

No. 26-5025

In the Supreme Court of the United States

ALEXANDER WESLEY LEDVINA,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

*ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT*

REPLY BRIEF FOR THE PETITIONER

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REPLY BRIEF

The government does not address the petition as presented and mischaracterizes it as merely challenging the 18 U.S.C. § 922(g)(3) count on Second Amendment and vagueness grounds. It only argues that certiorari should be denied because the § 922(g)(3) count was vacated and remanded by the court of appeals to the district court in light of circuit precedent decided prior to this Court's decision in *United States v. Hemani*, 146 S. Ct. 1677 (2026), where the government implies Ledvina "will be able to raise his current claims." See Mem. in Opp. at 2. That argument overlooks the actual judgment under review, the specific errors it contains and sidesteps key issues central to the relief sought in the petition—full reversal of both counts—that the government seeks to insulate from review.

The government's response conceals that the petition seeks review of the *affirmed* 18 U.S.C. § 924(a)(1)(A) count, which is deeply intertwined with the disposition of the § 922(g)(3) count. See Pet. App. at 9a. The validity of the § 924(a)(1)(A) count hinges on whether Ledvina was prohibited from possessing a firearm by § 922(g)(3). See Pet. at 10-13, 22-25. As that count was unconditionally affirmed by the court of appeals, Ledvina cannot obtain reversal on remand. If the court of appeals' judgment is permitted to stand, the district court is powerless to effect any kind of relief regarding that count under the mandate rule and the Eighth Circuit will refuse to review it on a subsequent appeal as law of the case. This bifurcated outcome is precisely why review is being sought in this Court. Ledvina can only receive the relief he seeks through this Court's intervention.

Central to the injury the petition seeks to review is the remand itself. Sitting as the most extreme outlier in an ongoing circuit split, the Eighth Circuit's remand practice forms distinct compounding injuries under the Fifth and Sixth Amendments. *See* Pet. at 9-10. It does not merely permit reconsideration of a legal question. The remand will subject petitioner to post-trial fact-finding by a judge, regarding facts not alleged in the indictment, under the preponderance of the evidence standard while giving the government a second chance to supply evidence it failed to produce in the first proceeding in order to establish criminal liability. *See* Supp. Brief at 6-11. These issues are fundamental to the further conduct of the case and are ripe for review. Furthermore, the protections of the Double Jeopardy Clause in particular will be completely lost if Ledvina is forced to go through this procedure before this claim is reviewed.

The suggestion that the district court has a clean slate to apply *Hemani* to the Second Amendment challenge on remand does not withstand scrutiny. The Eighth Circuit has already doubled down on its pre-*Hemani* approach to as-applied challenges to § 922(g)(3) that utilizes analogues that were expressly rejected in *Hemani* and follows a procedure that conflicts with this Court's method in *Hemani*. *See* Supp. Brief at 4-6. As the inferior court, the district court is not free to deviate from the Eighth Circuit's flawed approach and properly apply *Hemani* on remand.

Further, the government's response does not address the court of appeals failure to follow constitutional avoidance in this case. The statutory and *mens rea* issues form independent grounds that could have finally resolved this case and

resulted in the relief that Ledvina seeks, avoiding the sensitive constitutional issues and the concerning remand procedure altogether. *See* Pet. at 20-31.

The government does not contest the existence of an ongoing circuit split regarding both the analogues and procedures for resolving as-applied challenges to § 922(g)(3). It does not dispute that these issues were properly preserved below, the underlying facts, or the procedural history. Nor does it deny the importance of the questions presented.

The ongoing circuit split, the Eighth Circuit's compounding constitutional violations in resolving as-applied challenges, its inconsistency with this Court's precedent, and its disregard of constitutional avoidance warrants plenary review from this Court. At a minimum, a GVR should issue directing the court of appeals to address the potentially dispositive non-constitutional issues before reassessing its approach to the constitutional issues, including the Second Amendment's implications for the § 924(a)(1)(A) count, as it should have done in the first instance in light of *Hemani*.

I. The Relief Sought Can Only Be Obtained with this Court's Intervention

The government's suggestion that Ledvina can raise all of his current claims and obtain the full relief he seeks on remand does not withstand scrutiny. The court of appeals only "vacate[d] Ledvina's conviction under § 922(g)(3) and remand[ed] to the district court to reassess his Second Amendment as-applied challenge." Pet. App. 9a. It "affirm[ed] the district court's decision on his other claims as well as his conviction under § 924(a)(1)(A)" without addressing the challenges to that count,

even though those issues were properly preserved and fully litigated by both parties. *Id.* That bifurcated disposition forecloses consideration of the remaining issues raised in the petition or any relief whatsoever from the § 924(a)(1)(A) conviction in the lower courts during the remand.

The constitutional, statutory, and *mens rea* arguments apply with equal force to both counts. It would be bizarre to recognize that a marijuana user has a Second Amendment right to keep and bear arms, yet still permit a felony conviction—and the lifetime disarmament that follows—for answering “no” to a question designed to deny him that very right. *See* Pet. at 10-13. It is also logically incoherent to sustain a conviction for falsely denying “unlawful user” status if, as a matter of law, the defendant did not fall within that category. *Id.* at 22-25. Further, it is equally inconsistent to uphold the § 924(a)(1)(A) count if the evidence was insufficient to establish knowledge of being an “unlawful user” at the time of the relevant conduct and sustain the § 922(g)(3) count. *Id.* at 26-29.

The district court has no authority to consider these additional issues or to grant any relief on the § 924(a)(1)(A) count. The mandate is strictly limited “to reassess[ing] his Second Amendment as-applied challenge” to § 922(g)(3). Pet. App. 9a. *See Sprague v. Ticonic National Bank*, 307 U.S. 161, 168 (1939) (“The general proposition ... that [the district court] was bound to carry the mandate of the upper court into execution and could not consider the questions which the mandate laid at rest—is indisputable.”). On any subsequent appeal, the Eighth Circuit would refuse to revisit these issues under the law of the case doctrine. *See United States v. Lara-*

Ruiz, 781 F.3d 919, 923 (8th Cir. 2015) (“our previous ruling upholding [the] conviction ... is ‘law of the case’ and cannot be challenged now in this appeal.”).

Absent this Court’s intervention vacating the judgment of the court of appeals, Ledvina cannot obtain the relief he seeks. He will be left with a felony conviction under § 924(a)(1)(A) that is unassailable in the lower courts. A plenary grant, or even a GVR, is the only way to open the door for any further consideration of these claims.

II. The Procedural Posture is Appropriate for Certiorari

The government’s argument that certiorari should be denied because the remand regarding the Second Amendment challenge to the § 922(g)(3) count places the petition in an interlocutory posture is unavailing. The posture of this case is no impediment to granting review because this case turns on important and purely legal questions that are fundamental to the further conduct of the case and could finally resolve it at this juncture. Each of the questions presented seek not only a reversal of the remanded count, but also the affirmed count. Furthermore, review of the remand itself is a central point of contention and the case sits in the precise procedural posture needed to challenge it.

As a preliminary matter, the procedural posture has no effect on the Court’s jurisdiction to grant certiorari. Under 28 U.S.C. § 1254(1) this Court has jurisdiction to review any judgment of the court of appeals. This statutory grant of authority is not dependent on the finality of that judgment. *Hohn v. United States*, 524 U.S. 236, 241 (1998). However, the district court’s judgment, following a trial

and sentencing, was final. Furthermore, the district court has stayed the remand proceedings, without any objection from the government, pending this Court's disposition. Dist. Ct. Dkt. 123. There is therefore no risk that the proceedings on remand may affect the consideration of the issues presented.

Where “there is some important and clear-cut issue of law that is fundamental to the further conduct of the case and that would otherwise qualify as a basis for certiorari, the case may be reviewed despite its interlocutory status.” Stephen M. Shapiro et al., *Supreme Court Practice* § 4.18 & n. 72 (11th ed. 2019). All of the issues presented fit this description. Whether the Constitution requires the remand to have the facts found by a jury beyond a reasonable doubt rather than by a judge under the preponderance of the evidence standard, the validity of the Second Amendment analogues, what must be proven under the statutes, and whether the Double Jeopardy Clause permits the remand in the first place are “fundamental to the further conduct of the case.” *Gillespie v. United States Steel Corp.*, 379 U.S. 148, 153 (1964). Indeed, “if a criminal defendant is to avoid exposure to double jeopardy, and thereby enjoy the full protection of the Clause, his double jeopardy challenge ... must be reviewable before that subsequent exposure occurs.” *Abney v. United States*, 431 U.S. 651, 662 (1977).

Furthermore, if “Supreme Court intervention may serve to hasten or finally resolve the litigation” and is “otherwise worthy of review” then “the interlocutory status of [a] case may be no impediment to certiorari.” *Supreme Court Practice* § 4.18. A favorable outcome in this Court, or even a GVR, would hasten or finally

resolve this case. If this Court finds that the Second Amendment precludes the prosecution, that the term “unlawful user” is unconstitutionally vague, or that the statutes did not cover the conduct, then the case would be finally resolved.¹ The same is true if the court of appeals makes such a finding after a GVR directing it to consider all of these issues that were before it.

The government’s suggestion to drag the case out with a piecemeal remand, just to raise these same issues again in a subsequent petition after another appeal, does the opposite. It wastes judicial resources, raises the expense of the litigation for the parties, and undermines “[t]he public interest in a ... prompt disposition of criminal charges.” *Strunk v. United States*, 412 U.S. 434, 439 n. 2 (1973). This Court’s “general policy against piecemeal appeals takes on added weight in criminal cases, where the defendant is entitled to a speedy resolution of the charges against him.” *Will v. United States*, 389 U.S. 90, 96 (1967). Indeed, Ledvina has already served a multi-year prison sentence and is still serving a term of supervised release with “the ‘substantial restriction of freedom’ involved in a term of supervised release.” *Gall v. United States*, 552 U.S. 38, 47 (2007). While these proceedings drag out, he continues to be subject to these restrictions as well as the total denial of his right to possess a firearm and the “career related consequences” involved with a felony conviction. *Koon v. United States*, 518 U.S. 81, 110 (1996).

¹ To put this into perspective, the conduct established at Ledvina’s trial is substantially indistinguishable from the defendant in *Hemani* and the underlying searches in both cases took place in August of 2022. Brief for the Gov’t at 7, No. 24-1234 (Dec. 12, 2025); Pet. at 1-2. This Court finally resolved *Hemani*, which came to this Court from a pre-trial motion to dismiss, rather than remanding for further fact-finding as the Eighth Circuit has done here.

A GVR is certainly appropriate here. This Court recently issued a GVR in a nearly identical case in essentially the same procedural posture. In *Harris v. United States*, the defendant was also charged with § 922(g)(3) and falsely denying being an unlawful user, but under 18 U.S.C. § 922(a)(6) rather than § 924(a)(1)(A). Pet. for Cert. at 7, No. 25-372 (Sep. 26, 2025). Like Ledvina, he argued that both counts rise and fall together. *Id.* at 8. In that case, the Third Circuit similarly split the counts, vacating the § 922(g)(3) conviction for reconsideration under a newly minted Second Amendment test while affirming the false statement count. *United States v. Harris*, 144 F.4th 154, 167-68 (3d Cir. 2025). Rather than forcing the defendant to endure a piecemeal remand, this Court intervened by granting the petition, vacating the court of appeals judgment, and ordering the appeal to be reconsidered anew. No. 25-372 (Jun. 29, 2026). Ledvina's case sits in a stronger position: *Harris* arrived from a guilty plea, whereas Ledvina actually completed a trial.

III. This Case is an Ideal Vehicle to Resolve the Important Questions Presented

The government does not contest that this case raises important questions with broad implications. Section 922(g)(3) still threatens millions of citizens with federal prosecution for merely exercising their right to keep and bear arms, even after *Hemani*. Meanwhile, § 924(a)(1)(A) as it is being applied in this case acts to effectively prohibit the acquisition of firearms by these same Americans even if they were to successfully navigate the minefield of conflicting Second Amendment tests being utilized by the lower courts. The government still conditions the purchase of a firearm on denying falling under a status that this Court has said alone cannot

interfere with this right—forcing these individuals to choose between their right to acquire a firearm or risk imprisonment and lifetime disarmament.

This case alone challenges both of these wide reaching statutes on both statutory and constitutional grounds. There is no dispute that all of these issues were properly preserved below. Coming to this Court from a stipulated bench trial, it presents these questions with a closed record of undisputed facts that can be cleanly applied to resolve these pure questions of law. Furthermore, out of all of the pending petitions challenging § 922(g)(3), only this one sits in the precise procedural posture to directly challenge the Eighth Circuit’s outlier framework, including its constitutionally dubious remand practice.

Conclusion

For the foregoing reasons, together with those set forth in the petition, this Court should grant the petition for a writ of certiorari or, alternatively, grant, vacate, and remand this matter with instructions to address the non-constitutional issues before reconsidering the constitutional issues, including the Second Amendment’s impact on the § 924(a)(1)(A) count, in light of *Hemani*.

Respectfully submitted,



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