No. __-_____

SUPREME COURT OF THE UNITED STATES

Christopher Wuchter,

Petitioner,

Vs.

The United States,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

I. Whether 18 U.S.C. § 922(g)(3), which prohibits firearm possession by any unlawful user of a controlled substance, is facially unconstitutional under this Court's plainly legitimate sweep doctrine.

LIST OF PARTIES

The caption of the case accurately reflects all parties to the proceeding before this Court.

RELATED PROCEEDINGS

The following proceedings are directly related to this case within the meaning of Rule 14.1(b)(iii):

United States District Court (S.D. Iowa):

United States v. Wuchter, No. 23-CR-2024-CJW-MAR, 2023 WL 4999862, (N.D. Iowa Aug. 4, 2023)

United States Court of Appeals (8th Cir.):

United States v. Wuchter, No. 24-2648, 2025 WL 2028073, (8th Cir. July 21, 2025)

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PETITION FOR WRIT OF CERTIORARI

Petitioner Christopher Wuchter prays that a writ of certiorari be granted to review the judgment of the Eighth Circuit Court of Appeals entered on July 21, 2025.

OPINIONS BELOW

The Eighth Circuit affirmed the district court's decision in an unpublished decision, available at *United States v. Wuchter*, No. 24-2648, 2025 WL 2028073, (8th Cir. July 21, 2025). The opinion is reproduced in the appendix to this petition at Pet. App. p. 23a.

JURISDICTION

The United States Court of Appeals for the Eighth Circuit entered judgment in Mr. Wuchter's case on July 21, 2025. Pet. App. p. 21a. This Court has jurisdiction under 28 U.S.C. § 1254(1).

SECTIONS OF LAW INVOLVED

Second Amendment

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

18 U.S.C. § 922(g)(3):

It shall be unlawful for any person— … (3) who is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)); … to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

STATEMENT OF THE CASE

Christopher Wuchter's case presents a critical and recurring question of constitutional significance: Does the Second Amendment of the Constitution permit the government to ban any and all users of a controlled substance from possessing firearms as done in § 922(g)(3).

The federal courts of appeals are divided on this issue, leading to a circuit split that has only grown wider since *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*. 597 U.S. 1, 10 (2022). Only this Court can resolve the conflict and ensure all citizens receive equal protection under the Second Amendment.

On July 24, 2023, the defendant filed a motion to dismiss the indictment, arguing that § 922(g)(3) is unconstitutional under the Second Amendment of the U.S. Constitution. The court denied the motion on August 4, 2023. Pet. App. p. 1a

On February 7, 2024, the defendant pled guilty in accordance with a conditional plea that permitted the defendant to appeal the ruling on the motion to dismiss. On August 7, 2024, the Court sentenced Mr. Wuchter to 97 months' imprisonment. Pet. App. p. 14a

On July 21, 2025, on direct appeal, the Eighth Circuit denied Mr. Wuchter's appeal and held § 922(g)(3) as facially constitutional because the Eighth Circuit's precedent in *Veasley* and *Cooper*. *See United States v. Veasley*, 98 F.4th 906, 917 (8th Cir. 2024); *United States v. Cooper*, 127 F.4th 1092 (8th Cir. 2025). Pet. App. p. 23a.

REASONS FOR GRANTING THE WRIT

I. This Case Presents an Ideal Vehicle for Resolving the Growing Circuit Split Over § 922(g)(3).

Bruen held that the Second Amendment requires gun regulations to be consistent with the nation's history and traditions of gun ownership. Circuits have applied this test and found multiple gun regulations can violated the Second Amendment. *See Cooper*, 127 F.4th at 1096, cert. denied, No. 24-1247, 2025 WL 2949663 (U.S. Oct. 20, 2025) (holding that § 922(g)(3) is unconstitutional in certain applications); *see also Worth v. Jacobson*, 108 F.4th 677, 685 (8th Cir. 2024), cert. denied, 145 S. Ct. 1924, 221 L. Ed. 2d 664 (2025) (holding that the Second Amendment does not permit banning those over 18 years old but under 21 years old from possessing firearms). One such regulation is 18 U.S.C. § 922(g)(3), which bars any user of a controlled substance, as defined in the Controlled Substance Act, or anyone addicted to a controlled substance, from possessing a firearm.

Every circuit that has heard a challenge to the constitutionality of this statute has determined that there are at least some circumstances in which this regulation is not in accordance with the history and traditions of gun ownership and thus these circuits have ruled § 922(g)(3) is unconstitutional as applied to certain defendants in certain circumstances.[1] And every circuit court has held § 922(g)(3) facially constitutional, citing to *Salerno* and identifying at least one circumstance in which the statute can

[1] *United States v. Harris*, 144 F.4th 154, 157 (3d Cir. 2025); *see also United States v. Connelly*, 117 F.4th 269, 274 (5th Cir. 2024); *see also United States v. VanOchten*, 150 F.4th 552, 557 (6th Cir. 2025); *see also Veasley*, 98 F.4th at 910, cert. denied, 145 S. Ct. 304 (2024); *see also United States v. Stennerson*, 150 F.4th 1276, 1282 (9th Cir. 2025); *see also United States v. Harrison*, 153 F.4th 998, 1014 (10th Cir. 2025); *see also Fla. Comm'r of Agric. v. Att'y Gen. of United States*, 148 F.4th 1307, 1317 (11th Cir. 2025).

be applied constitutionally. *Id.*; *see United States v. Salerno*, 481 U.S. 739, 745 (1987) (holding a law is facially unconstitutional when no set of circumstances exists under which the law would be valid). However, this Court stated in *Moody* that a statute can be facially unconstitutional if "it lacks a plainly legitimate sweep." *Moody v. NetChoice,* LLC, 603 U.S. 707, 723 (2024). A statute lacks a plainly legitimate sweep when it prohibits a sufficient amount of constitutional activity, and it is not subject to reasonable limitations. *Washington v. Glucksberg,* 521 U.S. 702 (1997); *Crawford v. Marion Cnty. Election Bd.,* 553 U.S. 181 (2008).

Each Circuit has also identified that the history and traditions of the United States do not support disarming a person solely because they are a drug user, though each circuit has found § 922(g)(3) can be constitutional when the drug user either poses a danger to society, or when the drug user is actively intoxicated. *See* cases cited in footnote 1, *supra*. This Court has stated that courts may not "rewrite" a statute to preserve its constitutionality. *United States v. Stevens*, 559 U.S. 460, 481 (2010). This court must identify a Second Amendment framework to determine how much constitutional activity must be affected before the statute is found to lack a plainly legitimate sweep.

This court has taken up *United States v. Hemani* (24-1234) where an as-applied challenge to § 922(g)(3) has been taken. Mr. Wuchter's case is the perfect case to join with that case because Mr. Wuchter's case raises the issue of how much constitutionally protected activity can be prohibited by a statute before that statute lacks a plainly legitimate sweep. So, if the court rules that some applications of

Section 922(g)(3) are unconstitutional, then Mr. Wuchter's case allows the Court to further state *whether or when* those applications cause the statute to lack a plainly legitimate sweep and thus be rendered facially unconstitutional.

II. The Courts of Appeals Are Divided Over How to Apply Bruen to § 922(g)(3).

All circuits are in agreement that the Second Amendment's text covers the conduct prohibited under § 922(g)(3) but circuits split when applying *Bruen's* second inquiry. *Bruen*, 597 U.S. at 15 (holding that first the defendant must show the Second Amendment is implicated by the statute and then the burden shifts to the government to show that the regulation is consistent with the nation's history and traditions of firearm regulation).

Under *Bruen*'s second inquiry courts must determine whether disarming the defendant is "consistent with the principles that underpin our regulatory tradition." *United States v. Rahimi*, 602 U.S. 680, 692 (2024). Modern laws pass this test if they are "'relevantly similar' to laws that our tradition is understood to permit," especially in "[w]hy and how [they] burden the right." *Id*. (quoting *Bruen*, 597 U.S. at 29).

The circuits all identified that there were not founding era laws that prohibited drug users from possessing firearms, but each circuit found § 922(g)(3), at least in some circumstances, could be analogized to historical laws, though they disagreed on what these circumstances were. *See* cases cited in footnote 1, *supra*.

This disagreement arises over the level of generality that circuits use when determining whether a challenged regulation has a sufficiently analogous statute. *See United States v. Harrison,* 153 F.4th 998, 1014 (10th Cir. 2025) (explaining that

the Fifth Circuit interpreted the historical analogues at a level of specificity inconsistent with *Bruen* and *Rahimi*).

a. Circuits are Split on Whether Historical Statutes that Disarmed the Mentally Ill are Sufficient Historical Analogs for § 922(g)(3).

The circuits are divided over whether Founding Era restrictions on the mentally ill provide a valid historical analogs for § 922(g)(3).

The Third and Eighth Circuits hold that these historical statutes are sufficiently analogous. They reason that, although the laws did not expressly disarm the mentally ill, such individuals were confined in jails or asylums, which effectively prevented them from possessing firearms. *United States v. Harris*, 144 F.4th 154, 160 (3d Cir. 2025); *Cooper*, 127 F.4th at 1095.

The Fifth and Tenth Circuits, however, reject these statutes as valid analogs. They conclude that the historical record reflects only the confinement of the mentally ill, not their disarmament, and therefore does not support § 922(g)(3). *United States v. Connelly*, 117 F.4th 269, 276 (5th Cir. 2024); *United States v. Harrison,* 153 F.4th 998, 1020 (10th Cir. 2025). The Tenth Circuit further reasoned that treating these laws as analogs would allow legislatures to disarm anyone they deem "irresponsible," which *Rahimi* forbids. *See Harrison*, 153 F.4th at 1020 (citing *Rahimi*, 602 U.S. at 701).

b. Circuits are Split on Whether Historical Statutes that Disarmed those Deemed Dangerous are Sufficient Analogs for § 922(g)(3)

Although the Tenth Circuit separates from the Eighth Circuit and Third Circuit above, these circuits, along with the Sixth Circuit, have all reached the conclusion

that § 922(g)(3) is consistent with the history and traditions of the United States because historical statutes permitted disarming those who pose a physical danger to others if armed. *See Harris,* 144 F.4th at 160; *United States v. VanOchten,* 150 F.4th 552, 558 (6th Cir. 2025); *Cooper*, 127 F.4th at 1095; *Harrison,* 153 F.4th at 1020.

In contrast, the Fifth Circuit, Ninth Circuit, and Eleventh Circuit agree that historical tradition supports disarming those who pose a physical risk to others, but they conclude that the drug users in their cases are not comparable to the historically dangerous groups disarmed in early America, such as Catholics and English loyalists. *United States v. Connelly,* 117 F.4th 269, 277 (5th Cir. 2024); *United States v. Stennerson,* 150 F.4th 1276, 1285 (9th Cir. 2025); *Fla. Comm'r of Agric. v. Att'y Gen. of the United States*, 148 F.4th 1307, 1320 (11th Cir. 2025).

These circuits adopt a narrower view, holding the only adequate historical analog for § 922(g)(3) is the founding era practice of disarming individuals who were actively intoxicated. *United States v. Connelly,* 117 F.4th 269, 277 (5th Cir. 2024); *United States v. Stennerson,* 150 F.4th 1276, 1285 (9th Cir. 2025); *Fla. Comm'r of Agric. v. Att'y Gen. of the United States*, 148 F.4th 1307, 1320 (11th Cir. 2025). As a result, they conclude that § 922(g)(3) is constitutional only when applied to people who are actively intoxicated on a controlled substance. *United States v. Connelly,* 117 F.4th 269, 277 (5th Cir. 2024); *United States v. Stennerson,* 150 F.4th 1276, 1285 (9th Cir. 2025); *Fla. Comm'r of Agric. v. Att'y Gen. of the United States*, 148 F.4th 1307, 1320 (11th Cir. 2025). The Third Circuit and Eighth Circuit have likewise recognized that

§ 922(g)(3) is constitutional as applied to actively intoxicated individuals. *Harris*, 144 F.4th at 160; *Cooper*, 127 F.4th at 1095.

c. There is a Further Split among these Circuits as to the Evaluation of Dangerousness

The division among the Circuits extends even further. The Third Circuit, Sixth Circuit, Eighth Circuit, and Tenth Circuit disagree on how courts should evaluate whether a defendant's drug use renders them dangerous. Specifically, the circuits divide over whether dangerousness should be assessed on the defendant's particular circumstances or on generalized evidence about the drug in question.

The Third Circuit, Sixth Circuit, and Eighth Circuit hold that the specific facts of the defendant's drug use are relevant to the inquiry. *Harris,* 144 F.4th at 160; *United States v. VanOchten,* 150 F.4th 552, 558 (6th Cir. 2025); *Cooper*, 127 F.4th at 1095. The Third Circuit has even developed a non-exhaustive set of factors that courts may consider, which includes individualized details regarding the defendant's drug use. *Harris,* 144 F.4th at 165; *VanOchten*, 150 F.4th at 558; *Cooper*, 127 F.4th at 1095.

The Tenth Circuit, in contrast, instructs courts to assess dangerousness objectively. *Harrison*, 153 F.4th at 1014. Under its approach, the specifics of the defendant's drug use, or the defendant's individual characteristics, do not factor into the analysis. *Id.* For example, on remand in *Harrison*, the Tenth Circuit directed the district court to consider whether a typical, non-intoxicated marijuana user poses a risk of danger. *Id*.

Although no circuit is in total agreement with another, each circuit has held that § 922(g)(3) encompasses at least some constitutional activity. That is why in order to find this statute as applied to certain defendants, each circuit has read additional elements into the statute such as requiring the defendant to be dangerous or actively intoxicated.

III. Section 922(g)(3) Burdens Substantial Amounts of Protected Second Amendment Conduct and This Court Should Determine Whether the Statute Lacks a Plainly Legitimate Sweep

This Court has stated that a statute is facially unconstitutional when no set of circumstances exists under which the law would be valid, but it has also held that a facial challenge can succeed if a defendant shows the statute "lacks a plainly legitimate sweep." *Salerno*, 481 U.S. at 745; *Moody*, 603 U.S. at 778 *citing*. *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 449 (2008).

The U.S. Supreme Court has given scant guidance on how to evaluate whether a statute has a plainly legitimate sweep outside of the First Amendment context, but two non-speech cases have touched on this issue. *Washington v. Glucksberg*, 521 U.S. 702 (1997); *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181 (2008). In *Glucksberg*, this Court indicated that part of the analysis is comparing the invalid applications of the statute to parts not invalidated. *Id*. Ten years later, this Court in *Crawford* upheld a law that imposed a limited burden on voting rights because even though the law infringed on constitutional activity, the burden it imposed was limited. *Id*.

Additionally, this Court has long held that courts may not "rewrite" a statute to preserve its constitutionality. *Stevens*, 559 U.S. at 481. Yet every circuit has "saved" § 922(g)(3) only by reading into the statute additional requirements that Congress never enacted.

Here, when those judicial limitations are removed, every circuit agrees that section 922(g)(3) affects constitutional activity. This Court needs to determine whether § 922(g)(3), without the judicial limitations, lacks a plainly legitimate sweep.

This Court can solve the above circuit split by finding that the amount of constitutional activity burdened by § 922(g)(3) renders the statute facially unconstitutional. Under that holding, circuits would not need to do a case-by-case analysis to determine whether a statute is constitutional as applied to a defendant.

Courts typically choose not to find statutes facially unconstitutional because "claims of facial invalidity often rest on speculation" about the law's coverage and its future enforcement, and "facial challenges threaten to short circuit the democratic process" by preventing duly enacted laws from being implemented in constitutional ways. *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 451 (2008). Neither of these concerns are present here because first, the unconstitutional applications are not mere speculation — the statute targets all drug users; and second, the democratic process is already infringed because courts have created limiting elements for the statutes, not legislators.

Further, courts typically evaluate whether a statute has a plainly legitimate sweep in the context of statute that interferes with the First Amendment's freedom of speech. *Stevens*, 559 U.S. at 473. In the First Amendment context, courts have added protections whereby a law may be invalidated as overbroad if "a substantial number of its applications are unconstitutional, judged in relation to the statute's plain sweep." *Id*. In *New York v. Farber*, the Supreme Court justified this rule as necessary and in accordance with the over-breadth doctrine because if the law was too broadly worded, it could deter protected activities. 458 U.S. 747, 770 (1982).

This lesser standard should be extended to statutes that implicate the Second Amendment because this Court has repeatedly held the "Second Amendment standard accords with how we protect other constitutional rights. Take, for instance, the freedom of speech in the First Amendment, to which *Heller* repeatedly compared the right to keep and bear arms." *Bruen*, 597 U.S. at 24 (citing D*.C. v. Heller*, 554 U.S. 570, (2008)). "This is not a second-class right subject to an entirely different set of rules than the other Bill of Rights guarantees." *Id*. at 70.

These cases show that under this Court's guidance, Second Amendment protections should be similar if not the same as the First Amendment. When this Court determined the regulation challenged in *Heller* was unconstitutional, it specifically referenced the First Amendment limitations when it determined what limitations it could put on the Second Amendment. *Heller*, 554 U.S. at 595.

Accordingly, the Court now faces an ideal opportunity to clarify how the plainly legitimate sweep doctrine operates when a statute burdens Second Amendment conduct.

IV. This Case is an Ideal Vehicle to Resolve This Split by Guiding the Courts Without Directly Overruling Any Cases or Requiring the Court to Engage in the *Bruen*'s Historical Analysis.

Although *Bruen* provided the framework for evaluating firearm regulations under the Second Amendment, the lower courts continue to reach conflicting results because each case presents different facts and historical analogs. These disagreements are not temporary or case specific. They reflect a deeper uncertainty about when a statute that burdens Second Amendment rights becomes facially unconstitutional because it lacks a plainly legitimate sweep. Without further guidance, courts are compelled to act as legislatures by reading new elements such as "dangerousness" or "active intoxication" into § 922(g)(3) to preserve its constitutionality. This practice not only departs from *Bruen*'s directive that the people's rights are defined by the U.S. Constitution and not by judicial amendment, but also risks producing inconsistent and subjective outcomes nationwide.

Mr. Wuchter's case provides the ideal vehicle for resolving this problem. His petition presents a pure facial challenge to § 922(g)(3) and does not depend on any disputed facts. The question before the Court is therefore a legal one: How much constitutionally protected conduct may Congress prohibit before a firearm regulation lacks a plainly legitimate sweep and violates the Second Amendment? Every circuit to address § 922(g)(3) has recognized that the statute is unconstitutional applications.

Yet the courts have declined to find it facially invalid under *Salerno* because they can imagine some set of circumstances in which the law might be constitutional. The result is a statute that survives only because lower courts have rewritten it to include limiting factors that Congress never enacted.

This case also complements the Court's recent grant of certiorari in *United States v. Hemani,* [No. 24-1234], which involves an as-applied challenge to § 922(g)(3) under *Bruen*. While that case concerns whether § 922(g)(3) may constitutionally be applied to a specific defendant, Mr. Wuchter's case raises the distinct but related question, whether § 922(g)(3) is facially unconstitutional because it encompasses so much protected conduct that it lacks a plainly legitimate sweep. Considering these cases together would allow the Court to clarify both the as-applied and facial dimensions of Second Amendment review.

Addressing both questions in tandem would give lower courts a comprehensive framework for future Second Amendment cases. It would confirm that when a statute such as § 922(g)(3) targets constitutionally protected activity without meaningful limits, it fails facially even if it might be valid in narrow circumstances. It would also align the Second Amendment with the First Amendment's established over-breadth doctrine, which recognizes that laws restricting protected rights must be struck down when their unconstitutional applications substantially outweigh their legitimate reach.

Finally, resolving this issue now would prevent the continued fragmentation of Second Amendment doctrine and end the need for courts to improvise limiting

principles not found in the text of federal law. *Rahimi* reaffirmed that Congress may disarm individuals who pose a concrete threat to others, but it also made clear that the government may not strip rights from entire classes of people deemed "not responsible." Section 922(g)(3), as written, does exactly that. By deciding this case, the Court will be able to define the boundary between permissible regulation and unconstitutional overreach, ensuring that the Second Amendment receives the same level of facial protection afforded to other fundamental rights.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted.

Respectfully submitted,

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