No. __________

In the Supreme Court of the United States

DEVONTE VEASLEY,

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 A WRIT OF CERTIORARI

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QUESTION PRESENTED

Is 18 U.S.C. § 922(g)(3), which restricts the Second Amendment rights of all users of controlled substances, facially unconstitutional?

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

Petitioner to this Court is Devonte Veasley, who was the defendant-appellant in the proceedings below.

Respondent is the United States of America, who was the plaintiff-appellee below.

There are no corporate parties involved in this case.

RELATED PROCEEDINGS

United States Court of Appeals (8th Cir.):

- United States v. Veasley, No. 23-1114 (Apr. 17, 2024) (reported at 98 F.4th 906).

United States District Court (S.D. Iowa):

- United States v. Veasley, No. 4:20-CR-00209, ECF Doc. No. 54, Order Denying Defendant's Motion to Withdraw Plea and Motion to Dismiss Indictment (Sept. 22, 2022); ECF Doc. No. 63, Judgment in a Criminal Case (Jan. 12, 2023).

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In the Supreme Court of the United States

NO. 24-__________

DEVONTE VEASLEY,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI

Devonte Veasley respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit in this matter.

OPINIONS BELOW

The Eighth Circuit's opinion is available at 98 F.4th 906 and is reproduced at App. 1a. The order of the Southern District of Iowa, denying Mr. Veasley's motion to withdraw plea and to dismiss the indictment, is reproduced at App. 25a.

JURISDICTION

On January 12, 2023, the Honorable Judge Rebecca Goodgame Ebinger entered judgment in the United States District Court for the Southern District of Iowa. On April 17, 2024, the Eighth Circuit affirmed the judgment of the District Court for the Southern District of Iowa. The Eighth Circuit's jurisdiction was pursuant to 18 U.S.C. § 3742(a) and 28 U.S.C. § 1291.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the Second and Fourteenth Amendments to the United States Constitution and 18 U.S.C. § 922(g)(3). The relevant portions of these provisions are reproduced in the Appendix.

STATEMENT OF THE CASE

A. Legal Background

The Second Amendment provides that the right of the people to keep and bear arms shall not be infringed. U.S. CONST. amend. II. This Court first interpreted the Second Amendment to confer an individual right to keep and bear arms in District of Columbia v. Heller, 554 U.S. 570, 595 (2008). Two years after recognizing this individual right in Heller, this Court applied the Second Amendment to the states through the Fourteenth Amendment. McDonald v. City of Chicago, 561 U.S. 742, 778 (2010).

In New York State Rifle & Pistol Ass'n v. Bruen, the Court reiterated the correct standard for applying the Second Amendment:

> When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation. Only then may a court conclude that the individual's conduct falls outside the Second Amendment's "unqualified command."

597 U.S. 1, 24 (2022) (citing Konigsberg v. State Bar of Cal., 366 U.S. 36, 50, n.10 (1961)).

Federal law prohibits certain classes of persons from possessing firearms, including "any person . . . who is an unlawful user of or addicted to any controlled substance." 18 U.S.C. § 922(g)(3).

B. Procedural Background

The Government charged Devonte Veasley with possession of a firearm by an unlawful user of a controlled substance in violation of 18 U.S.C. §§ 922(g)(3) and 924(a)(2). App. 2a. Mr. Veasley entered a guilty plea. App. 2a.

Shortly after Mr. Veasley pleaded guilty, this Court issued its decision in Bruen. App. 2a. Mr. Veasley filed a motion to withdraw his guilty plea and to dismiss the indictment, asserting that 18 U.S.C. § 922(g)(3) was an unconstitutional violation of the Second Amendment. App. 2a. The district court denied Mr. Veasley's motion to withdraw his guilty plea and to dismiss, and subsequently sentenced him to 108 months' incarceration. App. 29a.

Mr. Veasley appealed to the Eighth Circuit Court of Appeals, challenging the facial constitutionality of section 922(g)(3) under this Court's simplified Bruen test. See United States v. Veasley, 98 F.4th 906 (8th Cir. 2024), reproduced in App. 1a. The Eighth Circuit began its analysis by assuming that section 922(g)(3) restricted conduct protected by the Second Amendment. App. 7a. The court then addressed the second part of the Bruen analysis: whether section 922(g)(3) complied with the country's historical tradition of firearm regulation. App. 7a.

The court examined the closest historical analogue to section 922(g)(3): the regulation of intoxicants such as drugs and alcohol. App. 7a. The court found that

although the Founders were familiar with the modern-day issues of drug and alcohol abuse, colonial-era legislators chose not to address those concerns through disarmament. App. 7a-11a. For this reason, the court found that "disarming all drug users, simply because of who they are, is inconsistent with the Second Amendment." App. 11a.

Despite acknowledging that the closest historical analogue could not justify section 922(g)(3), the Eighth Circuit rejected Mr. Veasley's facial challenge to section 922(g)(3). App. 22a. Without citing a single authority for the proposition, the court decided that modern drugs presented "unprecedented" challenges that the Founders never faced. App. 11a (quoting Bruen, 597 U.S. at 27). This allowed the lower court to abandon its analysis of the closest historical analogue, in favor of the "more nuanced approach" this Court reserves for "unprecedented societal concerns." App. 11a (citing Bruen, 597 U.S. at 27-30). The Eighth Circuit then cited two supposed analogues to justify section 922(g)(3): the historical tradition of incapacitating the mentally ill, thus disarming them in the process, and regulations disarming individuals who struck terror in others. App. 11a-22a. Relying on these two "analogues," the Eighth Circuit affirmed the judgment of the Southern District of Iowa, holding that "for some drug users, § 922(g)(3) is 'analogous enough to pass constitutional muster,'" but noting that "[w]hether it is for others is a question for another day." App. 22a (citing Bruen, 597 U.S. at 30).

Today is that day. This petition follows.

REASONS FOR GRANTING THIS PETITION

This Court has repeatedly rejected means-end scrutiny in the context of the right to bear arms. Over 16 years ago in Heller, this Court refused to engage in means-end scrutiny, remarking that "[t]he very enumeration of the right takes out of the hands of government – even the Third Branch of Government – the power to decide on a case-by-case basis whether the right is really worth insisting upon." 554 U.S. at 634. "A constitutional guarantee subject to future judges' assessments of its usefulness is no constitutional guarantee at all." Id. In McDonald, this Court observed that the Second Amendment neither permits nor requires "judges to assess the costs and benefits of firearms restrictions and thus to make difficult empirical judgments in an area in which they lack expertise." 561 U.S. at 790-91. And in Bruen, this Court reiterated the correct standard for applying the Second Amendment:

> When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation.

597 U.S. at 24.

The Eighth Circuit's decision is wrong because it relied upon the sort of means-end scrutiny explicitly rejected by this Court in Heller, McDonald, and Bruen. See 597 U.S. at 22-24.

The Eighth Circuit began its analysis by assuming that drug users are not excluded from "the people" who enjoy Second Amendment protections. App. 7a. The question then became whether the government could justify its regulation by finding a sufficiently analogous historical analogue. See Bruen, 597 U.S. at 24.

The court examined the most obvious historical analogue to section 922(g)(3): the regulation of intoxicating substances. App. 7a. The Founders were familiar with the risks of drugs and alcohol but declined to address the societal problem by enacting any "distinctly similar historical regulation[s] addressing that problem." App. 8a (quoting Bruen, 597 U.S. at 26). The court found that history could not justify restricting all drug users' Second Amendment rights. App. 11a.

The Eighth Circuit's opinion should have stopped there. As this Court stated in Bruen:

[W]hen a challenged regulation addresses a general societal problem that has persisted since the 18th century, the lack of a distinctly similar historical regulation addressing that problem is relevant evidence that the challenged regulation is inconsistent with the Second Amendment. Likewise, if earlier generations addressed the societal problem, but did so through materially different means, that also could be evidence that a modern regulation is unconstitutional.

Bruen, 597 U.S. at 26-27.

Instead, the Eighth Circuit attempted to justify section 922(g)(3) by engaging in means-end scrutiny disguised as further historical analysis. The court assumed without evidence that modern drugs present a wholly new phenomenon from the drugs and alcohol with which the Founders were well-acquainted. App. 11a. This allowed the court to reject "relevant evidence" showing that the Founders declined to enact similar legislation to address a well-known societal concern. Bruen, 597 U.S. at 26. Instead, the court examined two weaker points of comparison: the historical tradition of incapacitating the mentally ill and regulations temporarily disarming those deemed a danger to the public. App. 11a-22a. Neither of these purported "analogues" can support the Eighth Circuit's conclusion that section 922(g)(3) is consistent with America's history of firearm regulation.

This petition is an ideal vehicle for addressing the Eighth Circuit's post-Bruen confusion. It presents an issue of profound importance, not only for Mr. Veasley, but also for others who have been unfairly stripped of their Second Amendment rights.

I. The question presented is worthy of this Court's review.

A. This Court should grant review to resolve the developing circuit split regarding the constitutionality of 18 U.S.C. § 922(g)(3).

The Fifth Circuit recently found section 922(g)(3) unconstitutional as applied in United States v. Daniels, 77 F.4th 337, 355 (5th Cir. 2023), vacated, 603 U.S. ___ (July 2, 2024). This decision alone would generally be sufficient for this Court to take a closer look at section 922(g)(3), as it has already done. See Iancu v. Brunetti, 588 U.S. 388, 392 (2019) (observing that this Court's "usual" approach is to grant

certiorari "when a lower court has invalidated a federal statute"). Other lower courts have similarly found the statute unconstitutional as applied. See, e.g., United States v. Alston, 2023 WL 7003235, at *5 (E.D. N.C. 2023); United States v. Connelly, 668 F. Supp. 3d 662, 680 (W.D. Tex. 2023); United States v. Harrison, 654 F. Supp. 3d 1191, 1222 (W.D. Okla. 2023); United States v. Hemani, 2023 WL 9659173, at *13 (E.D. Tex. 2023).

But merely resolving as-applied challenges will not solve the underlying problem: the post-Bruen standard has become unworkable for lower courts.

B. This Court should grant review of Mr. Veasley's facial challenge to section 922(g)(3).

A facial challenge is the best vehicle for this Court to address section 922(g)(3)'s unconstitutional restriction on the Second Amendment right to bear arms. With a facial challenge, the Court is not limited to one set of facts. The Court may consider the broad spectrum of people who use controlled substances, including the "frail and elderly grandmother" referenced by the Eighth Circuit. App. 4a, 22a. "In effect, Veasley is speaking for a range of people." App. 6a.

Though two courts of appeals have "suggested in passing" that section 922(g)(3)'s facial validity is "unclear in the post-Bruen world," the Eighth Circuit remains the only court of appeals to directly consider a facial challenge to the statute. United States v. Biden, 2024 WL 2112377, at *2 n.4 (D. Del. 2024) (collecting cases). Unfortunately, the Eighth Circuit got it wrong. This Court should grant review to correct the Eighth Circuit's mistake.

No better vehicle for addressing the constitutionality of section 922(g)(3) is likely to emerge. In the Eighth Circuit, it has become nearly impossible for a defendant to question section 922(g)(3)'s constitutionality in any other way than by facial challenge. Lower courts flatly refuse to rule on defendants' as-applied Second Amendment challenges until after a trial on the merits.[1] In a system where the vast majority of federal criminal charges are resolved by plea,[2] most defendants, like Mr. Veasley, never have the chance to bring an as-applied challenge.[3]

As-applied void-for-vagueness challenges fare no better.[4] The Eighth Circuit has repeatedly acknowledged that section 922(g)(3) runs the risk of being unconstitutionally vague under the Fifth Amendment "without a judicially-created temporal nexus between the gun possession and regular drug use." United States v. Carnes, 22 F.4th 743, 748 (8th Cir. 2022) (citation omitted). But despite recognizing section 922(g)(3)'s constitutional defects, the Eighth Circuit recently made it even harder for defendants to bring facial challenges. A defendant bringing a facial void-

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[1] See, e.g., United States v. Blue Bird, 2024 WL 35247, at *2 (D.S.D. 2024); United States v. Uchytil, 2024 WL 1745050, at *1 (N.D. Iowa 2024); United States v. Cooper, 2023 WL 6441943, at *5-6 (N.D. Iowa 2023); United States v. Walker, 2023 WL 3932224, at *5 (D. Neb. 2023); Biden, 2024 WL 2112377, at *4.

[2] Of nearly 80,000 defendants facing federal charges in 2018, fewer than 2% went to trial. John Gramlich, Only 2% of Federal Criminal Defendants Go to Trial, and Most Who Do Are Found Guilty, PEW RSCH. CTR. (June 11, 2019).

[3] Mr. Veasley entered a guilty plea prior to this Court's decision in Bruen, foreclosing an as-applied constitutional challenge. See United States v. Seay, 620 F.3d 919, 922 n.3 (8th Cir. 2010).

[4] See, e.g., United States v. Robinson, 2023 WL 7413088, at *5 (D.S.D. 2023); United States v. Ledvina, 2023 WL 5279470, at *7 (N.D. Iowa 2023).

for-vagueness challenge must also win an as-applied challenge by "show[ing] that the statute is vague as applied to his particular conduct." United States v. Bramer, 832 F.3d 908, 909 (8th Cir. 2016) (emphasis added). And because as-applied challenges must wait until trial, so too must facial challenges. Defendants – and lower courts – are increasingly confused by the disappearing boundary between facial and as-applied challenges.[5] Because of this ever-thinning line, it is harder than ever for a challenge to section 922(g)(3) to make it in front of an appeals court.[6] Resolving Mr. Veasley's facial challenge gives this Court the opportunity to clarify several matters at once.

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[5] See, e.g., United States v. Stupka, 418 F. Supp. 3d 402, 407 (N.D. Iowa 2019) (noting "if a defendant could not show that the law is unconstitutional as applied, then he or she would always be prohibited from challenging a law as being void for vagueness on its face"); Cooper, 2023 WL 6441943, at *6 (observing "it is difficult to tell when and why a defendant would argue that a statute is unconstitutional on its face as opposed to unconstitutional as applied to her, specifically").

[6] This issue is not limited to challenges to section 922(g)(3). The Eighth Circuit is unwilling to consider further as-applied challenges to section 922(g)(1), noting "there is no need for felony-by-felony litigation regarding the [statute's] "constitutionality." United States v. Jackson, 69 F.4th 495, 502 (8th Cir. 2023), vacated, 603 U.S. ___ (July 2, 2024). Other courts have expressed similar reluctance. See, e.g., Atkinson v. Garland, 70 F.4th 1018, 1023 (7th Cir. 2023) (noting that the defendant failed to "provide much historical basis for individualized assessments or for delineating between individuals who committed violent versus non-violent crimes"), vacated, 603 U.S. ___ (July 2, 2024); United States v. Hurnes, 2024 WL 2701099, at *13 (N.D. Ill. 2024) (discussing the "propriety" of an as-applied challenge and rejecting defendant's request "to parse out an individualized 'dangerousness' assessment"). Yet if a defendant cannot show a statute is unconstitutional as applied, any associated facial challenge must also fail. See United States v. Mitchell, 652 F.3d 387, 415 (3d Cir. 2011) ("Because the statute is constitutional as applied. . . he has not shown that 'there is no set of circumstances' under which the statute may be applied constitutionally.") (citing United States v. Salerno, 481 U.S. 739, 745 (1987)).

C. Lower courts desperately need this Court's guidance to apply Bruen's historical analogue test.

Since this Court issued its decision in Bruen, countless defendants have mounted challenges to the provisions of 18 U.S.C. § 922(g), with varying degrees of success. Circuit splits are emerging across the country as courts struggle to apply the test set forth in Bruen. This Court recently vacated eight judgments to correct the errors of five courts of appeals.[7] Without additional guidance – beyond what this Court has already provided in Bruen and United States v. Rahimi, 602 U.S. ___ (2024) – lower courts will continue to make the same mistakes.

In Bruen, this Court "look[ed] to history because 'it has always been widely understood that the Second Amendment. . . codified a pre-existing right.'" Bruen, 597 U.S. at 20 (citing Heller, 554 U.S. at 592). To that end, historical evidence regarding common law offenses and colonial-era regulations should have helped courts across the country engage in reasoning by analogy, which this Court has repeatedly deemed "a commonplace task." Id. at 28. This Court acknowledged that lower "courts have misunderstood the methodology of our Second Amendment cases." Rahimi, 602 U.S. at ___.

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[7] Among the casualties were the lower courts' decisions in Range v. Garland, 69 F.4th 96 (3d Cir. 2023), United States v. Daniels, 77 F.4th 337 (5th Cir. 2023), United States v. Perez-Gallan, 2023 WL 4932111 (5th Cir. 2023), Vincent v. Garland, 80 F.4th 1197 (10th Cir. 2023), Antonyuk v. Chiumento, 89 F.4th 271 (2d Cir. 2023), United States v. Jackson, 69 F.4th 495 (8th Cir. 2023), United States v. Cunningham, 70 F.4th 502 (8th Cir. 2023), and United States v. Doss, 2023 WL 8299064 (8th Cir. 2023).

Unfortunately, the search for historical analogues "has facilitated rather than deterred decisions that are based upon the courts' policy preferences, rather than neutral principles of law." ANTONIN SCALIA, A MATTER OF INTERPRETATION: FEDERAL COURTS AND THE LAW 35 (1997). "This allow[s] the 'willful judge' to discard evidence simply by calling it 'ambiguous' . . . 'inconclusive,'" or, in the case of Bruen, not analogous. United States v. Bullock, 679 F. Supp. 501, 530 (S.D. Miss. 2023) (citing A MATTER OF INTERPRETATION, at 36).

Lower courts, including the Eighth Circuit, have ignored the Court's caution against using history as a regulatory blank check, with increasingly bizarre results. See Bruen, 597 U.S. at 30. How else could the Eighth Circuit admit on the one hand that the Founders understood the risks of drug and alcohol abuse, and on the other claim that drug use is an unprecedented societal concern? App. 11a. How else could the Fifth Circuit remand a case for clarification by the district court as to whether a defendant, "as a regular marihuana user or addict, was part of a dangerous group analogous to political and religious dissidents who could be disarmed at the time the Second Amendment was ratified"? United States v. Gil, 2024 WL 2186916, at *4 (5th Cir. 2024). Clearly, courts are struggling with the analogical tests this Court imposed in Bruen.

Nowhere is this confusion more obvious than in cases involving section 922(g)(1). Section 922(g)(1), which prohibits felons from possessing firearms, has long been considered "presumptively lawful." Heller, 554 U.S. at 626, n.26. Yet in Range v.

Garland, 69 F.4th 96, 106 (3d Cir. 2023), vacated, 603 U.S. ___ (July 2, 2024), the Third Circuit Court of Appeals found section 922(g)(1) unconstitutional as applied under Bruen's second prong. And a panel of Ninth Circuit judges recently agreed that section 922(g)(1) fell outside the country's history of firearm regulations and concluded it to be unconstitutional as applied, again under Bruen's second prong. United States v. Duarte, ___ F.4th ___, 2024 WL 2068016, at *24 (9th Cir. 2024). Several lower courts joined the Third and Ninth Circuits to find section 922(g)(1) unconstitutional as applied,[8] while others went further and found a facial violation.[9]

Meanwhile, four circuit courts reached the opposite conclusion – for three different reasons. The Seventh Circuit upheld section 922(g)(1) under Bruen's first prong. United States v. Gay, 98 F.4th 843, 847 (7th Cir. 2024). The Eighth Circuit reached the second prong of Bruen analysis and found section 922(g)(1) constitutional. United States v. Jackson, 69 F.4th 495, 501-06 (8th Cir. 2023),

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[8] United States v. Cook, 2024 WL 532351, at *6-7 (N.D. Ill. 2024); United States v. Williams, 2024 WL 731932, at *24-25 (E.D. Mich. 2024); United States v. Anderson, 2023 WL 7531169, at *11 (N.D. Ill. 2023); United States v. Bullock, 679 F. Supp. 3d 501, 540 (S.D. Miss. 2023); United States v. Daniel, 2023 WL 7325930, at *11-12 (N.D. Ill. 2023); United States v. Delaney, 2023 WL 7325932, at *11-12 (N.D. Ill. 2023); United States v. Diaz, 2023 WL 8019691, at *11-12 (N.D. Ill. 2023); United States v. Forbis, 2023 WL 5971142 (N.D. Okla. 2023); United States v. Freeman, 2023 WL 7325934, at *11-12 (N.D. Ill. 2023); United States v. Griffin, 2023 WL 8281564, at *9 (N.D. Ill. 2023); United States v. Harper, 2023 WL 5672311, at *14 (M.D. Penn. 2023); United States v. Leblanc, 2023 WL 8756694, at *15 (M.D. La. 2023); United States v. Quailes, 2023 WL 5401733, at *12-13 (M.D. Penn. 2023); United States v. Salme-Negrete, 2023 WL 7325888, at *11-12 (N.D. Ill. 2023).

[9] United States v. Brunner, 2024 WL 1406190, at *5 (S.D. Ill. 2024); United States v. Cherry, 2024 WL 379999, at *5 (S.D. Ill. 2024); United States v. Crisp, 2024 WL 664462, at *6 (S.D. Ill. 2024); United States v. Hale, 2024 WL 621614, at *3, 7 (N.D. Ill. 2024); United States v. Martin, 2024 WL 728571, at *5 (S.D. Ill. 2024); United States v. Neal, 2024 WL 833607, at *12-13 (N.D. Ill. 2024); United States v. Taylor, 2024 WL 245557, at *5-6 (S.D. Ill. 2024); United States v. Prince, 2023 WL 7220127, at *11 (N.D. Ill. 2023).

vacated, 603 U.S. ___ (July 2, 2024). And the Tenth and Eleventh Circuits failed to consider either prong of Bruen, finding instead that Bruen did not abrogate prior circuit precedent upholding the constitutionality of section 922(g)(1)'s felon-in-possession ban. Vincent v. Garland, 80 F.4th 1197, 1202 (10th Cir. 2023), vacated, 603 U.S. ___ (July 2, 2024); United States v. Dubois, 94 F.4th 1284, 1293 (11th Cir. 2024).

Other provisions of section 922(g) have been challenged, too. Some lower courts have examined section 922(g)(5), which disarms "all unlawfully present aliens," and found it unconstitutional on its face or as applied. United States v. Sing-Ledezma, 2023 WL 8587869, at *18 (W.D. Tex. 2023) (finding section 922(g)(5) facially unconstitutional); United States v. Carbajal-Flores, 2024 WL 1013975, at *4-5 (N.D. Ill. 2024) (finding section 922(g)(5) unconstitutional as applied).

Recently, this Court reversed a Fifth Circuit holding that struck down section 922(g)(8) as unconstitutional. Rahimi, 602 U.S. at ___. In Rahimi, this Court upheld the statute, concluding that "[a]n individual found by a court to pose a credible threat to the physical safety of another may be temporarily disarmed consistent with the Second Amendment." Id. at ___.

The post-Bruen confusion is not limited to cases interpreting various subsections of 922(g). At least one lower court found section 922(k), which prohibits possession of a firearm with an altered, obliterated, or removed serial number, to be unconstitutional under Bruen's second prong. See United States v. Price, 635 F.

Supp. 3d 455, 464 (S.D. W.V. 2022). In contrast, many other courts have upheld section 922(k) by concluding that it fails to implicate the Second Amendment under Bruen's first step.[10]

Several lower courts have also considered section 922(n), which prohibits those under felony indictments from obtaining new firearms. Critically, unlike section 922(g), this section "does not entirely restrict an individual's Second Amendment rights, as it does not bar possession of a firearm." United States v. Jackson, 661 F. Supp. 3d 392, 414 (D. Md. 2023). Yet even in the context of section 922(n)'s limited and temporary restriction on the right to bear arms, "there is reasonable dispute in other courts concerning whether the Second Amendment protects the right for someone under felony indictment to carry a weapon." United States v. Yancey, 2024 WL 317636, at *2 (8th Cir. 2024). Some lower courts have found section 922(n) unconstitutional on its face[11] or as applied.[12] Even courts that upheld section 922(n) have reported serious concerns with the administrability of the Bruen analysis.

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[10] See, e.g., United States v. Holton, 639 F. Supp. 3d 704, 710-11 (N.D. Tex. 2022); United States v. Reyna, 2022 WL 17714376, at *5 (N.D. Ind. 2022); United States v. Tita, 2022 WL 17850250, at *7 (D. Md. 2022); United States v. Serrano, 651 F. Supp. 3d 1192, 1210 (S.D. Cal. 2023); United States v. Avila, 672 F. Supp. 3d 1137, 1143-44 (D. Colo. 2023); United States v. Bradley, 2023 WL 2621352, at *3-4 (S.D. W.V. 2023); United States v. Patton, 2023 WL 6230413, at *4 (D. Neb. 2023); United States v. Dixson, 2023 WL 7102115, at *3 (E.D. Mo. 2023); Sing-Ledezma, 2023 WL 8587869, at *4; United States v. Alberts, 2024 WL 1485145, at *4 (D. Mont. 2024); United States v. Ortiz, 2024 WL 1554868, at *3 (D.V.I. 2024).

[11] See, e.g., United States v. Quiroz, 629 F. Supp. 3d 511, 527 (W.D. Tex. 2022); United States v. Holden, 638 F. Supp. 3d 931, 938 (N.D. Ind. 2022), rev'd on other grounds, 70 F.4th 1015 (7th Cir. 2023); United States v. Hicks, 649 F. Supp. 3d 357, 366 (W.D. Tex. 2023).

[12] United States v. Stambaugh, 641 F. Supp. 3d 1185, 1193 (W.D. Okla. 2022).

United States v. Kelly, 2022 WL 17336578, at *6 (M.D. Tenn. 2022) (concluding that section 922(n) "is consistent with the Second Amendment" under Bruen but admitting that "[t]he court's confidence in that holding, however, is low"); United States v. Ogilvie, 2024 WL 2804504, at *6 (D. Utah 2024) (expressing concerns that "[w]ithout the expertise of an impartial historian on staff, the court runs the risk of cherry-picking the historical record").

Lower courts across the country are struggling to apply Bruen. As a result, a defendant in Arkansas is subject to wildly different laws than his neighbor in Mississippi. Compare United States v. Barefield, 2024 WL 2194862, at *2 (E.D. Ark. 2024) ("Congress acted within the historical tradition when it enacted § 922(g)(1) and the prohibition on possession of firearms by felons") (citations omitted), with Bullock, 679 F. Supp. 3d at 537 (dismissing a felon-in-possession charge against a defendant after an as-applied challenge). Courts, "operating in good faith, are struggling at every stage of the Bruen inquiry." Daniels, 77 F.4th at 358 (Higginson, J., concurring). Though the "contours of Bruen continue to solidify in district and appellate courts across the nation," there is still "no consensus." United States v. Claybrooks, 90 F.4th 248, 256 (4th Cir. 2024). This Court's guidance is sorely needed.

When a rule's application "reveal[s] its defects, political and social," this Court will step in to address the "mischievous results of the doctrine." Erie R.R. Co. v. Tompkins, 304 U.S. 64, 74 (1938). The rule established in Bruen inadvertently

"developed a new well of uncertainties" that this Court must rectify. Id.; see also Halliburton Co. v. Erica P. John Fund, Inc., 573 U.S. 258, 298 (2014) (Thomas, J., concurring) (observing that "when we err in areas of judge-made law, we ought to presume that Congress expects us to correct our own mistakes – not the other way around"). The Court should grant review of Mr. Veasley's facial challenge to address the growing confusion regarding Bruen's application.

II. 18 U.S.C. § 922(g)(3) plainly violates the Second Amendment.

A. Drug users are not excluded from Second Amendment protection.

The Second and Fourteenth Amendments "protect an individual's right to carry a handgun for self-defense outside the home." Bruen, 597 U.S. at 10. Individuals who use drugs are not exempted from these protections. When, as here, the plain text of the Second Amendment covers an individual's course of conduct, the Constitution "presumptively protects that conduct." Id. at 17.

Section 922(g)(3) restricts the Second Amendment rights of individuals who are unlawful users of or addicted to "any controlled substance." 18 U.S.C. § 922(g)(3). In doing so, it burdens conduct that is presumptively protected by the Second Amendment, putting it "on a collision course with the Constitution." Dobbs v. Jackson Women's Health Org., 597 U.S. 215, 268 (2022).

That Mr. Veasley and others affected by section 922(g)(3) maintain their Second Amendment rights is not in doubt. The Eighth Circuit "assume[d] that § 922(g)(3) 'governs conduct that falls within the plain text of the Second Amendment.'" App.

7a (citing United States v. Sitladeen, 64 F.4th 978, 985 (8th Cir. 2023)). The court correctly acknowledged that "drug users are part of 'the people' whom the Second Amendment protects, and handguns are weapons in common use today." App. 7a (cleaned up). The Second Amendment applies with equal force at home and in public, presumptively guaranteeing the right to bear arms in public for self-defense.

People who use drugs are still just that – people. And they are still entitled to constitutional protection as part of "the people" to whom the Second Amendment refers. "The people" is a phrase of inclusion, not of exclusion. The Bill of Rights refers elsewhere to "the people," notably in the First Amendment's Assembly and Petition Clause and in the Fourth Amendment's Search and Seizure Clause. U.S. CONST. amends. I, IV. Nowhere else in the Constitution did the Founders limit the phrase to exclude individuals who use, possess, or are addicted to certain substances. The term "unambiguously refers to all members of the political community, not an unspecified subset." Heller, 554 U.S. at 580 (emphasis added); see also Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503, 511 (1969) (declining to exclude students from the "persons" granted constitutional protections); Griswold v. Connecticut, 381 U.S. 479, 483 (1965) (refusing to exclude individuals from "the people" based on race or ideology).

The Second Amendment is not a "second class right, subject to an entirely different body of rules than the other Bill of Rights guarantees." McDonald, 561 U.S. at 780. This Court recently reiterated this point in Rahimi, rejecting the

argument that the Government can disarm anyone it deems "irresponsible." 602 U.S. at ___.

1. Modern handguns are protected by the Second Amendment.

As this Court noted in Bruen, "the Second Amendment protects only the carrying of weapons that are those 'in common use at the time,' as opposed to those that 'are highly unusual in society at large.'" 597 U.S. at 47 (citing Heller, 554 U.S. at 627). Handguns are "the quintessential self-defense weapon" in modern times and therefore are protected by the Second Amendment. Heller, 554 U.S. at 629; see also Bruen, 597 U.S. at 32 ("handguns are weapons 'in common use' today for self-defense").

2. Second Amendment protections extend beyond the home.

The right to bear arms includes the right to "wear, bear, or carry" arms upon the person. Heller, 554 U.S. at 584 (citing Muscarello v. United States, 524 U.S. 125, 143 (1998) (Ginsburg, J., dissenting). This naturally encompasses public carry, as "gun owners do not wear a holstered pistol at their hip in their bedroom or while sitting at the dinner table." Bruen, 597 U.S. at 32. "To confine the right to 'bear' arms to the home would nullify half of the Second Amendment's operative protections." Id.

For these reasons, section 922(g)(3) restricts conduct that falls neatly under the protections of the Second Amendment. Under Bruen, the Government must now

"affirmatively prove that its firearms regulation is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms." Id. at 19.

B. Section 922(g)(3) is inconsistent with the United States' historical tradition of firearm regulation.

To survive a post-Bruen constitutional challenge, the Government must do more than "posit that the regulation promotes an important interest." Id. at 17. The Government must show that the restriction complies with the country's "historical tradition of firearm regulation" by finding a relevant historical analogue. Id. at 17, 29. This analogue need not be a "dead ringer" for section 922(g)(3), but a law that merely "remotely resembles" the challenged regulation is insufficient. Id. at 30. In short, an analogue is not a "regulatory blank check," nor an excuse to engage in means-end scrutiny. Id. This is where the Eighth Circuit's analysis went wrong.

1. The Founders declined to impose a similar regulation disarming drinkers or drug users.

When, as here, "a challenged regulation addresse[s] a general societal problem that has persisted since the 18th century, the lack of a distinctly similar historical regulation addressing that problem is relevant evidence that the challenged regulation is inconsistent with the Second Amendment." Bruen, 597 U.S. at 26. In Heller, for instance, the District of Columbia "addressed a perceived societal problem – firearm violence in densely populated communities – and it employed a regulation – a flat ban on the possession of handguns in the home – that the Founders themselves could have adopted to confront that problem." Bruen, 597 U.S. at 27. Yet the Founders declined to do so. This Court considered that to be fact

powerful evidence that the statute fell outside the historical tradition of valid firearm regulations. Id.

Section 922(g)(3), like other subsections of 922(g), "takes aim at gun violence generally, which is a problem that has persisted in this country since the 18th century." Duarte, 2024 WL 2068016, at *14. In particular, section 922(g)(3) "keep[s] guns away from drug users and addicts." App. 10a. The critical question is not whether this is a laudable policy goal, but whether section 922(g)(3) addresses a known societal problem with a regulation that the Founders themselves could have adopted to confront the issue. See Bruen, 597 U.S. at 26. Neither the Founders who ratified the Second Amendment in 1791, nor their successors in 1868 who ratified the Fourteenth Amendment, restricted alcohol or drug users' right to bear arms.

Early Americans drank a great deal, being particularly fond of strong distilled liquors such as whiskey, rum, gin, and brandy. See W. J. RORABAUGH, THE ALCOHOLIC REPUBLIC: AN AMERICAN TRADITION 7 (1979). During this time period, Americans drank more alcohol per capita than any time before or since. Id. at 7-9. The Founders, "fearful that the American republic would be destroyed in a flood of alcohol," were understandably concerned by this societal phenomenon:

A similar alarm was voiced by the nation's most prominent statesmen. It was not so much the use of alcohol that worried them – they all drank to some extent – as its excessive use. George Washington, a whiskey distiller himself, thought that distilled spirits were "the ruin of half the workmen in this Country." John Adams,

whose daily breakfast included a tankard of hard cider, asked, “Is it not mortifying that we, Americans, should exceed all other people in the world in this degrading, beastly vice of intemperance?”

Id. at 5-6 (cleaned up). In an 1815 letter to a wine merchant, Thomas Jefferson wrote that “wine from long habit has become an indispensable for my health, which is now suffering by its desire.” JOHN M. HOLMES, THOMAS JEFFERSON TREATS HIMSELF: HERBS, PHYSICKE, & NUTRITION IN EARLY AMERICA 78 (1997). The Founders were keenly aware of the effects of alcohol.

Yet despite the Founders’ growing concern with the effects of intoxicating substances, they declined to restrict drinkers’ Second Amendment rights. “[T]he few restrictions that existed during colonial times were temporary and narrow in scope.” App. 9a; see also Daniels, 77 F.4th at 345 (noting that the few Founding-era statutes concerning guns and alcohol were “limited in scope and duration”). Disarmament, however, “was not an option” endorsed or advanced by the Founders. App. 9a.

There were even fewer regulations concerning drugs. As the Eighth Circuit admitted, the Founders were no strangers to drug use and addiction. Many of the drugs used in the Founders’ time, “and others like them, remain a problem today.” App. 8a. Yet earlier generations addressed the societal problem of addiction without disarming all drug users. This is relevant evidence suggesting that the statute does not fit into the historical tradition. See Bruen, 597 U.S. at 26. “[D]isarmament is a

modern solution to a centuries-old problem." App. 10a. For this reason, the court conceded that "disarming <u>all</u> drug users, simply because of who they are, is inconsistent with the Second Amendment." App. 10a-11a. The Eighth Circuit's analysis should have stopped there, holding all applications of section 922(g)(3) to be unconstitutional.

2. Modern drugs are not "unprecedented."

The Eighth Circuit attempted to save section 922(g)(3) by resorting to the "judge-empowering interest-balancing inquiry" explicitly rejected by <u>Heller</u> and <u>McDonald</u>. <u>Bruen</u>, 597 U.S. at 22-23 (citations omitted). The Second Amendment does not permit judges to assess the costs and benefits of firearms restrictions using means-end scrutiny. <u>Id.</u> (citing <u>McDonald</u>, 561 U.S. at 790-91). No branch of government should be tasked with "the power to decide on a case-by-case basis whether the right is <u>really worth</u> insisting upon." <u>Id.</u> at 23 (citing <u>Heller</u>, 554 U.S. at 634).

Yet despite proof that the Founders could have enacted similar legislation to section 922(g)(3) and declined to do so, the court found – without any evidence – that modern drugs present "unprecedented" challenges that the Founders never considered. App. 11a (citing <u>Bruen</u>, 597 U.S. at 27). Because "James Madison never experimented with methamphetamine, Benjamin Franklin did not dabble in PCP, and Thomas Jefferson did not use fentanyl to take the edge off the day," the Eighth Circuit argued that the Founders could not possibly comprehend the modern drug landscape. App. 11a. This bizarre statement requires a still-more-bizarre foray into the Founding-era drug world.

As the Eighth Circuit points out, James Madison never experimented with methamphetamine, which in any case was not synthesized until the late 19th century. But he was familiar with other stimulants available to the Founders, including nicotine and cocaine.

Tobacco was one of the most frequently used stimulants in the Founders' time. Notable doctor Benjamin Rush considered the substance to be "unfriendly to health and morals" due to its addictive qualities. BENJAMIN RUSH, ESSAYS: LITERARY, MORAL, & PHILOSOPHICAL 263-64 (1798). The addictive process, Dr. Rush observed, was "exactly the same as in the use of spiritous liquors." Id. at 264. "In no one view," he wrote, "is it possible to contemplate the creature man in a more absurd and ridiculous light than in his attachment to tobacco." Id. at 263. Despite concern about the plant's addictive properties, several of the Founders cultivated the plant on their estates, including George Washington and Thomas Jefferson. See JOSEPH C. ROBERT, THE STORY OF TOBACCO IN AMERICA 28, 44-47 (1949).

Cocaine, of course, was the Founding-era stimulant with the most potent and dangerous effects. The pure form of cocaine was not isolated from its leaves until the 19th century, but the coca plant was used by Inca civilizations and their descendants for centuries. See Melody Redman, Cocaine: What is the Crack? A Brief History of the Use of Cocaine as an Anesthetic, 1 ANESTHESIOLOGY & PAIN MED. 95, 95-96 (2011). The coca plant was taken as a stimulant to decrease fatigue, prevent hunger, and increase physical strength. See G. HUSSEIN RASSOOL, ALCOHOL AND

DRUG MISUSE: A HANDBOOK FOR STUDENTS AND HEALTH PROFESSIONALS 48 (1st ed. 2009). In fact, one of the first descriptions of coca plant use can be found in the journals of explorer Amerigo Vespucci, from whom America takes its name. See generally STEVEN B. KARCH, A BRIEF HISTORY OF COCAINE FROM INCA MONARCHS TO CALI CARTELS: 500 YEARS OF COCAINE DEALING (2d ed. 2006). Yet Founding-era legislation left drug users alone.

Benjamin Franklin never used PCP, which was not developed until the 20th century, but he may have been familiar with some of the hallucinogens available in colonial America, such as ayahuasca, peyote, and hallucinogenic mushrooms. App. 8a. Cannabis, another psychoactive substance, was also grown in colonial America. App. 8a. Jefferson (or rather Jefferson's enslaved laborers) maintained hemp plants at his Monticello estate and his plantation at Poplar Forest. THOMAS JEFFERSON FOUND., THOMAS JEFFERSON ENCYCLOPEDIA, "HEMP." No regulations prevented users of hallucinogenic and psychoactive substances from exercising their Second Amendment rights.

Thomas Jefferson may never have used the synthetic opioid fentanyl, but he – like many during the Founders' time – was intimately familiar with its predecessor, opium. Jefferson regularly took laudanum, a tincture of opium, and likely became dependent on the drug as he steadily increased the dosage. See THOMAS JEFFERSON TREATS HIMSELF, at 32, 35-36. Opium became an important part of Jefferson's later years at Monticello. In 1825, Jefferson wrote to his doctor that "with care and

laudanum I may consider myself in what is to be my habitual state." Id. at 35. Martha Jefferson kept handwritten "recipes" at their Monticello home, some of which included opium as a key ingredient. Id. at 36. And Jefferson planted opium poppy flowers on his estate – a decision that would later receive attention from drug enforcement authorities. EDWIN M. BETTS & HAZELHURST BOLTON PERKINS, THOMAS JEFFERSON'S FLOWER GARDEN AT MONTICELLO 72 (3d ed. 2000); see also Monticello Allowed to Grow Illegal Plant, ROANOKE TIMES, Apr. 20, 1991, at A-5 ("Monticello officials will be allowed to continue to grow an illegal drug-producing plant on the grounds of Thomas Jefferson's home, federal drug authorities say.").

Jefferson was not the only Founding Father who used opium. During the Founders' time, opium was "as readily available as is aspirin today, and just as cheap." Elizabeth Lomax, The Uses and Abuses of Opiates in Nineteenth-Century England, 47 BULL. HIST. MED. 167, 167 (1973). Unsurprisingly, thousands became addicted to the drug. George Washington reportedly took laudanum to cope with pain. See Richard Norton Smith, The Surprising George Washington, 26 PROLOGUE 1 (1994). Other users included Senator John Randolph and the family members of Founder Rufus King and Senator Robert Goodloe Harper. App. 10a. The Founders "were certainly aware of the [opium] problem." App. 10a. King "wrote letters to his doctor lamenting his sister's opium dependency, including how it impaired her ability to care for her children. App. 10a. Harper's mother-in-law died of laudanum dependency. App. 10a. Yet despite the widespread use and abuse of opium, lawmakers passed no legislation to abridge drug users' Second Amendment rights.

The Eighth Circuit cited no authority for its claim that modern-day drugs represent a dramatic departure from the drugs with which the Founders were familiar. Instead, the court assumed without evidence that "modern synthetic drugs present a dramatic technological change." App. 11a (cleaned up). This allowed the court to turn its back on fact – that the Founders never implemented an equivalent to section 922(g)(3), though they understood the dangers of drug use and abuse – and to set off instead in search of another historical "analogue."

3. Other historical evidence is unpersuasive.

The Eighth Circuit attempted to use two other historical "analogues" to uphold section 922(g)(3): regulations incapacitating the mentally ill and regulations disarming those deemed "dangerous" by the government. Neither can justify section 922(g)(3)'s continued existence.

a. Regulations disarming the mentally ill are not appropriate analogues to section 922(g)(3).

The Eighth Circuit suggested that the colonial tradition of "disarming" the mentally ill (by ensuring their incapacitation) was an appropriate historical analogue. But there are too many differences between the questionable historical practice and section 922(g)(3). The two are not "analogous enough to pass constitutional muster" under Bruen's streamlined test. 597 U.S. at 30.

The first assumption the court made was that drug use is analogous to mental illness. App. 11a. The similarities, according to the court, are "intuitive." App. 11a. Some individuals with mental illnesses make poor decisions, just as some

individuals who use drugs make poor decisions._App. 12a. Individuals with autism, attention deficit disorder, and nicotine dependence may also "have difficulty exercising self-control," but "it is hard to see how any of those groups could be categorically prohibited from the right to armed self-defense on that basis." Harrison, 654 F. Supp. 3d at 1214-15. Yet according to the Eighth Circuit, this surface-level similarity between drug users and the mentally ill is enough to justify the statute – even though irresponsible individuals do not lose their other constitutional rights. See Rahimi, 602 U.S. at ___.

The next assumption made by the Eighth Circuit was that disarmament by regulation is the modern-day constitutional equivalent to the historical practice of disarmament by incapacitation. Because mentally ill individuals were "confined in barred cells in the basement" – and "[i]t should come as no surprise that confinement did not include access to guns" – the court reasoned that section 922(g)(3) is nothing more than a natural successor to the asylum. App. 13a. Concealed in the court's reasoning is the opinion that individuals who lose their right to bear arms should be grateful that the loss of liberty no longer involves "straightjackets and chains." App. 17a-18a. This is no more than means-end scrutiny dressed up as historical reasoning.

The court forgave the "limited process accompanying the confinement of the mentally ill," suggesting that historical "analogues" need not be constitutional – or even ethical – to support a modern regulation. App. 18a. This is a serious departure

from the test advanced in Bruen. Though a modern-day regulation need not be a "dead ringer" for its historical precursor, analogical reasoning is not a "regulatory blank check" for the court to endorse otherwise unconstitutional policies. Bruen, 597 U.S. at 30. The court is required to consider how and why a historical regulation burdened the Second Amendment right. Id. at 29. "It is not as simple as saying some groups lost their arms," so others should categorically lose them too. United States v. Jackson, 85 F.4th 468, 470 (8th Cir. 2023) (Stras, J., dissenting from denial of rehearing en banc). "After all, it goes without saying that we would not allow Congress to indiscriminately strip Catholics and Native Americans, two groups targeted by colonial-era disarmament laws, of their guns today." Id.

The modern equivalent disarming the mentally ill, section 922(g)(4), renders it illegal for any person to own a firearm "who has been adjudicated as a mental defective or who has been committed to a mental institution." 18 U.S.C. § 922(g)(4) (emphasis added). Some level of process is due before the prohibition can apply. See, e.g., United States v. Harvey, 609 F. Supp. 3d 759, 768 (D. Neb. 2022); United States v. Rehlander, 666 F.3d 45, 50-51 (1st Cir. 2012); United States v. Giardina, 861 F.2d 1334, 1337 (5th Cir. 1988).

Recently, this Court stressed in Rahimi that section 922(g)(8), which prohibits individuals subject to a domestic violence restraining order from possessing firearms, "applies only once a court has found that the defendant 'represents a credible threat to the physical safety' of another." 602 U.S. at ___ (citing 18 U.S.C. §

922(g)(8)(C)(i)). This placed section 922(g)(8) comfortably within the tradition of "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 ___. America's "tradition of firearm regulation distinguishes citizens who have been found to pose a credible threat to the physical safety of others from those who have not." Id. at ___. The key word here is "found": this Court requires a judicial determination of dangerousness before the Second Amendment right is burdened or stripped away.

Section 922(g)(3), however, requires no such prior determination. This may have been sufficient to survive means-end review, but it is certainly not enough to satisfy Bruen's analysis. This lack of process renders section 922(g)(3) an "outlier in our legal tradition." Harrison, 654 F. Supp. 3d at 1204. It cannot stand.

b. Regulations disarming those considered "dangerous" are not appropriate analogues to section 922(g)(3).

The Eighth Circuit next referenced another "historical analogue" with a "lengthy historical pedigree": an offense called "Terror of the People." App. 19a. As this Court has recognized, a lengthy pedigree does not guarantee quality analysis. "Sometimes, in interpreting our own Constitution, 'it [is] better not to go too far back into antiquity for the best securities of our liberties.'" Bruen, 597 U.S. at 35 (citing Funk v. United States, 290 U.S. 371, 382 (1933)).

The Terror of the People offense initially prohibited going armed to terrify subjects of the King. Id. at 43-44. As time passed, "arms" began to include firearms.

Id. at 41. "But the offense was not about mere possession, or even openly carrying a firearm." App. 20a (citing Bruen, 597 U.S. at 45). "[T]errorizing behavior had to accompany the possession." App. 21a. And there was another requirement that the court failed to acknowledge. Early "going armed" laws only disarmed an offender after a "judicial determination[]" that considered a particular defendant's conduct and threat to others. Rahimi, 602 U.S. at ___. "Section 922(g)(3), in contrast, disarms those who engage in criminal conduct that would give rise to misdemeanor charges, without affording them the procedural protections enshrined in our criminal justice system." Connelly, 668 F. Supp. 3d at 678.

The Eighth Circuit suggested this historical prohibition is analogous to section 922(g)(3) because "[c]ontrolled substances can induce terrifying conduct, made all the more so by the possession of a firearm." Id. "All it takes is a few minutes flipping through the pages of the Federal Reporter to locate some examples." App. 21a. But our free society prefers to punish those few individuals who abuse their rights – after those rights have been abused – rather than "to throttle them and all others beforehand." Se. Promotions, Ltd. v. Conrad, 420 U.S. 546, 559 (1975). Individuals who use controlled substances do not automatically lose their other constitutional rights. And even individuals who make poor choices do not abandon their constitutional protections. This Court recently rejected the argument that an individual "may be disarmed simply because he is not 'responsible.'" Rahimi, 602 U.S. at ___. The Court further 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. But those decisions did not define the term and said nothing about the status of citizens who were not "responsible."

Id.

In the Eighth Circuit's view, the benefits of section 922(g)(3) outweigh its constitutional costs. But this is exactly the kind of means-end analysis this Court left behind in Bruen. "Bruen forbids us from balancing a law's justifications against the burden it places on rightsholders." Daniels, 77 F.4th at 353. Otherwise, the government could "disarm[] all men, citing statistics that men commit more violent crimes than do women," or else "bar[] all convicted cybercriminals from owning guns," so long as the evidence was substantial enough and the law sufficiently tailored enough to justify such a categorical restriction. Id. Congress "cannot have unchecked power to designate a group of persons as 'dangerous' and thereby disarm them." Daniels, 77 F.4th at 353. Without a "true limiting principle," the Second Amendment would become a dead letter. Id. (citing Rahimi, 61 F.4th at 454).

III. The question at issue in this case is critically important to thousands of Americans.

Section 922(g) "is no minor provision." Rehaif v. United States, 588 U.S. 225, 239 (2019) (Alito, J., dissenting). Justice Alito suggested that section 922(g) "probably does more to combat gun violence than any other federal law." Id. But even the most

important statutory provision must comply with the Constitution. And as this Court has repeatedly remarked, the right to bear arms is not "a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees." McDonald, 561 U.S. at 780; see also Bullock, 679 F. Supp. 3d at 538 (the post-Bruen Second Amendment is "second-class no longer," but "the brightest star in the Constitutional constellation").

Reasonable minds may disagree on the best method of addressing gun violence in the United States. As this Court has noted, however, "what is not debatable is that it is not the role of this Court to pronounce the Second Amendment extinct." Heller, 554 U.S. at 636 (emphasis added). The "enshrinement of constitutional rights necessarily takes certain policy choices off the table." Id. And the "right to keep and bear arms. . . is not the only constitutional right that has controversial public safety implications." McDonald, 561 U.S. at 783. Should the government decide to disarm individuals who use drugs based on individual assessments of dangerousness, it still has a valid, constitutional path to do so. Nothing prevents the government from charging and convicting an individual for the possession or use of illicit substances, which would similarly result in a ban on firearm ownership – but with the procedural safeguards required by the Constitution.

Finally, this Court should grant review because the constitutionality of section 922(g) raises important questions about fairness and race in the United States. Section 922(g) contributes to the stark disparities in our criminal punishment

system. Black Americans are more frequently stopped by police, searched, and arrested than other Americans. See Emma Pierson et al., A Large-Scale Analysis of Racial Disparities in Police Stops Across the United States, 4 NATURE HUM. BEHAV. 736, 737-39 (2020). Black individuals are also disproportionately charged with gun-related crimes. In 2022, 58.1% of individuals prosecuted under section 922(g) were Black, even though Black individuals made up only 14.4% of the country's population. U.S. SENT'G COMM'N, 18 U.S.C. § 922(G) FIREARMS OFFENSES 1 (FY 2022). This is not a new phenomenon. New York's firearm regulation, which this Court struck down in Bruen, was criticized for its apparently biased application: "according to NYPD arrest data, in 2020, 96% of arrests made for gun possession. . . in New York City were of Black or Latino people." Brief for Black Attorneys of Legal Aid et al. as Amici Curiae Supporting Petitioners at 15, Bruen, 579 U.S. 1 (2022). The percentage was "above 90% for 13 consecutive years." Id.

Black individuals are also disproportionately charged with drug-related crimes, such as violations of section 922(g)(3). Though drug use tends to stay constant across racial groups, arrest and conviction rates for drug-related offenses are significantly higher for minorities. Deborah M. Ahrens, Retroactive Legality: Marijuana Convictions and Restorative Justice in an Era of Criminal Justice Reform, 110 J. CRIM. L. & CRIMINOLOGY 379, 392 (2020). In some parts of the country, the ACLU estimated that Black individuals were up to thirty times more likely than white individuals to be arrested for marijuana possession, even though Black individuals are not any more likely to use the drug. ACLU, THE WAR ON

MARIJUANA IN BLACK AND WHITE 11 (2013). Given that 74% of Americans now live in a state where marijuana is legal for either recreational or medical use, this regulation should be reexamined. Athena Chapekis & Sono Shah, Most Americans Now Live in a Legal Marijuana State – and Most Have at Least One Dispensary in Their County, PEW RSCH. CTR. (Feb. 29, 2024).

Any "erroneous interpretation of the Constitution is always important, but some are more damaging than others." Dobbs, 597 U.S. at 268. Among the most "damaging" decisions are those that "betray[] our commitment to 'equality before the law.'" Id. (citing Plessy v. Ferguson, 163 U.S. 537, 562 (1896) (Harlan, J., dissenting). Section 922(g)(3) has a uniquely damaging impact on minority Americans across the country. "The new constitutional and statutory rights for individuals to bear arms at home and in public apply to all. The courts have an obligation to protect those rights for people in 'bad' neighborhoods as well as 'good' ones." United States v. Williams, 731 F.3d 678, 694 (7th Cir. 2013) (Hamilton, J., concurring in part).

Post-Bruen, section 922(g)(3) cannot survive. For the above reasons, this Court's review is urgently needed to protect the Second Amendment.

CONCLUSION

Mr. Veasley respectfully requests that the Supreme Court grant his petition for a writ of certiorari for all the reasons stated herein.

Respectfully submitted,

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