ORIGINAL

26-5025
No.

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SUPREME COURT, U.S.

IN THE SUPREME COURT OF THE UNITED STATES

ALEXANDER WESLEY LEDVINA,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR WRIT OF CERTIORARI

Alexander Wesley Ledvina
Reg. Number 63885-510
FCI Memphis
P.O. Box 34550
Memphis, TN 38184
Pro se

QUESTIONS PRESENTED

1. Whether the Second Amendment precludes applying 18 U.S.C. § 922(g)(3), the statute prohibiting the possession of firearms by unlawful users of controlled substances, to the Petitioner and a conviction under 18 U.S.C. § 924(a)(1)(A), the statute criminalizing false representations with respect to information required to be kept in the records of a firearms dealer, for falsely representing that Petitioner was not an unlawful user.

2. Whether the term "unlawful user" is unconstitutionally vague.

3. Whether the court of appeals erred by deciding the constitutional issues without passing on the nonconstitutional issues.

PARTIES TO THE PROCEEDING

Petitioner Alexander Wesley Ledvina was the defendant in the district court and the appellant below.

Respondent United States of America was the plaintiff in the district court and appellee below.

RELATED PROCEEDINGS

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

United States v. Ledvina, No. 23-cr-36 (June 28, 2024)

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

United States v. Ledvina, No. 24-2441 (Feb. 6, 2026)

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PETITION FOR WRIT OF CERTIORARI

Petitioner Alexander Wesley Ledvina petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit.

OPINIONS BELOW

The opinion of the court of appeals, including a concurrence by Judge David Stras and a dissent by Chief Judge Steven Colloton, is reported at 166 F.4th 716. App. 1a-18a. The order denying panel rehearing is unreported. App. 54a. The district court's bench trial order, findings, and conclusions is unreported. App. 21a-39a. The district court's order denying Petitioner's motion to dismiss is not officially reported, but is unofficially reported at 2023 U.S. Dist. LEXIS 143224 and 2023 WL 5279470. App. 40a-53a.

JURISDICTION

The judgment of the court of appeals was entered on February 6, 2026. Timely petitions for panel rehearing were denied on April 9, 2026. The deadline to file this petition is July 8, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The relevant constitutional and statutory provisions are reproduced in the appendix. App. 55a-56a.

STATEMENT OF THE CASE

Alexander Ledvina was a concealed carry permit holder in the state of Iowa. D. Ct. Dkt. 52 at 4. On July 29, 2022, shortly after his 26th birthday, he purchased a pistol. App. 2a. In connection with this purchase, he answered "no" on a federal form asking if he was an unlawful user of or addicted to marijuana or any other controlled substances. App. 3a. Suspecting him of being a marijuana user, federal agents executed a search warrant at his home as he was arriving from work on August 11, 2022. Id. Five firearms and cannibis were seized during the search. D. Ct. Dkt. 52 at 4-5.

Approximately 10 months after the search, Ledvina was arrested and charged with possessing firearms as an unlawful user of controlled substances, in violation of 18 U.S.C. § 922(g)(3), and knowingly making a false representation with respect to information required to be kept in the records of a firearms dealer in violation of 18 U.S.C. § 924(a)(1)(A). D. Ct. Dkt. 3 and 7. At the time of his arrest, he worked as an IT technician at a Veterans Affairs hospital. D. Ct. Dkt. 19 at 41-42.

Ledvina moved to dismiss the indictment, arguing that both counts must fall because § 922(g)(3) violates the Second Amendment and the term "unlawful user" is unconstitutionally vague. D. Ct. Dkt. 37. The district court denied the Second Amendment challenge and held in abeyance ruling on the vagueness challenge until trial. App. 40a-53a.

The parties agreed to a bench trial on stipulated facts. App. 21a. The stipulation reflected that Ledvina used marijuana 5 to 6 times per week and cited a single use of cocaine. D. Ct. Dkt. 52. There was no stipulation that he was intoxicated during the purchase of the firearm or that he had lost self control regarding the use of controlled substances. Id.

At trial, Ledvina raised as-applied Second Amendment and vagueness challenges. D. Ct. Dkt. 57 and 99 at 24-25. He also argued that the statutes did not reach his conduct and mens rea was not established. D. Ct. Dkt. 57 and 99 at 26-29.

On December 1, 2023, the district court rejected the constitutional challenges and found Ledvina guilty of both counts. App. 21a-39a. With a minimal background, his criminal history score was zero at sentencing. D. Ct. Dkt. 100 at 11. He is currently serving a 51 month term of imprisonment. D. Ct. Dkt. 88.

On appeal, Ledvina's counsel renewed the Second Amendment and vagueness challenges. 8th Cir. Entry 5451898. After receiving leave to do so, App. 20a, Ledvina raised, among other issues, the statutory construction and mens rea claims in a pro se brief. 8th Cir. Entry 5477448. The court of appeals accepted this brief and in the same order directed the government to respond to both briefs. App. 19a. The government then addressed all of the issues raised by Ledvina in it's brief. 8th Cir. Entry 5507851. When the subject arose at oral argument, Ledvina argued that remanding for the district court to redecide the as-applied Second Amendment challenge would violate the Double Jeopardy Clause. 8th Cir. Entry 5559489.

In a divided opinion, the court of appeals affirmed the § 924(a)(1)(A) count while vacating and remanding the § 922(g)(3) count. App. 1a-18a. The court first rejected the vagueness challenges. App. 5a-8a. It concluded that "frequent controlled substance use by Ledvina" fell within the meaning of unlawful user. App. 6a. In so holding, the court relied on it's precedent interpreting § 922(g)(3) to "require a temporal nexus between firearm possession and regular drug use." Id.

Turning to the Second Amendment, the court denied the facial challenge as foreclosed by it's precedent. App. 8a. However, the court held "[a]n as-applied challenge may be available" under it's precedents that were decided while Ledvina's appeal was pending. Id. The court then vacated the § 922(g)(3) count and remanded for the district court to redetermine the as-applied challenge. App. 9a. Without addressing his argument that both counts rise and fall together under the Second Amendment, the court affirmed the § 924(a)(1)(A) count. Id.

The court declined to address the statutory construction and mens rea issues, as well as all other claims from the pro se brief. Id. The court explained that it typically does not accept pro se briefs from parties represented by counsel but has discretion to review them. In contradiction with it's earlier orders, it elucidated that it was exercising it's discretion to enforce it's normal policy. Id.

Judge Stras concurred to express his disagreement with the dissent's view that § 922(g)(3) is categorically permissible. App. 9a-11a (Stras, J., concurring). He believes that the Second Amendment and the usual course of constitutional litigation compels case by case adjudication. Id.

Chief Judge Collaton dissented to vacatur of the § 922(g)(3) count. App. 11a-18a (Colloton, J., dissenting). In his view, the case should have been affirmed because § 922(g)(3) is constitutional in all of it's applications. Id. He further chastised the majority for not resolving the as-applied challenge. App. 17a-18a.

Ledvina timely filed a pro se petition for panel rehearing. 8th Cir. Entry 5609335. He argued that vacating the § 922(g)(3) count while affirming the § 924(a)(1)(A) count was logically inconsistent because the counts were interdependent, that the court should have resolved the as-applied challenge, and that the court erred by not addressing the other issues. Id. Ledvina's counsel shortly afterward filed another timely petition arguing that the sentence should have been vacated under the sentencing package doctrine. 8th Cir. Entry 5610332. The petitions were denied on April 9, 2026. App. 54a.

REASONS FOR GRANTING THE PETITION

According to recent studies, there are more American adults who regularly consume marijuana than regularly drink alcohol.[1] Of adults age 19 to 30, 28% report having used marijuana in the last month.[2] Meanwhile, roughly 32% of adults own a firearm.[3] 18 U.S.C. § 922(g)(3), which disarms "unlawful users" of controlled substances, threatens millions of ordinary and otherwise law abiding citizens who fall into the overlap of these statistics with 15 years of imprisonment. 18 U.S.C. § 924(a)(8). Under the current regulatory scheme, the government conditions the purchase of firearms from a dealer on answering "no" on a federal form asking whether the purchaser is an unlawful user of or addicted to controlled substances, forcing these Americans to choose between foregoing their right to acquire a firearm or risk facing federal prosecution. As currently enforced, 18 U.S.C. § 924(a)(1)(A), which prohibits false representations with respect to information required to be kept in the records of a firearms dealer, punishes a false answer to this question with up

1. Jonathan P. Caulkins, Changes in self-reported cannabis use in the United States from 1979 to 2022, Wiley Online Library (2024), perma.cc/R5WP-CUDW
2. Megan E. Patrick et al., Monitoring the Future Panel Study Report, at 29 (2023), perma.cc/5SEQ-723B
3. Katherine Schaeffer, Key Facts About Americans and Guns, Pew Research Center (July 24, 2024), perma.cc/MVK4-T7SD

to 5 years of imprisonment. A conviction under either provision results in disarmament for life. 18 U.S.C. § 922(g)(1).

This case presents important and intertwined questions regarding the constitutionality of applying these statutes to many of these Americans, the evidence required for a conviction, and whether they would even apply in many circumstances. These questions warrant review by this Court. Further, the court of appeals refusal to address the nonconstitutional issues, which were fairly presented and preserved for review, before passing on the constitutional questions represents a departure from the established usual course of judical proceedings which calls for this Court to exercise it's supervisory power.

The circuits are irreconcilably divided on the constitutionality of § 922(g)(3) under the Second Amendment, which led to this Court granting certiorari in United States v. Hemani, No. 24-1234 (cert. granted Oct. 20, 2025). This division ranges from analogues to the procedural nuances involved in resolving as-applied challenges. The decision below is one of the latest iterations which deepens this schism. While some of these questions will be answered in Hemani, many will likely go unanswered due to the parties focus on a single analogue, habitual drunkards, and because that case stems from a pretrial motion to dismiss. Additionally, it will not shed light on the effect a finding of unconstitutionality will have on cases where a defendant is also accused of falsely denying being an unlawful user while purchasing a firearm.

Lower courts have continually acknowledged that § 922(g)(3) raises vagueness concerns. This has led to repeated, but failed attempts to formulate a clear and consistent limiting construction that provides the notice that due process requires. Considering the courts cannot settle on what "unlawful user" means, it is unreasonable to expect ordinary citizens to have notice of what conduct is prohibited. This has led to a fickle statute that invites arbitrary enforcement and undermines the separation of powers by allowing police, prosecutors, and judges to define the scope of criminal activity. The discussions during oral argument in Hemani regarding the government's shifting definitions, none of which are present in the statute, exemplifies these concerns and why this Court should review this question.

Related questions that should be answered are what the term "unlawful user" actually encompasses and what must be shown to establish mens rea when a defendant has been charged under §§ 922(g)(3) and 924(a)(1)(A) with falsely denying being an unlawful user during the purchase of a firearm. Does "unlawful" require a separate federal, state or local law proscribing "use" to be violated? Is "user" defined by "addicted to?" Does there need to be a showing of knowledge of how case law defines "user?" Does the unlawful user question even fall under the scope of § 924(a)(1)(A)? Answering these questions would not only aid in the constitutional analysis, but may be dispositive in many cases.

Ledvina's case presents an ideal vehicle to answer all of these questions. Unlike Hemani, Ledvina went to trial and preserved all of these issues. Out of all the pending petitions challenging convictions under § 922(g)(3), only this case presents all of these important and intertwined questions.

The court of appeals refusal to address the nonconstitutional issues before the constitutional questions itself should be reviewed. The established course of judicial proceedings requires first exhausting all potentially dispositive alternative grounds. This will clarify the appellate courts' duty to do so in future cases like Ledvina's where the court accepts a pro se brief raising preserved nonconstitutional issues while a counseled brief only presents constitutional questions.

In the alternative to plenary review, this Court should grant, vacate, and remand this case to the court of appeals with instructions to reconsider the constitutional issues in light of Hemani, including it's effect on the § 924(a)(1)(A) count, only if it first determines the case cannot be disposed of on nonconstitutional grounds.

I. The Eighth Circuit Erred by Remanding for the District Court to Redetermine the As Applied Second Amendment Challenge to 18 U.S.C. § 922(g)(3) but Affirming the 18 U.S.C. § 924(a)(1)(A) Count

A. The Courts of Appeals are Deeply Divided Over the Resolution of As Applied Challenges to § 922(g)(3)

There is a deep split among the courts of appeals regarding the constitutionality of § 922(g)(3) under the Second Amendment. This disagreement extends from historical analogues to the procedural nuances involved with resolving as-applied challenges. At least six circuits have weighed in on the matter, each coming up with it's own test based on different analogues while following different procedures in either applying or putting off applying these tests themselves.

A discussion of these various approaches highlights the need of this Court's guidance. The decision below exemplifies and widens this division by setting out a test rejected by other circuits, refusing to apply this test itself, and remanding for further findings even after a trial.

i. The Split Regarding Analogues and Tests

A couple examples of the tests crafted by the circuits illustrate the irreconcilability of the lower courts on the matter.

Essentially transforming § 922(g)(3) into a carrying while intoxicated law, the Fifth Circuit has held that while "history and tradition may support some limits on a presently intoxicated person's right to carry a weapon," they do not support "disarming a sober citizen based exlusively on his past drug usage." United States v. Daniels, 124 F.4th 967, 2025 U.S. App. LEXIS 208 at *5, *16 (5th Cir. 2025). That is, § 922(g)(3) cannot constitutionally be applied to a person based on "habitual or occasional drug use." Id. at *3. In arriving to this conclusion, the Fifth Circuit explicitly rejected purported traditions of disarming the mentally ill or classes deemed dangerous by the legislature. United States v. Connelly, 117 F.4th 269, 275 (5th Cir. 2024).

Meanwhile, the Sixth Circuit has found that history and tradition allow Congress to use "class-based legislation" to disarm "whole classes" of people "it believes are dangerous, so long as members of that class have an opportunity to show they aren't." United States v. VanOchten, 150 F.4th 552, 558 (6th Cir. 2025). This test authorizes categorical disarmament while placing the burden on the individual to rebut a presumption of dangerousness, running counter to this Court's instruction that the burden is on the government to prove constitutionality. New York State Rifle & Pistol Assn. v. Bruen, 597 U.S. 1, 24 (2022). The government does not need to show that a person is dangerous as a result of his drug use. VanOchten, 150 F.4th at 560-62. Instead, it is sufficient to point to unconnected attributes such as a person's criminal background or other activities brought to the attention of a court. Id.

In the decision below in this case, the Eighth Circuit explicated it's own test. In it's view, § 922(g)(3) is constitutional "when a defendant's use of a controlled substance (1) made the defendant act like someone who is both mentally ill and dangerous, or (2) would cause the defendant to induce terror, or pose a credible threat to the physical safety of others with a firearm." App. 8a-9a (citing United States v. Cooper, 127 F.4th 1092, 1096 (8th Cir. 2025)). In reaching this view, the court rejected carrying while intoxicated laws that sprang up "only toward the end of the 19th century" as proper analogues. United States v. Veasley, 98 F.4th 906, 911 n.3 (8th Cir. 2024).

As this sample demonstrates, the circuits have announced various incompatible tests for deciding as-applied challenges to § 922(g)(3). Though the same set of historical laws were identified in each case, the circuits are hopelessly divided on which, if any, are proper or the principle that can be drawn. Unless the Court addresses these various tests and regulations the circuits will not likely resolve this split.

ii. The Split Regarding Procedure

The aspect of the split most likely to escape this Court's attention in Hemani is the circuits varying procedural approaches in resolving as-applied challenges. The disconnect is clear, with the Eighth Circuit's approach encroaching on other constitutional guarantees.

The Fifth Circuit has no qualms about resolving as-applied challenges itself. It has done so consistently after this Court's decision in United States v. Rahimi, 602 U.S. 680 (2024). Connelly was an appeal from a granted pretrial motion to dismiss. 117 F.4th at 272. There, the Fifth Circuit announced it's test and applied it to affirm dismissal of the § 922(g)(3) count without a remand. In Daniels, it again applied it's test and reversed a conviction after a jury trial. 2025 U.S. App. LEXIS 208 at *3, *5. The Seventh Circuit joined the Fifth in resolving as-applied challenges without a remand in United States v. Seiwert, 152 F.4th 854 (7th Cir. 2025).

By contrast, the Third, Eighth, and Tenth Circuits have all remanded as-applied challenges to the district court to redetermine them under their newly minted tests and make further findings. The Third and Tenth did this in the context of pretrial motions to dismiss. See United States v. Harris, 144 F.4th 154, 2025 U.S. App. LEXIS 17293 at *3-4 (3d Cir. 2025); United States v. Harrison, 153 F.4th 998, 2025 U.S. App. LEXIS 21978 at *4-6, *10-12 (10th Cir. 2025). The Eighth Circuit has gone even further by remanding for further findings even after trials - raising concerns with other constitutional provisions and drawing criticism from the dissent below. App. 12a-18a (Colloton, J., dissenting).

The Eighth Circuit has rejected the resolution of every as-applied challenge to come before it as a pretrial motion to dismiss. In United States v. Grubb, the court essentially held that as-applied challenges to § 922(g)(3) cannot be resolved without a trial. 135 F.4th 604, 2025 U.S. App. LEXIS 9384 at *7-8 (8th Cir. 2025); see id. at *15 (Stras, J., concurring). Meanwhile, it has remanded every as-applied challenge after a trial for further findings and reassessment. Both in Cooper, 127 F.4th, and the decision below it did so after stipulated bench trials. In United States v. Perez, it did the same even following a jury trial. 145 F.4th 800, 2025 U.S. App. LEXIS 18095 at *1 (8th Cir. 2025).

In Perez, the court acknowledged that it's approach to "resolving as-applied challenges to § 922(g)(3)" is of an "unprecedented nature." Id. at *16. It further recognized that it's approach raised Sixth Amendment concerns and required a jury to find facts tied up with the offense itself. Id. at *15-17. The court, however, overlooked the Double Jeopardy implications that it's remand raises - an issue raised by Ledvina but given no discussion.

An as-applied challenge based on facts at trial is a "substantive ruling" triggering the Double Jeopardy Clause because it "relates to the ultimate question of guilt or innocence." Evans v. Michigan, 568 U.S. 313, 318 (2013) (quotes and brackets omitted). It is "an affirmative defense bearing directly on his guilt or innocence," arguing that the evidence shows "he cannot be guilty of the charged offense by dint of the Constitution's guarantees." United States v. Pope, 613 F.3d 1255, 1261 (10th Cir. 2010) (Gorsuch, J.). Thus, the Eighth Circuit's remanding practice as ordered below unconstitutionally "affords the prosecution another opportunity to supply evidence which it failed to muster in the first proceeding." Burks v. United States, 457 U.S. 1, 11 (1978).

In sum, the split regarding procedure in resolving as-applied Second Amendment challenges to § 922(g)(3) requires this Court's immediate attention. It not only creates confusion, but as this case exemplifies, raises further constitutional concerns.

B. The § 924(a)(1)(A) Count is Dependent on the § 922(g)(3) Count

The court of appeals vacated the § 922(g)(3) conviction while affirming the § 924(a)(1)(A) conviction. This bifurcated outcome overlooks that both counts depend on the same underlying premise: that Ledvina was prohibited from possessing a firearm at the time of the firearm transaction. Despite both parties briefing the issue, the court ignored the Second Amendment's implication on the § 924(a)(1)(A) count. If the constitutionality of prohibiting Ledvina from possessing a firearm for the underlying status is unsettled and requires reconsideration on remand, affirmance of the false statement conviction creates a logical inconsistency.

For starters, the right to keep a firearm necessarily encompasses the right to acquire one.[4] If it is unconstitutional to prohibit a person from possessing a firearm then it stands to reason that barriers to the purchase of a firearm based on such status is also unconstitutional. It is well established that "constitutional violations may arise from the deterrent or chilling effect of governmental regulations." Laird v. Tatum, 408 U.S. 1, 11 (1972). This applies to the Second Amendment because it is not "subject to an entirely different body of rules than the other Bill of Rights guarantees." Bruen, 597 U.S. at 70. Requiring a potential purchaser to divulge whether they are an unlawful user has such a chilling affect on the right because a dealer is unlikely to complete the transaction if the answer is yes due to fear of reprisal from the government. See 18 U.S.C. § 922(d)(3). This forces one to choose between foregoing their right to acquire a firearm or risk federal prosecution.

Next, the court of appeals failed to explain precisely how the question fell under the scope of § 924(a)(1)(A) in the first place. As discussed later in Part III(A)(ii), infra, the statement does not fall under the plain language of the statute. Section 924(a)(1)(A) prohibits providing false representations with respect to information required to be kept in the records of a dealer by Ch. 44 of Title 18. Because no section of Ch. 44 itself requires a declaration that one is

4. See Andrews v. State, 50 Tenn. (3 Heisk) 165, 178 (1871); Teixeira v. City of Alameda, 873 F.3d 670, 678 (9th Cir. 2017); Ortega v. Grisham, 148 F.4th 1134, 1134 (10th Cir. 2025).

not an unlawful user, that should be dispositive. However, the district court adopted a loose interpretation of the relevant scheme to convict Ledvina. App. 35a. A finding that § 922(g)(3) is unconstitutional as-applied keeps the question out of the scope of § 924(a)(1)(A) even under this theory.

The district court's theory is as follows: 18 U.S.C. § 923(g)(1)(A) requires firearms dealers to "maintain such records of ... sale, or other disposition of firearms at his place of business for such period, and in such form, as the Attorney General may prescribe." In turn, the implementing regulation in 27 C.F.R. § 478.124(c)(1) requires the dealer to obtain an ATF Form 4473 that includes "a certification by the transferee that the transferee is not prohibited by the [Gun Control] Act from ... possessing a firearm in or affecting commerce." Thus, the court reasoned, the unlawful user question is information required to be kept because it is part of a certification that one is not prohibited. App. 35a.

Assuming this theory is correct, the statement must in some way falsely represent that Ledvina was not prohibited from possessing a firearm. This means that absent § 922(g)(3), a declaration that one is not an unlawful user would be ultra vires or not information required to be kept. If § 922(g)(3) is unconstitutional as-applied, then "a court must decide a case 'conformably to the constitution, disregarding the law.'" United States v. Arthrex, Inc., 594 U.S. 1, 26 (2021) (quoting Marbury v. Madison, 1 Cranch 137, 178 (1803)). That is, in deciding the case § 922(g)(3) is "as inoperative as though it had never been passed." Norton v. Shelby County, 118 U.S. 425, 442 (1886). In that case, the statement could not fall under the scope of § 924(a)(1)(A) through § 478.124(c)(1). Ledvina could not falsely certify that he was not prohibited from possessing a firearm if he, in fact, was not prohibited from possessing a firearm.

If § 922(g)(3) may be unconstitutional as-applied, then the validity of the § 924(a)(1)(A) count necessarily remains unresolved. The appellate court's failure to address this issue when it was briefed by both parties raises due process concerns and creates serious doubts to the correctness of the court's judgment.

This court should grant certiorari to clarify the Second Amendment's effect on § 924(a)(1)(A) prosecutions for denying falling under a category when it is unconstitutional to disarm an individual for falling under that category. Alternatively, the Court should GVR this case for the court of appeals to address this issue as it should have done in the first instance.

II. This Court Should Decide Whether § 922(g)(3) is Unconstitutionally Vague

The Fifth Amendment provides that "[n]o person shall ... be deprived of life, liberty, or property, without due process of law." This Court has long held that "the Government violates this guarantee by taking away someone's life, liberty, or property under a criminal law so vague, that it fails to give ordinary people fair notice of the conduct it punishes or so standardless that it invites arbitrary enforcement." Johnson v. United States, 576 U.S. 591, 596 (2015). In addition to violating due process guarantees, vague laws contravene the separation of powers doctrine by allowing "relatively unaccountable police, prosecutors, and judges," rather than elected representatives, to define the law thereby undermining "democratic self-governance." United States v. Davis, 588 U.S. 445, 451 (2019). Thus, where a law is so vague it violates a defendant's due process rights, "the role of courts under our constitution is not to fashion a new, clearer law to take its place, but to treat the law as a nullity and invite Congress to try again." Id. at 448.

"The degree of vagueness the Constitution tolerates ... depends in part on the nature of the enactment." Vill. of Hoffman Ests. v. Flipside, Hoffman Ests., Inc., 455 U.S. 489, 499 (1982). This Court has long required "a more stringent vagueness test" for law imposing criminal penalties and restricting fundamental rights. Id. A law like § 922(g)(3) which threatens to inhibit an individuals Second Amendment right to possess a firearm therefore requires heightned clarity. Any other treatment reduces the Second Amendment to "a second-class right." McDonald v. City of Chicago, 561 U.S. 742, 780 (2010).

The statute, however, does not define "unlawful user." Does someone who uses a controlled substance once in their life qualify? Once a year? What about every month, or every two weeks? What about someone who occasionally uses in social settings? Does the quantity or level of intoxication matter? Or only the frequency? When does one cease being a "user?" The statute does not say.

Absent any legislatively delineated objective standard, courts have struggled to provide clarity to the statutes terms. Courts have given many varying definitions unmoored from the statutes text without reaching a concensus. The government has also expressed various, contradictory views on the matter over the years, including in front of this Court. The outcome is not a discernible rule, but judicial improvisation and enforcement based on the predilections of executive officials. Add the varying tests in adjudicating when the statute comports with the Second Amendment, ordinary citizens have no definite means to determine what conduct is criminalized.

The statute is hopelessly vague as-applied to Ledvina. With a minimal criminal background and only evidence he occasionally used marijuana - absent any indication of the quantity or level of intoxication reached - and used cocaine on a single occasion, he had no fair notice that he was considered an "unlawful user." Indeed, without any suggestion that he lacked self control regarding or was negatively affected by drug use, he was swept up by the government's arbitrary enforcement of a broad, indefinite statute. He had no way of knowing he fell into the category prohibited from possessing a firearm. This Court's intervention is critically needed to ensure that ordinary citizens do not continue being ensnared with felony liability.

A. Courts Have Long Struggled to Define "Unlawful User"

"This Court has acknowledged that the failure of 'persistent efforts ... to establish a standard' can provide evidence of vagueness." Johnson, 576 U.S. at 598 (quoting United States v. L. Cohen Grocery Co., 255 U.S. 81, 91 (1921)). Few statutes have been rewritten to the extent of § 922(g)(3). Absent a statutory definition for "unlawful user," courts struggling to save the statute have endeavored to supply the guidance Congress did not while failing to reach any meaningful consensus.

Courts have long recognized that the term "runs the risk of being unconstitutionally vague without a judicially-created temporal nexus between gun possession and regular drug use." United States v. Turnbull, 349 F.3d 558, 561 (8th Cir. 2003). The courts, however, have failed to agree on how frequent, prolonged, or substantial the use must be or how close in time it must come to the firearm possession.

The Third Circuit has concluded that a single use does not make one an "unlawful user" but requires "use of drugs with some regularity" that is "sufficiently close in time" to the firearm possession. United States v. Augustin, 376 F.3d 135, 139 & n. 6 (3d Cir. 2004). The Sixth Circuit additionally requires not just regular use, but use "over an extended period of time, and contemporaneously with [the] purchase or possession of a firearm." United States v. Bowens, 938 F.3d 790, 793 (6th Cir. 2019). By contrast, the Eighth Circuit has rejected a qualification "that would require evidence of use over an extended period." United States v. Carnes, 22 F.4th 743, 748-49 (8th Cir. 2022). It has gone so far as to hold that mere possession of a controlled substance on a single occasion is sufficient to find a person is a user. United States v. Johnson, 572 F.3d 449, 453 (8th Cir. 2009).

Courts have also failed to come to a consensus on the proximity the use must have with the firearm possession. According to the Fourth Circuit, "drug use [two] months earlier" is not enough. United States v. Jackson, 280 F.3d 403, 406 (4th Cir. 2002). Meanwhile, the Fifth Circuit said that it is. United States v. McCowan, 469 F.3d 386, 392 (5th Cir. 2006).

The appeals courts are not always even internally consistent and have contradicted earlier opinions to bring a present defendant into the statutes purview. For example, in United States v. Herrera, a panel of the Fifth Circuit reversed a conviction by tracking the Controlled Substances Act ("CSA") definition of addict and requiring "use in such quantitities as to lose the power of self control and thereby pose a danger to the public morals, health, safety, or welfare." 289 F.3d 311, 323-24 (5th Cir. 2002), overruled on other grounds by 313 F.3d 882, 885 (5th Cir. 2002) (en banc). The court later required only "a pattern of use over an extended period of time." McCowan, 469 F.3d at 391-92.

Similarly, in Turnbull the Eighth Circuit approved a jury instruction tracking the definition in 27 C.F.R. § 478.11 for "unlawful user" requiring proof that a defendant "lost the power of self-control with reference to the use of [a] controlled substance." 349 F.3d at 561. The court then rejected this requirement in a later case, declaring that it was "not bound to the Treasury Department's definition because Congress did not otherwise define the term" and was therefore free to craft another extratextual definition.[5] United States v. Boslau, 632 F.3d 422, 430 (8th Cir. 2011). It's new standard, "actively engaging in ... unlawful use," of course, was held to capture the defendant. Id.

Exacerbating these conflicting judicially created efforts to provide clarity missing from the statutes text is the various conflicting views of it's constitutionality under the Second Amendment. See supra at Part I(A). In an effort to save the statute from facial invalidity, each test grafts new requirements outside of it's elements that raise further vagueness issues. Take the test below for example. As the dissent explained, the Eighth Circuit's "test is undecipherable to a person of ordinary intelligence and tantamount to rendering the statute

5. Similarly, the government and district court arbitrarily selected which parts of § 478.11 to follow in order to convict Ledvina in the proceedings below. App. 26a-28a, 35a.

unenforceable and void for vagueness." App. 17a (Colloton, J., dissenting). A defendant "will find out only retrospectively - after he is convicted of a crime - whether a judge believes" his conduct is punishable. Id. at 16a. "Law enforcement officers cannot readily identify" who "may be arrested and prosecuted. What does it mean to act like someone who is mentally ill? How much risk is required before" a defendant "with a gun poses a credible threat or induces terror?" Id. at 17a. See Johnson, 576 U.S. at 598 (holding unconstitutionally vague a provision involving uncertain level of "risk"). Adding the other circuits' assortment of tests to the equation expounds the lack of notice.

In sum, the courts have repeatedly rewritten the statute to save it under multiple constitutional provisions. Each revision raising further ambiguity. "Only the people's elected representatives in Congress have the power to write new federal criminal laws." Davis, 588 U.S. at 447-48. It is time for this Court to step in and decide whether "to treat the law as a nullity and invite Congress to try again." Id.

B. The Government's Enforcement and Effort to Define "Unlawful User" Exacerbates the Problem

The government itself has offered multiple conflicting interpretations of "unlawful user." The Bureau of Alcohol, Tobacco, Firearms, and Explosives ("ATF") has long construed the term to encompass any person who had a positive drug test or a "conviction for use or possession of a controlled substance in the last year." 27 C.F.R. § 478.11. However, at the beginning of this year the ATF promulgated a new interim final rule declaring a different position. See Revising Definition of "Unlawful User of or Addicted to Controlled Substance," 91 Fed. Reg. 2,698 (Jan. 22, 2026). The ATF explained it's views "have evolved." Id. It now proffers that "a pattern of ongoing use" is required to be an "unlawful user," but that there is no need to show that a defendant was using "the substance ... at the precise time [she] seeks to ... possess a firearm." Id.

The government picks and chooses when to embrace the ATF's new or old position or to come up with another in a particular case. For example, in the proceedings below the government vehemently argued that Ledvina was a "user" of cocaine when the parties' stipulation reflected no level of frequency and cited only a single use. Yet when defending the statute in front of this Court it's position was that "[t]he statute does not disarm someone who uses drugs once, or even someone who uses them occasionally." Brief for the United States at 36, United States v. Hemani, No. 24-1234 (Dec. 2025). Instead, it repeatedly told this Court that someone who uses "habitually" - a term that appears nowhere in § 922(g)(3) - is an "unlawful user." This begs the question: when does one's use exceed being "occasional" and begin to be "habitual?" The terms have all the same ambiguities regarding how recent, frequent, or significant the use must be.[6]

The government's enforcement of § 922(g)(3) reflects the concerns behind the vagueness doctrine. As it admitted to this Court, "the lions share" of prosecutions under § 922(g)(3) allege the accused is an "unlawful user" rather than an addict. Oral arg. tr. at 130:14-17, United States v. Hemani, No. 24-1234 (Mar. 2, 2026). This is not surprising, unlike "addict," which is defined by the CSA, prosecutors and judges can bend it's meaning as needed to capture a particular defendant "because Congress did not otherwise define the term in the governing statute." Boslau, 632 F.3d at 430. Indeed, it's decision to pursue charges or not in recent cases demonstrates the fickle nature of the government's position.

For example, rather than appeal the decision in Connelly, 117 F.4th, the government decided to abandon the prosecution because it was "no longer confident

6. Indeed, "habitual" has been held unconstitutionally vague in an analogous context. See Manning v. Caldwell, 930 F.3d 264, 278 (4th Cir. 2019) (en banc) ("the term 'habitual drunkard' provides no standard of conduct. It is thus unconstitutionally vague because the term invites the very type of arbitrary enforcement that the Constitution's prohibition on vague statutes is designed to prevent.")

that it would be able to prove beyond a reasonable doubt that the defendant violated Section 922(g)(3)."[7] This raises eyebrows considering the findings in the district court. "When asked about her drug use, Connelly told investigators that she uses marijuana on a regular basis 'to sleep at night and to help her with anxiety.'" United States v. Connelly, 668 F. Supp. 3d 662, 666 (W.D. Tx. 2023). When law enforcement conducted a protective sweep, it "observed what appeared to a homemade marijuana greenhouse," uncovered quantities of multiple controlled substances, "and 'numerous items of drug paraphernalia.'" Id. It is hard to square the government's view that this defendant likely falls outside the scope of "unlawful user" with it's aggressive prosecution of someone like Ledvina who used marijuana a few times a week. Was Connelly's use only "occasional" and Ledvina's "habitual?" Where exactly was that line drawn?

In the end, the government cannot come up with a consistent stance. It cannot even explain what it's latest standard, "habitual user," means. The government's failure to articulate precisely who can be stripped of their liberty under § 922(g)(3) for bearing arms is further evidence that the statute "fails to give ordinary people fair notice of the conduct it punishes." Johnson, 576 U.S. at 595.

* * *

The time has come for this Court's intervention. The courts have tried and failed to develop a clear, objective standard that salvages the phrase "unlawful user" from unconstitutional vagueness. The government's efforts have only confounded the problem. A defendant like Ledvina could not have had notice his use of intoxicants "may result in forfeiture of his rights under the Second Amendment" because the term "user" is "so open-ended." Herrera, 313 F.3d at 899 (DeMoss, J., dissenting). It leaves prosecutors, police, and judges the ability to construe and enforce the law in accordance with their "personal predilections." Kolender v.

7. Letter from Elizabeth Prelogar, Solicitor Gen., to Mitch McConnell, Minority Leader, U.S. Senate (Nov. 15, 2024), justice.gov/oip/media/1379361/dl?inline

Lawson, 461 U.S. 352, 358 (1983). This court should grant review in order to prevent further ensnaring of ordinary citizens with felony liability under §§ 922(g)(3) and 924(a)(1)(A) for exercising their right to bear arms due to an indeterminate phrase with an uncertain scope.

III. The Eighth Circuit Should Have Addressed the Other Grounds for Relief Before Deciding the Constitutional Issues

The court of appeals ignored several issues raised by Ledvina that could have resulted in the relief he seeks that should have been addressed. Most significantly, it ignored his arguments that the statutes did not reach his conduct and that the evidence failed to establish the mens rea elements in either count. Success on either of these claims would have alleviated any need to adjudicate the constitutional issues. The failure to address them is contrary to the established course of judicial proceedings and has due process implications.

No reason for the court's refusal was given other than that it was exercising it's discretion to do so. App. 9a. This is despite it's previous orders granting him leave to file the pro se brief, App. 19a, and accepting it while directing the government to respond to both the counseled and pro se briefs. App. 20a. By contrast, in the numerous other occasions the Eighth Circuit has accepted pro se briefs from defendants represented by counsel it considered the additional issues.[8] Aside from Ledvina's case, the court does not appear to have ever declined to consider issues raised in a pro se brief after authorizing the defendant to file it.

The Fifth Amendment's Due Process Clause "contains within it the prohibition against denying any person equal protection of the laws." United States v. Windsor, 570 U.S. 744, 774 (2013). Equal protection "keeps governmental decisionmakers from treating differently persons who are in all relevant aspects alike." Nordlinger v. Hahn, 505 U.S. 1, 10 (1992). Ledvina is relevantly similar

8. See, e.g., United States v. Scales, 735 F.3d 1048, 1052-53 (8th Cir. 2013) ("[W]e will address the five issues raised by Scales in his pro se brief."); United States v. Kuhnel, 25 F.4th 559 (8th Cir. 2022) (vacating convictions based on argument in pro se brief by represented defendant); United States v. Miranda-Zarco, 836 F.3d 899, 901-2 (8th Cir. 2016) (collecting cases).

to the defendants who had their pro se arguments addressed after the court authorized filing a pro se brief.

The court of appeals "departed from the accepted and usual course of judicial proceedings" by resolving constitutional questions without addressing the potentially dispositive nonconstitutional issues. Supreme Court Rule 10(a). This Court has long held that courts "ought not pass on questions of constitionality ... unless such adjudication is unavoidable." Matal v. Tam, 582 U.S. 218, 231 (2017) (quoting Spector Motor Serv. v. McLaughlin, 323 U.S. 101, 105 (1944)). This is a "doctrine more deeply rooted than any other in the process of constitutional adjudication." Id.

Ledvina's arguments that the statutes did not reach his conduct and that mens rea was not established are deeply intertwined with the constitutional issues. They are important issues that deserved the court's attention and may have compelled reversal. There is no question these grounds were available because the court accepted the pro se brief, they were preserved below, and they were briefed by both parties.[9] This Court has even considered statutory arguments that were never raised below because they could potentially resolve a case without reaching the constitutional issues presented for certiorari. See, e.g., Matal, 582 U.S. at 230-31. So, "[b]efore deciding on the constitutional question[s], it was incumbent on [the appeals court] to consider whether the statutory grounds may have been dispositive." N.Y.C. Transit Auth. v. Beazer, 440 U.S. 568, 582 (1979).

This Court should grant certiorari to correct "this departure from settled federal practice" and answer these important questions. Id. "The failure of the Court of Appeals to address the statutory issue[s] decided by the District Court does not, of course, prevent this Court from reaching the issue[s]." Id. at 583

9. See Hayes v. Hawes, 921 F.2d 100, 102 (7th Cir. 1990) ("[W]hen the appellant is represented by counsel, nothing precludes an appellate court from accepting the pro se brief and considering the arguments.").

n. 24.

In the alternative to plenary review, this Court shoud GVR this matter with instructions to address these issues. "When lower courts have failed to address an argument that deserved their attention, [this Court's] usual practice is to remand for further consideration." Christian Legal Soc. Ch. of Univ. of Cal. v. Martinez, 177 L. Ed. 2d 838, 866 n. 28 (2010). If these issues are not found to be dispositive, then the constitutional issues should be reconsidered in light of Hemani. See Massachusetts v. Westcott, 431 U.S. 322, 323 (1977) (GVR for reconsideration because "there may be a statutory basis to provide" the relief sought when a constitutional issue was presented.).

A. The Statutes Do Not Reach Ledvina's Conduct

i. Ledvina Was Not an "Unlawful User"

Before addressing the constitutional questions, the court of appeals should have first decided precisely who actually qualifies as an "unlawful user." It would have not only aided in the constitutional analysis but likely obliged reversing both counts.

To begin with, it is not clear that Ledvina would qualify as a "user." The term is undefined by statute and is so open-ended that it is likely void for vagueness. Supra at Part II. However, the case could be decided on a more ascertainable ground.

A problem with a great portion of prosecutions charging defendants with being an "unlawful user" that has been overlooked or sidestepped by the courts is that for many defendants, like Ledvina, there was no law that made their "use" unlawful. This was brought directly to the court of appeal's attention and had it addressed this issue it would have likely been dispositive.

The word "unlawful" modifies "user," which leads to the natural reading of a person who uses a controlled substance unlawfully. That means absent a law making a defendant's "use" unlawful their conduct is not captured by § 922(g)(3). This aligns with one of the earliest cases to interpret the term. In United States v. Ocegueda, the Ninth Circuit held that by "unlawful user," "Congress intended to refer to any law, federal, state or municiple in making use of narcotics unlawful" and upheld the conviction because California law specifically made "use" of heroin unlawful. 564 F.2d 1363, 1365 (9th Cir. 1977).

As the government has conceded elsewhere, for most people "it is not ... a violation of federal law to use a controlled substance." Hernandez-Munoz v. Sessions, 718 F. App'x 511, 512 n. 1 (9th Cir. 2017) (quoting government's brief). While Congress has made it unlawful to possess, distribute, or manufacture controlled substances, it did not generally prohibit use. See 21 U.S.C. §§ 841(a)(1)-(2), 844. However, Congress has proscribed use of controlled substances by certain groups of people. See, e.g., 10 U.S.C. § 912a (military personnel); 49 U.S.C. § 45103(a) (certain aviation workers). That means a prosecution relying solely on federal law requires a defendant to be a member of one of these groups. See, e.g., United States v. Freitas, 59 M.J. 755 (N-M Ct. Crim. App. 2004) (prosecution under § 922(g)(3) by virtue of violating § 912a).

Many states today, like at the time of § 922(g)(3)'s enactment, do criminalize use generally.[10] In these jurisdictions, one could be subject to § 922(g)(3) just as the defendant in Ocegueda. Iowa, however, is not one of these states. Like federal law, it only criminalizes possession, not use. Iowa Code § 124.401.

Faced with this regulatory reality, the district court and government adopted two theories to apply § 922(g)(3) to Ledvina. The first relies on the regulation in 27 C.F.R. § 478.11 to define "unlawful user" as a "person who uses controlled substances in a manner other than as prescribed." App. 28a-29a. The dispositive

10. See, e.g., N.D. Cent. Code 19-03.1-22.3 (prohibiting use without a valid prescription); Del Code Ann. tit. 16, § 4763 (similar); Wyo. Stat. § 35-7-1039 (similar); Okla. Stat. tit. 63, § 465.20(a) (similar); Col. Stat. § 18-8-404(1)(a) (similar); Cal. Health & Safety Code § 11550 (similar).

problem with this argument is that Congress did not make this a crime nor did it give the ATF "clear congressional authorization" to do so. West Virginia v. EPA, 597 U.S. 697, 723 (2022).

The second theory is that possession is illegal and "use always means possession." App. 27a-28a. However, the CSA itself distinguishes possession as "illegal" while use merely as "improper."[11] The use of different words in the same statute signals that Congress intended to convey a different meaning for those words. Russello v. United States, 464 U.S. 16, 23 (1983). Indeed, this Court itself has distinguished use and possession in the context of firearms. Bailey v. United States, 516 U.S. 137, 150 (1995).

Further, there is a tradition of courts distinguishing between proscriptions of possessing intoxicating substances and using them. A century ago, in a case that has never been overruled, the Eighth Circuit, relying on various state high court rulings, held that a prohibition on possessing an intoxicating substance does not reach consuming it or even handling it in order to consume it. Colbaugh v. United States, 15 F.2d 929, 931 (8th Cir. 1926) (collecting cases). Under stare decisis this should have been dispositive below. The Eighth Circuit is not alone.[12] This view is also held by various contemporary state high courts.[13]

Neither Iowa or federal law made using controlled substances unlawful for Ledvina. As a result he did not unlawfully use a controlled substance. Had the

11. "The illegal importation, distribution, and possession, as well as improper use of controlled substances has a substantial and detrimental effect on the heath and general welfare of the American people." 21 U.S.C. § 801(2) (emphasis added).
12. See Zurich Gen. Acc. & Lia. Ins. Co. v. Flickinger, 33 F.2d 853, 855 (4th Cir. 1929) (adopting Colbaugh's holding); United States v. Martin, 984 F.2d 308, 311 n. 5 (9th Cir. 1993) ("use itself is only circumstantial evidence of possession"); but see United States v. Courtney, 979 F.2d 45, 48-49 (5th Cir. 1992) (creating circuit split by holding "use is subsumed within possession").
13. See, e.g., Commonwealth v. Rivera, 367 A.2d 718, 721 (Pa. 1927) ("Our statute law prohibits the unauthorized manufacture, possession, sale, and distribution of controlled substances such as heroin and marijuana. The mere use of such drugs, however is not an offense under the law."); State v. Harris, 646 S.E. 2d 526, 529 (N.C. 2007) (similar); State v. Jedlicka, 938 N.W. 2d 854, 860-61 (Neb. 2020) (similar).

court of appeals addressed this argument, both counts would have likely been reversed.

This Court should grant review to clarify what exactly constitutes an "unlawful user" or GVR for the appeals court to consider this issue as it should have in the first instance.

ii. The Unlawful User Question is Outside the Scope of § 924(a)(1)(A)

The court of appeals failed to explain how the unlawful user question fell under the scope of § 924(a)(1)(A) when it affirmed that count. Section 924(a)(1)(A) only prohibits making "any false statement or representation with respect to information required by this chapter [Ch. 44 of Title 18] to be kept in the records of a person licensed under this chapter." No section of Ch. 44 requires a declaration that one is not an unlawful user. The only information on the form that was required to be kept by statute that was provided by Ledvina was his name, age, and address. 18 U.S.C. § 922(b)(5); See Abramski v. United States, 573 U.S. 169, 172-73 (2014). Because courts are "not at liberty to extend [a penal statute's] meaning beyond its exact literal sense" this should have resulted in a reversal of the § 924(a)(1)(A) count. Sarlls v. United States, 152 U.S. 570, 576 (1894).

The theory of the district court, as mentioned in Part I(B), supra, is that the question is part of a certification that the transferee is not prohibited as required by 27 C.F.R. § 478.124(c)(1) which purports to derive authority from 18 U.S.C. § 923(g)(1)(A). App. 35a. Section 923(g)(1)(A) provides in relevant part:

> "Each ... licensed dealer shall maintain such records of importation, production, shipment, receipt, sale, or other disposition of firearms at his place of business for such period, and in such form as the Attorney General may by regulations prescribe."

The problem with this theory is that the Attorney General was only given "clear congressional authorization" to prescribe the form by regulation, not the information required to be collected from the purchaser and kept. West Virginia, 597 U.S. at 723. "It is manifest that the regulation [in § 478.124(c)(1)] adds a requirement that [Ch. 44] does not." United States v. George, 228 U.S. 14, 21 (1913). "To construe [§ 923(g)(1)(A)]" to allow the ATF to create such an enforceable requirement "is to make it confer unbounded legislative powers." Id. No "limitation can be disregarded in determining what statement the statute, and any regulation which it authorizes the [Attorney General] to promulgate, called on petitioner to make" and whether it is punishable under § 924(a)(1)(A). Viereck v. United States, 318 U.S. 236, 242 (1943).

Here, the Attorney General was limited to prescribing the form used to collect the information required to be kept, not prescribing what information is required to be collected and kept. Further, the unlawful user question is not even a certification that a purchaser is not prohibited from possessing a firearm as required by § 478.124(c)(1) but merely a statement regarding ones status as an unlawful user. The question is therefore ultra vires and outside the scope of § 924(a)(1)(A).

This Court should grant certiorari to clarify whether the unlawful user question falls under the scope of § 924(a)(1)(A). It will provide an opportunity to resolve whether the statute reaches ultra vires information, a question that was left unanswered by the slim majority in Abramski. 573 U.S. at 192 n. 11. Alternatively, the Court should GVR this case for the court of appeals to address it. Had it done so in the first instance, it may not have needed to address any constitutional arguments regarding this count.

B. Mens Rea Was Not Established

i. Knowledge of Being an "Unlawful User"

"The Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt every fact necessary to constitute the crime with which he is charged." In re Winship, 397 U.S. 358, 364 (1970). In order to convict a defendant under § 922(g), the evidence must show "that he knew he belonged to the relevant category of persons barred from possessing a firearm." Rehaif v. United

States, 588 U.S. 225, 237 (2019). In a § 922(g)(3) case like this one, this requires a showing that Ledvina knew he was an "unlawful user" as alleged in the indictment. The same proof is required to establish that the statement underlying the § 924(a)(1)(A) count was knowingly false.

Whether someone is an "unlawful user" can be broken down into two elements: (1) whether someone is a "user" of controlled substances and (2) whether their use of controlled substances is "unlawful." Proving knowledge of being an "unlawful user" involves proving three components: (1) a person knew what qualifies as a "user," (2) they knew the facts that qualifies them as a "user," and (3) they knew their "use" of controlled substances is "unlawful."

In Rehaif, this Court made clear that the ignorance of the law maxim has no place in this context, the question of whether a defendant is an "unlawful user" is a "'collateral' question of law." 588 U.S. at 234-35. Such knowledge of the law is a question of fact to be proven, just as in Liparota v. United States, 471 U.S. 419 (1985) the Court "required the Government to prove that the defendant knew that his use of food stamps was unlawful." Rehaif, 588 U.S. at 234. What must be proven is a defendant's "knowledge and subjective beliefs - not ... what an objectively reasonable person may have known or believed." United States ex rel Schutte v. SuperValu, Inc., 598 U.S. 739, 749 (2023). Further, "the evidence of knowledge must be clear, not equivocal." Direct Sales Co. v. United States, 319 U.S. 703, 711 (1943).

The government partially agreed with the third component by telling this Court "you have to know you're using an illegal drug" when asked what must be shown under Rehaif.[14] Oral arg. tr. at 53:12, Hemani. However, hoping to ease it's burden, it took the position that it does not have to prove a person understand what

14. This phrasing, of course, dances around the fact that the statute applies to "unlawful users of controlled substances," not "users of unlawful controlled substances."

constitutes a "user": "You don't, in the government's view, have to know the legal definition of 'habitual.' But you do have to know ... the conduct that would put [a defendant] in the category of habitual." Id. at 53:15-23. This is similar to an unpublished Eighth Circuit case that trivialized the mens rea by holding that it is enough to simply show a defendant "knew the underlying facts making him part of a category of persons barred from possessing a firearm." United States v. Kinney, 850 F. App'x 987, 987 (8th Cir. 2021) (citing United States v. Sholley-Gonzalez, 996 F.3d 887, 896 (8th Cir. 2021)).

That view is in direct conflict with both Rehaif and at least one other circuit to have directly addressed the issue. In Rehaif, this Court required that one "knew he belonged to the relevant category of persons barred from possessing a firearm" not simply the underlying facts that puts them in that status. 588 U.S. at 237. "Without knowledge of that status, the defendant may well lack the intent needed to make his behavior wrongful. His behavior may instead be an innocent mistake to which criminal sanctions normally do not attach." Id. at 232. This necessarily requires knowledge of what would be considered part of that category. In this case, knowledge of what is considered a "user" is another "'collateral' question of law" that must be proven. Id. at 235. If one does not know what qualifies as a "user," how could they know they fall in that status?

The Seventh Circuit held there must be an evidentiary showing that a defendant subjectively "knew he was an unlawful user as caselaw defines that term. Particularly in view of the regularity and contemporaneity components of unlawful use, it is possible for any given user to think that his use falls outside the range of regular, ongoing use." United States v. Cook, 970 F.3d 866, 884 (7th Cir. 2020). It also held one must have subjective knowledge "that his use was 'unlawful.'" Id. at 882. That he "ought to have known his use was unlawful would not suffice to convict him; he had to actually know his use was unlawful." Id. at

884 (emphasis kept).

Whether the proper standard was met below is highly questionable. There was no showing Ledvina knew what was considered a "user" at the time of the firearm purchase. Indeed, the district court speculated on whether Ledvina understood "user" to be defined by "addicted to" when it convicted him. It found that he had to have known these were separate categories by citing 27 C.F.R. § 478.11, without any showing he was ever aware of it, and projecting how it believed "people commonly understand the word 'or'" on to Ledvina. App. 35a-36a. That is, it convicted Ledvina by speculating on "what an objectively reasonable person," in it's opinion, "may have known or believed" rather than actual evidence of his "knowledge and subjective belief." SuperValu, 598 U.S. at 749. This is also fallacious because other reasonable people have arrived to the conclusion that "user" and "addict" are synonymous. See Herrera, 313 F.3d at 891 (DeMoss, J., dissenting) (concluding the government must prove facts "to satisfy the statutory definition of 'addicted to'"); Merriam-Webster's Dictionary and Thesaurus at 11 and 903 (2020) (listing "addict" and "user" as synonyms).

Even if it could be inferred that he knew "user" is a separate category, there is no evidence as to which of the various definitions he would have understood himself to fall under. Habitual? Regular and ongoing? Having lost the power of self-control regarding use? The district court did not say. Not a single piece of evidence shows any subjective knowledge as to what is legally considered a "user."

The appeals court declined to address this issue though it deserved it's attention and may have been dispositive for both counts. This Court should grant certiorari to explain precisely what must be shown to establish mens rea in a § 922(g)(3) prosecution or GVR for the court of appeals to decide the issue as it should have done to begin with.

ii. Knowledge that the Representation is Information Required to be Kept

In the district court, and again on appeal, Ledvina argued that in order to be convicted under § 924(a)(1)(A) the government had to show that he knew the representation was "information required to be kept by" Ch. 44 of Title 18 in the records of a firearms dealer. This is because "we normally read the statutory term "knowingly' as applying to all the subsequently listed elements of the crime.'" Rehaif, 588 U.S. at 230 (quoting Flores-Figueroa v. United States, 556 U.S. 646, 650 (2009)). As it "defines the behavior the statute calls a violation of Federal law," it is a substantive element. Torres v. Lynch, 578 U.S. 452, 457 (2016). Simply lying to someone is not normally treated as a crime - what separates this "otherwise innocent conduct" is that it pertains to "information required to be kept" by Ch. 44. Rehaif, 588 U.S. at 229 (quoting United States v. X-Citement Video, Inc., 513 U.S. 64, 72 (1994)).

The district court held that whether a representation is "information required to be kept" is a question of law, and for this reason, such knowledge is not an element of the offense. App. 34a. However, this is a "'collateral' question of law" regarding knowledge of a substantive element just like knowledge of status in § 922(g). Rehaif, 588 U.S. at 234.

The trial record contains no evidence on this regard. This issue could have been dispositive for the § 924(a)(1)(A) count and eliminated the need for resorting to the constitutional questions relating to it. This Court should grant certiorari to clarify the required mens rea in a § 924(a)(1)(A) prosecution or GVR for the court of appeals to address it first.

* * *

It is well established that "a federal court should not decide federal constitutional questions where a dispositive nonconstitutional ground is available." Hagans v. Lavine, 415 U.S. 528, 547 (1974). This "is a fundamental rule of judicial restraint." Three Affiliated Tribes v. Wold Engineering, 467 U.S. 138, 157 (1984). They were briefed by both parties and passed on by the district court. The court of appeals failure to address them before deciding the constitutional questions was a departure from the established course of judicial proceedings that warrants an exercise of this Court's supervisory power.

The Court should grant certiorari to clarify the court of appeals duty to address these issues and answer these important questions. Or, it should GVR this matter for the court of appeals to address them as it should have done in the first instance before revisiting the constitutional issues in light of Hemani.

IV. The Questions Presented are Important and this Case is an Ideal Vehicle to Resolve Them

Section 922(g)(3)'s disarmament of "unlawful users" threatens millions of ordinary and otherwise law abiding Americans with felony liability for exercising their right to possess a firearm. Section 924(a)(1)(A) as currently enforced forces these same Americans to choose between foregoing their right to acquire a firearm or risk being ensnared in a federal prosecution. Any of those unfortunate enough to be singled out for prosecution and convicted under either statute not only face years of imprisonment but also life long disarmament.

These statutes together are at odds with two of the Constitution's guarantees. First, they violate the Second Amendment because banning users of intoxicants from owning a firearm has no basis in this Nation's history and tradition of firearms regulation. Second, they violate the Fifth Amendment's Due Process Clause because the term "unlawful user" is unconstitutionally vague. The term is so open-ended that it leaves prosecutors, police, and judges to enforce these statutes in accordance with their personal predilections while failing to provide fair notice as to who falls under it's scope. The importance of these issues has already caught the attention of this Court and are the subject of Hemani.

Before deciding these constitutional questions, it is also important to try to ascertain the precise scope of the statutes and what evidence, including that regarding mens rea, is required for a conviction under them. These questions may be dispositive in many circumstances and would aid in the constitutional analysis. It may be that they do not actually reach a large portion of the people who fall in the government's crosshairs.

Many of these issues are not likely to be fully decided in Hemani because they were not brought to the Court's attention or raised in the lower courts. Ledvina's case provides an ideal vehicle to review these questions because he went to trial and preserved all of these issues. This case has a fully developed record consisting of stipulated facts that the law can easily be applied to.

This case also warrants a GVR in the alternative to plenary review. Doing so would give the court of appeals an opportunity to revisit the constitutional issues with the benefit of this Court's decision in Hemani. A GVR would also clarify the court of appeals duty to exhaust all potentially dispositive alternative grounds before deciding constitutional questions by instructing it to first address the nonconstitutional issues that were preserved and fairly presented. This would promote "fairness and accuracy" in the outcome of this case while also "assist[ing] this Court by procuring the benefit of the lower court's insight" on these issues before visiting them itself. Lawrence v. Chater, 516 U.S. 163, 167-68 (1996). "In this case ... a GVR order guarantees the petitioner full and fair consideration of his rights in light of all pertinent considerations and is also satisfactory to the Government." Stutson v. United States, 516 U.S. 193, 196 (1996).

CONCLUSION

For the foregoing reasons, this Court should grant the petition for certiorari.

Respectfully submitted,

Alex Ledvina

Alexander Wesley Ledvina
Reg. Number 63885-510
FCI Memphis
P.O. Box 34550
Memphis, TN 38184
Pro se