No. 24-1234

In the Supreme Court of the United States

UNITED STATES OF AMERICA,

Petitioner,

v.

ALI DANIAL HEMANI,

Respondent.

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

BRIEF OF ILLINOIS, DISTRICT OF COLUMBIA, CALIFORNIA, COLORADO, CONNECTICUT, DELAWARE, HAWAI'I, MAINE, MARYLAND, MASSACHUSETTS, MICHIGAN, MINNESOTA, NEVADA, NEW JERSEY, NEW YORK, OHIO, OREGON, RHODE ISLAND, VERMONT, AND WASHINGTON AS AMICI CURIAE IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

Whether 18 U.S.C. § 922(g)(3), the federal statute that prohibits the possession of firearms by a person who "is an unlawful user of or addicted to any controlled substance," violates the Second Amendment as applied to respondent.

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INTERESTS OF AMICI CURIAE

Amici States of Illinois, the District of Columbia, California, Colorado, Connecticut, Delaware, Hawai'i, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New York, Ohio, Oregon, Rhode Island, Vermont, and Washington (collectively, "amici States") submit this brief in support of the United States.

Amici States have a substantial interest in the health, safety, and welfare of their communities, which includes preventing firearms from coming into the hands of people likely to misuse them. *E.g.*, *United States* v. *Rahimi*, 602 U.S. 680, 690 (2024) (describing tradition of laws preventing dangerous individuals "from misusing firearms"). That interest is implicated by this case, which addresses the extent to which the federal government may prohibit an individual who is an "unlawful user of or addicted to any controlled substance" from possessing firearms. 18 U.S.C. § 922(g)(3); see *Smith* v. *United States*, 508 U.S. 223, 240 (1993) ("[D]rugs and guns are a dangerous combination.").

As detailed below, the vast majority of States have furthered that interest by enacting laws that, like section 922(g)(3), restrict habitual drug users from possessing or carrying firearms.[1] Although amici

[1] States use a variety of terms to describe individuals who are restricted from possessing and carrying firearms because of habitual drug use. For example, California restricts the possession of firearms by those who are "addicted to" "narcotic drug[s]," Cal. Penal Code § 29800, while Texas restricts firearm carriage by those who are "chemically dependent" on "controlled substances or dangerous drugs," Tex. Gov't Code §§ 411.172(a), 411.171(2). This brief uses the phrase "habitual drug users" to

States have come to different conclusions about how to regulate in this area, they agree that legislatures may, consistent with the Second Amendment, protect the public by imposing restrictions on firearm possession and carriage by habitual drug users.

The Fifth Circuit's decision—which concluded that the Second Amendment permits the prohibition of firearms by a habitual drug user only in the narrow circumstances where the user of a "controlled substance" was intoxicated at the time he or she was arrested, Pet. App. 1a-2a—undermines this authority by unduly limiting the category of individuals who may be prohibited from possessing firearms. Amici States thus agree with the United States that section 922(g)(3) is constitutional as applied to respondent and other habitual drug users and, accordingly, that the decision below should be reversed.[2]

SUMMARY OF ARGUMENT

The Fifth Circuit affirmed the dismissal of the indictment in this case because respondent was not under the influence of drugs at the time he was arrested for unlawful firearm possession. Pet. App. 1a-2a. This summary decision was based on binding precedent within the circuit—specifically, *United States* v. *Connelly*, 117 F.4th 269 (5th Cir. 2024), and

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refer to individuals who are subject to firearms restrictions under state laws analogous to section 922(g)(3).

[2] As petitioner acknowledges, see, *e.g.*, Pet. Br. 36, section 922(g)(3) is not intended to target casual users of controlled substances, but rather those who are engaged in habitual use or are addicted to controlled substances.

United States v. *Daniels*, 124 F.4th 967 (5th Cir. 2025)—holding that section 922(g)(3) is "unconstitutional where it seeks to disarm an individual solely 'based on habitual or occasional drug use.'" *Daniels*, 124 F.4th at 974 (quoting *Connelly*, 116 F.4th at 282). According to these cases, the federal government failed to show that this application of section 922(g)(3) was consistent with the country's historical tradition of regulating firearms because the historical laws identified by the government barred habitual drug users from carrying firearms only while they are intoxicated. *Connelly*, 117 F.4th at 281. In other words, the Fifth Circuit determined that these analogues were insufficient to support the full range of conduct regulated by section 922(g)(3). *Ibid.*

As the United States explains, Pet. Br. 12-40, the reasoning underlying these decisions is flawed in multiple respects, including that it misdescribes the scope of the relevant historical tradition, misapplies this Court's precedents, and unduly ties the hands of legislatures seeking to protect the public from the full range of dangers associated with combining firearms and drugs. Amici States seek to highlight two aspects of the Fifth Circuit's reasoning that are particularly problematic for the States.

First, the Fifth Circuit's reasoning is based in part on the premise that habitual drug users present a public safety risk only while actively intoxicated. *E.g.*, *Daniels*, 124 F.4th at 976 (discussing how habitual drug users do not necessarily "pose a danger to others"). But as the States know from their regulatory and enforcement experience, this is incorrect. In addition to the undisputed public safety

risks presented by possessing firearms while impaired, habitual drug use can cause some individuals to experience chronic psychological disturbances that affect their conduct and decision-making in a manner that compromises their ability to safely handle firearms. Further, because much drug use is illicit, habitual drug users frequently interact with the illegal drug trade, which is inherently dangerous.

In light of these public safety risks, the vast majority of States regulate firearm use by habitual drug users in much the same way as section 922(g)(3). The ubiquity of these laws reflects the widespread consensus that habitual drug users present a sufficient risk to public safety to warrant restricting their access to firearms.

Second, the Fifth Circuit's decision improperly cabins legislative action in ways that the Second Amendment and this Court's precedent do not require. For instance, the lower court wrongly concluded that to justify the application of section 922(g)(3) to habitual drug users like respondent, the government must identify a historical regulation that is identical to section 922(g)(3) in all material respects. But as this case illustrates, imposing such a requirement would lead to a regulatory scheme "trapped in amber"—a prospect that this Court has rejected. *Rahimi*, 602 U.S. at 691.

In a similar vein, the Fifth Circuit's approach unduly restricts legislatures from making categorical determinations about who is likely to misuse firearms. In reaching its conclusion that section 922(g)(3) could not be applied to habitual drug users who were not actually intoxicated at the time of

arrest, the court suggested that the government might be able to apply section 922(g)(3) to some of those individuals if it proved a "tight temporal nexus between an individual's drug use and his possession of firearms" or by establishing on a case-by-case basis "that a defendant's frequent or recent drug use renders him presumptively dangerous." *Daniels*, 124 F.4th at 976. This approach, if accepted, would create serious fairness and administrability problems.

In short, amici States have a substantial interest in retaining the flexibility to address new societal concerns with appropriately tailored firearms regulations that are consistent with the principles underlying this country's historical tradition. Section 922(g)(3), as well as its state counterparts, respect that balance.

ARGUMENT

I. Given the unique dangers associated with combining habitual drug use and firearms, most States have enacted restrictions similar to section 922(g)(3).

As the United States explains, Pet. Br. 27-35, section 922(g)(3) furthers the important public safety goal of protecting the public from the dangers associated with firearm use by a presumptively dangerous group of people: individuals who habitually use a "controlled substance." In amici States' experience, and contrary to the Fifth Circuit's conclusion otherwise, see *Daniels*, 124 F.4th at 976, these dangers arise in circumstances beyond those where an individual was under the influence of drugs at the time of arrest. Indeed, the public can be endangered by habitual drug users who experience

ongoing psychological deficits that cause them to make dangerous decisions while handling firearms, commit dangerous actions that put others at risk, and expose themselves to unsafe environments to obtain drugs. Given those dangers, a large majority of States have made a similar legislative choice as the federal government to regulate how habitual drug users may use firearms. These restrictions, like section 922(g)(3), typically regulate habitual drug users by imposing a temporary restriction on their possession or carriage of firearms.

A. Habitual drug use is associated with unique dangers when combined with firearms.

For years, States have recognized that firearms present a danger to the public when combined with drug use. See, *e.g.*, *State* v. *Woods*, 23 N.W.3d 258, 269 (Iowa 2025) ("[M]ixing drugs and guns together is inherently dangerous[.]"). As the Fifth Circuit recognized, these dangers frequently arise when an individual possesses a firearm while under the influence of drugs. Pet. App. 1a-2a. But there are also significant public safety risks associated with habitual drug use that extend beyond the time that the individual is using drugs.

At the threshold, many drugs cause psychological impairment to the user while intoxicated, and this psychological impairment can cause risks to the public when combined with firearms. As courts have noted, drug use "typically causes immediate deficits in cognitive function." *United States* v. *Seiwert*, 152 F.4th 854, 866 (7th Cir. 2025). For example, after taking heroin, users will rapidly become drowsy and

experience clouded mental function.[3] And when an individual ingests cocaine, the user's behavior can quickly become "bizarre, erratic, and violent."[4] Likewise, cannabis can cause impaired thinking and movement, and, in large amounts, can cause anxiety and hallucinations.[5]

As criminal cases arising across the country show, the altered mental states caused by these and other drugs can be dangerous when combined with firearms, even when an individual user does not necessarily intend violence or harm or even fire the weapon. For instance, in *United States* v. *VanOchten*, 150 F.4th 552, 554 (6th Cir. 2025), the criminal defendant—who was both high and drunk—was shooting a rifle at a "flock of birds" in his backyard. While trying to shoot the birds, he also shot in the direction of a propane tank. *Ibid.* As the court noted, if the defendant had hit the tank, he could "have caused a major explosion," injuring not only himself but also "the person or property of another." *Id.* at 560-561 (internal quotations omitted).

In another case, a criminal defendant who regularly smoked marijuana purchased a pistol. *United States* v. *Harris*, 144 F.4th 154, 156 (3rd Cir. 2025). Five days later, he went to party, "got really drunk and high and, in the revelry, lost his new gun."

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[3] National Institute on Drug Abuse, *Heroin Research Report,* https://bit.ly/43N6HfA. All websites last visited December 17, 2025.

[4] National Institute on Drug Abuse, *Cocaine*, https://bit.ly/48vnars.

[5] National Institute on Drug Abuse, *Cannabis (Marijuana)*, https://bit.ly/3XFUOVr.

Ibid. (internal quotations omitted). Soon thereafter, the defendant's lost pistol ended up in the hands of a felon, who should not have been able to obtain the pistol under federal law. *Id.* at 157. In yet another case, a man who engaged in daily heroin and cocaine use traded firearms that he had inherited from his father to his drug dealer to pay for drugs. *Seiwert*, 152 F.4th at 859.

But the Fifth Circuit was wrong that the danger of mixing drugs and guns is limited to times when a drug user is actively intoxicated. In addition to the altered mental state that users experience while high, long-term drug use can lead to "severe ongoing psychological deficits." *Id.* at 869. Indeed, many States have recognized that using drugs for an extended period of time can cause lasting mental disturbances by providing a "lack of penal responsibility defense" to defendants who suffer from permanent mental impairment resulting from chronic drug use. See, *e.g.*, *State* v. *Abion*, 478 P.3d 270, 282 (Haw. 2020) (trial judge erred when it precluded the testimony of a psychologist who would testify that defendant was suffering from permanent effects of chronic methamphetamine use); *Currie* v. *State*, 254 A.3d 25, 43 (Md. Ct. Spec. App. 2021) ("Defendants may be found not criminally responsible based on evidence that their drug use resulted in a 'settled' disorder" such as "psychosis from prolonged use of marijuana." (internal quotations omitted)); *White* v. *Commonwealth*, 636 S.E.2d 353, 357 (Va. 2006) (acknowledging that the defense of insanity caused by long-term substance abuse is "not new" and collecting cases). And, as this Court has noted, there have been "longstanding prohibitions on the possession of firearms by . . . the mentally ill." *Heller* v. *District of*

Columbia, 554 U.S. 570, 626 (2008). Given the potentially lasting effects of sustained drug use, habitual drug users may lack the ability to safely handle firearms even while not under the immediate influence of drugs.

Additionally, habitual drug users can pose a danger to communities even while those users are not actively intoxicated or experiencing ongoing psychological deficits. Even though drug addiction is an illness that "in some cases [can] be contracted innocently or inadvertently," *United States* v. *Yancey*, 621 F.3d 681, 685 (7th Cir. 2010), *abrogated on other grounds by N.Y. State Rifle & Pistol Ass'n* v. *Bruen*, 597 U.S. 1 (2022), a habitual user may be driven to violence or other criminal measures to obtain the substances on which he or she has become dependent. For example, in concluding that there was a strong link between drug use and violence, one court described several studies indicating that "chronic cocaine and opiate users were more likely than nonusers to engage in robbery and violence"; that "almost 50% of all state and federal prisoners who had committed violent felonies were drug abusers or addicts in the year before their arrest, as compared to only 2% of the general population"; and that "probationers who had perpetrated violence in the past were significantly more likely to have used a host of drugs—marijuana, hallucinogens, sedatives, and heroin—than probationers who had never been involved in a violent episode." *United States* v. *Carter*, 750 F.3d 462, 467 (4th Cir. 2014).[6] These violent

[6] Citing Carrie B. Oser et al., *The Drugs–Violence Nexus Among Rural Felony Probationers*, 24 J. Interpersonal Violence 1285, 1293 tbl. 1 (2009); Bureau of Just. Stat., U.S. Dep't of Just., *Drug*

episodes and run-ins with law enforcement may happen because the "inflated price[s] of illegal drugs on the black market" can compel people addicted to those drugs to try to obtain them by any means necessary. *Id.* at 469. Indeed, approximately one in five state prisoners reported that "their most serious current offense was committed to get money for drugs or to obtain drugs."[7]

Thus, habitual drug users can pose societal risks when seeking drugs, not just when they are intoxicated. And the addition of firearms necessarily increases the danger. When habitual drug users interact with drug dealers and traffickers to obtain drugs, they enter an inherently risky environment. The high "price per kilogram means that some people have enough incentive to steal [the drugs] that they may resort to violence."[8] Traffickers also "carry around so much cash (after a sale) or precious cargo that many will resort to lethal force (immediately) to defend" that cargo.[9] And because rivals in the drug market have so much at stake, they may also "resort to lethal force to protect or expand their customer

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Use and Dependence, State and Federal Prisons, 2004, at 7 & tbl.6 (2007); H. Virginia McCoy et al., *Perpetrators, Victims, and Observers of Violence: Chronic and Non-Chronic Drug Users*, 16 J. Interpersonal Violence 890, 900 (2001).

[7] Bureau of Just. Stat., U.S. Dep't of Just., *Drug Use, Dependence, and Abuse Among State Prisoners and Jail Inmates, 2007-2009*, at 6 (2017).

[8] Dru Stevenson, *The Complex Interplay Between the Controlled Substances Act and the Gun Control Act*, 18 Ohio St. J. of Crim. L. 211, 216 (2020).

[9] *Ibid.*

base."[10] For all these reasons, courts have consistently recognized that illegal drug use and firearms possession are a dangerous combination even absent evidence of intoxication. See, *e.g.*, *United States* v. *Yanez Sosa*, 513 F.3d 194, 202 (5th Cir. 2008) (crediting testimony that "drugs and guns are commonly found together and that drug dealers use guns to protect their business because of the inherent violence of the trade"); *Woods*, 23 N.W.3d at 269 ("[M]ixing drugs and guns together is inherently dangerous . . . ."); *State* v. *Jackson*, 697 A.2d 1328, 1331 (Me. 1997) ("[D]rugs and guns are a lethal combination . . . .").

Thus, firearm possession by habitual drug users can pose a danger to the public both because of the dangerous choices that users may make, whether or not under the influence at the time, and because obtaining unlawful drugs can expose them to the inherent violence and criminality associated with the drug trade.

B. Nearly every State has passed legislation addressing the danger of firearms possession or carriage by habitual drug users.

Recognizing the dangers posed by combining habitual drug use with firearms, the vast majority of States impose firearm restrictions on such drug users. Although States have not reached identical conclusions on how to regulate in these circumstances, virtually every State and the District of Columbia have enacted laws to limit the possession

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[10] *Ibid.*

or carriage of firearms by those who habitually use drugs. These laws share important characteristics with section 922(g)(3).

To start, at least 38 States and the District of Columbia have determined that restricting the possession or carriage of firearms by "habitual" drug users is appropriate to promote public safety and curb gun violence within their borders. Among those 39 jurisdictions, 16 States—Alabama, California, Hawai'i, Illinois, Kansas, Maine, Maryland, Minnesota, Missouri, Nevada, New York, Ohio, South Carolina, Tennessee, Utah, and West Virginia—and the District of Columbia prohibit firearm possession by habitual drug users.[11] Twenty-two additional States—Alaska, Arkansas, Colorado, Florida, Georgia, Idaho, Indiana, Kentucky, Louisiana, Mississippi, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Pennsylvania, Texas, Virginia, Washington, and Wyoming—restrict firearms carriage by habitual drug users.[12] Notably, a majority of all States define

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[11] See Ala. Code § 13A-11-72(b); Cal. Penal Code § 29800(a); D.C. Code § 22-4503(a)(4); Haw. Rev. Stat. § 134-7(a); 720 Ill. Comp. Stat. 5/24-3.1(a)(3); Kan. Stat. Ann. § 21-6301(a)(10); Me. Stat. tit. 15, § 393(1)(G); Md. Code Ann. Pub. Safety § 5-133(b)(7); Minn. Stat. § 624.713(10)(iii); Mo. Rev. Stat. § 571.070.1(2); Nev. Rev. Stat. § 202.360(1)(f); N.Y. Penal Law § 400.00(1)(e); Ohio Rev. Code Ann. § 2923.13(A)(4); S.C. Code Ann. § 16-23-30(A)(1); Tenn. Code Ann. § 39-17-1307(f)(1)(C); Utah Code Ann. § 76-11-303(5); W. Va. Code § 61-7-7(a)(3).

[12] See Alaska Stat. § 18.65.705(2); Ark. Code Ann. § 5-73-309(7); Colo. Rev. Stat. § 18-12-203(1)(f); Fla. Stat. § 790.06(2)(f); Ga. Code Ann. § 16-11-129(b)(2); Idaho Code § 18-3302(11)(e); Ind. Code §§ 35-47-2-3(g)(3), (i)(6), 35-47-1-7(5); Ky. Rev. Stat. Ann. § 237.110(4)(a); La. Stat. Ann. § 40:1379.3(C)(12); Miss. Code Ann. § 45-9-101(2)(e); Mont. Code Ann. § 45-8-321(1)(a); Neb.

the restricted drug user by referring to or using the language of section 922(g)(3).[13]

Other States describe the group of prohibited drug users slightly differently. Some States, like Oklahoma, restrict the possession or carriage of firearms by those who have been convicted of certain drug offenses, such as the unlawful possession of controlled substances.[14] Still others, like Rhode Island, ban possession or carriage of firearms by those who are in treatment for drug use.[15]

Rev. Stat. § 69-2433(2); N.H. Rev. Stat. Ann. § 159:6(I)(a); N.J. Stat. Ann. § 2C:58-3(c)(3); N.M. Stat. Ann. §§ 29-19-4(A)(9); N.C. Gen. Stat. § 14-415.12(b)(5); N.D. Cent. Code §§ 62.1-04-03(1)(c)(8), (1)(f); 18 Pa. Cons. Stat. § 6109(e)(1)(vi); Tex. Gov't Code Ann. § 411.172(a)(6); Va. Code Ann. § 18.2-308.09(8); Wash. Rev. Code § 9.41.070(1)(a); Wyo. Stat. Ann. § 6-8-104(b)(iv).

[13] See Alaska Stat. § 18.65.705(2); Ark. Code Ann. § 5-73-309(7); Colo. Rev. Stat. § 18-12-203(1)(f); Ga. Code Ann. § 16-11-129(b)(2)(E); Ind. Code § 35-47-2-3(i)(6); Haw. Rev. Stat. § 134-7(a); Kan. Stat. Ann. § 21-6301(a)(10); Ky. Rev. Stat. Ann. § 237.110(4)(a); La. Stat. Ann. § 40:1379.3(C)(12); Me. Rev. Stat. tit. 15, § 393(1)(G); Mont. Code § 45-8-321(1)(a); Neb. Rev. Stat. § 69-2433(2); Nev. Rev. Stat. Ann. § 202.360(1)(f); N.H. Rev. Stat. Ann. § 159:6(I)(a); N.M. Stat. Ann. § 29-19-4(A)(7); N.Y. Penal Law § 400.00(1)(e); N.C. Gen. Stat. § 14-415.12(b)(5); N.D. Cent. Code §§ 62.1-04-03(1)(c)(8), (1)(f); Ohio Rev. Code Ann. § 2923.125(D)(1)(o); 18 Pa. Cons. Stat. § 6109(e)(1)(vi); Tenn. Code § 39-17-1307(f)(1)(C); Tex. Gov't Code Ann. § 411.172(a)(6); Va. Code Ann. § 18.2-308.09(8); Wash. Rev. Code § 9.41.070(1)(a); W. Va. Code § 61-7-7(a)(3); Wyo. Stat. § 6-8-104(b)(iv).

[14] See Del. Code Ann. tit. 11, § 1448(a)(3); 21 Okla. Stat. § 1272(A)(6)(f); Or. Rev. Stat. § 166.291(1)(L).

[15] See Haw. Rev. Stat. § 134-7(c)(1); Mass. Gen. Laws, ch. 140, § 121F(j)(ii)(A), (D); R.I. Gen. Laws § 11-47-6.

Importantly, as in the federal system, these States impose merely a temporary restriction on the possession or carriage of firearms. In many States, as under section 922(g)(3), the disarmament lasts only so long as the person habitually uses the drug.[16] Other States restrict possession or carriage for a specific, time-limited period, such as by imposing three- or five-year bans on carriage for certain drug

[16] See, *e.g.*, Colo. Rev. Stat. § 18-12-203(1)(f) (allowing issuance of concealed-carry permit if applicant is not "an unlawful user of or addicted to a controlled substance," as determined by "federal law and regulations"); Ohio Rev. Code Ann. § 2923.13(A)(4) (prohibiting the possession and carriage of a firearm while "the person has a drug dependency"); see also *State* v. *White*, 1997 WL 180307, at *3 (Ohio Ct. App. 1997) (the "limitation on the right to possess a firearm is only temporary" as the restriction is stated "in the [present] tense" (internal quotations omitted)); *State* v. *Wheatley*, 94 N.E.3d 579, 591 (Ohio Ct. App. 2018) (barred drug users "must currently use drugs or do so on a habitual basis" and "individuals who formerly abused drugs and have completely recovered from their addiction" are not barred); *People* v. *Washington*, 237 Cal. App. 2d 59, 68 (Cal. Dist. Ct. App. 1965) (defining "addicted" as an "emotional dependence on any narcotic in the sense that he experiences a compulsive need to continue its use, and an increased tolerance to the drugs' effects").

users.[17] At least one State disarms drug users for the length of their substance use treatment.[18]

To be sure, the States impose restrictions through different administrative and regulatory means and by using slightly different metrics. For instance, many States bar firearm possession by habitual drug users through their criminal code, providing for criminal penalties when a prohibited drug user possesses a firearm.[19] Others use licensing and permitting

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[17] See, *e.g.*, Ark. Code Ann. § 5-73-309(7)(B) (presumption of chronic and habitual use if the applicant for concealed-carry license has been in drug abuse treatment or has been convicted for certain controlled substance offenses "within the three-year period immediately preceding the date on which the application is submitted"); Fla. Stat. § 790.06(2)(f) (presumption of chronic and habitual use if the applicant for a concealed-carry license has been convicted of certain intoxication offenses "within a 3-year period"); Ky. Rev. Stat. Ann. § 237.110(4)(d) (three-year bar on concealed-carry permit if committed for controlled substance abuse or convicted of controlled substance offense); La. Stat. Ann. § 40:1379.3(C)(7) (five-year bar on concealed-carry permit if committed for controlled substance abuse or convicted of controlled substance offense); Miss. Code Ann. § 45-9-101(2)(e) (presumption of chronic and habitual use if the applicant for concealed-carry license has been in drug abuse treatment or has been convicted for certain controlled substance offenses "within the three-year period").

[18] See Mont. Code Ann. § 45-8-321(1)(f) (restricting issuance of concealed-carry permits while applicant "is under a court order of . . . treatment . . . or is otherwise under state supervision").

[19] See Ala. Code § 13A-11-72(b); Cal. Penal Code § 29800(a); D.C. Code § 22-4503(a)(4); Haw. Rev. Stat. § 134-7(a); 720 Ill. Comp. Stat. 5/24-3.1(a)(3); Kan. Stat. Ann. § 21-6301(a)(10); Me. Rev. Stat. tit. 15, § 393(1)(G); Md. Code Ann. Pub. Safety § 5-133(b)(7); Minn. Stat. § 624.713(10)(iii); Mo. Rev. Stat. § 571.070.1; Nev. Rev. Stat. § 202.360(1)(f); Ohio Rev. Code Ann. § 2923.13(A)(4); R.I. Gen. Laws § 11-47-6; S.C. Code Ann. § 16-

schemes to restrict carriage.[20] In these States, state officials will not issue firearms permits and licenses to habitual drug users. But regardless of these variations, virtually all States and the District of Columbia have sought to address the recognized public-safety risk associated with the combination of firearms and drugs by prohibiting habitual drug users from possessing or carrying firearms regardless of whether they are under the influence at the time.

II. The Fifth Circuit's decision unduly restricts permissible regulatory responses to public safety risks like those addressed by section 922(g)(3).

In addition to mirroring the approach taken by the majority of the States, section 922(g)(3)'s categorical

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23-30(A)(1); Tenn. Code Ann. § 39-17-1307(f)(1)(C); Utah Code Ann. § 76-11-303(5); W. Va. Code § 61-7-7(a)(3).

[20] See Alaska Stat. §§ 18.65.705(2), (5); Ark. Code Ann. § 5-73-309(7); Colo. Rev. Stat. § 18-12-203(1)(f); Fla. Stat. § 790.06(2)(f); Ga. Code Ann. § 16-11-129(b)(2); Idaho Code § 18-3302(11)(e); 430 Ill. Comp. Stat. 65/8(d); Ind. Code §§ 35-47-2-3(g)(3), (i)(6), 35-47-1-7(5); Ky. Rev. Stat. Ann. §§ 237.110(4)(a), (d); La. Stat. Ann. § 40:1379.3(C)(12); Md. Code Ann. Pub. Safety § 5-306(a)(5); Mass. Gen. Laws, ch. 140, §§ 121F(j)(ii)(A), (D); Miss. Code Ann. § 45-9-101(2)(e); Mont. Code §45-8-321(1)(a); Neb. Rev. Stat. § 69-2433(2); N.H. Rev. Stat. § 159:6(I)(a); N.J. Stat. Ann. § 2C:58-3(c)(3); N.M. Stat. Ann. §§ 29-19-4(A)(7), (A)(9); N.Y. Penal Law § 400.00(1)(e); N.C. Gen. Stat. § 14-415.12(b)(5); N.D. Cent. Code §§ 62.1-04-03(1)(c)(8), (1)(f); Ohio Rev. Code Ann. § 2923.125(o); Or. Rev. Stat. § 166.291(1)(L); 18 Pa. Cons. Stat. § 6109(e)(1)(vi); Tex. Gov't Code Ann. § 411.172(a)(6); Va. Code Ann. § 18.2-308.09(8); Wash. Rev. Code § 9.41.070(1)(a); Wyo. Stat. § 6-8-104(b)(iv); see also S.D. Codified Laws §§ 23-7-7.1(3), 23-7-7 (prohibiting drug users from obtaining a concealed carry permit for purposes of interstate carriage).

restriction on firearm possession for habitual drug users is consistent with this country's historical tradition of firearms regulation, as the United States explains. Pet. Br. 12-27. As the United States demonstrates with ample historical evidence, Founding-era legislatures categorically disarmed certain groups of people, *id.* at 14-16, in particular, habitual drunkards, *id.* at 17-27. And these laws applied even when a habitually intoxicated individual was sober. *Ibid.*

In reaching the opposite conclusion, the Fifth Circuit applied principles that are contrary to this Court's precedents. Namely, the lower court's reasoning that, in order to qualify as an appropriate historical analogue, the burdens imposed by modern laws must be identical to those imposed by historical laws, is inconsistent with *Bruen* and *Rahimi*. *Connelly*, 117 F.4th at 282. It would also impair the States' ability to respond to societal problems that are novel or have shifted meaningfully since the Founding and Reconstruction eras. Similarly, the lower court's approach to the categorical nature of section 922(g)(3)'s restriction would, if adopted, unduly restrict legislatures from making appropriate and reasonable determinations about who is likely to misuse firearms. These outcomes are not required by this Court's precedents or the Second Amendment and should be rejected.

A. The Second Amendment allows legislatures to confront shifting societal problems with new regulatory solutions.

As this Court has explained, while legislatures may not completely ban the possession of handguns by responsible, law-abiding individuals or impose

similarly severe burdens on the Second Amendment right, they still possess "a variety of tools" to combat the problem of gun violence. *Heller*, 554 U.S. at 636 (noting that the "absolute prohibition of handguns held and used for self-defense in the home" is not a permissible policy choice); see also *McDonald* v. *City of Chicago*, 561 U.S. 742, 785 (2010) (Second Amendment "by no means eliminates" the States' "ability to devise solutions to social problems that suit local needs and values"). One prominent application of that principle is this Court's consistent recognition that the Second Amendment "permits more than just those regulations identical to ones that could be found in 1791." *Rahimi*, 602 U.S. at 691-692; see also *Bruen*, 597 U.S. at 28 (Second Amendment "can, and must, apply to circumstances beyond those the Founders specifically anticipated").

In fact, *Bruen* accounts for this very scenario. When assessing whether the government has provided sufficient historical analogues to show that a challenged statute is consistent with historical tradition, the *Bruen* standard recognizes that while some historical analogies are "straightforward," others are not "simple to draw." 597 U.S. at 26-27. This is because "[t]he regulatory challenges posed by firearms today" are not the same as those that "preoccupied the Founders in 1791 or the Reconstruction generation in 1868." *Id.* at 27. Yet the Second Amendment must "apply to circumstances beyond those . . . anticipated" during the Founding and Reconstruction eras. *Id.* at 28. Accordingly, this Court anticipated a "more nuanced approach" to analogical reasoning in cases involving circumstances unanticipated by previous generations, such as

"unprecedented societal concerns or dramatic technological changes." *Id.* at 27.

The Court reiterated these precepts in *Rahimi*, where it underscored that the "appropriate analysis" involves applying "the principles that underpin our regulatory tradition" to "modern circumstances." 602 U.S. at 692 (internal quotations omitted). Consistent with that articulation of the standard, the Court upheld the constitutionality of 18 U.S.C. § 922(g)(8) notwithstanding that it was "by no means identical to . . . founding era regimes." *Id.* at 698. In doing so, this Court recognized that a contemporary statute responding to a serious public safety risk—disarming individuals subject to a domestic violence restraining order—was consistent with the historical tradition of disarming individuals who threaten harm to others to prevent the misuse of firearms. *Id.* at 690.

The Fifth Circuit here, however, disregarded this standard when it determined that section 922(g)(3) was constitutional only in certain applications—specifically, to the same extent that legislatures regulated the intersection of intoxicants and firearms at the time of the Founding. Indeed, in *Connelly*, the court reasoned that historical regulations prohibiting the carriage of firearms by intoxicated persons could justify modern regulations prohibiting the carriage of firearms by the actively intoxicated only. 117 F.4th at 282. In reaching this conclusion, the Fifth Circuit failed to account for the reason why there were no laws identical to section 922(g)(3) in the Founding or Reconstruction eras: there was no public safety risk involving the combination of habitual drug use and firearms. On the contrary, that risk is an entirely contemporary problem, and one that legislatures

began regulating shortly after the dangers attendant to the misuse of firearms by habitual drug users became apparent.

Indeed, at the Founding and during Reconstruction, Americans' relationship to drugs was vastly different than the relationship today. Even though the use of opiates was widespread by the early eighteenth century, this use was not illicit, nor was it associated with danger or violence.[21] Any American could obtain morphine or other opiates without a prescription.[22] Furthermore, there is no evidence that the typical opiate user presented a public safety risk, let alone one that was heightened when combined with firearms. On the contrary, habitual opiate users were usually women of means, who were introduced to the drug for severe or chronic pain.[23] And because these drugs were often "the only effective pain-killers available," any problems with overdosing or habitual use were not accompanied by regulation.[24] This, combined with the secrecy associated with habitual opiate use by this population, made it unlikely that early legislatures were even aware of the existence of a problem.[25]

It was only when the scale of the addiction problem increased and became apparent to doctors and pharmacists in the early twentieth century that

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[21] Elizabeth Kelly Gray, *Habit Forming: Drug Addiction in America, 1776-1914*, at 43 (2022) (hereinafter "Gray").

[22] *Id.* at 24.

[23] *Id.* at 21.

[24] *Id.* at 25.

[25] See *ibid.*

legislatures started to act.[26] Congress first addressed drug addiction in 1909. See Smoking Opium Exclusion Act of 1909, Pub. L. No. 60-221, 35 Stat. 614. And drug addiction was only comprehensively legislated five years later when, in 1914, Congress passed the Harrison Narcotics Tax Act, ch. 1, 38 Stat. 785, which had the effect of banning nonmedical uses of opiates and cocaine. Many States also began regulating the sale of cocaine and opiates around this time.[27] And it was not until these drugs became illegal that a dangerous drug trade developed and, subsequently, was regulated through criminal laws and restrictions like section 922(g)(3).[28]

In short, there is good reason why the historical analogues identified by the United States are not identical to section 922(g)(3). And there is also good reason why this Court's precedents have recognized

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[26] Proceedings of the American Pharmaceutical Association at the Fiftieth Annual Meeting 567-568 (1902); Gray, *supra* note 21, at 43; David T. Courtwright, *A Century of American Narcotic* Policy, *in* 2 Treating Drug Problems: Commissioned Papers on Historical Institutional and Economic Contexts of Drug Treatment 2 (Gerstein & Harwood, eds. 1992), available at https://bit.ly/4pmUh6y (hereinafter "Courtwright"). Another reason for this regulation may have been because a nonopiate pain reliever, aspirin, became widely available at this time. Gray, *supra*, at 19. Plus, the medical community did not begin to acknowledge or focus on drug dependency until about 1830. *Id.* at 40.

[27] See George Fisher, *The Drug War at 100*, Stan. L. School Blogs (Dec. 19, 2014), https://law.stanford.edu/2014/12/19/the-drug-war-at-100/.

[28] Courtwright, *supra* note 26, at 11-13 (discussing the advent of legal and diplomatic efforts to prevent illicit drug transactions in the 1920s and 1930s).

that legislatures may still regulate firearms consistent with the Second Amendment in these circumstances. Otherwise, the States and the federal government would be unable to address pressing public safety risks even if, as here, those risks are "unprecedented." *Bruen*, 597 U.S. at 27. Amici States thus urge the Court to reject this aspect of the Fifth Circuit's reasoning.

B. The Second Amendment contemplates categorical restrictions that avoid the administrability problems associated with case-by-case determinations.

The Fifth Circuit's reasoning hamstrings legislatures in another meaningful way: by calling into question the validity of categorical restrictions like the one at issue in this case. Indeed, the lower court reached its ultimate conclusion in part by rejecting the federal government's regulatory determination that the best way to protect the public is to prohibit all habitual drug users from possessing firearms. As the United States explains, Pet. Br. 12-27, 39-40, this decision is inconsistent with historical tradition, which includes myriad laws that made categorical determinations about who may possess firearms.[29]

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[29] See, *e.g.*, *United States* v. *Jackson*, 110 F.4th 1120, 1128 (8th Cir. 2024) (early American legislatures determined that prohibiting possession of firearms by categories of people was appropriate when the legislature determined that the category as a whole presented a serious risk of danger if armed); *Kanter* v. *Barr*, 919 F.3d 437, 456 (7th Cir. 2019) (Barrett, J., dissenting) (in early America, legislatures routinely passed laws "regarding categorical exclusions from the enjoyment of the right to keep and bear arms"), *abrogated by Bruen*, 597 U.S. 1.

Additionally, the Fifth Circuit's standard—which would require courts to conduct an individualized analysis of dangerousness to determine if a defendant violated section 922(g)(3)—would create serious administrability and fairness problems. For one, it is unclear how courts would conduct such an individualized analysis. The Fifth Circuit's standard, for example, requires the government to establish, on a person-by-person basis, "that a defendant's frequent or recent drug use renders him presumptively dangerous," or to show a "tight temporal nexus between an individual's drug use and his possession of firearms." *Daniels*, 124 F.4th at 976. The Third Circuit, which has likewise rejected a categorical approach to section 922(g)(3), similarly requires courts to evaluate several factors when determining whether a criminal defendant presents a "special danger" of misusing firearms, such as the "drug's half-life," the "length and recency of the defendant's [drug] use," and the effects of the drug, among other considerations from a "non-exhaustive list." *Harris*, 144 F.4th at 164-165 (internal quotations omitted).

A multifactor test like these, if adopted by this Court, would require trial courts to create a kind of common law of dangerousness and would result in lengthy litigation over the application of that standard in each case. *Cf. Taylor* v. *United States*, 495 U.S. 575, 601 (1990) (discussing administrability problems involved in a sentencing court considering factual evidence when applying 18 U.S.C. § 924(e) sentencing enhancements). Indeed, such an approach would require courts to resolve a wide range of fact-intensive inquiries, such as how often a criminal

defendant used illegal drugs, what particular drug or drugs the defendant used, the specific effects of each drug, how those effects contribute to the defendant's dangerousness, as well as questions about the defendant's past behavior, arrests, or convictions. See, *e.g.*, *VanOchten*, 150 F.4th at 559; *Harris*, 144 F.4th at 164-165. These kinds of proceedings are exactly what led this Court to describe a proposed case-by-case approach to sentencing enhancements under the Armed Career Criminal Act as "utter[ly] impractica[l]." *Johnson* v. *United States*, 576 U.S. 591, 605 (2015).

Furthermore, this type of post-hoc inquiry into dangerousness would present substantial notice and fairness issues in determining whether someone's drug use would fall within the ambit of section 922(g)(3). *Cf. Greer v. United States*, 593 U.S. 503, 506 (2021) ("[I]ndividuals who are convicted felons ordinarily know that they are convicted felons."). Allowing the categorical disarmament of habitual drug users, by contrast, both recognizes the risks posed by habitual drug users and is readily administrable and fair. The lower courts have a well-developed body of law establishing the method for adjudicating cases under section 922(g)(3), and have settled on a consistent definition of who an "unlawful user" of a "controlled substance" is. See *United States* v. *McCowan*, 469 F.3d 386, 392 (5th Cir. 2006) (collecting cases); 27 C.F.R. § 478.11 (2024) (describing an unlawful user as someone who has "lost the power of self-control with reference to the use of [a] controlled substance").

Because of this settled definition, the elements of the offense are predictable. For an individual to be convicted under section 922(g)(3), the government must prove beyond a reasonable doubt that: (1) the defendant used illegal drugs regularly or is addicted to those substances, (2) the use took place over a long period of time, and (3) the use was proximate or contemporaneous with his possession of a firearm. See *United States* v. *Tanco-Baez*, 942 F.3d 7, 15 (1st Cir. 2019); *Seiwert*, 152 F.4th at 873 (similar); *United States* v. *Burchard*, 580 F.3d 341, 350 (6th Cir. 2009) (to establish violation of section 922(g)(3), government must prove "that the defendant took drugs with regularity, over an extended period of time, and contemporaneously with his purchase or possession of a firearm" (internal quotations omitted)). This clear legal test puts longtime drug users on notice that they cannot possess a firearm, and it also enables courts to apply the law consistently. Not only that, the standard is democratically accountable. If the polity decides that users of certain controlled substances should be allowed to possess firearms, it can request that democratically elected representatives make that change.

For these reasons, section 922(g)(3) is much preferable to the multi-factor tests advanced by some circuit courts that assess individualized dangerousness correlated to the defendant's criminal history or drugs of choice.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted,

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