**No. 26-_____**

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**IN THE**

**SUPREME COURT OF THE UNITED STATES**

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KESHON DAVEON BAXTER, *Petitioner*,

v.

UNITED STATES OF AMERICA, *Respondent*.

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

# PETITION FOR WRIT OF CERTIORARI

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## QUESTION PRESENTED

Federal law makes it a crime for any "unlawful user" of a controlled substance to possess a firearm. 18 U.S.C. § 922(g)(3). In *United States v. Hemani*, 608 U.S. 772 (2026), this Court rejected the Government's contention that it may "automatically strip" a person of his Second Amendment right merely because he uses marijuana a few times a week, without proof that the person's drug use renders him dangerous. *Id.* at 794.

The Eighth Circuit nevertheless affirmed petitioner Keshon Baxter's conviction under section 922(g)(3). It held that the statute was constitutional as applied based on petitioner's alleged dangerous conduct, criminal history, and social-media activity, even though the Government did not establish that petitioner's marijuana use caused the conduct on which the court relied. *United States v. Baxter*, 181 F.4th 898, 901 (8th Cir. 2026). The question presented is:

> Whether the Second Amendment permits a conviction under 18 U.S.C. § 922(g)(3) absent proof that the defendant's unlawful drug use rendered him dangerous or caused him to pose a credible threat to the physical safety of others with a firearm.

## LIST OF PARTIES

Keshon Daveon Baxter, Petitioner

United States of America, Respondent

## TABLE OF CONTENTS

**Page**

OPINIONS BELOW ..... 1

JURISDICTION ..... 1

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED ..... 1

STATEMENT OF THE CASE ..... 2

REASONS FOR GRANTING THE WRIT ..... 5

I. The decision below conflicts with *Hemani* by allowing disarmament without the constitutionally required nexus between Baxter's marijuana use and dangerousness ..... 5

II. The decision below conflicts with the Eighth Circuit's own causation-based framework ..... 7

III. The question presented is exceptionally important and warrants this Court's immediate intervention ..... 9

CONCLUSION ..... 11

CERTIFICATE OF COMPLIANCE

PROOF OF SERVICE

## INDEX TO APPENDICES

**APPENDIX A**
Opinion, *United States v. Baxter*, 181 F.4th 898 (8th Cir. 2026) ..... 1a

**APPENDIX B**
Order denying rehearing and rehearing en banc,
*United States v. Baxter*, No. 25-2752 (8th Cir. August 20, 2026) ..... 15a

**APPENDIX C**
Order on motion to dismiss, *United States v. Baxter,*
4:23-cr-00108-SMR-WPK (S.D. Iowa July 23, 2025) ..... 17a

## TABLE OF AUTHORITIES CITED

CASES PAGE NUMBER

*Burrage v. United States*, 571 U.S. 204 (2014) ..... 9

*United States v. Baxter*, 127 F.4th 1087 (8th Cir. 2025) ..... 3, 4

*United States v. Baxter*, 181 F.4th 898 (2026) ..... 6, 7

*United States v. Carnes*, 22 F.4th 743 (8th Cir. 2022) ..... 9, 10

*United States v. Grubb*, 135 F.4th 604 (8th Cir. 2025) ..... 4

*United States v. Hemani*, 608 U.S. 772 (2026) ..... 5, 6, 9, 10

*United States v. Perez*, 145 F.4th 800 (8th Cir. 2025) ..... 7, 8

## PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

## OPINIONS BELOW

The panel decision of the court of appeals appears at Appendix A, page 1a to the petition and is published at *United States v. Baxter*, 181 F.4th 898 (2026).

The denial of rehearing and rehearing en banc appears at Appendix B, page 15a and is unpublished.

The district court's order on the motion to dismiss appears at Appendix C, page 17a and is unpublished.

## JURISDICTION

The panel of the Eighth Circuit Court of Appeals entered judgment on July 13, 2026.

The court of appeals denied a timely petition for rehearing and rehearing en banc on August 20, 2026.

This Court has jurisdiction under 28 U.S.C. section 1254(1).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

**Second Amendment to the United States Constitution:**

> A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

**18 U.S.C. § 922(g):**

It shall be unlawful for any person—

> * * *
>
> **(3)** who is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));
>
> * * *

to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

## STATEMENT OF THE CASE

### A. Material Facts

On May 21, 2023, Keshon Baxter was observed in the Court Avenue district of Des Moines, Iowa, with a group of individuals known to associate with the Strap street gang. R. Doc. 114-4, at 1 (Gov't Ex. 100). Officers witnessed Baxter's group arguing and preparing to fight known members of the C-Block street gang. R. Doc. 114-4, at 1-2 (Gov't Ex. 100). Ultimately, the officers broke up the altercation before it turned physical, and both groups went in opposite directions. R. Doc. 114-4, at 3 (Gov't Ex. 100).

Approximately thirty minutes later, the two groups confronted each other approximately a block away. R. Doc. 114-4, at 3-4 (Gov't Ex. 100). A concerned citizen approached one of the officers and informed him that an individual wearing a black balaclava was in possession of a handgun. R. Doc. 114-4, at 4 (Gov't Ex. 100). Based on this information, an officer approached Baxter, who was wearing a balaclava, and

asked, "Hey, what's in your pocket?" R. Doc. 114-4, at 4 (Gov't Ex. 100). Baxter responded, "Nothing" and almost simultaneously fled. R. Doc. 114-4, at 4 (Gov't Ex. 100). A chase ensued, and when the officers apprehended Baxter, they uncovered a firearm and baggie of marijuana from his pockets. R. Doc. 114-4, at 4 (Gov't Ex. 100). Following Baxter's arrest, law enforcement officers obtained a federal warrant to seize and search his urine for the presence of controlled substances. R. Doc. 93, at 2. Testing confirmed the presence of THC metabolites, consistent with the use of marijuana. R. Doc. 93, at 2.

**B. Proceedings Below.**

On July 18, 2023, a grand jury in the Southern District of Iowa returned a one-count indictment charging Baxter with being an unlawful user of a controlled substance in possession of a firearm in violation of 18 U.S.C. sections 922(g)(3) and 924(a)(8). R. Doc. 22. Baxter moved to dismiss the indictment on the grounds that section 922(g)(3) was unconstitutional as applied to him in violation of the Second Amendment. R. Doc. 37. He also challenged the statute as being unconstitutionally vague. R. Doc. 37. The district court denied the motion in its entirety. R. Doc. 45. Thereafter, Baxter entered a conditional guilty plea to the indictment that preserved his right to appeal the court's ruling on his motion to dismiss. R. Docs. 50, 52. The district court sentenced Baxter to sixty-four months in prison. R. Doc. 67.

Baxter appealed the district court's ruling on his motion to dismiss. *United States v. Baxter*, 127 F.4th 1087 (8th Cir. 2025). A panel of the Eighth Circuit Court of Appeals reversed and remanded. *Id.* at 1092. The court of appeals found the

district court record insufficient to determine whether section 922(g)(3) was constitutional as applied to Baxter under the Second Amendment. *Id.* at 1089. Consequently, the Court reversed the district court's ruling on Baxter's as-applied Second Amendment challenge and remanded with instructions for the district court to make the factual findings required by Federal Rule of Criminal Procedure 12(d). *Id.* at 1090-92.

On remand, the district court granted Baxter leave to withdraw his guilty plea. R. Docs. 103, 104. The parties subsequently proceeded to a bench trial on a stipulated record, and the court found him guilty as charged. R. Doc. 105, at 1. The court then held a Rule 12 evidentiary hearing at which the Government introduced exhibits and testimony to support its resistance to Baxter's motion to dismiss. R. Doc. 105, at 1; *see United States v. Grubb*, 135 F.4th 604, 608 (8th Cir. 2025)(approving presentation of evidence bearing on the constitutional question "separate from the trial of the charge").

On July 23, 2025, the district court entered an order denying Baxter's motion to dismiss. R. Doc. 120. The court ruled that application of section 922(g)(3) to Baxter was consistent with our nation's historical tradition of prohibiting the mentally ill and danger from possessing firearms as well as the laws disarming individuals who engage in terror-inducing conduct. R. Doc. 120, at 20-21. The parties proceeded to a one-day bench trial on a stipulated record, and the court found Baxter guilty as charged. R. Doc. 128. It then resentenced Baxter to 64 months' imprisonment and three years of supervised release. Pet. App. 5a.

On appeal, Baxter argued that the Government had not established that applying section 922(g)(3) to him comported with the Nation's historical tradition of firearm regulation. Pet. App. 7a. The Eighth Circuit affirmed. Pet. App. 12a. Baxter timely sought panel rehearing and rehearing en banc. The court denied Baxter's request for rehearing. Pet. App. 16a.

## REASONS FOR GRANTING THE WRIT

### I. The decision below conflicts with *Hemani* by allowing disarmament without the constitutionally required nexus between Baxter's marijuana use and dangerousness

In *United States v. Hemani*, 608 U.S. 772 (2026), this Court held that the Government may not "automatically strip" an individual of his Second Amendment right simply because he uses marijuana a few times each week. *Id.* at 794. The Court rejected a theory under which the Government need not show the amount of marijuana used, its effect on the person, misuse of a firearm while intoxicated, or danger to anyone resulting from marijuana use. *Id.* The Court left room for a materially different prosecution: one supported by individualized evidence that a defendant's drug use rendered him dangerous, or proof that a particular drug invariably presents a danger because of its potency or other characteristics. *Id.* That limitation is the holding's center of gravity. It distinguishes a permissible, evidence-based application of section 922(g)(3) from an impermissible rule under which marijuana use alone—or marijuana use combined with unrelated allegations of misconduct—works an automatic forfeiture of an enumerated constitutional right.

The decision below crossed that constitutional line. The court treated petitioner's alleged dangerous behavior, criminal history, and social-media activity as sufficient to establish that section 922(g)(3) could constitutionally apply. *Baxter*, 181 F.4th at 901. But the pertinent question is not whether a court can identify conduct it regards as dangerous. It is whether the Government proved that petitioner's marijuana use made him dangerous in a manner historically sufficient to justify disarmament. The Government's theory permits precisely the form of automatic disarmament *Hemani* rejected. Under that theory, marijuana use supplies the statutory hook, while any other evidence of poor judgment, criminal conduct, or troubling expression supplies the asserted constitutional justification. The required causal nexus between drug use and dangerousness disappears. And once it disappears, section 922(g)(3) again becomes a categorical firearms ban for marijuana users, merely accompanied by post hoc explanations for why a particular defendant might be considered risky.

That approach is especially untenable given the breadth of the federal statute. Section 922(g)(3) incorporates the Controlled Substances Act's definition of "controlled substance," sweeping across all five schedules of substances subject to differing degrees of regulation. *Hemani*, 608 U.S. at 777. The statute consequently reaches individuals who use substances with profoundly different properties and risks. In *Hemani*, this Court refused to accept that Congress could disarm every unlawful user of every such substance without attention to actual dangerousness. *Id.*

## II. The decision below conflicts with the Eighth Circuit's own causation-based framework

The Eighth Circuit's precedents had already recognized the defect in the theory sustained below. In *United States v. Perez*, 145 F.4th 800 (8th Cir. 2025), for example, the court stated that section 922(g)(3) may be constitutional when controlled-substance use "caused" the defendant to "act like someone mentally ill and dangerous" or when it "caused him to induce terror or pose a danger to others with a firearm." *Id.* at 809-10. The causal requirement matters. It ensures that the Second Amendment inquiry does not collapse into a free-ranging assessment of a defendant's character. A court must determine whether drug use actually produced the dangerousness asserted as the basis for disarmament.

*Perez* applied that principle with care. Although the defendant had engaged in dangerous conduct while using marijuana, the court found the existing findings inadequate because the district court had not expressly determined that marijuana impaired the defendant's decision-making and thereby caused him to threaten public safety. *Id.* at 808. The court likewise found no determination that the defendant's marijuana use placed him within a class that historically presented a special danger of firearm misuse. *Id.*

The decision below is irreconcilable with that analysis. It affirmed Baxter's conviction based on dangerousness evidence without requiring a finding that marijuana use *caused the dangerousness*. *Baxter*, 181 F.4th at 901. The panel thus transformed *Perez*'s causal requirement into a watered-down version: marijuana use plus conduct that may be deemed dangerous equals constitutional disarmament.

That is not the rule *Perez* announced, and it is not the rule *Hemani* permits. The conflict is not merely semantic. Under the court of appeals' approach, a defendant may lose the right to possess a firearm for life even if marijuana neither impaired him nor contributed to the conduct used to characterize him as dangerous.

Baxter does not dispute the district court's findings that marijuana "*can* compromise a user's decision-making capacity" and "*can* adversely affect both brain development and behavior." R. Doc. 120, at 16. But, the question under *Perez* is whether marijuana *did* induce Baxter to act mentally ill to the degree that our Founders would have allowed him to be institutionalized. Tellingly, the court found that Baxter's "marijuana use *consistently coincided* with gang activities and other dangerous behavior." R. Doc. 120, at 16 (emphasis added). It also found that Baxter "was experiencing either the direct effects of marijuana or experiencing withdrawal at the time of his arrest." R. Doc. 120, at 16. What the court did not say is that Baxter's marijuana use *caused him* to act like someone who is both mentally ill and dangerous. In this way, the court's findings mirror those in *Perez* that this Court found to be lacking. *See Perez*, 145 F.4th at 807 (holding that the district court's "finding that [defendant] acted violently or recklessly while using marijuana" was insufficient to establish causation). Because the court did not find that Baxter's marijuana use caused him "to induce terror or pose a credible threat to the physical safety of others with a firearm," his conviction cannot stand.3 *See id.* at 809.[1]

[1] The district court noted that Baxter had marijuana metabolites in his system on the night of his arrest but stopped short of finding that he was intoxicated. R. Doc. 120, at 17.

The district court's actual factual findings dispel any causal connection between Baxter's marijuana use and his firearm possession or related conduct. The court repeatedly identified gang involvement—not drug use—as the central driver of Baxter's dangerous behavior. It found that Baxter's "marijuana use consistently coincided with gang activities and other dangerous behavior." R. Doc. 120 at 17. The court below likewise emphasized Baxter's "consistent presence with other gang members while possessing firearms and using marijuana." R. Doc. 120 at 11. And most significantly, the court found that Baxter's history of dangerous conduct was "driven largely by his gang associations and activities." R. Doc. 120 at 10 (emphasis added). These findings resolve the causation question. If Baxter's gang associations were the primary force behind his unlawful conduct, then the Government cannot show that his marijuana use was a but-for cause of his firearm possession or related conduct. The Second Amendment requires more than correlation; it requires causation. *See Burrage v. United States*, 571 U.S. 204, 211 (2014) (explaining that the "but-for requirement is part of the common understanding of causation").

## III. The question presented is exceptionally important and warrants this Court's immediate intervention

Section 922(g)(3) authorizes severe criminal punishment and permanent disarmament for people whom the Government classifies as unlawful users of controlled substances. *Hemani*, 608 U.S. at 777. The Eighth Circuit has recognized that the statute requires a temporal nexus between firearm possession and regular drug use because, without such a judicially imposed limitation, the term "unlawful user" risks unconstitutional vagueness. *United States v. Carnes*, 22 F.4th 743, 748

(8th Cir. 2022). Yet even that temporal limitation does not answer the Second Amendment question decided here. A person may be a regular marijuana user and possess a firearm contemporaneously without being rendered dangerous by marijuana. *Hemani* holds that such a person may not be automatically stripped of his constitutional right. *Hemani*, 608 U.S. at 794.

The decision below gives lower courts and prosecutors no workable limiting principle. It authorizes disarmament upon an after-the-fact conclusion that a marijuana user has acted dangerously at some point, even absent a finding that marijuana caused the conduct or made firearm possession dangerous. That rule threatens to turn a narrow exception for persons whose drug use demonstrably creates a public-safety threat into a general prohibition on firearm ownership by marijuana users whom the Government can portray unfavorably. This Court should grant review to enforce *Hemani*'s central holding and make clear that section 922(g)(3) may not be applied unless the Government establishes the necessary connection between unlawful drug use and dangerousness.

## CONCLUSION

For the foregoing reasons, petitioner Keshon Baxter respectfully requests that the Petition for a Writ of Certiorari be granted, the judgment of the Eighth Circuit Court of Appeals be vacated, and the case be remanded to the district court.



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