APPENDIX A

United States Court of Appeals
For the Eighth Circuit

No. 24-2441

United States of America

Plaintiff - Appellee

v.

Alexander Wesley Ledvina

Defendant - Appellant

Appeal from United States District Court
for the Northern District of Iowa - Cedar Rapids

Submitted: September 19, 2025
Filed: February 6, 2026

Before COLLOTON, Chief Judge, ERICKSON and STRAS, Circuit Judges.

ERICKSON, Circuit Judge.

Alexander Wesley Ledvina appeals the district court's decision denying his motion to dismiss charges for being an unlawful drug user in possession of a firearm and for making a false statement during the purchase of a firearm. In light of this Court's decisions in United States v. Perez, 145 F.4th 800 (8th Cir. 2025), and United States v. Cooper, 127 F.4th 1092 (8th Cir. 2025), we vacate his conviction under 18 U.S.C. § 922(g)(3) and remand for further proceedings to resolve Ledvina's Second

Amendment as-applied challenge. We affirm the district court's decision on all other issues.

I. BACKGROUND

A grand jury indicted Ledvina in a two-count indictment. Count One charged him with unlawful possession of a firearm by a drug user, in violation of 18 U.S.C. §§ 922(g)(3) and 924(a)(8). Count Two charged him with making a false statement during the purchase of a firearm, in violation of 18 U.S.C. § 924(a)(1)(A). The indictment alleged that on August 11, 2022, Ledvina, an unlawful user of marijuana and cocaine, knowingly possessed five firearms in and affecting commerce, and that on July 29, 2022, he knowingly made false statements and representations—specifically, that he was not an unlawful user of a controlled substance—in connection with his acquisition of an Arsenal Bulgarian P-MO1, 9x18 mm caliber pistol.

The district court rejected Ledvina's claim that, as used in § 922(g)(3), the terms "user" and "addict" are unconstitutionally vague. The court held in abeyance Ledvina's claim that § 924(a)(1)(A) was void on its face, finding Ledvina's facial challenge was an as-applied challenge in disguise. As to Ledvina's post-Bruen[1] facial challenge to § 922(g)(3), the district court concluded that the statute is a constitutional restriction consistent with historical traditions. Finally, the court reserved ruling on any as-applied challenge to § 922(g)(3) until completion of the presentation of evidence at trial.

The case proceeded to a bench trial on stipulated facts, a joint exhibit, and an exhibit offered by the government. The evidence included Ledvina's stipulation that he purchased at least 14 firearms between April 2018 and February 2022. As of August 11, 2022, Ledvina was in possession of at least five firearms. Ledvina specifically admitted that on July 29, 2022, he purchased a pistol from a federally

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[1]New York State Rifle & Pistol Ass'n, Inc. v. Bruen, 597 U.S. 1 (2022).

licensed firearms dealer in Marion, Iowa. At the time of the purchase, an employee of the licensed firearms dealer smelled the odor of marijuana emanating from Ledvina, a fact the employee reported to the authorities. Ledvina admitted that he smelled like marijuana because he had smoked marijuana in July 2022. In connection with the firearm purchase, Ledvina stated on ATF Form 4473 that he was not an unlawful user of, or addicted to, marijuana or any depressant, stimulant, narcotic drug, or any other controlled substance. At the time Ledvina made this representation, he knew that he had used controlled substances in March, April, May, June, and July 2022. In further detail, Ledvina stipulated that between March and July 2022, he used marijuana at least five to six times per week and continued to consistently use marijuana the following month in August 2022. Ledvina acknowledged that at no point during the timeframe at issue had he been prescribed marijuana, THC, or cocaine by a licensed physician.

The evidence also showed that on August 11, 2022, while a search warrant was being executed at Ledvina's residence, he pulled into his driveway in his vehicle. Investigators approached Ledvina and instructed him to show his hands. Ledvina continued to look and reach toward the floorboard of the driver's seat. Ledvina eventually opened the car door and began to get out. As he got out, the vehicle began rolling backwards. An investigator jumped in to put the vehicle in park. During the vehicle search, investigators located a loaded pistol on the driver's side floorboard, a partially smoked marijuana roach in the storage area by the shifter, and a plastic bag containing marijuana in the center console. Investigators also obtained a urine sample from Ledvina, which confirmed the presence of Benzoylecgonine (a metabolite of cocaine), Ecgonine methyl ester (a metabolite of cocaine), and 11-nor-9-carboxy-delta-9-tetrahydrocannabinol (a metabolite of THC). Ledvina admitted that he used marijuana sometime between July 21, 2022, and August 11, 2022, and that he used cocaine sometime between August 8, 2022, and August 11, 2022.

After admission of the evidence, Ledvina moved for a judgment of acquittal, arguing the government failed to prove he was an "unlawful user" or "addict." The district court found the evidence established beyond a reasonable doubt that Ledvina was guilty on both counts. Regarding the possession count, the court found the evidence established both the temporal requirement and the knowledge component to satisfy the element of being an "unlawful user" of a controlled substance, and that Ledvina knew he belonged to a category of persons barred from possessing a firearm. The district court further found the evidence established beyond a reasonable doubt that Ledvina's representation that he was not an unlawful user of a controlled substance on ATF Form 4473 was false and Ledvina knew his representation was false when he made it to the licensed firearms dealer, explaining: "Even had defendant lacked a scintilla of knowledge that using marijuana was unlawful prior to filling out that form, a plain reading of that question and warning would have put him on notice that his use was unlawful, meaning he was an unlawful user, and given him the knowledge that saying 'no' was false." The form asked the applicant to mark "Yes" or "No" to the following question, which was accompanied by a warning:

> e. Are you an unlawful user of, or addicted to, marijuana or any depressant, stimulant, narcotic drug, or any other controlled substance?
> **Warning:** The use or possession of marijuana remains unlawful under Federal law regardless of whether it has been legalized or decriminalized for medicinal or recreational purposes in the state where you reside.

As to the phrase "unlawful user of, or addicted to," as framed in the question, the district court provided several reasons why a reasonable person would not construe "unlawful user" and "addicted to" as synonyms. First, the court noted people commonly understand "or" to be disjunctive. Second, the court explained that the Code of Federal Regulations defines "unlawful user" and "addicted to" separately. Third, one applying a common sense reading of the terms would understand that a person can be an unlawful user of drugs without being addicted to a drug. And fourth, the district court found the commas, even if ungrammatical, show an attempt to separate "addicted to" from "unlawful user."

The district court rejected Ledvina's as-applied void for vagueness challenges to the statutes, finding Ledvina stipulated to facts establishing that during the relevant time period, he possessed firearms while he was an "unlawful user" of marijuana and cocaine. The court found that Ledvina's admitted use of controlled substances and coded language in text messages showed that he knew he was using controlled substances in a way that was unlawful and thus made him an "unlawful user." The court also pointed out that ATF Form 4473 informed Ledvina that this was the case and thus Ledvina had sufficient notice that his conduct was proscribed by § 924(a)(1)(A). The court sentenced Ledvina to concurrent imprisonment terms of 51 months.

Ledvina appeals both convictions, raising facial and as-applied void for vagueness challenges and arguments that § 922(g)(3) violates the Second Amendment.

II. DISCUSSION

We review the denial of a motion to dismiss a charge *de novo*. United States v. Turner, 842 F.3d 602, 604 (8th Cir. 2016).

1. Fifth Amendment

A criminal statute is unconstitutionally vague and violates the Fifth Amendment due process clause if it "fails to give ordinary people fair notice of the conduct it punishes, or [is] so standardless that it invites arbitrary enforcement." Johnson v. United States, 576 U.S. 591, 595 (2015). Section 922(g)(3) prohibits firearm possession by any person "who is an unlawful user of or addicted to any controlled substance." 18 U.S.C. § 922(g)(3). A defendant who "was actively engaged in the use of a controlled substance during the time he possessed firearms" violates the statute. Perez, 145 F.4th at 804 (quoting United States v. Carnes, 22 F.4th 743, 749 (8th Cir. 2022)).

Following a narrowing construction to require a temporal nexus between firearm possession and regular drug use, this Court has rejected facial Fifth Amendment void-for-vagueness challenges to § 922(g)(3). See, e.g., United States v. Madden, 135 F.4th 629, 631 (8th Cir. 2025). Thus, Ledvina's facial challenge is foreclosed by precedent. See Mader v. United States, 654 F.3d 794, 800 (8th Cir. 2011) (en banc) ("It is a cardinal rule in our circuit that one panel is bound by the decision of a prior panel."). This Court has also rejected as-applied vagueness challenges when a defendant admits that he frequently used marijuana and knew that he was a marijuana user when he possessed a firearm. See United States v. Deng, 104 F.4th 1052, 1055 (8th Cir. 2024).

Ledvina's stipulation of facts and the exhibits admitted at trial foreclose his as-applied challenge. Ledvina admitted that he "was using cocaine and marijuana during the same time that he was in possession of the above-mentioned firearms." And "[b]etween at least March 2022 and July 2022, [Ledvina] used marijuana at least five to six times per week." Ledvina also admitted that in August 2022, he "continued to consistently use marijuana." Ledvina further admitted that "[i]n March, April, May, June, July, and August of 2022, [he] was in possession of firearms" and he "knew he was using controlled substances, including marijuana, THC, and cocaine in March, April, May, June, July, and August 2022." Lastly, Ledvina admitted that between March 2022 and August 11, 2022, he did not have a prescription from a licensed physician for marijuana, THC, or cocaine.

Ledvina's argument that the government only established that he was a user of controlled substances, not that he was an unlawful user is unavailing. The stipulated facts establish frequent controlled substance use by Ledvina. They establish Ledvina's knowledge that he did not have a prescription for the drugs he was using. In addition, the district court, reciting 10 examples in its decision, found that the coded language used by Ledvina in text messages he sent to others demonstrated an attempt to conceal his drug use and possession and showed knowledge that the drugs Ledvina was using and possessing were unlawful. Ledvina has not demonstrated that any of the district court's findings were clearly erroneous.

On this record, Ledvina cannot show § 922(g)(3) is unconstitutionally vague as applied to him.

Ledvina also contends § 924(a)(1)(A) is unconstitutionally vague, asserting in his opening brief in a conclusory manner that the same analysis used in § 922(g)(3) applies with equal force. Despite not developing his argument in any meaningful way, Ledvina faults the government in his reply brief for ignoring his point that "if 'unlawful user' is unconstitutionally vague in one context, it is unconstitutionally vague in both."

Section 924(a)(1)(A) does not contain the words "unlawful user." "[A] conviction under § 924(a)(1)(A) requires only that a defendant knowingly make a false statement with respect to information that the law requires a federally licensed firearms dealer to keep." United States v. Lehman, 8 F.4th 754, 757 (8th Cir. 2021). The relevant conduct is knowingly making a false statement. Id. Ledvina has not developed any meaningful argument showing how the statute "fails to give ordinary people fair notice of the conduct it punishes, or [is] so standardless that it invites arbitrary enforcement." Johnson, 576 U.S. at 595.

As applied to the facts and circumstances in Ledvina's case, a question on ATF Form 4473 asked Ledvina whether he was "an unlawful user of, or addicted to, marijuana or any depressant, stimulant, narcotic drug, or any other controlled substance." Immediately below the question was an explicit warning notifying Ledvina that "[t]he use or possession of marijuana remains unlawful under Federal law regardless of whether it has been legalized or decriminalized for medicinal or recreational purposes in the state where you reside." Despite the warning and Ledvina's knowledge that he had used controlled substances in March, April, May, June, and July 2022, Ledvina answered "no." The stipulated facts establish Ledvina knew he was a frequent controlled substance user, including marijuana, THC, and cocaine in March, April, May, June, July, and August 2022; he had very recently used marijuana when he completed ATF Form 4473 such that an employee of the licensed firearms dealer smelled the odor of marijuana emanating from Ledvina and reported this fact to the authorities; and the plain language on ATF Form 4473 instructed Ledvina that the use or possession of marijuana was unlawful under federal law. Text messages using coded language recovered from Ledvina's phone by law enforcement further establish that Ledvina knew his use and possession of controlled substances was unlawful. On this record, Ledvina cannot show § 924(a)(1)(A) is unconstitutionally vague as applied to him.

2. Second Amendment

Ledvina raises both a facial and as-applied challenge to 18 U.S.C. § 922(g)(3). His facial challenge is foreclosed by our precedent. See United States v. Grubb, 135 F.4th 604, 606 (8th Cir. 2025) (citing United States v. Seay, 620 F.3d 919, 925 (8th Cir. 2010)); United States v. Veasley, 98 F.4th 906, 918 (8th Cir. 2024) (adding to Seay's analysis with a review of historical analogues). An as-applied challenge may be available. See Perez, 145 F.4th at 804; Cooper, 127 F.4th at 1098. A court reviewing an as-applied challenge is asked to declare a statute unconstitutional "on the facts of a particular case." Lehman, 8 F.4th at 457. In other words, unlike a facial challenge, which challenges the law as written, an as-applied challenge considers whether the "application to a particular person under particular circumstances deprived that person of a constitutional right." Id.

The district court's ruling on Ledvina's as-applied challenge predated this Court's decisions in Cooper and Perez. In Perez, this Court recognized that "certain categories of active drug users—classified either by drug type or the frequency or manner of a defendant's use—may be disarmed consistent with the Second Amendment if the government shows that any member of that 'class' either 'demonstrate[s] disrespect for legal norms of society' or would pose 'an unacceptable risk of danger if armed.'" 145 F.4th at 807 (quoting United States v. Jackson, 110 F.4th 1120, 1127-28 (8th Cir. 2024)). The Court in Cooper identified at least two situations when § 922(g)(3) is consistent with the Second Amendment, which are: 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. 127 F.4th at 1096 (cleaned up). Without this guidance, the district court did not consider these circumstances or whether Ledvina's drug use placed him in a category of people "'presenting a special danger of misuse' sufficient to justify disarmament irrespective of any individualized showing of dangerousness." Perez, 145 F.4th at 808 (quoting Jackson, 110 F.4th at 1129).

Without more, drug use generally or marijuana use specifically does not automatically extinguish a person's Second Amendment right. Id. (citing Cooper, 127 F.4th at 1097, 1098 n. 3). Consistent with Cooper and Perez, we vacate Ledvina's § 922(g)(3) conviction and remand for the district court to reassess Ledvina's as-applied challenge in accordance with our recent precedents.

Ledvina has submitted a *pro se* brief. When a party is represented by counsel, the Court typically does not accept *pro se* briefs. United States v. Robertson, 883 F.3d 1080, 1087 (8th Cir. 2018). We exercise our discretion to enforce our policy against multiple filings and decline to consider additional claims or issues that Ledvina raised in his *pro se* brief. Id.; see United States v. Miranda-Zarco, 836 F.3d 899, 901-02 (8th Cir. 2016) (noting this Court's discretion to review *pro se* supplemental briefs).

III. CONCLUSION

We vacate Ledvina's conviction under § 922(g)(3) and remand to the district court to reassess his Second Amendment as-applied challenge. We affirm the district court's decision on his other claims as well as his conviction under § 924(a)(1)(A).

STRAS, Circuit Judge, concurring.

Let me tell you a story. A man walks into a bar. Usually a joke would follow, but this is no laughing matter. When the man bellies up to the bar for dinner, he orders his usual: a cheeseburger and a seltzer. Not any ordinary seltzer, mind you, but one with THC, which he has ordered a handful of times before. Little does he know that getting back into his vehicle, where he stores a locked, unloaded pistol, will mean he is committing a federal crime, one punishable by up to 15 years in prison. *See* 18 U.S.C. §§ 922(g)(3), 924(a)(8); *United States v. Carnes*, 22 F.4th 743, 748 (8th Cir. 2022); *see also United States v. Hiebert*, 30 F.3d 1005, 1008–09 (8th Cir. 1994) (concluding that a defendant constructively possessed a firearm because he had "control or dominion over it . . . as it was found in the vehicle that he was driving").

The dissent seems to think that this man can—and maybe should—be convicted. Or perhaps drinking a spiked THC beverage is not "relevantly similar" to habitual drunkenness, which is just another way of stating an as-applied challenge. *United States v. Rahimi*, 602 U.S. 680, 692 (2024) (quoting *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 29 (2022)). What we do know is that the dissent's "categorical[]" approach is inconsistent with the Second Amendment and how constitutional litigation typically works.[2] *Post*, at 17; *see United States v. Cooper*,

[2]So inconsistent, in fact, that not a single other circuit has adopted it. *See United States v. Harris*, 144 F.4th 154, 165 (3d Cir. 2025) (remanding for the district court to consider an as-applied challenge to § 922(g)(3) based on "how [the defendant's] drug use affected his mental state and riskiness"); *United States v. Daniels*, 124 F.4th 967, 974–76 (5th Cir. 2025) (concluding that § 922(g)(3) was unconstitutional as applied); *United States v. VanOchten*, 150 F.4th 552, 560 (6th Cir. 2025) (explaining that courts should consider whether the defendant "poses a clear risk to others if armed" when evaluating an as-applied challenge to § 922(g)(3)); *United States v. Seiwert*, 152 F.4th 854, 869 (7th Cir. 2025) (rejecting an as-applied § 922(g)(3) challenge because the defendant "was persistently and presently impaired during the periods alleged in the indictment"); *see also United States v. Harrison*, 153 F.4th 998, 1034–35 (10th Cir. 2025) (remanding for the district court to determine whether § 922(g)(3) is constitutional as applied to "non-intoxicated marijuana users"); *Fla. Comm'r of Agric. v. Att'y Gen. of U.S.*, 148 F.4th 1307, 1320–21 (11th Cir. 2025) (concluding that the plaintiffs plausibly alleged that § 922(g)(3) is unconstitutional "as applied to medical marijuana users"). *But see United States v. Stennerson*, 150 F.4th 1276, 1285 (9th Cir. 2025) (leaving the as-applied-challenge question "for another day").

127 F.4th 1092 (8th Cir. 2025); *United States v. Veasley*, 98 F.4th 906 (8th Cir. 2024); *see also Moody v. NetChoice, LLC*, 603 U.S. 707, 723 (2024) (explaining that "courts usually handle constitutional claims *case by case*, not en masse" (emphasis added)).

COLLOTON, Chief Judge, concurring in part and dissenting in part.

There is nothing unlawful about appellant Ledvina's conviction for possession of a firearm as an unlawful user of drugs under 18 U.S.C. § 922(g)(3). The majority does not say that the conviction is invalid. Yet rather than decide the legal question presented on appeal, the majority vacates the conviction and remands for further proceedings that are unwarranted and unnecessary.

The state of the law in this circuit concerning § 922(g)(3) is untenable. In appeal after appeal, the court refuses to decide whether the statute is constitutional as applied to unlawful drug users. The court should decide the question presented in this case and affirm the judgment.

Section 922(g)(3) forbids possession of a firearm by a person who is an unlawful user of or addicted to any controlled substance. In the Act that included § 922(g), Congress "sought broadly to keep firearms away from the persons Congress classified as potentially irresponsible and dangerous." *Barrett v. United States*, 423 U.S. 212, 218 (1976). Drug users and drug addicts—like convicted felons and the mentally ill—constitute a group of persons whom Congress identified as presenting a special danger of misuse of firearms.

To qualify as an unlawful user of controlled substance, a person must use drugs habitually or regularly, and the drug use must be current not past. *United States v. Turnbull*, 349 F.3d 558, 561 (8th Cir. 2003), *vacated*, 543 U.S. 1099, *reinstated*, 414 F.3d 942 (8th Cir. 2005) (per curiam). A leading case cited in *Turnbull*, for example, upheld a conviction where the defendant's "drug use was sufficiently consistent, prolonged, and close in time to his gun possession to put him on notice that he qualified as an unlawful user of drugs." *United States v. Purdy*, 264 F.3d 809, 812 (9th Cir. 2001) (internal quotation omitted). Another formulation cited by this court in *Turnbull* requires the government to establish "a pattern of use and recency of use." *United States v. Jackson*, 280 F.3d 403, 406 (4th Cir. 2002).

Ledvina argues that he enjoyed a constitutional right to possess firearms despite his regular drug use. The Supreme Court held in *District of Columbia v. Heller*, 554 U.S. 570 (2008), that the Second Amendment confers an individual right to keep and bear arms, but the right is not unlimited, and Congress may forbid possession by certain categories of persons. *Id.* at 626; *United States v. Jackson*, 110 F.4th 1120, 1125 (8th Cir. 2024), *cert. denied*, 145 S. Ct. 2708 (2025). *New York Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022), reaffirmed *Heller* and "made the constitutional standard endorsed in *Heller* more explicit." *Id.* at 21, 26, 31. *Heller* and *Bruen* explained that the Second Amendment allows regulation that is consistent with the Nation's historical tradition of firearm regulation. *Bruen*, 597 U.S. at 17; *Heller*, 554 U.S. at 627.

In *United States v. Rahimi*, 602 U.S. 680 (2024), the Court emphasized two propositions that had been misunderstood by some judges of the courts of appeals. First, a law regulating firearms need not "precisely match its historical precursors," and the government may show that a statute passes constitutional muster without identifying an "historical twin." *Id.* at 692, 701. The proper analysis considers whether "the challenged regulation is consistent with the principles that underpin our regulatory tradition." *Id.* at 692. Second, the Court made clear that *Heller* and *Bruen* do not preclude categorical gun regulations, saying "we do not suggest that the Second Amendment prohibits enactment of laws banning the possession of guns by categories of persons thought by a legislature to present a special danger of misuse." *Id.* at 698 (citing *Heller*, 554 U.S. at 626).

Congress concluded that drug addicts and drug users present a special danger of misuse, and the prohibition on the possession of guns by those persons is consistent with the principles underlying the Nation's regulatory tradition. A convincing array of historical analogues shows that habitual drunkards were subject to confinement and surety bonds on a temporary basis while they were engaged in the regular consumption of a mind-altering drug—alcohol. This court recently acknowledged that it has not considered this important historical evidence, *see United States v. Perez*, 145 F.4th 800, 806 n.4 (8th Cir. 2025), and it is high time to recognize its force in establishing the constitutionality of § 922(g)(3).

In 1606, England banned drunkenness, declaring it "the roote and foundacion of many other enormious Synnes, as Bloodshed Stabbinge Murder . . . and such lyke." 4 Jac. 1, c. 5 (1606). In 1679 and 1691, the New Hampshire and Virginia governments adopted similar bans on drunkenness. Act of Mar. 16, 1679, 1 *Laws of New Hampshire* 21 (Albert Stillman Batchellor ed., 1904); Act of Apr. 16, 1691, Act XI, 3 *Statutes at Large; Being a Collection of All Laws of Virginia, from the First Session of the Legislature* 73 (William Waller Hening ed., 1823).

Eighteenth century American legislatures enacted laws classifying "common drunkards" as vagrants and subjecting them to confinement in jails or workhouses. *See* Act of Oct. 12, 1727, *The Public Records of the Colony of Connecticut from May, 1726, to May, 1735, Inclusive* 128 (Charles J. Hoadly ed., 1873); Act of June 29, 1700, ch. 8, § 2, 1 *Acts and Resolves of the Province of Massachusetts Bay* 378 (1869); Act of May 14, 1718, ch. 15, 2 *Laws of New Hampshire* 266 (Albert Stillman Batchellor ed., 1913); Act of June 10, 1799, ch. 806, §§ 1, 3, *Acts of the Twenty-Third General Assembly of the State of New-Jersey* 561-63 (1821). By the nineteenth century, at least ten more States enacted similar statutes.[3]

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[3]*See* Brief for the United States at 20 n.10, *United States v. Hemani*, No. 24-1234 (U.S. Dec. 12, 2025) (citing Act of Dec. 15, 1865, No. 107, § 1, 1865-1866 Ala. Acts 116; Act to Establish a Penal Code, Tit. XVII, § 1014, *Revised Statutes of Arizona* 753-754 (1887); § 647, 2 *The Codes and Statutes of the State of California* 1288 (Theodore H. Hittell ed., 1876); Act of Feb. 4, 1885, § 1, 1884-1885 Idaho Terr. Gen. Laws 200; Act of Feb. 22, 1825, ch. 297, § 4, 1825 Me. Pub. Acts 1034; Act of Feb. 22, 1881, § 1, 1881 Mont. Terr. Laws 81-82; Act of Mar. 7, 1873, ch. 114, § 1, 1873 Nev. Stat. 189-190; Act of June 2, 1871, No. 1209, § 2, 1871 Pa. Laws 1301-1302; Act of Mar. 15, 1865, ch. 562, §§ 1-2, 1865 R.I. Acts & Resolves

Some jurisdictions also treated habitual drunkards in the same manner as the mentally ill. Several States provided for civil confinement of habitual drunkards "in the same manner as in case of lunatics" until the drunkards presented "proof of a permanent reformation," which generally meant refraining from use of intoxicating drinks for at least one year. Amos Dean, *Principles of Medical Jurisprudence* 590 (1850). An 1836 statute in Pennsylvania placed habitual drunkards "on precisely the same footing" as lunatics, and removed their power to control their estates. *Imhoff v. Witmer*, 31 Pa. 243, 244-45 (Pa. 1858). An 1873 Massachusetts Act excepted common drunkards—along with lunatics, vagabonds, and those convicted of infamous crimes—from service in the militia. An Act Concerning the Militia, ch. 313, § 1, 1873 Mass. Acts 760. In all, at least twenty-two States and the District of Columbia provided that habitual drunks could be committed to asylums or placed in the custody of guardians in the same manner as the mentally ill.[4]

197; Act of Feb. 18, 1876, § 378, *The Compiled Laws of the Territory of Utah* 647 (1876)).

[4]*See* Brief for the United States at 21 n.12, *United States v. Hemani*, No. 24-1234 (U.S. Dec. 12, 2025) (citing Act of Mar. 30, 1876, ch. 40, § 8, 19 Stat. 10 (District of Columbia); Ark. Rev. Stat., ch. 78, § 1, at 456 (William M. Ball & Sam C. Roane eds., 1838); Act of Apr. 1, 1870, ch. 426, § 2, 1869-1870 Cal. Stat. 585-586; Act of July 25, 1874, ch. 113, § 1, 1874 Conn. Pub. Acts 256; Ga. Code pt. 2, tit. 2, ch. 3, Art. 2, § 1803, at 358 (R.H. Clark et al. eds., 1861); Act of Feb. 21, 1872, § 1, 1872 Ill. Laws 477; Act of May 1, 1890, ch. 42, § 1, 1890 Iowa Acts 67; Act of Mar. 2, 1868, ch. 60, § 5, *The General Statutes of the State of Kansas* 553 (John M. Price et al. eds., 1868); Act of Mar. 28, 1872, ch. 996, §§ 10-11, 1872 Ky. Acts, Vol. 2, at 523-524; Act of July 8, 1890, No. 100, § 1, 1890 La. Acts 116; Act of Mar. 5, 1860, ch. 386, §§ 6-7, 1860 Md. Laws; Act of June 18, 1885, ch. 339, §§ 1-3, 1885 Mass. Acts 790; Act of Apr. 12, 1827, § 1, 1827 Mich. Terr. Laws 489-90; Minn. Terr. Rev. Stat. ch. 67, § 12, at 278 (1851); Act of Apr. 17, 1873, ch. 57, §§ 1, 3, 1873 Miss. Laws 61-62; Act of Mar. 3, 1853, ch. 89, § 1, 1853 N.J. Acts 237; Act of Feb. 7, 1856, ch. 38, § 1, 1855-1856 N.M. Terr. Laws 94; Act of Mar. 27, 1857, ch. 184, § 9, 1857 N.Y. Laws, Vol. 1, at 431; Act of Jan. 5, 1871, § 1, 68 *Ohio General and Local Laws and Joint Resolutions* 6 (1871); Act of Feb. 1, 1866, No.

"[A]t the Founding, the consensus was that surety laws extended to all 'common drunkards.'" *United States v. Harris*, 144 F.4th 154, 163 (3d Cir. 2025), *petition for cert. filed* (U.S. Sept. 30, 2025) (No. 25-372). Legislatures required drunkards to post bond due to the risk of future misbehavior. *E.g.*, An Act Against Breaking the Peace, *Acts and Laws of the State of Connecticut, in America* 189 (1784); Act of Dec. 16, 1812, *A Digest of the Laws of the Corporation of the City of Washington to the First of June, 1823* 141 (1823); *A Digest of the Laws of Maryland* 206 (Thomas Herty ed., 1799). If a habitual drunkard refused to "enter into security for good behavior for a reasonable time," he was committed to hard labor or imprisonment. *A Digest of the Laws of the Corporation of the City of Washington to the First of June, 1823*, at 141; *see also* James Parker, *Conductor Generalis: Or, the Office, Duty and Authority of Justices of the Peace, High-Sheriffs, Under-Sheriffs, Coroners, Constables, Gaolers, Jury-Men, and Overseers of the Poor* 422 (1764).

These historical analogues establish that Congress's prohibition on gun possession by drug addicts and regular drug users is consistent with the principles underlying the Nation's tradition. Both habitual drunkenness and unlawful drug use under § 922(g)(3) involve the regular use of a mind-altering substance. Congress concluded that drug addicts and regular drug users present a special risk of misusing firearms.

The prohibition on gun possession, like the burden of the surety bonds that applied to habitual drunkards, is of limited duration, because it ends when a drug user breaks the habit. *See Rahimi*, 602 U.S. at 699. The prohibition is relevantly similar in mitigating the risk that habitual abusers of alcohol or drugs will misuse firearms. Habitual drunkards historically were subject to even greater restrictions than disarmament—jailing or civil commitment, which necessarily served to disarm the subject. If those restrictions were a permissible response to habitual use of a

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11, § 10, 1866 Pa. Laws 10; Act of Aug. 18, 1876, ch. 112, § 147, 1876 Tex. Gen. Laws 188; Act of Mar. 17, 1870, ch. 131, § 1, 1870 Wis. Gen. Laws 197).

mind-altering substance, then the lesser restriction of temporary disarmament is also permissible. *See id.*; *Jackson*, 110 F.4th at 1127.

The problem in this circuit arises from two panel decisions that failed to consider all of the relevant historical evidence. In *United States v. Veasley*, 98 F.4th 906 (8th Cir.), *cert. denied*, 145 S. Ct. 304 (2024), the court rejected a facial challenge to § 922(g)(3). As one judge pointed out, *id.* at 918 (Gruender, J., concurring in the judgment), that holding was dictated by the court's post-*Heller* decision in *United States v. Seay*, 620 F.3d 919 (8th Cir. 2010). A facial challenge fails if the statute is constitutional in any of its applications; once that is established, nothing more need be said. But the *Veasley* majority waxed on in dicta and asserted that for intoxicated persons, the focus historically "was on the use of a firearm, not its possession." 98 F.4th at 911. The *Veasley* panel, however, did not address the more substantial restrictions traditionally applicable to habitual drunkards.

In a follow-on case, a panel of this court asserted that Congress cannot constitutionally prohibit drug users as a category from possessing firearms on the ground that they are dangerous. *United States v. Cooper*, 127 F.4th 1092 (8th Cir.), *cert. denied*, 146 S. Ct. 348 (2025). The *Cooper* opinion, like the *Veasley* dicta, referred to a few laws governing persons at the moment of intoxication but again neglected to consider the historical tradition of regulation applicable to habitual drunkards. Instead, according to the *Cooper* opinion, courts are supposed to conduct an "individualized assessment" and ask in each prosecution (1) whether using drugs made a defendant "act like someone who is both mentally ill and dangerous," or (2) whether a defendant "induce[d] terror" or "pose[d] a credible threat to the physical safety of others." *Id.* at 1096 (internal quotation omitted).

This test is both ahistorical and impractical. The Due Process Clause requires adequate notice to persons, including drug users, about what possession of firearms is unlawful. But under the *Cooper* individualized-assessment approach, a drug user will find out only retrospectively—after he is convicted of a crime—whether a judge believes that he has "acted like someone who is both mentally ill and dangerous" or whether a judge thinks that he "induced terror" or "posed a credible threat." Prosecutors will be hard pressed to prove the *mens rea* element of the offense when the law fails to give clear notice about which regular drug users act unlawfully. *See Rehaif v. United States*, 588 U.S. 225, 227 (2019). Law enforcement officers cannot readily identify which violators of § 922(g)(3) may be arrested and prosecuted. What does it mean to act like someone who is mentally ill? How much risk is required before a drug user with a gun poses a credible threat or induces terror? The *Cooper* test is indecipherable to a person of ordinary intelligence and tantamount to rendering the statute unenforceable and void for vagueness. But there is no such conundrum once the court recognizes that the Second Amendment allows Congress to act categorically with respect to well-defined groups of persons who present a special danger of misuse.

Having announced its new constitutional rule, the *Cooper* panel then declined to apply it. 127 F.4th at 1098. The parties had developed the factual record in a stipulated bench trial and jointly asked the court of appeals to resolve the as-applied challenge. But the panel refused to do so, remanded to the district court, and placed the case in an interlocutory posture that avoided further review. There was no sound basis for the *Cooper* panel to avoid making a decision.

The consequence has been paralysis in the circuit. The panel in *Perez*, citing the *Cooper* panel's remand, felt bound to remand the *Perez* case without deciding the as-applied challenge. 145 F.4th at 809. Now this panel, citing *Cooper* and *Perez*, refuses to decide another as-applied challenge and remands again. *Ante*, at 9.

Whether § 922(g)(3) is constitutional as-applied in a particular case is a legal question that this court has a duty to decide. The court should accept responsibility for whatever rule it fashions and apply it. Or, as here, the court should consider the historical analogues that it missed in *Cooper*, *see Perez*, 145 F.4th at 806 n.4, and conclude that Congress permissibly prohibited the possession of firearms by drug addicts and regular unlawful drug users—one of the "categories of persons thought by a legislature to present a special danger of misuse." *Rahimi*, 602 U.S. at 698.

The continuing cycle of remands, and the uncertainty that it has engendered, ill serves the rule of law in the circuit.

The record in this case is fully developed and shows that appellant Ledvina smoked marijuana in March, April, May, June, and July 2022 while possessing firearms in his residence. In August 2022, officers found Ledvina in his car with a loaded pistol on the floorboard, a partially smoked cannabis roach in front of the gear shift, and a plastic bag containing marijuana in the console. Toxicology results from a urine sample showed that Ledvina had used cocaine and marijuana over the past several days. In Ledvina's residence, officers found a loaded pistol leaning against a coffee table that held a small quantity of cannabis, a digital scale, and rolling paper. They found thirteen grams of marijuana under a couch. In the bedroom, officers found three more firearms next to a vanity that contained a large digital scale and 137 grams of cannabis in glass jars. The district court found beyond a reasonable doubt that Ledvina possessed firearms as an unlawful user of controlled substances. At sentencing, a witness augmented the record by describing an incident when Ledvina accidentally discharged a firearm inside his home while using cocaine.

Yet the majority is unwilling to decide whether § 922(g)(3) is constitutional as applied to Ledvina. The majority instead vacates the conviction and suggests the possibility that Ledvina enjoyed a constitutional right to possess the firearms under these circumstances. The court should decide the questions presented on this appeal and affirm the judgment.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 24-2441

United States of America

Appellee

v.

Alexander Wesley Ledvina

Appellant

Appeal from U.S. District Court for the Northern District of Iowa - Cedar Rapids
(1:23-cr-00036-CJW-1)

ORDER

Appellant has submitted an overlength pro se supplemental brief. The court will accept this brief for filing. Appellee is directed to respond to both appointed counsel's brief and the pro se supplemental brief. Brief of United States of America due February 13, 2025.

January 23, 2025

Order Entered at the Direction of the Court:
Acting Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Maureen W. Gornik

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 24-2441

United States of America

Appellee

v.

Alexander Wesley Ledvina

Appellant

Appeal from U.S. District Court for the Northern District of Iowa - Cedar Rapids
(1:23-cr-00036-CJW-1)

ORDER

Appellant's pro se motions for leave to file a pro se supplemental brief and for access to sealed district court records in Case No. 22-mj-162-CJW-MAR in the United States District Court for the Northern District of Iowa are granted. Appellant is granted until January 15, 2025 to file a pro se supplemental brief. The clerk of court is directed to forward copies of this order and Appellant's motion for access to sealed district court records to the United States District Court for the Northern District of Iowa

December 12, 2024

Order Entered at the Direction of the Court:
Acting Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Maureen W. Gornik

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. ALEXANDER WESLEY LEDVINA, Defendant.	No. 23-CR-36-CJW-MAR **BENCH TRIAL ORDER, FINDINGS, AND CONCLUSIONS**

I. INTRODUCTION

In a Superseding Indictment, the grand jury charged defendant Alexander Wesley Ledvina with one count of possession of a firearm by a drug user, in violation of Title 18, United States Code Section 922(g)(3), and one count of making a false statement during purchase of a firearm in violation of Title 18, United States Code, Section 924(a)(1)(A). (Doc. 32). The parties waived jury trial (Docs. 47 & 62), and on November 16, 2023, the Court presided over a bench trial (Doc. 62). At that trial, defendant combined argument with his motion for judgment of acquittal under Federal Rule of Criminal Procedure 29. Upon consideration of all the evidence, the Court **denies** defendant's motion for judgment of acquittal and finds defendant **guilty** of Counts 1 and 2 of the Superseding Indictment. The Court also **denies** defendant's as-applied challenges to dismiss the Superseding Indictment. (Doc. 37).

In compliance with Federal Rule of Criminal Procedure 23(c), the Court states here its specific findings in a written decision.

II. ELEMENTS

The crime of possession of a firearm by a drug user has three elements. Here, the government must prove:

> *One*, the defendant was an unlawful user of or addicted to controlled substances, that is, marijuana and cocaine;
>
> *Two*, the defendant knowingly possessed a Smith & Wesson M&P 9 Shield Plus, 9x19 mm caliber pistol; an Arsenal Bulgarian P-MO1, 9x18 mm caliber pistol; a Ruger 10/22, .22 LR caliber rifle; a Zastava Arms ZPAP92, 7.62x39mm caliber pistol; and an IWI Tavor X95, 5.56 NATO caliber rifle while he was an unlawful user of or addicted to marijuana and cocaine; and
>
> *Three*, these firearms were transported across a state line at some time during or before the defendant's possession of it.

EIGHTH CIRCUIT MODEL CRIMINAL INSTRUCTION 6.18.922B.

The crime of making a false statement during the purchase of a firearm, as charged in Count 2, contains the following four elements:

> *One*, the defendant knowingly made a statement or representation in an ATF Form 4473;
>
> *Two*, the defendant made the statement or representation to a federally licensed firearms dealer;
>
> *Three*, the statement or representation was false; and
>
> *Four*, the defendant knew the statement or representation was untrue when he made it.

EIGHTH CIRCUIT MODEL CRIMINAL INSTRUCTION 6.18.924.

The parties provided 22 joint stipulations in lieu of evidence presented at the bench trial. (Doc. 52). Among other things, defendant stipulated that on August 11, 2022, he knowingly possessed all firearms detailed in Count 1 of the Superseding Indictment: a Smith & Wesson M&P 9 Shield Plus, 9x19 mm caliber pistol; an Arsenal Bulgarian P-

MO1, 9x18 mm caliber pistol; a Ruger 10/22, .22 LR caliber rifle; a Zastava Arms ZPAP92, 7.62x39mm caliber pistol; and an IWI Tavor X95, 5.56 NATO caliber rifle. (*Id.*, at 6). Each of these was stipulated as a weapon designed to expel a projectile by action of an explosive. (*Id.*). Defendant also stipulated that each firearm was manufactured outside the State of Iowa and necessarily transported in interstate commerce prior to or during defendant's possession of them. (*Id.*). Thus, at issue in Count 1 is whether, at this time, defendant was then knowingly an unlawful user of or addicted to marijuana or cocaine. Further, defendant stipulated that on July 29, 2022, he knowingly made a representation that he was not an unlawful user of, or addicted to, marijuana or any depressant, stimulant, narcotic drug, or any other controlled substance on an ATF form 4473. (*Id.*, at 3). Defendant also stipulated this representation was made to a federally licensed firearms dealer. (*Id.*). Last, defendant stipulates that on July 29, 2022, he knew he had used controlled substances in March, April, May, June, and July of 2022. (*Id.*). As such, the only elements in Count 2 at issue during the trial were (1) whether the representation was false;[1] and (2) whether defendant knew the representation was untrue when he made it.

III. REASONABLE DOUBT STANDARD

The government bears the burden of proving each element of each charge beyond a reasonable doubt. It is useful to review and consider the standard explanation of "reasonable doubt" provided to jurors, a standard that is equally binding on the Court as a fact-finder:

> Reasonable doubt is doubt based upon reason and common sense, and not doubt based on speculation. A reasonable doubt may arise from careful and impartial consideration of all the evidence, or from a lack of evidence.

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[1] The Court notes that because defendant's argument relies heavily on what, if anything, is the definition of "unlawful user" or "addicted to" that this element is arguably in debate because under defendant's argument that those definitions are unestablished, it would also be unestablished whether the representation that defendant was not an unlawful user was itself false. As such, the Court will for the sake of clarity evaluate this element, too.

> Proof beyond a reasonable doubt is proof of such a convincing character that a reasonable person, after careful consideration, would not hesitate to rely and act upon that proof in life's most important decisions. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. Proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

EIGHTH CIRCUIT MODEL CRIMINAL INSTRUCTION 3.11.

Defendant's motion for judgment of acquittal is governed by Federal Rule of Criminal Procedure 29, which provides: "After the government closes its evidence or after the close of all the evidence, the court on the defendant's motion must enter a judgment of acquittal of any offense for which the evidence is insufficient to sustain a conviction." FED. R. CRIM. P. 29(a). "Sufficient evidence exists to support a verdict if 'after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *United States v. Jiminez-Perez*, 238 F.3d 970, 972 (8th Cir. 2001) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)).

IV. THE EVIDENCE

The parties submitted 22 joint stipulations[2] in lieu of evidence at trial, submitted a joint exhibit that was incorporated into those stipulations, and the government submitted an additional exhibit, all of which the Court incorporates and considers here. (Docs. 52 & 61).

V. ANALYSIS

This is not, by any means, a close case. Based on the totality of the evidence, the Court is firmly convinced of defendant's guilt as to both Counts 1 and 2 of the Superseding Indictment.

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[2] The Court notes the parties informed the Court both in briefing and at the trial that stipulation 10 incorrectly states the year as "2021" when it should state "2022" as the correct year associated with each date in the stipulation. (Docs. 55, at 7 n.1 & 62). The Court will, thus, refer to the year as 2022 when discussing this stipulation.

A. Count 1

The Court finds the evidence shows beyond a reasonable doubt that on or about August 11, 2022, defendant was a drug user in possession of a firearm as alleged in Count 1. The sole element at issue is whether on or about August 11, 2022, defendant was knowingly an unlawful user of or addicted to controlled substances, that is, marijuana and cocaine.

Defendant argues the government has not proven this element of the offense, in part because there "is no such thing as an 'unlawful user' of controlled substances." (Doc. 57, at 4-10). Specifically, defendant asserts that despite any other evidence or stipulation, defendant has not been shown to be, nor has he explicitly admitted that he is, an "unlawful user" or an "addict." (*Id.*, at 5). Citing Eighth Circuit precedent requiring a defendant to know he belonged to the category of persons barred from firearm possession in the relevant statute, defendant argues the government cannot prove his knowledge because no defendant could know their use is unlawful when no law specifically makes "use" of a controlled substance "unlawful." (*Id.*, at 5-6 & n.2). Defendant further asserts there is a difference in whether defendant knew he was a user of controlled substances and whether he knew he was an unlawful user. (*Id.*, at 5). Defendant also argues it is not relevant that defendant possessed controlled substances because "unlawful possession" is not synonymous with "unlawful use" under Section 922(g)(3). (*Id.*, at 6-7). Last, defendant asserts there is no evidence defendant is or ever was an "addict." (*Id.*, at 7-8).

The government asserts defendant was an unlawful user of controlled substances during the same time period he possessed firearms as alleged in the Superseding Indictment. (Doc. 55, at 6-10). First, the government argues there is a temporal nexus between defendant's controlled substance use and his possession of firearms, which the Eighth Circuit Court of Appeals has held is a requirement of the unlawful user element. (*Id.*, at 8-9). Specifically, the government points to the stipulations showing defendant both possessed firearms and used marijuana and cocaine during the same, relevant period. (*Id.*, at 9). Second, the government asserts it has proven defendant knew his conduct fell within the relevant prohibited status. (*Id.*). To this point, the government emphasizes defendant's admission and agreement through stipulation that defendant knew he was using controlled substances, including marijuana, THC, and cocaine in March, April, May, June, July, and August 2022, and to the ATF 4733 form warning to show defendant's knowledge of his status. (*Id.* & 60, at 5). The government further cites to Eighth Circuit Model Jury Instruction Section 6.18.922B defining "unlawful user," which itself is based on the Treasury Department's definition of an unlawful user of a controlled substance provided in Title 27, Code of Federal Regulations, Section 478.11. (Doc. 60, at 3-4). This definition, the government argues, renders defendant an unlawful user on these facts. (*Id.*) Last, the government cites Fourth and Fifth Circuit Courts of Appeals' cases addressing the distinction between possession and use and finding that the term "use" is subsumed within the term "possession" under the current statutory scheme and advocates for this Court to find the same. (*Id.*, at 5).

The crime of possession of a firearm by a drug user requires proof that during the time alleged in the charging document, the defendant was an unlawful user of or addicted to a controlled substance. This "unlawful user" element contains two components: a temporal component and a knowledge component. *Rehaif v. United States*, 139 S.Ct. 2191, 2194, 2200 (2019); *United States v. Carnes*, 22 F.4th 743, 748, 749 (8th Cir. 2022). The temporal component does not require proof that defendant used a controlled substance contemporaneously with his possession of a firearm, but rather, it requires the government "to demonstrate use of a controlled substance 'during the period of time' that the defendant possessed firearms, not that there was actual use 'at the time that the officers discovered [the defendant] in possession of firearms.'" *Carnes*, 22 F.4th at 748 (quoting *United States v. Rodriguez*, 711 F.3d 928, 937 (8th Cir. 2013)) (alteration and quotation in original). The Eighth Circuit has expressly rejected the requirement that controlled substance use must be proven through evidence of regular use over an extended period of time. *United States v. Boslau*, 632 F.3d 422, 429-31 (8th Cir. 2011). The second component, knowledge, requires proof that the defendant knew he or she fell within the relevant statute's category of persons prohibited from possessing firearms. *Rehaif*, 139 S.Ct. at 2200.

Defendant's argument that possession is wholly irrelevant to the question of use is in error. Knowing possession of controlled substances alone, though not necessarily dispositive of knowing use, shows access to controlled substances and makes accusations of knowing use more likely than without knowing possession. In a similar vein, the government urges the Court to adopt the view of the Fourth and Fifth Circuit Courts of Appeals. In *United States v. Courtney*, the Fifth Circuit Court of Appeals found that under the current statutory scheme, which does not separately criminalize use from possession, "use is subsumed within possession." 979 F.2d 45, 48-49 (5th Cir. 1992). In other words, one cannot knowingly use a controlled substance without possessing a controlled substance. *Id.* at 49. Likewise, in *United States v. Clark*, the Fourth Circuit Court of Appeals found that culpable use—as opposed to passive inhalation—and possession bear no distinct meanings under Title 18, United States Code, Section 3583(g). 30 F.3d 23, 25-26 (4th Cir. 1994). Though it is not always the case that possession equates use, the Court agrees with the government's argument that culpable[3] knowing use always equates knowing possession. Because culpable use always also means possession, use is a type of possession or way of proving possession, and its inclusion in the explicit illegality of possession alone puts a defendant on notice that use of a controlled substance can be unlawful. *See United States v. Two Hearts*, 32 F.4th 659, 663 (8th Cir.

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[3] There are scenarios when an individual could experience passive inhalation or consume a substance that was tainted with or is a controlled substance without knowing they were consuming a controlled substance. The Court distinguishes these scenarios from culpable consumption whereby a person knows they are consuming some controlled substance.

2022) (finding evidence consisting of user quantity of controlled substances and items used to consume controlled substances were sufficient for a jury to find that defendant was an unlawful user of those substances). Further support for finding possession relevant and important in establishing use lies in the Treasury Department's definition of unlawful user, which provides that "[a]n inference of current use may be drawn from evidence of a recent use *or possession* of a controlled substance or a pattern of use *or possession* that reasonably covers the present time[.]" 27 C.F.R. § 478.11 (emphasis added).

The Court is equally unpersuaded that "unlawful user" does not provide notice as to what conduct is illegal, and thus, that defendant and other defendants cannot know they fall into the category of prohibited persons under the statute. It is an unfair characterization of the law to state that unlawful user is so undefined that not even an omniscient being would be aware of the term's meaning. The Eighth Circuit Model Jury Instructions for the crime drug user in possession of a firearm note that the definition of an "unlawful user of a controlled substance" is based on the Treasury Department's definition. EIGHTH CIRCUIT MODEL CRIMINAL INSTRUCTION 6.18.922B; 27 C.F.R. § 478.11. That definition provides, in relevant part, that an unlawful user is:

> Any person who is a current user of a controlled substance in a manner other than as prescribed by a licensed physician. Such use is not limited to the use of drugs on a particular day, or within a matter of days or weeks before, but rather that the unlawful use has occurred recently enough to indicate that the individual is actively engaged in such conduct. A person may be an unlawful current user of a controlled substance even though the substance is not being used at the precise time the person seeks to acquire a firearm or receives or possesses a firearm.

27 C.F.R. § 478.11; *see also United States v. Turnbull*, 349 F.3d 558, 562 (8th Cir. 2003), *judgment vacated on other grounds*, 543 U.S. 1099 (2005) (finding appropriate and consistent this definition of unlawful user with standard). This definition of unlawful user directly contradicts defendant's argument that there is no such thing as an unlawful

user and that it was impossible for defendant to ever become aware of his status.

Defendant also argued at trial that "unlawful user of or addicted to" is a conjunctive phrase—meaning that a reasonable person would believe he had to be both an unlawful user and addicted to a controlled substance to satisfy this requirement, or in other words that "addicted to" defines "unlawful user." This is not so. Several courts, and now this Court, have held that "unlawful user of" and "addicted to" are joined disjunctively by way of "or," not conjunctively. *See, e.g.*, *Sobolewski v. United States*, 649 F. App'x 706, 710 (11th Cir. 2016); *United States v. Grover*, 364 F. Supp. 1298, 1300 (D. Utah 2005); *United States v. Bennett*, 329 F.3d 769, 776 (10th Cir. 2003); *United States v. Herrera*, 313 F.3d 882, 884 (5th Cir. 2002) (discussing "unlawful user" and "addicted to" as alternative requirements). The terms are not only separately definable, and a person can be an unlawful user without being addicted and vice versa, but most importantly, the term "or" is naturally disjunctive. *See Reiter v. Sonotone Corp.*, 442 U.S. 330, 339 (1979) ("Canons of construction ordinarily suggest that terms connected by a disjunctive be given separate meanings, unless the context dictates otherwise; here it does not."). The construction of the sentence and its use of "or" indicates a person need only be one of the two categories of persons to satisfy the element. It is not necessary, therefore, that the government prove defendant was or is addicted to a controlled substance if it proves defendant was an unlawful user as alleged.

Here, the evidence shows that on or about August 11, 2022, defendant was an unlawful user of controlled substances, specifically cocaine and marijuana. On May 20, 2022, ATF agents collected defendant's trash and therein found cigar wrappers and loose tobacco, consistent with removing tobacco from a cigar to replace with marijuana to smoke. (Doc. 52, at 2); *see Two Hearts*, 32 F.4th at 663. On August 11, 2022, investigators obtained a urine sample from defendant, and that sample tested positive for two separate cocaine metabolites and a THC metabolite. (Doc. 52, at 5). And defendant tested positive for marijuana and cocaine metabolites because he used cocaine sometime between August 8 and August 11, 2022, and had used marijuana sometime between July 21 and August 11, 2022. (*Id.*). Defendant also admitted that on July 29, 2022, an employee at Black Dog Guns smelled marijuana emanating from defendant because defendant had been smoking marijuana. (*Id.*, at 2-3). Further, defendant was using marijuana five to six times per week between March and July 2022, was consistently using marijuana in August 2022, and used cocaine during the March-August 2022 period. (*Id.*, at 5-6). At no point has defendant had a prescription from a licensed physician for cocaine, THC, or marijuana. (*Id.*). These instances of cocaine and marijuana use were performed knowing defendant was using controlled substances. (*Id.*, at 6). During that same March-August 2022 period, defendant possessed firearms. (*Id.*). Together, this evidence shows a pattern of repeated possession and use of marijuana and cocaine during the period alleged. That this use was done without a prescription establishes that this period of use of controlled substances was done "in a manner other than as prescribed by a licensed physician," *i.e.*, defendant had committed unlawful use of these substances. 27 C.F.R. § 478.11. The government has established, therefore, that defendant's unlawful use of controlled substances occurred during the same period as his firearm possession.

The evidence also shows that defendant knew he belonged to the category of persons barred from firearm possession under the relevant provision. Defendant's argument that the government has not shown defendant knew of his status under the statute is in conflict with the evidence. First, defendant used coded language in his messages with others attempting to conceal his drug use and possession, showing his knowledge that use and possession are unlawful; for example, defendant received a message from another individual saying to just give the person "what you gave me last time" to which defendant responded, "For the same amount of food?" followed by a debate in price. (Joint Exhibit 1, at 171-72); *see United States v. Wilson*, 484 F.3d 267, 276 (4th Cir. 2007) (stating "the primary purpose of coded drug language is to conceal the meaning of the conversation from outsiders through deliberate obscurity"); *United States v. Campbell*, No. 17-CR-2045-LRR, 2018 WL 4517458, at *1 (N.D. Iowa Sept. 20, 2018) (discussing the use of coded language to communicate about drug business, including use of the term "food"). The record contains many more instances of coded language use between defendant and others, indicating defendant used and distributed controlled substances:

- A message to defendant stating, "Can I get a g?" (*Id.*, at 209).
- A message to defendant stating, "Me and my friend are just chilling. He got a lil blow from someone. You trying to chill we need some bud and he needs a contact. He's a close friend of mine. Wouldn't bring a stranger to you[.]" (*Id.*, at 240).
- Another's text message to defendant, "I'm ready to smoke," and defendant's reply of, "Ok I'll be over in a sec." (*Id.*, at 316).
- A text to defendant, "Did u roll one?" to which defendant replied, "I will ys[.]" (*Id.*, at 348).
- A text message to defendant asking, "U got one rolled?" to which defendant replied "Yup[.]" (*Id.*, at 366).
- A text from defendant asking, "Want to hang out in a little bit," a response from another individual of "[a]nd do what," and defendant's message back "[s]moke and talk then idk wing it like usual lol." (*Id.*, at 439).
- A text from defendant, "We could just watch something on Netflix and smoke[.]" (*Id.*, at 576).
- A message to defendant asking, "Could I buy some blow from ya sir," defendant's reply, "No wrong number," and the other person's reply "Hahahaha stfu[.]" (*Id.*, at 705).
- A message asking defendant, "Got any bud?" to which defendant stated,

"Not that I can sell[.]" (*Id.*, at 768).

- A text to defendant stating, "Landon just asked for my number so that Conner could score some snow lol[.]" (*Id.*, at 777).

The use of coded language shows that defendant knew that his conduct—both the use and distribution of drugs—was unlawful.

What is more, on 15 separate occasions defendant completed an ATF form 4473 during the purchase of various firearms, including less than two weeks prior to the events alleged in Count 1, stating that he was not an unlawful user of or addicted to or any depressant, stimulant, narcotic drug, or any other controlled substance. (Docs. 52, at 3 & 61). On that form, defendant had to answer the question, "Are you an unlawful user of, or addicted to, marijuana or any depressant, stimulant, narcotic drug or any other controlled substance?" (Doc. 61, at 1). The sentence that follows says, "Warning: The use or possession of marijuana remains unlawful under Federal law regardless of whether it has been legalized or decriminalized for medicinal or recreational purposes in the state where you reside." (*Id.*). Defendant knew his marijuana use was unlawful as specified in that question, if for no other reason, because the ATF form 4473 explicitly stated that marijuana use and possession are illegal under federal law. Thus, the government has proven defendant knew he fell within the category of persons prohibited from possession of a firearm as an unlawful user of marijuana.

In short, the Court finds beyond a reasonable doubt that defendant is guilty as charged in Count 1 of the Superseding Indictment.

B. Count 2

The Court finds beyond a reasonable doubt that defendant made a false statement during the purchase of a firearm as alleged in Count 2 of the Superseding Indictment. As noted earlier, at issue are the following elements: (1) whether the representation was false; and (2) whether defendant knew the representation was untrue when he made it.

1. Defendant's Representation was False

The evidence shows defendant's representation that he was not an unlawful user of a controlled substance was false. Defendant's assertion that "unlawful user" is undefined and that, consequently, no one could know whether they fall into that category implicates an argument that the representation was not false—something cannot be false if it bears no meaning and does not exist.

The government argues the representation was false. (Doc. 55, at 11). The government cites defendant's admissions that he knew he had used controlled substances throughout March-July 2022, specifically five to six times minimum each week, continuing his consistent use in August 2022. (*Id.*). To this point, the government also refers to defendant's admission of marijuana use on or about July 29, 2022, when a store employee smelled marijuana odor on defendant and that that same day, defendant denied being an unlawful user on an ATF Form 4473. (*Id.*).

Here, the record shows the representation was false. Defendant knew that he had used controlled substances in March, April, May, June, and July 2022 and that he was using marijuana five to six times per week during those months. (Doc. 52, at 3). When defendant made the July 29, 2022 firearm purchase, an employee at Black Dog Guns smelled marijuana emanating from defendant, and this was—by defendant's admission—because defendant had been smoking marijuana. (*Id.*, at 2-3). As discussed in the Court's analysis of Count 1, there is a plethora of evidence proving beyond reasonable doubt that defendant was an unlawful user during the period of events surrounding both Counts. By stating "No" in response to the inquiry whether defendant was an unlawful user of "marijuana or any depressant, stimulant, narcotic drug, or any other controlled substance," defendant made a representation that was false.

The Court finds the government has proven this element of the offense.

2. Defendant Knew His Representation Was False When Making It

Last, the evidence shows defendant knew his representation was false when he made it to the licensed firearms dealer. Defendant asserts once more that defendant could not know his statement was false when filling out the ATF form 4473 because he could not have reasonably understand the "or" in "unlawful user of, or addicted to," to be disjunctive—rather, he thought "addicted to" defined "unlawful user."[4] (Doc. 57, at 10). That "or addicted to" is set off by commas creates a difference in meaning equivalent to indicating "addicted to" is synonymous with "unlawful user of," in defendant's telling. (*Id.*, at 11-12). Defendant also asserts there is an additional component to knowledge here because a defendant must be shown to have known that the question to which he answered untruthfully was "information required to be kept by this chapter." (*Id.*, at 12).

The government argues defendant knew his representation was false when he made it. (Doc. 55, at 11). Defendant knew, the government asserts, that he had never been prescribed THC, cocaine, or marijuana by a licensed physician, was using controlled substances during that time, and that stating he was not an unlawful user on the form was untrue. (*Id.*, at 11-12). Second, the government argues defendant is incorrect that it need prove defendant knew the question to which he answered untruthfully was "information to be kept by this chapter" because it is not an element, but rather, it is a matter of law. (Doc. 60, at 8-9).

As a preliminary matter, defendant's assertion that the government must prove defendant knew the question to which he answered untruthfully was "information required to be kept by this chapter" is incorrect. That is not an element of the offense. *See* EIGHTH CIRCUIT MODEL CRIMINAL INSTRUCTION 6.18.924. Further, the question requires interpretation as a matter of law, not as a matter of fact. *See United States v. Bartucci*, No. 1:19-cr-00244-ADA-BAM, 2023 WL 2189530, at *2 (E.D.C.A. Feb. 23,

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[4] The Court notes this use of "or" is slightly different than that use in Count 1 because the language in Count 1 is not set off by commas, whereas the language on the ATF form is.

2023) (discussing interpretation of this issue as a matter of law); *see also United States v. Cabaccang*, 332 F.3d 622, 624-25 (9th Cir. 2003) (en banc) ("The construction or interpretation of a statute is a question of law"). Title 18, United States Code, Section 923(g)(1) requires licensed 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 by regulation prescribe." A regulation requires that same dealer obtain an ATF form 4473 that includes "certification by the transferee that the transferee is not prohibited by the Act from . . . receiving a firearm which has been shipped or transported in interstate or foreign commerce or possessing a firearm in or affecting commerce." 27 C.F.R. § 478.124(c)(1). By asking defendant whether he was an unlawful user of a controlled substance, this question was gathering information as to whether defendant could lawfully receive or possess a firearm in or affecting commerce. This Court finds that as a matter of law, this question was information required to be kept by the licensed firearms dealer. *See United States v. Johnson*, 680 F.3d 1140, 1146-47 (9th Cir. 2012) (affirming district court finding that, as a matter of law, ATF form 4473 was information to be kept).

Second, a reasonable person would not read the "or" to mean "unlawful user" and "addicted to" are synonyms because, if nothing else, of the utilization of commas surrounding "or." Further, people commonly understand the word "or" to be disjunctive. The language used in the ATF form 4473 tracks the language of Section 922(g)(3), and the terms are separately definable. *See* 27 C.F.R. § 478.11 (defining separately "unlawful user" and "addicted to"). A common sense, natural reading of the terms would be that, because one can be a user of drugs unlawfully without being addicted to those drugs, they are not interchangeable. *See Grover*, 364 F. Supp. at 1302-03 (discussing separately definable terms in Section 922(g)(3) consistent with everyday meaning of those terms). The commas here appear to be ungrammatical under any interpretation or at best, an attempt to separate "addicted to" from unlawful user and avoid any argument one term modifies the other.

Here, the government has shown defendant knew his representation was false at the time he made it. First, defendant was smoking marijuana in July 2022. (Doc. 52, at 2-3). Defendant knew that he had used controlled substances in March, April, May, June, and July 2022. (*Id.*). He stipulated that on July 29, 2022, the owner of Black Dog Guns contacted the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") to inform agents that defendant purchased an Arsenal Bulgarian P-MO1, 9x18 mm from the store that day. (*Id.*). An employee there smelled marijuana odor coming from defendant, and this was because defendant had been smoking marijuana. (*Id.*, at 3). During the transaction that day, defendant filled out an ATF form 4473. (*Id.*). On that form, defendant had to answer the question, "Are you an unlawful user of, or addicted to, marijuana or any depressant, stimulant, narcotic drug or any other controlled substance?" (Doc. 61, at 1). He answered "No." (*Id.*). But as stated earlier, that question was followed by, "Warning: The use or possession of marijuana remains unlawful under Federal law regardless of whether it has been legalized or decriminalized for medicinal or recreational purposes in the state where you reside." (*Id.*). Even had defendant lacked a scintilla of knowledge that using marijuana was unlawful prior to filling out that form, a plain reading of that question and warning would have put him on notice that his use was unlawful, meaning he was an unlawful user, and given him the knowledge that saying "no" was false. In the aggregate, this evidence shows defendant knew he was an unlawful user of marijuana as alleged in Count 2.

Thus, the Court finds the government has proven beyond a reasonable doubt that defendant is guilty of Count 2 of the Superseding Indictment.

C. Defendant's As-Applied Challenges

Last, defendant challenges his indictment on a motion to dismiss, stating that Sections 922(g)(3) and 924(a)(1)(A) are unconstitutional as applied to him. This Court has previously ruled on a facial challenge to Section 922(g)(3) in this case and incorporates all finding and analysis here. (Doc. 41).

An as-applied void for vagueness challenge to a statute looks to "whether the statute gave adequate warning, under a specific set of facts, that the defendant's behavior was a criminal offense." *United States v. Washam*, 312 F.3d 926, 931 (8th Cir. 2002).

1. 922(g)(3)

The Court finds Section 922(g)(3) is constitutional as-applied to defendant. As stated in its analysis of Count 1, the Court finds the government has proven all elements of Count 1, including that defendant was then an unlawful user. Defendant argues Section 922(g)(3) is unconstitutionally vague as-applied to him because "unlawful user" is vague and does not provide notice. (Doc. 57, at 4-6). Citing *United States v. Bramer*, 832 F.3d 908 (8th Cir 2016), defendant asserts that the government cannot simply prove he knew he was a user of a controlled substance but instead must prove he was an unlawful user, a fact to which he has not stipulated. (*Id.*, at 4-7).

The government asserts that though defendant has not stipulated to being an "unlawful user," he has stipulated to facts that in the aggregate show he was an unlawful user of controlled substances. (Doc. 60, at 1-3).

The application of this statute is not unconstitutional as applied to this defendant. In *Bramer*, the court found Section 922(g)(3) was not void for vagueness as-applied to the defendant's conduct. 832 F.3d at 909-10. There, defendant had stipulated that he was an unlawful user when also in knowing possession of firearms, meaning there was no basis to conclude the term was vague as applied to him. *Id.* But here, defendant stipulated to facts showing that at the time he possessed the firearms referenced in Count 1 of the Superseding Indictment, he was an "unlawful user" of controlled substances, specifically marijuana and cocaine. His conduct was clearly proscribed.[5] Nothing in the

[5] Defendant argues again that nothing would have put him on notice as to what unlawful use was, but again, not only are both "unlawful user" and "addicted to" defined in the Code of Federal Regulations, but defendant also was given warnings 15 separate times when filling out the ATF

application of Section 922(g)(3) to defendant is arbitrary or outside the scope of the conduct the statute covers; defendant's possession of the firearms as an "unlawful user" of drugs is the exact conduct proscribed in the statute. 18 U.S.C. § 922(g)(3) ("It shall be unlawful for any person . . . who is an unlawful user of . . . any controlled substance[.]"). Thus, Section 922(g)(3) is not unconstitutional as-applied to this defendant.

Thus, the Court **denies** defendant's motion on this ground.

2. 924(a)(1)(A)

The Court finds Section 924(a)(1)(A) is constitutional as-applied to defendant. Defendant challenges Section 924(a)(1)(A) as-applied to him because he could not have possibly known he was an unlawful user and thus that the statement that he was not an unlawful user was a false statement. (Doc. 57, at 8-10).

The Court finds that this statute is not vague as-applied to defendant. Again, defendant stipulated to facts showing that he knew he was using controlled substances in a way that was unlawful and was thus an unlawful user. The ATF form 4473 even told him this was the case. His conduct was clearly proscribed by Section 924(a)(1)(A), and he had sufficient notice that his conduct fell within that statute. Its application to defendant is neither arbitrary nor outside the statute's scope of conduct. Thus, Section 924(a)(1)(A) is not unconstitutional as applied to defendant.

Thus, the Court **denies** defendant's motion on this ground.

VI. CONCLUSION

Considering the evidence in the light most favorable to the government, the Court **denies** defendant's motion for judgment of acquittal under Rule 29 of the Federal Rules of Criminal Procedure. Based on the totality of the evidence, the Court finds beyond a

form 4473 what it meant under the law to be an unlawful user and that his conduct fell into that status.

reasonable doubt that defendant is guilty of the crime of possession of a firearm by a drug user, in violation of Title 18, United States Code, Sections 922(g)(3) and 924(a)(8), as charged in Count 1 of the Superseding Indictment and guilty of the crime of false statement during purchase of a firearm, in violation of Title 18, United States Code, Section 924(a)(1)(A), as charged in Count 2 of the Superseding Indictment. Defendant's as-applied motions to dismiss the Superseding Indictment are **denied**. (Doc. 37).

The Court will set this case for sentencing on a later date by separate order. The Court orders the preparation of a presentence investigation report. Defendant will remain in custody of the United States Marshal pending sentencing.

IT IS SO ORDERED this 1st day of December, 2023.

C.J. Williams
United States District Judge
Northern District of Iowa

APPENDIX E

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF IOWA CEDAR RAPIDS DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ALEXANDER WESLEY LEDVINA,

Defendant.

No. 23-CR-36-CJW-MAR

MEMORANDUM OPINION AND ORDER

I. INTRODUCTION

This matter is before the Court on defendant's Motion to Dismiss the Indictment. (Doc. 37). The government filed a timely resistance. (Doc. 39). Defendant filed a timely reply. (Doc. 40). For the following reasons, the Court **denies** defendant's motion to dismiss Count 1. The Court **holds in abeyance** defendant's motion to dismiss Count 2 until trial.

II. RELEVANT BACKGROUND

On May 17, 2023, a grand jury indicted defendant in a two-count indictment charging him with one count of possession of a firearm by a drug user (Count 1) in violation of Title 18, United States Code, Sections 922(g)(3) and 924(a)(8) and making a false statement during purchase of a firearm (Count 2) in violation of Title 18, United States Code, Section 924(a)(1)(A). (Doc. 2). In Count 1, the indictment alleges that defendant, knowing he was an unlawful user of marijuana and cocaine, knowingly possessed firearms, all in and affecting commerce: a Smith & Wesson M&P 9 Shield Plus, 9x19 mm caliber pistol; an Arsenal Bulgarian P-MO1, 9x18 mm caliber pistol; a Ruger 10/22, .22 LR caliber rifle; a Zastava Arms ZPAP92, 7.62x39mm caliber pistol; and an IWI Tavor X95, 5.56 NATO caliber rifle. The indictment also alleges in Count

2 that in connection with his acquisition of an Arsenal Bulgarian P-MO1, 9x18 mm caliber pistol, defendant knowingly made false statements and representations, specifically that he was not an unlawful user of a controlled substance.

On July 25, 2023, a grand jury returned a two-count superseding indictment with identical allegations as the original but adding a forfeiture allegation to any and all firearms and ammunition involved in or used in the knowing violation of Section 922(g)(3). (Doc. 32).

III. DISCUSSION

Defendant argues the Court should dismiss Counts 1 and 2 of the superseding indictment based on two separate constitutional arguments. (Doc. 37-1). First, defendant asserts Title 18, United States Code, Sections 922(g)(3) and 924(a)(1)(A) are unconstitutionally vague on their faces in violation of the Due Process Clause of the Fifth Amendment. (*Id.*, at 4-12). Second, defendant argues that Section 922(g)(3) is a facially unconstitutional violation of the Second Amendment right to bear arms. (*Id.*, at 12-18). Defendant asserts 922(g)(3) is inconsistent with this Nation's historical tradition of firearm regulation, as required by *Bruen*. *N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022). (Docs. 37; 37-1, at 12-18).

The Court finds defendant's facial challenge to Section 922(g)(3) fails, and thus, it denies defendant's motion to dismiss Count 1 on that ground. Second, the Court finds defendant's facial challenge to Section 924(a)(1)(A) is an as-applied challenge in disguise, which cannot be brought at this time; thus, it holds the motion to dismiss Count 2 in abeyance until the full presentation of evidence at trial. The Court also finds that Section 922(g)(3) does not violate the Second Amendment on its face and therefore denies defendant's motion to dismiss Count 1 on that ground. In arriving at this conclusion, the Court first finds that Section 922(g)(3) implicates conduct protected by the Second

Amendment. Second, the Court concludes that Section 922(g)(3) is consistent with this Nation's traditional regulation of possession of firearms by criminals.

A. Due Process Clause Facial Challenges

Defendant asserts the Indictment must be dismissed because he was not given notice as to the illegality of his alleged conduct under either Section 922(g)(3) or 924(a)(1)(A). (Doc. 37-1). For the following reasons, the Court denies the motion to dismiss Count 1 as void on its face, and it holds in abeyance the motion to dismiss Count 2 as void on its face.

1. Facial Challenge to Section 922(g)(3)

First, defendant alleges Section 922(g)(3) is unconstitutionally vague because the terms "user" and "addict" are vague and provide no notice to individuals whether they fall into the class covered by the statute. (Doc. 37-1, at 4-10). Defendant asserts that the lack of definition or temporal constraints means the statute is unworkable and reads that anyone who has ever used a controlled substance of any kind, quantity, and at any time is left to believe Section 922(g)(3) applies to them. (*Id.*, at 6-10).

In *United States v. Owens*, Case No. 23-CR-22-CJW-MAR, Doc. 24, this Court addressed an identical argument that the vague use of terms "user" and "addict" render Section 922(g)(3) unconstitutionally vague on its face. There, this Court rejected a facial challenge to Section 922(g)(3) because the argument presented did not warrant facial review when no fundamental right was infringed and when process or arbitrary enforcement were not attacked. Just as in *Owens*, defendant has challenged only what he perceives as imprecise language in Section 922(g)(3), not any arbitrary enforcement or process and, consequently, lack of notice. Thus, the Court adopts its analysis and reasoning in *Owens* here and need not repeat the same.[1]

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[1] Defendant also argues that judicial intervention to "salvage" Section 922(g)(3) would violate the Separation of Powers doctrine. (Doc. 37-1, at 10-11). Because this Court does not evaluate

The Court, therefore, denies defendant's motion to dismiss on this ground.

2. Facial Challenge to Section 924(a)(1)(A)

Next, defendant challenges Section 924(a)(1)(A), stating the text is ambiguous and thus void. (Doc. 37-1, at 11). Section 924(a)(1)(A) makes it a crime to knowingly provide false statements or representations to a licensed firearms dealer during the purchase of a firearm. 18 U.S.C. § 924(a)(1)(A). Defendant argues that because the Indictment alleges defendant's false statement was that he was not an "unlawful user," and "unlawful user" is vague, then Section 924(a)(1)(A) is vague. (Doc. 37-1, at 11).

Here, defendant's challenge is not a facial challenge to Section 924(a)(1)(A). Defendant instead challenges the application of Section 924(a)(1)(A) as to him for stating he is not an "unlawful user," which the government identified as an allegedly false statement falling under Section 924(a)(1)(A). What defendant challenges here is not the statute itself, but instead, the form asking him whether he is an unlawful user and his specific factual circumstance. In other words, defendant is not alleging that Section 924(a)(1), making it a crime to make a false statement in purchasing a firearm, is a vague statute on its face. Defendant is asserting that the form he filled out, which asks if he is an unlawful user of controlled substances, is vague. Whether the form is so vague that defendant could not be found to have knowingly made a false statement is a question of fact for the jury to decide in the first instance. As such, the Court cannot now address this challenge. *United States v. Turner*, 842 F.3d 602, 605 (8th Cir. 2016) (stating a district court cannot adjudicate an as-applied challenge without resolving factual issues related to the alleged offense, and thus, must wait to do so until trial). Because this is an as-applied challenge, the Court must not resolve it until trial.

Thus, the Court holds in abeyance its ruling on this ground until the presentation of evidence at trial.

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the merits of defendant's facial challenge, it need not address this argument.

B. ***Post-*****Bruen** ***Challenge***

Defendant asserts Section 922(g)(3) violates the Second Amendment right to bear arms. (Doc. 37-1, at 12-18). Defendant argues first that the Second Amendment's plain text covers conduct regulated in Section 922(g)(3). (*Id.*, at 13-14). Further, defendant asserts the government cannot and has not met its burden to show that the regulation of the conduct in the statute—possession of a firearm by an unlawful drug user—is consistent with this Nation's historical tradition of firearm regulation as required in *Bruen*. (*Id.*, at 14-18). For the reasons that follow, the Court denies the motion to dismiss on this ground.

1. Implication of the Second Amendment

The Second Amendment to the United States Constitution provides "[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." U.S. CONST. amend. II. Title 18, United States Code, Section 922(g), however, provides that "[i]t shall be unlawful for any person . . . (3) who is an unlawful user of or addicted to any controlled substance . . . to . . . possess in or affecting commerce, any firearm or ammunition . . .." The question here is whether Section 922(g)(3) unconstitutionally infringes upon defendant's right to keep and bear arms guaranteed to persons under the Second Amendment.

In *Bruen*, the United States Supreme Court explained that "[w]hen the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." 142 S. Ct. at 2129-30. Only after the government makes that showing "may a court conclude that the individual's conduct falls outside the Second Amendment's unqualified command." *Id.* at 2130 (internal quotation marks and further citation omitted). In *Bruen*, the Supreme Court held unconstitutional a State of New York's penal code provision making it a crime to possess a firearm outside the home without a license, when licensing required applicants to satisfy a "proper cause" for possessing a firearm by "demonstrat[ing] a special need for self-protection distinguishable from that of the general community." 142 S. Ct. at 2123 (further citation omitted). The Supreme Court determined that all lower courts had erred in applying means-end scrutiny of statutes regulating firearms, finding that statutes regulating conduct protected by the Second Amendment are presumptively unconstitutional unless the government can show that "it is consistent with the Nation's historical tradition of firearm regulation." *Id.* at 2129-30. Because the State of New York only issued public-carry licenses when an applicant demonstrated a special need for self-defense, the *Bruen* Court found "the State's licensing regime violates the Constitution." *Id.* at 2122. "*Bruen* transformed and left uncharted much of the legal landscape" of Second Amendment jurisprudence. *United States v. Charles*, 22-CR-00154-DC, 2022 WL 4913900, at *1 (W.D. Tex. Oct. 3, 2022).

Under *Bruen*, the threshold question a court must address is whether the statute in question regulates conduct protected by the Second Amendment. Here, Section 922(g)(3) criminalizes possession of a firearm, which is conduct expressly protected by the Second Amendment. The text of the Second Amendment does not qualify who may possess firearms, but rather uses the word "people." Thus, as a textual matter, the plain reading of the Second Amendment covers defendant who is a person under the Constitution. *See United States v. Perez-Gallan*, 22-CR-00427-DC, 2022 WL 16858516, at *8-9 (W.D. Tex. Nov. 10, 2022) (finding the Second Amendment applies to members of the political community and is not limited to law-abiding citizens). Thus, the Court answers the threshold question in the affirmative.

2. *Section 922(g)(3) is Consistent with the Nation's Tradition of Firearm Regulation*

Having found that Section 922(g)(3) implicates conduct protected by the Second Amendment, the next question is whether it is consistent with the Nation's historical tradition of firearm regulation. The second prong of *Bruen* requires the Court to determine "if there is a history and tradition of keeping guns from those engaged in criminal conduct"; if so, then the law is constitutional "whether the Second Amendment right belongs to all Americans or just to ordinary, law-abiding citizens." *Fried v. Garland*, Case No. 4:22-cv-164-AW-MAF, 2022 WL 16731233, at *5 (N.D. Fla. Nov. 4, 2022) (quoting *Heller*, 554 U.S. at 581; *Bruen*, 142 S. Ct. at 2122) (internal quotation marks and citations omitted). This Court has thrice found that Section 922(g)(3) is constitutional. *See United States v. Garcia*, Case No. 23-CR-2018-CJW-MAR, at Doc. 25; *United States v. Springer*, Case No. 23-CR-1013-CJW-MAR, at Doc. 44; *United States v. Wuchter*, Case No. 23-CR-2024-CJW-MAR, at Doc. 33. The Court makes the same finding here for the same reasons, which it will repeat here.

The Supreme Court's holding in *Bruen* did not overturn *District of Columbia v. Heller*, in which the Court recognized the importance of "the historical tradition of prohibiting the carrying of 'dangerous and unusual weapons.'" 554 U.S. 570, 627 (2008) (citations omitted). In fact, the *Bruen* Court expressly stated that its opinion was "consistent with *Heller* and *McDonald* [*v. City of Chicago*, 561 U.S. 742 (2010)]." 142 S. Ct at 2122. As in *Heller* and *McDonald*, the issue in *Bruen* concerned "how and why the regulations burden a law-abiding citizen's right to armed self-defense." *Id.* at 2133. The *Bruen* Court noted that it was undisputed that the petitioners were "two ordinary, law-abiding, adult citizens" who are "part of 'the people' whom the Second Amendment protects." *Id.* at 2134. In the first paragraph of the *Bruen* opinion, the Court framed the issue as follows:

> In *District of Columbia v. Heller*, 554 U.S. 570 (2008), and *McDonald v. Chicago*, 561 U.S. 742 (2010), we recognized that the Second and Fourteenth Amendments protect the right of an ordinary, law-abiding citizen to possess a handgun in the home for self-defense. In this case, petitioners and respondents agree that ordinary, law-abiding citizens have a similar right to carry handguns publicly for their self-defense. We too agree, and now hold, consistent with *Heller* and *McDonald*, that the Second and Fourteenth Amendments protect an individual's right to carry a handgun for self-defense outside the home.

Id. at 2122 (parallel citations omitted). In the concluding paragraph of the majority opinion, the Court repeated that the right to bear and keep arms belonged to "law-abiding citizens with ordinary self-defense needs." *Id.* at 2156.

Thus, it is abundantly clear that the *Bruen* Court did not disturb the conclusions in *Heller* and *McDonald* in which the Justices made it plain that it left undisturbed government regulations prohibiting felons from possessing firearms. *Id.* at 2162 (Kavanaugh, J., concurring). It follows that, since *Bruen*, lower courts have consistently held as constitutional Section 922(g)(1) which makes it an offense for felons to possess firearms. *See United States v. Price*, No. 2:22-cr-00097, 2022 WL 6968457, at *8 (S.D. W.Va. Oct. 12, 2022) (collecting cases). The broader question the Supreme Court left open is the extent to which statutes prohibiting other categories of people from possessing firearms is supported by the historic regulation of firearm possession.

In *Heller*, the Supreme Court emphasized that despite its holding that the Second Amendment conferred an individual right to bear arms, it was not undertaking "an exhaustive historical analysis . . . of the full scope of the Second Amendment, [and that] nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms." *Heller*, 554 U.S. at 626-

27. The *Heller* Court explained: "We identify these presumptively lawful regulatory measures only as examples; our list does not purport to be exhaustive." 554 U.S. at 627 n.26. Later, in *McDonald*, 561 U.S. at 785-87, the Supreme Court reaffirmed the sentiment that *Heller* was not meant to create doubt about the regulations that prohibited firearm possession by certain groups of people or in certain places.

After *Heller*, but prior to *Bruen*, the Eighth Circuit Court of Appeals held that Section 922(g)(3) was a lawful exception to the Second Amendment—an exception consistent with the historical understanding of the amendment's protections. In *United States v. Seay*, 620 F.3d 919, 925 (8th Cir. 2010), the Eighth Circuit rejected a facial constitutional challenge to Section 922(g)(3). The Eighth Circuit explained:

> Nothing in Seay's argument convinces us that we should depart company from every other court to examine § 922(g)(3) following *Heller*. Further, § 922(g)(3) has the same historical pedigree as other portions of § 922(g) which are repeatedly upheld by numerous courts since *Heller*. *See* Gun Control Act of 1968, Pub. L. No. 90-618, 82 Stat. 1213. Moreover, in passing § 922(g)(3), Congress expressed its intention to "keep firearms out of the possession of drug abusers, a dangerous class of individuals." *United States v. Cheeseman*, 600 F.3d 270, 280 (3d Cir. 2010), *pet. for cert. filed*, 78 U.S.L.W. 3731 (U.S. June 1, 2010) (No. 09-1470). As such, we find that § 922(g)(3) is the type of 'longstanding prohibition[ ] on the possession of firearms' that *Heller* declared presumptively lawful. *See* 128 S. Ct. at 2816–17. Accordingly, we reject Seay's facial challenge to § 922(g)(1).

Id. (alteration in original).

The *Seay* Court did not conduct the type of historic analysis the Supreme Court contemplated in *Bruen*. Still, the Court does not find persuasive defendant's argument. (Doc. 39-1, at 2 (citing *United States v. Rahimi*, 61 F.4th 443 (5th Cir. 2023)). As the Honorable Stephen H. Locher, United States District Court Judge for the Southern District of Iowa, reasoned:

> All the same, nothing in *Bruen* expressly repudiates the holding of *Seay*. To the contrary, in a concurring opinion in *Bruen*, Justice Kavanaugh

> (joined by Chief Justice Roberts) reiterated the earlier admonitions of Justices Scalia (in *Heller*) and Alito (in *McDonald*) that "nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill . . ." *Bruen*, 142 S. Ct. at 2162 (Kavanaugh, J., concurring (quoting *Heller*, 554 U.S. at 626, 128 S.Ct. 2783)). As *Seay* relied heavily on the same "longstanding prohibition" language in affirming the facial constitutionality of § 922(g)(3), *see* 620 F.3d at 925, it is difficult for this Court to conclude *Seay* is no longer good law. Instead, the proper course is to treat *Seay* as binding and "leav[e] to [the Eighth Circuit] the prerogative of overruling its own decisions." *United States v. Coonce*, 932 F.3d 623, 641 (8th Cir. 2019) (quoting *Rodriguez de Quijas v. Shearson/Am. Express, Inc.*, 490 U.S. 477, 484, 109 S.Ct. 1917, 104 L.Ed.2d 526 (1989)); *see also United States v. Wendt*, --- F. Supp. 3d ----, ----, 2023 WL 166461, at *5 (S.D. Iowa Jan. 11, 2023) (declining to interpret *Bruen* as having invalidated firearm restrictions under the Bail Reform Act absent "much clearer guidance from higher courts").

United States v. Le, No. 4:23-cr-00014-SHL-HCA, 2023 WL 3016297, at *2 (S.D. Iowa Apr. 11, 2023).

Here, the Court agrees with Judge Locher's reasoning. Absent the Eighth Circuit itself finding that *Bruen* overturned its holding in *Seay*, this Court must treat *Seay* as binding precedent. For that reason, the Court would deny defendant's motion to dismiss on the ground that Section 922(g)(3) violates the Second Amendment. *See also Gilpin v. United States*, Civil No. 22-04158-CV-C-RK-P, 2023 WL 387049, at *4 (W.D. Mo. Jan. 3, 2023) (rejecting a post-*Bruen* challenge to Section 922(g)(3), finding that *Bruen* did not overturn binding precedent in *Seay*).

Regardless, even if the Court did not find *Seay* binding, under the more robust historic analysis demanded by *Bruen*, the Court is persuaded that Section 922(g)(3) withstands a constitutional attack. In *United States v. Bena*, 664 F.3d 1180, 1183-84 (8th Cir. 2011), the Eighth Circuit conducted a more thorough historic analysis of the regulation of firearms as it relates to dangerous people during the Founding era in rejecting a constitutional challenge to Section 922(g)(8), which criminalizes firearm possession by persons subject to a court order of protection for domestic abuse. There, the Eighth Circuit concluded there was "a common-law tradition that permits restrictions directed at citizens who are not law-abiding and responsible." *Bena*, 664 F.3d at 1183. Further, as Justice Barrett, who was then sitting as a judge on the Seventh Circuit Court of Appeals, noted, there is ample evidence from the Founding era that firearms were restricted from those who were deemed dangerous to society. *See Kanter v. Barr*, 919 F.3d 437, 464 (7th Cir. 2019) (Barrett, J., dissenting) ("The historical evidence does, however, support a different proposition: that the legislature may disarm those who have demonstrated a proclivity for violence or whose possession of guns would otherwise threaten the public safety. This is a category simultaneously broader and narrower than 'felons'—it includes dangerous people who have not been convicted of felonies but not felons lacking indicia of dangerousness."). Congress considered drug abusers to be a "dangerous class of individuals." *Seay*, 620 F.3d at 925. Congress made it illegal for unlawful drug users to possess firearms for the common sense and obvious reason that someone using illegal drugs, in possession of a firearm, poses a real danger to the community. *See United States v. Yancey*, 621 F.3d 681, 685 (7th Cir. 2010) ("[H]abitual drug abusers, like the mentally ill, are more likely to have difficulty exercising self-control, making it dangerous for them to possess deadly firearms."). It follows, then, that barring unlawful drug users who pose a danger to society is consistent with the history of firearm regulation at the time the Second Amendment was adopted.

This Court is not alone in reaching the conclusion that Section 922(g)(3) does not violate the Second Amendment. Numerous other district courts have reaffirmed the conclusion that Section 922(g)(3) is constitutional after *Bruen*. *See, e.g.*, *United States v. Walker*, 8:22-CR-291, 2023 WL 3932224, at *5 (D. Neb. June 9, 2023) (rejecting post-*Bruen* challenge to Section 922(g)(3), finding the *Seay* case controlling); *Le*, 2023

WL 3016297, at *5 (rejecting a post-*Bruen* constitutional challenge to Section 922(g)(3)); *United States v. Posey*, Case No. 2:22-CR-83 JD, 2023 WL 1869095, at *9-10 (N.D. Ind. Feb. 9, 2023) (denying as applied and facial post-*Bruen* challenge to Section 922(g)(3)); *United States v. Lewis*, Case No. CR-22-368-F, Case No. CR-22-395-F, 2023 WL 187582, at *4 (W.D. Okla. Jan. 13, 2023) (rejecting a post-*Bruen* constitutional challenge to Section 922(g)(3)); *United States v. Sanchez*, W-21-CR-00213-ADA, 2022 WL 17815116, at *3 (W.D. Tex. Dec. 19, 2022) (holding that Section 922(g)(3) is "consistent with this Nation's historical tradition of firearm regulation"); *Fried*, 2022 WL 16731233, at *7 ("At bottom, the historical tradition of keeping guns from those the government fairly views as dangerous—like alcoholics and the mentally ill—is sufficiently analogous to modern laws keeping guns from habitual users of controlled substances . . .. The challenged laws are consistent with the history and tradition of this Nations' [sic] firearm regulation."); *United States v. Seiwert*, Case No. 20 CR 443, 2022 WL 4534605, at *2 (N.D. Ill. Sept. 28, 2022) (holding that Section "922(g)(3) is relevantly similar to regulations aimed at preventing dangerous or untrustworthy persons from possessing and using firearms, such as individuals convicted of felonies or suffering from mental illness"); *United States v. Daniels*, 610 F.Supp.3d 892, 897 (S.D. Miss. 2022) (finding Section 922(g)(3) constitutional after determining that "analogous statutes which purport to disarm persons considered a risk to society—whether felons or alcoholics—were known to the American legal tradition").

True, some other district courts have found Section 922(g)(3) violates the Second Amendment. *See, e.g.*, *United States v. Connelly*, Cause No. EP-22-CR-229(2)-KC, 2023 WL 2806324, at *12 (W.D. Tex. Apr. 6, 2023); *United States v. Harrison*, Case No. CR-22-00328-PRW, 2023 WL 1771138, at *24 (W.D. Okla. Feb. 3, 2023). Defendant relies heavily on these isolated decisions.[2] (Docs. 37-1; 40). The Court has

[2] Defendant places an especially large emphasis on the Fifth Circuit Court of Appeals' decision

reviewed these non-binding decisions and, with respect, simply disagrees with the narrow view these courts took of the historic precedent of regulating firearm possession by dangerous and unlawful citizenry. The Court is persuaded that Section 922(g)(3) is a constitutional restriction consistent with historical tradition.

Thus, the Court **denies** defendant's motion to dismiss Count 1, finding Section 922(g)(3) does not violate the Second Amendment on its face.

3. As Applied Challenge

Defendant has notified the Court of his intention to make an as-applied challenge to Section 922(g)(3) after trial and reserves the right to do so after the complete presentation of evidence. (Doc. 37-1, at 4 n.1). The government argues an as-applied challenge is premature because as-applied challenges may only be decided after the presentation of evidence at trial. (Doc. 39, at 15). Both parties are correct that an as-applied challenge is premature at this point. *Turner*, 842 F.3d at 605 (stating a district court cannot adjudicate an as-applied challenge without resolving factual issues related to the alleged offense, and thus, must wait to do so until trial). Defendant is free to make such a motion after the complete presentation of evidence at his upcoming trial.

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in *United States v. Daniels*, Case No. 1:22-CR-58-1 (5th Cir. Aug. 9, 2023). (Doc. 40). This decision is not only not binding on this Court, but the Court also respectfully disagrees with that court's reasoning and treatment of analogues in that case. This narrow reading and demand for near perfect analogues—despite acknowledging *Bruen*'s pronouncement analogues need not be perfect—is too severe and places too great an emphasis on the specific controlled substance Daniels used—marijuana—when Section 922(g)(3) regulates unlawful users and addicts of any controlled substance, not specific controlled substances. 18 U.S.C. § 922(g)(3).

IV. CONCLUSION

For these reasons, defendant's motion to dismiss the indictment (Doc. 37) is **denied** as to Count 1. The Court **holds in abeyance** defendant's motion to dismiss Count 2 until trial.

IT IS SO ORDERED this 16 day of August, 2023.

C.J. Williams
United States District Judge
Northern District of Iowa

APPENDIX F

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 24-2441

United States of America

Appellee

v.

Alexander Wesley Ledvina

Appellant

Appeal from U.S. District Court for the Northern District of Iowa - Cedar Rapids
(1:23-cr-00036-CJW-1)

ORDER

The petitions for rehearing by the panel are denied.

April 9, 2026

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Susan E. Bindler

APPENDIX G

CONSTITUTIONAL AND STATUTORY PROVISIONS

U.S. Const. Amend. II

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.

U.S. Const. Amend. V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

18 U.S.C. § 922(g)(3)

(g) It shall be unlawful for any person--

(3) who is an unlawful user of an 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.

18 U.S.C. § 924(a)(1)(A)

(a)(1) Except as otherwise provided in this chapter, whoever--

(A) knowingly makes any false statement or representation with respect to the information required by this chapter to be kept in the records of a person licensed under this chapter or in applying for any license or exemption or relief from disability under the provisions of this chapter;

shall be fined under this title, imprisoned not more than five years, or both.