EDWARDS SANCHEZ, *PETITIONER*,

v.

UNITED STATES OF AMERICA, *RESPONDENT*.

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

SUPPLEMENTAL BRIEF FOR PETITIONER

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This case presents an important constitutional question: whether 18 U.S.C. § 922(g)(3), the statute prohibiting firearm possession by a person who “is an unlawful user of ... any controlled substance,” violates the Second Amendment as applied to someone who was under the influence of marijuana at the time of possession. The government asked the Court to hold the petition pending its decision in *United States v. Hemani*, No. 24-1234 (June 18, 2026). Now that the Court has decided *Hemani*, the question here is more important than ever, with wide-ranging impact on millions of Americans’ right to keep and bear arms. This Court should grant plenary review to resolve the question presented, which *Hemani* did

not address. In the alternative, the Court should grant, vacate, and remand (GVR) for the court of appeals to consider *Hemani*'s application to this case.

A. The Court should grant plenary review to decide whether § 922(g)(3) is unconstitutional as applied to individuals under the influence of marijuana.

This Court often issues a GVR order if an intervening decision clarifies the legal principles governing the resolution of the question presented in a pending petition. *See Lawrence v. Chater*, 516 U.S. 163, 167–68 (1996). But “a GVR order is inappropriate” if “the delay and further cost entailed in a remand are not justified by the potential benefits of further consideration by the lower court.” *Id.* at 168. That is the case here. *Hemani* is a “narrow” decision that did not address “efforts to ban ... those presently intoxicated ... from possessing a firearm.” Slip op. 18. Here, Sanchez admits that he was under the influence of marijuana when he possessed a firearm. *See* Pet. App. 2a n.1. So *Hemani* is unlikely to affect the court of appeals’ analysis. But *Hemani* highlights the critical importance of the question presented here and casts doubt on the Fifth Circuit’s decision below.

Hemani acknowledged that “millions of Americans ... now regularly use marijuana.” Slip op. 17–18. And *Hemani* confirmed that the government cannot deprive those individuals of their right

to possess a firearm simply “because [they] use[] marijuana a few times a week.” *Id.* at 19. But *Hemani* left open the natural follow-up question: Can someone who regularly uses marijuana possess a firearm even while they are using marijuana? Millions of Americans deserve an answer to that question.

And the Fifth Circuit’s current answer to that question—that individuals under the influence of marijuana can be disarmed, *see* Pet. App. 3a–4a—creates an unworkable constitutional rule. If regular marijuana users can possess firearms as a general matter after *Hemani*, it is unclear what they are supposed to do with their firearms during those episodes of regular use under the Fifth Circuit’s approach. For example, the Fifth Circuit’s rule would prohibit someone who keeps firearms at home—where the need for self-defense is “most acute,” *District of Columbia v. Heller*, 554 U.S. 570, 628 (2008)—from also using marijuana at home (perhaps “as a sleep aid,” *see Hemani*, slip op. 10). So the Fifth Circuit’s conclusion that marijuana users cannot possess firearms while they are under the influence guts the central holding of *Hemani* by effectively prohibiting millions of Americans from both possessing firearms and using marijuana in the comfort and safety of their own homes.

Postponing review of this important question risks leaving the Second Amendment rights of millions of Americans in doubt. This

Court should grant plenary review now to ensure that it can decide the question presented next Term.¹

B. If the Court does not grant plenary review, it should GVR.

If the Court does not grant plenary review, it should GVR for the court of appeals to apply *Hemani*.

CONCLUSION

The Court should grant the petition for a writ of certiorari. If the Court does not grant plenary review, it should GVR.

Respectfully submitted.

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¹ If the Court grants plenary review, it should also consider whether § 922(g)(3) is unconstitutionally vague, an issue the Court did not reach in *Hemani*. See Pet. i, 12–20.