NO. _______

IN THE

# Supreme Court of the United States

__________ TERM, 20__

ROBERT ALLEN JOSHUA,

*Petitioner*,

v.

UNITED STATES OF AMERICA,

*Respondent*.

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

**PETITION FOR WRIT OF CERTIORARI**

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## QUESTION PRESENTED

Whether 18 U.S.C. § 922(g)(3)—which permanently prohibits all unlawful users of controlled substances and all drug addicts from possessing firearms, without any pre-deprivation process or individualized finding of dangerousness—is consistent with the Second Amendment's text and this Court's historical-tradition test established in *New York State Rifle & Pistol Ass'n v. Bruen*, *United States v. Rahimi*, and *United States v. Hemani*.

## PARTIES TO THE PROCEEDINGS

Petitioner is Robert Allen Joshua, defendant and appellant below.

Respondent is the United States of America, appellee below.

## DIRECTLY RELATED PROCEEDINGS

This case arises from the following proceedings in the United States District Court for the Southern District of Iowa and the United States Court of Appeals for the Eighth Circuit:

*United States v. Joshua,* 4:24-cr-00042-001, (S.D. Iowa) (criminal proceedings) judgment entered January 31, 2025.

*United States v. Joshua,* 25-1337 (8th Cir.) (direct criminal appeal), judgment and opinion entered May 21, 2026.

There are no other proceedings in state or federal trial or appellate courts, or in this Court directly related to this case.

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## PETITION FOR WRIT OF CERTIORARI

Petitioner Robert Joshua respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit.

## OPINIONS BELOW

The Eighth Circuit's unpublished opinion in Mr. Joshua's case is available at 2026 WL 14226241 and is reproduced in the appendix to this petition at Pet. App. p. 9.

## JURISDICTION

The Eighth Circuit entered judgment in Mr. Joshua's case on May 21, 2026. Pet. App. p. 11. This Court has jurisdiction over this case under 28 U.S.C. § 1254(1).

## RELEVANT STATUTORY AND CONSTITUTIONAL PROVISIONS

18 U.S.C. § 922(g)(3)

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

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.

## STATEMENT OF THE CASE

### A. Introduction[1]

This case arrives at a rare inflection point in this Court's Second Amendment jurisprudence. Less than two months ago, this Court decided *United States v. Hemani*, 608 U.S. ___, 146 S. Ct. 1677 (2026), holding that the government's prosecution of a regular marijuana user under § 922(g)(3)'s unlawful-user provision was inconsistent with the Second Amendment. In doing so, the Court rejected the government's central historical analogues — habitual-drunkard laws and laws targeting the categorically dangerous — as poor fits for a statute that "automatically divest[s]" gun owners of their rights "without any pre-deprivation process." *Id.* at 1691-92. *Hemani* did not resolve whether § 922(g)(3) is facially unconstitutional, but its reasoning sweeps far more broadly than its narrow as-applied holding acknowledges.

*Hemani* changes the landscape in which this Court last considered this question. *Hemani*'s reasoning on due process, dangerousness, and the CSA's schedules now calls into question the very Eighth Circuit precedent, *Veasley*, that Mr. Joshua's decision below rests upon. The Eighth Circuit's opinion in this case leaves the circuit's law exactly where it stood before *Hemani* was decided. After *Hemani*, lower courts now have a controlling precedent whose reasoning does not sit

[1] A virtually identical petition was recently filed in *Buay Kong Chuol v. United States*, 26-5310.

comfortably with the framework several circuits, including the Eighth, have used to uphold § 922(g)(3) against facial challenge.

The result is a circuit split that *Hemani* has not resolved. *Compare United States v. Connelly*, 117 F.4th 269, 276 (5th Cir. 2024) (no historical justification for disarming sober citizens not presently under an impairing influence), with *United States v. Seiwert*, 152 F.4th 854, 869 (7th Cir. 2025) (upholding application of § 922(g)(3) to a self-admitted addict despite the absence of present intoxication). Only this Court can supply the uniform historical-analogue framework that *Bruen*, *Rahimi*, and now *Hemani* promised but that lower courts have been unable to derive on their own. This case, arising on a full record and squarely presenting the facial question *Hemani* left open, is the right vehicle to do so.

**B. Proceedings below**

**1. Mr. Joshua files a motion to dismiss, arguing the prosecution violated his Second Amendment rights. The district court denies the motion.**

Mr. Joshua was indicted on one count of being an unlawful user of or addicted to a controlled substance in possession of a firearm, in violation of 18 U.S.C. § 922(g)(3). R. Doc. 2.[2] Section 922(g)(3) criminalizes possession of a firearm by any person "who is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. § 802))."

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[2] In this petition, the following abbreviations will be used:

"R. Doc." -- district court clerk's record, followed by docket entry and page number, where noted; and

"Pet. App." – Petitioner's Appendix, followed by page number.

Mr. Joshua filed a motion to dismiss the indictment based upon *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022). R. Doc. 24. He asserted that 18 U.S.C. § 922(g)(3) was facially unconstitutional, but acknowledged his argument was foreclosed by Eighth Circuit precedent, specifically *United States v. Veasley*, 98 F.4th 906 (8th Cir. 2024). R. Doc. 24. The prosecution resisted, also noting that Mr. Joshua's argument was foreclosed by circuit precedent. R. Doc. 25.

In a written order, the district court denied Mr. Joshua's facial challenge to § 922(g)(3). R. Doc. 26, Pet. App. p. 1. The court determined his argument was foreclosed by *United States v. Veasley*, 98 F.4th 906 (8th Cir. 2024), and *United States v. Tucker*, No. 23-2758, 2024 WL 3634232 (8th Cir. Aug. 2, 2024). R. Doc. 26, Pet. App. p. 1.

Soon after, Mr. Joshua entered a conditional guilty plea where he preserved the right to challenge his motion to dismiss. R. Doc. 30. The case proceeded to sentencing. Ultimately, the court sentenced Mr. Joshua to 48 months of imprisonment, to be followed by a three-year term of supervised release. R. Doc. 43; Pet. App. pp. 3-4.

### 2. Mr. Joshua appeals the denial of his motion to dismiss and the Eighth Circuit affirms.

Mr. Joshua appealed to the Eighth Circuit. He maintained his Second Amendment challenge. The panel rejected Mr. Joshua's facial challenge. *United States v. Joshua*, 25-1337, 2026 WL 1426241 (8th Cir. May 21, 2026). Pet. App. p. 10.

The panel determined that Mr. Joshua's facial challenge was foreclosed by the Circuit's prior decision in *Veasley*. *Id.*

## REASONS FOR GRANTING THE WRIT

### I. The Eighth Circuit's ruling rejecting a facial challenge is inconsistent with *Bruen*, *Rahimi*, and *Hemani*.

The Eighth Circuit has mis-analyzed cases dealing with the constitutionality of § 922(g)(3), wrongly limiting the Second Amendment right. In the Eighth Circuit's opinion affirming the Southern District of Iowa's judgement against Mr. Joshua, the court relied upon *United States v. Veasley*, 98 F.4th 906 (8th Cir. 2024), *cert. denied*, 145 S.Ct. 304 (2024). *United States v. Joshua*, No. 25-1337, 2026 WL 1426241 (8th Cir. 2026). In *Veasley*, the Eighth Circuit rejected the argument Mr. Joshua advances here, that § 922(g)(3) is facially unconstitutional under *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022). *Veasley*, 98 F.4th at 908.

*New York State Rifle & Pistol Ass'n, Inc. v. Bruen* created a two-step test for courts to analyze firearm regulations. Under the first step, "when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct." *Bruen*, 597 U.S. at 17. The Court also made it clear that "the Second and Fourteenth Amendments protect an individual's right to carry a handgun for self-defense outside the home." *Id.* at 32. *Bruen* expanded upon *District of Columbia v. Heller*, 554 U.S. 570 (2008), which held that the Second Amendment protected an individual's right to possess a firearm in their home.

Under *Bruen*, if the Second Amendment's text covers the conduct, then courts should move on to the second step, where the "government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." *Bruen*, 597 U.S. at 24. The government must provide a "representative historical analogue, not a historical twin." *Id.* at 30.

*Veasley* correctly held that drug users are included in "the people" the Second Amendment protects when considering the first step of the *Bruen* test. *Veasley*, 98 F.4th at 910. However, *Veasley* incorrectly decided that there was a historical analogue to § 922(g)(3) when considering the second step of the *Bruen* test, thus rejecting a facial Second Amendment challenge.

In *Veasley*, the court started with the "closest analogue"—regulations on intoxicating substances. *Veasley*, 98 F.4th at 910. The court noted that at the time of adoption, certain controlled substances, like opium and cannabis, were present in society. *Id.* at 911. Yet, Congress did not adopt regulations regarding drug users and firearm possession until over 100 years later. *Id.* at 912. Therefore, "[t]he fact that 'earlier generations addressed the societal problem . . . through materially different means . . . [is] evidence that' disarming all drug users, simply because of who they are, is inconsistent with the Second Amendment." *Id.* (quoting *Bruen*, 597 U.S. at 26).

Still, the court found that some controlled substances could survive Second Amendment inspection, and therefore § 922(g)(3) was not facially invalid. *Id.* at 912-

13. Unlike cannabis, other controlled substances, like PCP and methamphetamine, are "unprecedented" and therefore implicated "unprecedented societal concerns." *Id.* at 912. This allowed for a more relaxed approach to the historical analogue analysis, where the prosecution must only find a historical regulation that is "relevantly similar." *Id.*; *Bruen*, 597 U.S. at 28-29.

Using this relaxed approach, *Veasley* found the historical-analogue requirement satisfied by founding-era 1) laws regulating the mentally ill and 2) "Terror of the People" laws, which banned "taking up arms to terrify the people." *Id.* at 912-17. While being mentally ill generally did not result in the loss of civil liberties, being mentally ill *and dangerous* did. And the court determined that § 922(g)(3) will, at least in some instances, prohibit individuals behaving in a dangerous manner from possessing a firearm.

The laws the court relied on fall short of being historically analogous to § 922(g)(3), as there are issues with both the "comparable burden" and "comparable justification" analyses. The Eighth Circuit's approach to the second step of the *Bruen* test is inconsistent with Supreme Court precedent. Therefore, the Court should grant certiorari.

### A. *Hemani's* reasoning supports 18 U.S.C. § 922(g)(3) being facially unconstitutional.

The Supreme Court's recent decision in *United States v. Hemani*, 608 U.S. ___, 146 S. Ct. 1677 (2026) is instructional. In *Hemani*, the Court held that § 922(g)(3) is unconstitutional as applied to Mr. Hemani, a firearm owner who used marijuana a few times per week. *Id.* at 1694. The Court first established that the Second Amendment's terms cover the conduct included in § 922(g)(3)'s unlawful user provision, since the statute "bans a class of people including Mr. Hemani from possessing essentially any firearm for any purpose." *Id.* at 1686. Under the first step of the *Bruen* test, the provision burdened conduct presumptively protected by the Second Amendment, putting the burden on the government to show that the statute is consistent with the Nation's historical tradition of firearm regulation. *Id.*

The Court then held that the statute as applied did not satisfy the second step of the *Bruen* test, stating that the habitual drunkard laws the government relied upon "targeted different kinds of people, did so for different purposes, and operated in different ways" than § 922(g)(3)'s unlawful user provision. *Id.* at 1687. The Court found that historical habitual drunkard laws were not applied to those who merely drank regularly, but instead on those whose drinking "rendered them practically incapacitated and incapable of managing their affairs." *Id.* at 1689. The Court then found that historical habitual drunkard laws "had little to do with protecting the public from categorically violent and unusually dangerous persons," as argued by the government, and instead had purposes including promoting productivity (vagrancy laws), protecting against financial ruin (civil-commitment laws), and protecting against morality scandals (sureties of good behavior). *Id.* at 1689-91. Lastly, the Court found that historical habitual drunkard laws worked differently than § 922(g)(3)'s unlawful user provision, offering some form of due process prior to deprivation unlike § 922(g)(3) "automatically divest[ing] an individual of his constitutional right to bear arms the moment he becomes an unlawful user and until he ends his drug use—all without any pre-deprivation process." *Id.* at 1691-92.

The Court also expressed doubt that § 922(g)(3)'s purpose is to disarm people who are, as a category, violent and unusually dangerous. *Id.* at 1692. In its analysis, the Court first focused on § 922(g)(3)'s reliance on the Controlled Substances Act's (CSA) schedules for which drugs to disarm unlawful users of, noting that drugs "can be added to its schedules for a variety of reasons having little or nothing to do with their potential to induce violence" including a lack of scientific knowledge about a drug and a drug's risk to public health. *Id.* The Court then noted that the government's approach to marijuana has changed, as the government recently moved some marijuana products from Schedule I to Schedule III and in 2013 directed federal prosecutors to reduce their enforcement efforts, leading to legalization of marijuana to some degree in most states. *Id.* at 1692-93. The Court noted that the government should not have the power to designate a group as dangerous based only on their marijuana use, stating that "affording the government that kind of 'broad power to designate any group as dangerous and thereby disqualify its members from having a gun' would risk allowing it to 'quickly swallow' the Second Amendment." *Id.* at 1693 (citing *Kanter v. Barr*, 919 F.3d 437, 465 (7th Cir. 2019) (Barrett, J., dissenting)).

The Court took care to note that its holding was a narrow one, stating that it didn't address other cases such as efforts to ban addicts, the second provision of

§ 922(g)(3), or efforts to prosecute when there is proof that a defendant's unlawful drug use makes them dangerous. *Id.* at 1693. However, the Court did not foreclose a facial challenge to the statute either. In *Hemani*, the Court established that at least some applications of § 922(g)(3) are unconstitutional, and its reasoning supports the statute being facially unconstitutional, as elaborated on below.

**B. *Veasley* is not supported by the *Bruen* test.**

**i. The Second Amendment presumptively protects the conduct—possession of a firearm—regulated in 18 U.S.C. § 922(g)(3).**

The Second Amendment protects the conduct regulated in § 922(g)(3) — firearm possession. In *Bruen*, the Supreme Court undoubtedly reaffirmed its holding that the Second Amendment provides for a personal right to possess firearms. *Bruen*, 597 U.S. 1; *cf. McDonald v. City of Chicago*, 561 U.S. 742 (2010); *Heller*, 554 U.S. 570. *Bruen* explained that this right did not just extend to possession of firearms at one's home, but also extended to the possession of firearms in public for self-defense. *Bruen*, 597 U.S. at 31.

Mr. Joshua is also part of "the people" protected by the Second Amendment. In *Heller*, the Court interpreted "the people" in the Second Amendment to presumptively apply to "all Americans." *Heller*, 554 U.S. at 581. The Court stated that this phrase "unambiguously refers to all members of the political community, not an unspecified subset." *Id.* at 580-81 (quoting *United States v. Verdugo-Urquidez*, 494 U.S. 259, 265 (1990)). "[N]othing in the Second Amendment's text" suggests drug users are not among "the people" entitled to the amendment's protection. *See id.*

This textual interpretation is supported by *United States v. Rahimi*, 602 U.S. 680 (2024), where the Court analyzed a Second Amendment challenge to a similar provision, § 922(g)(8), which prohibits individuals subject to a domestic abuse protective order from possessing firearms. In *Rahimi*, the Court rejected the government's argument that individuals can lose Second Amendment protections simply because they are not "law abiding" or deemed not "responsible." *Rahimi*, 602 U.S. at 701-02. This interpretation is also supported by *Hemani*, which, as explained above, held that "§ 922(g)(3)'s unlawful user provision burdens conduct presumptively protected by the Second Amendment." *Hemani*, 146 S. Ct. at 1686.

While *Hemani* does not discuss § 922(g)(3)'s drug addict provision, *Id.* at 1685 n.2, the plain text of the Second Amendment presumptively protects drug addicts as well as unlawful users. *Hemani's* holding that § 922(g)(3)'s unlawful user provision "burdens conduct presumptively protected by the Second Amendment because the statute bans a class of people, including Mr. Hemani, from possessing essentially any firearm for any purpose" can be applied equally to § 922(g)(3)'s drug addict provision, which also bans a class of people from possessing a firearm. *Id.* at 1686. Drug addicts may be seen as less responsible than mere unlawful users, but that does not limit their Second Amendment protections. In *Rahimi*, the Court stated:

> "Responsible" is a vague term. It is unclear what such a rule would entail. Nor does such a line derive from our case law. In *Heller* and

> *Bruen*, we used the term "responsible" to describe the class of ordinary citizens who undoubtedly enjoy the Second Amendment right. See, e.g., *Heller*, 554 U. S., at 635; *Bruen*, 597 U. S., at 70. But those decisions did not define the term and said nothing about the status of citizens who were not "responsible." The question was simply not presented.

*Rahimi*, 602 U.S. at 701-02. *Rahimi* dealt with individuals subject to a domestic abuse protective order, a population who likely pose a larger threat of criminal violence than drug addicts. If the plain text of the Second Amendment presumptively protects the former, it presumptively protects the latter as well.

Therefore, both unlawful drug users and drug addicts possessing firearms are presumptively protected by the Second Amendment.

#### ii. The Eighth Circuit's "historical analogue" analysis for 18 U.S.C. § 922(g)(3) is inconsistent with *Bruen*, *Rahimi*, and *Hemani*.

The Eighth Circuit's approach to *Bruen's* second step is inconsistent with Supreme Court precedent. To justify a firearm law infringing on otherwise protected conduct under *Bruen*, "the government may not simply posit that the regulation promotes an important interest. Rather, the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation." *Bruen*, 597 U.S. at 17. *Bruen* refers to the "how" and "why" as "central considerations" when comparing modern and historical regulations: "whether modern and historical regulations impose a *comparable burden* on the right of armed self-defense and whether that burden is *comparably justified*." *Id.* at 29 (emphasis added).

As established above, the court concluded in *Veasley* that § 922(g)(3) is consistent with historical laws placing restrictions on the mentally ill and those who took up arms to terrify others. *Veasley*, 98 F.4th at 912-17. These holdings are not supported by the Supreme Court's precedents in *Bruen*, *Rahimi*, and *Hemani*.

**1. Historical laws regulating the mentally ill are not relevantly similar to 18 U.S.C. § 922(g)(3).**

Founding-era laws regulating the mentally ill are not relevantly similar to § 922(g)(3). In *Veasley*, the court admits that mental illness and drug use are not the same, but asserts that they are intuitively similar because they can have similar behavioral effects such as issues with memory and decision-making. *Veasley*, 98 F.4th at 912-13. However, *Veasley* finds that founding-era laws did not take away the right to possess firearms from all mentally ill persons. *Id.* at 913 ("Those who posed no danger stayed at home with their families, and their civil liberties remained intact."). *Veasley* had to turn instead to laws regulating those who were both mentally ill and dangerous, citing statutes authorizing officials to confine mentally ill persons who posed a threat to others, thus removing their civil liberties including their right to possess a firearm. *Id.* at 913-14.

This does not satisfy the "why" test as the burden is not comparably justified. The court described the comparable justification as to "keep guns out of the hands of presumptively risky people." *Id.* at 915-16. However, "presumptively risky" takes for granted that unlawful drug users and drug addicts pose a danger to others comparable to a dangerous mentally ill person in the 1700s. This ties to the issue with the "how" test, exposing a lack of comparable burden. In *Veasley*, the defendant pointed out the flaw in the court's analogy: there was a requirement for a judicial finding before confining a mentally ill person, contrasted with drug users and addicts receiving no warning that they are not legally permitted to have a firearm under § 922(g)(3). *Id.* at 916. The Eighth Circuit rejected this argument, stating 1) that there was limited process accompanying the confinement of the mentally ill with officials given broad discretion, and 2) that there is a finding required under § 922(g)(3), but that it just doesn't come until the conviction stage where the government must prove beyond a reasonable doubt that an individual violated the statute. *Id.*

The circuit's dismissal of the *Veasley* defendant's argument is flawed. First, despite the court's assertion that officials confining the mentally ill had broad discretion and sometimes no formal legal training, a representative of the state deciding to confine an individual was a form of process that is not given to those covered under § 922(g)(3). This process seems obviously distinct from one where the moment a person unlawfully uses a drug or becomes an addict, they lose their right to possess a firearm. Second, a finding requirement not existing until the conviction stage in § 922(g)(3) cases is not comparable. The Second Amendment right cannot be revoked in the time prior to a finding. By removing the right to possess a firearm prior to a finding that an individual is dangerous, § 922(g)(3) violates the Second Amendment. *See Rahimi*, 602 U.S. at 692 ("Even when a law regulates arms-bearing for a permissible reason, though, it may not be compatible with the right if it does so to an extent beyond what was done at the founding."). In *Rahimi*, the Supreme Court found that § 922(g)(8) removing the right to possess a firearm only after a court found the individual presented a credible threat to another's safety "match[ed] the surety and going armed laws, which involved judicial determinations of whether a particular defendant likely would threaten or had threatened another with a weapon." *Id.* at 699. This contrasts with § 922(g)(3), which removes the right prior to a finding that an individual poses a threat, with no clear standard. *Hemani* further explained the Court's concerns with a lack of adequate due process, noting that despite a criminal trial being required before permanent disarmament, "§ 922(g)(3) offers an unlawful user no pre-deprivation process before his 'temporary disarmament.'" *Hemani*, 146 S. Ct. at 1692.

**2. Historical "Terror of the People" laws are not relevantly similar to 18 U.S.C. § 922(g)(3).**

"Terror of the People" or "going armed" laws are also not relevantly similar to § 922(g)(3). *Veasley* defined these laws as "the Founding-era criminal prohibition on taking up arms to terrify the people," where "the offense was not about mere possession, or even openly carrying a firearm" but actually using a firearm in a way that spread fear. *Veasley*, 98 F.4th at 916-17.

*Veasley* asserts that the "how" "comparable burden" requirement is satisfied because "§ 922(g)(3) does not criminalize mere possession. It requires another act, the taking of drugs, which itself can cause terrifying and dangerous behavior. The decision to engage in illegal and dangerous conduct . . . is what leads to a temporary deprivation, which ends once the illegal behavior does." *Id.* at 917. However, "Terror of the People" laws only restrict using a firearm to terrify others, while § 922(g)(3) completely bans firearm use all the time for drug users and addicts. This burden far exceeds the historical precedent the Eighth Circuit relied on.

*Veasley* also asserts that the "why" "comparable justification" requirement is satisfied for at least some drug users because "[c]ontrolled substances can induce terrifying conduct, made all the more so by the possession of a firearm." *Id.* at 917. However, the act of taking drugs is a distinct step separate from acting in a scary manner with a firearm. While taking drugs can induce terrifying conduct in some users, taking drugs is not analogous to acting in a terrifying manner. The Supreme Court said as much in *Hemani*, when it expressed doubt toward the government's argument that "consistent with historical laws, § 922(g)(3)'s unlawful user provision disarms individuals who are, as a 'category,' 'violen[t]' and 'unusually dangerous.'" *Hemani*, 146 S. Ct. at 1692 (internal citations omitted).

In *Hemani*, the Court noted its issues with § 922(g)(3)'s reliance on the Controlled Substances Act (CSA) schedules, wherein the statute disarms unlawful users of any drug found on any CSA schedule—drugs which "can be added to its schedules for a variety of reasons having little or nothing to do with their potential to induce violence." *Id.* at 1692. The Court continued, "by defining its scope through the CSA—a statute animated by a variety of other concerns—it is far from obvious that 18 U.S.C. § 922(g)(3) confines its reach to those who are categorically and unusually dangerous." *Id.* The justification for § 922(g)(3) and historical "Terror of the People" laws is therefore not comparable, as unlawful users and addicts of CSA scheduled drugs are not categorically dangerous and the government should not be able to deem them as such. *See id.* at 1693 (quoting *Kanter v. Barr*, 919 F.3d 437, 465 (7th Cir. 2019) (Barrett, J., dissenting)) ("Affording the government that kind of 'broad power to designate any group as dangerous and thereby disqualify its members from having a gun' would risk allowing it to 'quickly swallow' the Second Amendment.").

**3. Firearm possession by drug users is not an unprecedented issue.**

As discussed above, the Eighth Circuit in *Veasley* determined that some applications of § 922(g)(3) dealt with "unprecedented societal concerns" because some modern controlled substances were not present during colonial times. *Veasley*, 98 F.4th at 912. This analysis takes too narrow of an approach. The existence of additional drugs today that were not present during colonial times does not make the problem "unprecedented." Instead, § 922(g)(3) addresses a problem that existed in 1791—firearm violence by those, who by virtue of the use of intoxicants, are likely to demonstrate disinhibition or danger—and it employed a regulation. The flat ban on possession of firearms by users of intoxicants even in the home and when not intoxicated is not analogous to any founding period restrictions. Because historical precedent does not evince a comparable tradition of regulation, § 922(g)(3)'s ban is unconstitutional. *See Bruen*, 597 U.S. at 26-27.

Before the promulgation of the Gun Control and Controlled Substances Acts, few laws regulated the possession of firearms based on past intoxicant use. Dru Stevenson, *The Complex Interplay Between the Controlled Substances Act and the Gun Control Act*, 18 Ohio St. J. Crim. L. 211, 230–31 (2020) (detailing the history of drug and firearm regulation in America, beginning with the original language of the Gun Control Act of 1968). In fact, "[i]t was not until 1968 that Congress barred the mentally ill from possessing guns, and it was in that same legislation that habitual drug abusers were prohibited from having guns." *United States v. Yancey*, 621 F.3d 681, 683 (7th Cir. 2010) (internal citations omitted). Accordingly, criminalizing firearm possession for drug users or addicts is of wholly recent vintage and is evidence in support of Mr. Joshua's challenge here—that § 922(g)(3) is a historically inconsistent and traditionally atypical firearm regulation. *See, e.g., Bruen*, 597 U.S. at 66 & n.28 (reasoning that 20th century regulations do not provide insight into the meaning of the Second Amendment when such regulations "contradict[] earlier evidence.").

The use of intoxicants and drugs was an issue that existed at the time of the Second Amendment's adoption, yet legislatures did not choose to prohibit users from possessing firearms. In *Veasley*, the Eighth Circuit has not adequately established any "historical analogue" to support § 922(g)(3)'s disarmament of all drug users and addicts. Certiorari is necessary for the Supreme Court to clarify whether § 922(g)(3) is justified by a "historical analogue" with both a comparable burden and comparable justification.

### C. The availability of an as-applied challenge does not cure § 922(g)(3)'s facial invalidity.

Any infirmity in § 922(g)(3) cannot, and should not have to be, remedied case-by-case through as-applied litigation. The as-applied safety valve does not change what the statute does to every unlawful user or addict the moment they fall within its terms. Under Eighth Circuit precedent, an individual is disarmed automatically upon becoming an unlawful user and remains disarmed unless and until he can litigate — after arrest, after indictment, and typically only as a defense to prosecution — that his particular circumstances place him on the constitutional side of the line. *United States v. Cooper*, 127 F.4th 1092, 1098 (8th Cir. 2025); *see also Veasley*, 98 F.4th at 917–18 (describing the "frail and elderly grandmother" example as a potentially meritorious as-applied claim, not a bar to prosecution in the first instance). That is precisely the sequencing problem this Court identified in *Hemani*: § 922(g)(3) "automatically divest[s] an individual of his constitutional right to bear arms the moment he becomes an unlawful user and until he ends his drug use—all without any pre-deprivation process." 146 S. Ct. at 1691–92. An as-applied defense raised after the deprivation has already occurred, and after the government has already obtained an indictment, is not the kind of process this Court found lacking in *Hemani* — it is confirmation of the very problem *Hemani* identified. A statute does not become facially valid merely because a defendant may eventually convince a court, months or years later, that his disarmament was unconstitutional all along.

Second, if the Eighth Circuit cannot say, without an individualized post-hoc historical inquiry into each defendant's drug use and conduct, whether a given application of the statute is constitutional, that is evidence the statute itself — as opposed to any discrete class of applications — lacks the "comparable burden" and "comparable justification" *Bruen* requires. *Bruen*, 597 U.S. at 29. A statute that requires case-by-case retrofitting to identify its constitutional applications has not been shown to rest on a historical tradition in the first place; it has been shown to lack one, with courts improvising the boundaries after the fact.

Third, relegating this question to as-applied litigation guarantees exactly the fractured, unpredictable enforcement landscape *Hemani* warned against. Eighth Circuit case law directs district courts to ask whether a defendant's drug use rendered him comparable to someone "both mentally ill and dangerous," or whether his conduct "pose[d] a credible threat to the physical safety of others." *Cooper*, 127 F.4th at 1096 (quoting *Veasley*, 98 F.4th at 913, 918). But nothing in the case law or § 922(g)(3)'s text supplies a workable standard for drawing that line ex ante. The result is that whether a citizen may lawfully possess a firearm in his own home turns on a prosecutor's charging decision and a later judge's retrospective assessment of dangerousness — not on any notice the statute itself provides. This Court in *Hemani* specifically faulted § 922(g)(3) for borrowing its scope from the Controlled Substances

Act's schedules, which are assembled for reasons having "little or nothing to do with their potential to induce violence." 146 S. Ct. at 1692. An as-applied regime built on top of that same undifferentiated class does not cure the mismatch between the statute's sweep and its asserted justification; it merely shifts the burden of identifying that mismatch onto individual defendants, one prosecution at a time.

For these reasons, an as-applied pathway is not an adequate substitute for resolving whether § 922(g)(3) is facially consistent with the Second Amendment. This Court's review is needed to resolve that tension directly, rather than leaving lower courts to continue relitigating case by case what *Hemani* has already called into serious doubt.

## II. Under *Bruen*, courts are split on their approach to 18 U.S.C. § 922(g)(3).

Courts have reached divergent conclusions when considering § 922(g)(3) cases. Two main areas of disagreement are on disarming citizens who are not presently under the influence and whether "Terror of the People" or "going-armed" laws disarming dangerous individuals are a historical analogue to § 922(g)(3).

### A. Courts have disagreed on whether there is a historical analogue for disarming presently-sober drug users.

The Fifth Circuit has expressed the most support for striking down certain § 922(g)(3) applications. In *United States v. Connelly*, 117 F.4th 269, 276 (5th Cir. 2024), the Fifth Circuit held that "there is no historical justification for disarming sober citizens not *presently* under an impairing influence." The court rejected the government's argument about laws disarming the mentally ill, stating that laws regulating the mentally ill are analogous to § 922(g)(3) "only if someone is so intoxicated as to be in a state comparable to 'lunacy.'" *Id.* at 275.

In contrast, the Seventh Circuit held in *United States v. Seiwert*, 152 F.4th 854, 869 (7th Cir. 2025), that "the application of § 922(g)(3) to a drug user like Seiwert is justified by closely analogous public safety concerns underlying historical laws preventing individual with severe mental illness from possessing firearms" despite the defendant likely not being under the influence when he was found with firearms. The defendant in *Seiwert* had used crack cocaine a few hours before police found firearms at his home and was a self-admitted addict of cocaine and heroin. *Id.* at 859. However, the "high" that comes with crack cocaine use is immediate and short-lasting, typically lasting mere minutes to an hour. *Cocaine*, Nat'l Inst. on Drug Abuse (Sep. 27, 2024), https://nida.nih.gov/research-topics/cocaine#references. Since the defendant was therefore unlikely to have been under the influence when found with firearms, the Seventh Circuit and Fifth Circuit would likely disagree on whether historical laws regulating the mentally ill were sufficient analogues.

**B. Courts have disagreed on whether historical laws disarming dangerous individuals are relevantly similar to § 922(g)(3).**

In *Connelly*, the Fifth Circuit pointed out that historical laws disarming "dangerous" individuals do not address a comparable problem to § 922(g)(3), since the founding-era laws disarmed religious minorities and disarmed political dissidents during periods of conflict, because the Founders saw both groups as political threats.

*Connelly*, 117 F.4th at 277-78. The court noted that "[e]ven as the Founders disarmed Catholics and politically disaffected citizens, they left ordinary drunkards unregulated," pointing out that no founding-era laws disarmed ordinary, non-military citizens for drunkenness. *Id.* at 279-81.

In *Seiwert*, the Seventh Circuit also rejected the government's argument that historical laws disarming generally dangerous individuals were relevantly similar to § 922(g)(3). *Seiwert*, 152 F.4th at 870-72. Like *Connelly*, the *Seiwert* court held that the government's examples of laws disarming those thought to pose political or religious threats addressed different concerns than those underlying § 922(g)(3), writing:

> The government is correct that both sets of laws are concerned about keeping firearms away from groups that might pose a threat to the public. But we see little resemblance between those who would consciously disobey the law for religious or political reasons and those, like Seiwert, who endanger the public by suffering from a condition that impairs their ability to obey it.

*Id.* at 871. The *Seiwert* court also rejected a comparison between § 922(g)(3) and "going-armed" (or "Terror of the People") laws disarming those who carried weapons to threaten the public, noting that their application was dependent on judicial determinations as to if an individual had threatened another. *Id.* The court also rejected evidence of discussions during the ratification of the Constitution about the need to disarm dangerous citizens, stating "the language of the Second Amendment that was ultimately ratified provides an unqualified right that 'shall not be infringed.' U.S. Const. amend. II. We are wary of relying upon verbiage in predecessors of the Second Amendment that did not gain ratification." *Id.* at 872.

In *United States v. Baxter*, No. 25-2752, 2026 WL 2016235 (8th Cir. July 13, 2026), a post-*Hemani* Eighth Circuit case, on the other hand, the court did find a law disarming dangerous persons to be analogous to § 922(g)(3). Here, the court held that the defendant's conduct, being involved in a gang fight while possessing a loaded firearm and under the influence of marijuana then fleeing from law enforcement, was sufficiently analogous to the conduct banned by "Terror of the People" or "going-armed" laws. *Id.* at *4. The district court had found that marijuana use impaired the defendant's judgement, causing him to threaten members of the public, and the Eighth Circuit "agree[d] with the district court's assessment that Baxter 'absolutely presented a credible threat to the safety of others.'" *Id.*

As shown above, the *Bruen* test continues to pose confusion for lower courts, and the variety of judicial interpretations of § 922(g)(3) creates questions about the statute's legitimacy. The Court should grant certiorari to analyze if § 922(g)(3) is constitutional. Should the Court find § 922(g)(3) to be facially constitutional, it should clarify what historical analogue satisfies part two of the *Bruen* test.

## CONCLUSION

For the reasons stated herein, Mr. Joshua respectfully requests that the Petition for Writ of Certiorari be granted.

RESPECTFULLY SUBMITTED,

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