NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

Mani Panoam Deng,

Petitioner,

-vs.-

United States of America,

Respondent.

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

Petition for Writ of Certiorari

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Questions Presented for Review

1. Under this Court's *Menna-Blackledge* doctrine, where a challenger's constitutional "claim is that the [Government] may not convict [him] no matter how validly his factual guilt is established[,] [t]he guilty plea…does *not* bar the claim." *Menna v. New York*, 423 U.S. 61, 62 n.2 (1975) (per curiam) (emphasis supplied). In 2018, this Court applied the doctrine to the Second Amendment, reaffirming a defendant does "not relinquish his right to appeal the District Court's [Second Amendment] constitutional determinations simply by pleading guilty." *Class v. United States*, 583 U.S. 174, 178 (2018).

Accordingly, the *first* question presented is whether, in light of the *Menna-Blackledge* doctrine, a defendant whose "constitutional claims…do not contradict" his guilty plea and who maintains "he did what the indictment alleged," retains his right to appeal the denial of an as-applied Second Amendment challenge after pleading guilty. *Accord id.* at 181–82.

2. The *second* question presented in this case is similar to the question posed in No. 24-5089, *Veasley v. United States*, regarding the constitutionality of 18 U.S.C. § 922(g)(3), a federal categorical firearm prohibition for "users" of controlled substances. In *N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 70–71 (2022), this Court emphasized the appropriate Second Amendment analysis requires a faithful application of the Nation's historical tradition. On that point, and as it relates to Section 922(g)(3), the Government has been

consistent: "Prior to 1968, it appears Congress had not enacted a federal law criminalizing the possession of firearms by addicts or drug users." *Government Appellee Br.*, at 20 (8th Cir. Feb. 23, 2024). This Court's recent decision in *Rahimi* applied this historical traditions test to a different categorical firearm prohibition, and highlighted a specific feature *absent* in Section 922(g)(3)—prior judicial determination. *E.g.*, *United States v. Rahimi*, 144 S. Ct. 1889, 1903 (2024) ("An individual *found by a court* to pose a credible threat…may be temporarily disarmed…." (emphasis supplied)).

Accordingly, the *second* question presented in this Petition is whether, consistent with *Bruen* and *Rahimi*, the federal firearm prohibition contained in Section 922(g)(3) is unconstitutional facially and as-applied to marijuana users by virtue of their drug use alone.

3. Whether 18 U.S.C. § 922(g)(3) is unconstitutionally vague for the failure to clearly define the temporal nexus between drug use and firearm possession.

Related Proceedings

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

United States v. Deng, No. 4:23-cr-00041-SMR-WPK-1 (Nov. 17, 2023)

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

United States v. Deng, No. 23-3545 (June 20, 2024)

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Opinion Below

Petitioner, Mr. Mani Panoam Deng, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Eighth Circuit in Case No. 23-3545 entered on June 20, 2024. *United States v. Deng*, 104 F.4th 1052 (8th Cir. 2024), *rehearing and rehearing en banc denied July 17, 2024*. Rehearing and rehearing en banc was denied July 17, 2024.

Jurisdiction

The panel of the Eighth Circuit Court of Appeals entered its judgment on June 20, 2024. The Eighth Circuit Court of Appeals denied rehearing and rehearing *en banc* on July 17, 2024. Jurisdiction of this court is invoked under 28 U.S.C. § 1254.

Constitutional and Statutory Provisions Involved

This case involves the application of the following constitutional and statutory provisions: U.S. CONST. amend. II; 18 U.S.C. § 922(g)(3).

U.S. CONST. amend. II

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

18 U.S.C. § 922(g)(3)

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

Statement of the Case

Petitioner Mani Deng respectfully requests a writ of certiorari issue to review the Eighth Circuit's affirmance of the denial of his pre-trial Motion to Dismiss. *See* D. Ct. Doc. 20 (Motion to Dismiss). In early 2021, upon returning home from a work-stint as a fisherman in Dutch Harbor, Alaska, Mr. Deng learned that his brother had been murdered in Lincoln, Nebraska. *See* PSR ¶ 56. As a coping mechanism, he turned to increased marijuana use. *Id.* ¶ 71. Also in response, Mr. Deng sought to obtain firearms for his and his family's self-defense.

Accordingly, Mr. Deng successfully completed the firearm training necessary to purchase a firearm, obtained a Firearm Purchase Certificate and Concealed Carry Permit, and purchased two firearms from a licensed dealer in Omaha, Nebraska. In January 2022, law enforcement executed a search warrant at Mr. Deng's temporary shared residence. There, he was apprehended and one of his firearms seized. That day, in a post-*Miranda* interview, Mr. Deng admitted to marijuana use. Relevant here, on March 22, 2023, Petitioner Mani Deng was charged by indictment in the Southern District of Iowa, having jurisdiction under 18 U.S.C. § 3231, with possession of a firearm as an unlawful marijuana user. D. Ct. Doc. 1 (Indictment); 18 U.S.C. § 922(g)(3). On April 13, 2023, Mr. Deng was arraigned on the charge. D. Ct. Doc. 13 (Minute Entry).

Less than a week later, on April 19, 2023, Petitioner Deng moved to dismiss the indictment as an impermissible infringement on his Second Amendment right and as unconstitutionally vague. D. Ct. Doc. 20-1 (Brief in Support of Motion to

Dismiss). On April 26, 2023, the Government resisted, conceding "[a] review of early colonial laws has not revealed any statutes that prohibited possession by unlawful drug users." D. Ct. Doc. 25, at 12.[1] Prior to Mr. Deng filing his reply brief, the District Court requested supplemental briefing on the difference (if any) of the court's role on a facial challenge versus an as-applied challenge. D. Ct. Doc. 26 (Text Order). Once the briefing and supplemental briefing was completed, the District Court denied Mr. Deng's Motion to Dismiss. D. Ct. Doc. 41 (Order).

Following the denial of his Motion, Mr. Deng pled guilty without a written plea agreement. *See* D. Ct. Doc. 49 (Order Adopting Guilty Plea). There was no appeal waiver. At the change of plea hearing, Mr. Deng admitted to the *facts* of the charge—he was an unlawful user of marijuana and purchased two firearms following his brother's murder. *See* Change of Plea Tr., at 25:7 – 28:17 (D. Ct. Doc. 70). Mr. Deng never disputed these factual predicates—nor does he here.

On appeal to the Eighth Circuit, Mr. Deng maintained that "whether someone falls within the grasp of a criminal statute has no bearing on whether that statute is constitutional." *Defendant's Appellant Br.*, at 45–46 (8th Cir. Dec. 20, 2023). Mr. Deng maintained both facial and as-applied Second Amendment challenges to Section 922(g)(3). Specifically, Mr. Deng submits the statute of conviction is unconstitutional under the Second Amendment, as it lacks the necessary historical pedigree required

[1] This concession was later repeated on appeal: "Prior to 1968, it appears Congress had not enacted a federal law criminalizing the possession of firearms by addicts or drug users." *Government Appellee Br.*, at 20 (8th Cir. Feb. 23, 2024).

by *Bruen*.[2] During the pendency of the appeal, however, a different Eighth Circuit panel decided *United States v. Veasley*, 98 F.4th 906 (8th Cir. 2024), *petition for writ of cert. docketed*, No. 24-5089 (U.S. July 16, 2024). *Veasley* held Section 922(g)(3) to be *facially* constitutional, a position Mr. Deng continues to dispute on appeal. Mr. Deng's Eighth Circuit panel held it was bound by *Veasley* on his facial challenge. *See* Op., at 2, *United States v. Deng*, 104 F.4th 1052, 1054 (8th Cir. 2024) ("That decision binds us here."). With respect to Mr. Deng's as-applied challenge—a claim *not* raised in *Veasley*—the panel found Mr. Deng "waived it by pleading guilty." *Id.*

The very next day after Mr. Deng's panel decision was released, this Court decided *United States v. Rahimi*, 144 S. Ct. 1889 (2024). Mr. Deng timely petitioned for panel and *en banc* rehearing, on the grounds that the panel did not have the benefit of *Rahimi*, and that the panel otherwise erred in declining to analyze his as-applied challenge. As to the former, this Court has remanded the only other pre-*Rahimi* case confronting this constitutional question, instructing the lower court to consider anew in light of *Rahimi*. *United States v. Daniels*, No. 23-376, 2024 WL 3259662 (U.S. July 2, 2024) (mem.). This Court has also remanded with the same instruction a different Eighth Circuit case upholding the federal felon-in-possession prohibition. *Jackson v. United States*, No. 23-6170, 2024 WL 3259675 (U.S. July 2, 2024) (mem.). Nevertheless, on July 17, 2024, the Eighth Circuit denied in full Mr. Deng's petition for panel and *en banc* rehearing.

[2] *N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022).

This Petition follows. This Court should grant Mr. Deng's Petition for Writ of Certiorari and reverse the Eighth Circuit's decision in three non-exclusive respects. *First*, the Eighth Circuit should not have declined to review Mr. Deng's as-applied constitutional challenge to Section 922(g)(3). Under the *Menna-Blackledge* doctrine, a constitutional claim challenging the authority of the Government to hale Petitioner into court is not "waived" or otherwise foreclosed merely by admitting factual guilt. *Second*, the statute itself is unconstitutional both facially and as-applied to marijuana users. As to the facial challenge, *Veasley* is wrongly decided. As to the as-applied challenge, *Veasley* all but admits Section 922(g)(3) would be unconstitutional as applied to marijuana users—but did not confront such a challenge.[3] *Third*, the statute of conviction is unconstitutionally vague. Accordingly, Mr. Deng respectfully submits this Court should grant certiorari and reverse.

Reasons for Granting the Writ

The United States Court of Appeals for the Eighth Circuit decided important issues of federal law not settled by this Court (constitutionality of 18 U.S.C. § 922(g)(3)) or otherwise conflicting with relevant Supreme Court decisions (as-applied constitutional challenges are not foreclosed by admitting factual guilt). *See* Supr. Ct. R. 10(a), (c). *First*, the appellate panel decided a question inapposite to the authority of this Court, including *Class v. United States*, 583 U.S. 174 (2018); *Menna v. New*

[3] *Veasley* never made an as-applied constitutional challenge on appeal. Although the question presented in *Veasley* is similar, *Veasley* does not completely resolve this case. Accordingly, Mr. Deng respectfully submits that this Court should grant certiorari in this case, *at least* in addition to *Veasley*, No. 24-5089.

York, 423 U.S. 61 (1975) (per curiam); and *Blackledge v. Perry*, 417 U.S. 21 (1974), in declining to treat Petitioner's as-applied Second Amendment challenge (Question Presented No. 1). *Second*, the historical pedigree of firearm restrictions does not support the prohibition, first codified in 1968, presently found at 18 U.S.C. § 922(g)(3) (Question Presented No. 2). *Accord Bruen*, 597 U.S. at 29. *Third*, the courts had to add a judicial temporal nexus to Congress's statutory text, rendering it unconstitutionally vague (Question Presented No. 3). *Fourth*, and alternatively, this Court should grant certiorari and summarily remand this case to the Eighth Circuit for proper analysis of Petitioner's facial and as-applied challenges in light of *Rahimi* (Questions Presented Nos. 1 and 2).

I. The *Menna-Blackledge* doctrine controls. (Question Presented No. 1)

This Court's precedent is clear: "[w]here the State is precluded by the United States Constitution from haling a defendant into court on a charge, federal law requires that conviction on the charge be set aside even if the conviction was entered pursuant to a counseled plea of guilty." *Menna*, 423 U.S. at 62. The Eighth Circuit applies a different standard, not true to *Menna*. This Court should grant certiorari and reverse the Eighth Circuit's practice of treating all as-applied challenges as *per se* "waived" by a guilty plea—even where there is no appeal waiver.

A. Substantive constitutional challenges survive guilty pleas if they do not contradict an admission of factual guilt.

The *Menna-Blackledge* doctrine should have controlled the Eighth Circuit's decision here. The appellate panel erred by applying something else. In 1974, this Court confronted the question of when a guilty plea *per se* waives a constitutional

claim. *Blackledge v. Perry*, 417 U.S. 21, 29 (1974) ("The remaining question is whether, because of his guilty plea to the felony charge in the Superior Court, [defendant] is precluded from raising his constitutional claims…."). The *Blackledge* Court drew a distinction between "the right not to be haled into court at all upon the felony charge" and "antecedent constitutional violations" of a factual or prophylactic nature. *Id.* at 30. The Court there expressly rejected expansion of the *Tollett v. Henderson*, 411 U.S. 258 (1973) line of cases.[4] Accordingly, the Court recognized that *Tollett* does not control the question here—*Tollett* applies only to constitutional infirmities antecedent to the defendant's admission of factual guilt. *Blackledge*, 417 U.S. at 31 ("[I]t follows that his guilty plea did not foreclose him from attacking his conviction….").

The following year, this Court reaffirmed that very holding in a *per curiam* decision:

> A guilty plea, therefore, simply renders irrelevant those constitutional violations not logically inconsistent with the valid establishment of factual guilt and which do not stand in the way of conviction if factual

[4] *Tollett* was best understood, according to *Blackledge*, as "complaining of 'antecedent constitutional violations.' " *Blackledge*, 417 U.S. at 30 (quoting *Tollett*, 411 U.S. at 266, 267). In *Tollett*, the constitutional challenger and habeas petitioner alleged the state grand jury process systemically excluded racial minorities. *Tollett*, 411 U.S. at 259. The Court ultimately held that such a technical or factual violation was foreclosed by pleading guilty. *Id.* at 266. Notably, the Court did *not* find *waiver* because the factual predicates to waiver were not available to the petitioner at the time of his guilty plea. *Id.* ("[T]he Court of Appeals was undoubtedly correct in concluding that there had been no such waiver here."). Moreover, this Court was careful to discuss the *Tollett* claim in terms of "the *facts* giving rise to the constitutional claims" and constitutional deprivations due to the failure of counsel to "pursue[] a certain *factual* inquiry" or whether such a claim "might be *factually* supported." *Id.* at 266, 267, 268 (emphases supplied). The import, of course, is *Tollett* did not confront a *legal* challenge to the sovereign's authority to prosecute at all.

> guilt is validly established. Here, however, the claim is that the State may not convict petitioner no matter how validly his factual guilt is established. The guilty plea, therefore does not bar the claim.

Menna, 423 U.S. at 62 n.2. Stated differently, "a plea of guilty to a charge does not waive a claim that…the charge is one which the State may not constitutionally prosecute." *Id.* Mr. Deng's Second Amendment constitutional challenge—whether cast as facial or as-applied—falls squarely within *Menna.*

The *Menna-Blackledge* doctrine remains binding law. It was next tested in *United States v. Broce*, 488 U.S. 563 (1989). The *Broce* Court correctly noted that in both *Blackledge* and *Menna*, the constitutional questions were able to be "resolved without any need to venture beyond" the indictment because "the concessions implicit in the defendant's guilty plea were simply irrelevant." *Id.* at 575. Because the claimants in *Broce* "[could]not prove their claim without contradicting those indictments," however, the *Menna-Blackledge* doctrine was inapplicable. *Id.* at 576.

Most recently, this Court applied the *Menna-Blackledge* doctrine to a Second Amendment constitutional challenge. In *Class v. United States*, the petitioner pled guilty to possession of a firearm on Capitol grounds after his Second Amendment motion to dismiss was denied. 583 U.S. 174, 176 (2018). Class appealed the denial of his motion, but the court of appeals—much like the panel in this case—held the guilty plea *waived* such a challenge. *Id.* at 178. This Court reversed and unambiguously held "Class did not relinquish his right to appeal the District Court's constitutional determinations simply by pleading guilty." *Id.* This holding continues to bind.

In reaching its conclusion, this Court emphasized what a plea of guilty actually

signifies:

> "The plea of guilty is, of course, a confession of all the facts charged in the indictment, and also of the evil intent imputed to the defendant. It is a waiver also of all merely technical and formal objections of which the defendant could have availed himself by any other plea or motion. But if the facts alleged and admitted do not constitute a crime against the laws of the [sovereign], the defendant is entitled to be discharged."

Id. at 180 (quoting *Commonwealth v. Hinds*, 101 Mass. 209, 210 (Mass. 1869)). And, as distinguished from *Broce*, Class's claims did "not contradict the terms of the indictment or the written plea agreement." *Id.* at 181. "They are consistent with Class' knowing, voluntary, and intelligent admission that he did what the indictment alleged." *Id.*[5]

The *Menna-Blackledge* doctrine tracks closely with the fundamental basics of judicial review. *See Marbury v. Madison*, 5 U.S. 137, 177 (1803) ("[T]he constitution controls any legislative act repugnant to it…."); *see also Wesberry v. Sanders*, 376 U.S. 1, 48 (1964) (Harlan, J., dissenting) ("This Court, no less than all other branches of the Government, is bound by the Constitution."). Even if a defendant could "consent" to his conviction by guilty plea, courts have an independent obligation to ensure that their act of convicting is not "repugnant to" the Constitution by convicting under an unconstitutional statute. Whatever its underpinnings, the Eighth Circuit was bound to apply the *Menna-Blackledge* doctrine as pronounced by this Court. That the Eighth

[5] Other Circuits have understood a key standard to be whether the constitutional challenge requires reneging on factual admissions. *E.g.*, *In re Sealed Case*, 936 F.3d 582, 589 (D.C. Cir. 2019) (finding a constitutional challenge foreclosed because "[a]spects of Appellant's as-applied challenge ignore or revise facts to which he stipulated [in his guilty plea]"). Petitioner's constitutional challenge takes no issue with his factual admissions.

Circuit has ignored this Court's binding precedent and charted its own course is error and warrants certiorari. *E.g.*, *United States v. Jackson*, 85 F.4th 468, 469 (8th Cir. 2023) (Stras, J., dissenting from the denial of rehearing en banc) ("It should go without saying that we have to follow what the Supreme Court says, even if we said something different before.").

B. There is no appeal waiver in this case.

Even if the Eighth Circuit panel's decision was not discordant with binding authority (it was), the decision is contrary to a traditional waiver analysis.[6] "[W]aiver is the 'intentional relinquishment or abandonment of a known right.' " *United States v. Olano*, 507 U.S. 725, 733 (1993) (quoting *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938)). "Waivers of constitutional rights not only must be voluntary but must be knowing, intelligent acts…." *Brady v. United States*, 397 U.S. 742, 748 (1970).

Petitioner's case is somewhat unique in that it lacks a written appeal waiver. *Cf. Class*, 583 U.S. at 176–77 (discussing the waived appellate rights and expressly retained appellate rights in the defendant's written plea agreement). As was argued below, requiring a defendant obtain an exception to an 'appeal waiver' "put[s] the appealability of constitutional challenges in the hands of the prosecutors." *Petitioner's Petition for Rehearing*, at 3 (8th Cir. June 25, 2024). And, what use would appeal

[6] The *Class* dissent proposes a different test grounded in the waiver doctrine. *See Class*, 583 U.S. at 186 (Alito, J., dissenting) ("And if no law prevents waiver, the final question is whether the defendant knowingly and intelligently waived the right to raise the claim on appeal."). Even under a waiver analysis—which even the appellate panel failed to conduct below—the result would be the same *here* as prescribed by the *Class* majority. *See also Tollett*, 411 U.S. at 266 (finding no waiver because the factual and legal predicates did not exist at the time of the guilty plea).

waivers serve if the simple fact of pleading guilty waived the claims anyways? Why does the Government insist on the appeal waiver in nearly every written plea agreement if they are meaningless or unnecessary?

Mr. Deng's guilty plea did one thing—it focused the case to the actual live dispute; this case was never about the facts, it was simply about the law. Accordingly, even were this Court to decide the *Menna-Blackledge* doctrine no longer controls (though, it certainly controlled when the Eighth Circuit declined to participate in the question below), the waiver analysis yields the same result here. This is particularly true because of the fact that *Class* exists as written. *Class* is the law unless and until it is overruled (though it should not be). *Class* prevents *any* reasonable conclusion that Petitioner *knowingly* waived any right. He is not to be charged with anticipating a material change in the law. Whether under the *Class* majority approach, founding judicial review principles, or a waiver analysis, there is no authority for retroactively stripping Petitioner of his right to challenge Congressional overstepping.[7]

C. Whatever test is appropriate, the Eighth Circuit's "jurisdiction" misnomer is not it.

Of the three foregoing alternative approaches this Court has taken (whether *Menna-Blackledge*, *Marbury* judicial review principles, or the *Class* dissent's waiver inquiry), the Eighth Circuit faithfully applied none of them. Instead, it contrived a different test: "jurisdiction." The Eighth Circuit has since admitted, however, that when it says "jurisdiction," it does not actually mean "jurisdiction." *See, e.g.*, Op., at

[7] *See* U.S. CONST. art. I § 9 cl. 3 ("No Bill of Attainder or ex post facto Law shall be passed.").

2, *Deng*, 104 F.4th at 1054; *United States v. Nunez-Hernandez*, 43 F.4th 857, 860 (8th Cir. 2022) ("Sometimes the word 'jurisdiction' has a special meaning. In *Seay*, for example, it referred to matters that have nothing to do with subject-matter jurisdiction, like the limited class of defenses that survive a guilty plea."); *United States v. Morgan*, 230 F.3d 1067, 1071 n.1 (8th Cir. 2000) (Bye, J., specially concurring) ("It's worth noting that this exception is *not* jurisdictional in character, although many courts have erred in this direction." (emphasis in original)).

The Eighth Circuit's "jurisdiction" sideroad began with a 1994 Circuit decision which has become the basis for all subsequent Eighth Circuit authority on this issue. The problem is, in that case, the challenge was made by a habeas petitioner challenging *state court* jurisdiction. *Weisberg v. Minnesota*, 29 F.3d 1271, 1280 (8th Cir. 1994) ("Thus, Weisberg can assert his second claim, that the criminal complaint was insufficient, only to the extent it challenges the state trial court's jurisdiction."). Of course, this is consistent with the *Menna-Blackledge* doctrine. *Class*, 583 U.S. at 181 (permitting challenges only where the indictment and factual admissions in the guilty plea are not disputed).

Weisberg, however, conducted a comprehensive survey of authority on when a constitutional challenge might survive a guilty plea, and it cited circumstances identical to Petitioner's here: acknowledging a "guilty plea does not foreclose [an] attack on [the] constitutionality of [the] criminal statute under which defendant was charged." *Weisberg*, 29 F.3d at 1280; *Sodders v. Parratt*, 693 F.2d 811, 812 (8th Cir. 1982) ("[T]his Circuit and others have indicated that a guilty plea does not preclude

a defendant from claiming that the statute under which he pleaded is unconstitutional."). In that way, the subsequent distortion of *Weisberg*, and application against Petitioner below, is untethered to either Supreme Court or Eighth Circuit precedent.

Six years after *Weisberg*, the Eighth Circuit quoted it at length, cited to and analyzed both *Blackledge* and *Menna*, and construed the foregoing to permit *only* a facial constitutional challenge—but *foreclose* an as-applied challenge. *Morgan*, 230 F.3d at 1071 (majority). Of course, neither *Blackledge*, *Menna*, nor *Class* made any distinction between facial and as-applied challenges. Indeed, it appears the challenge in *Class* was an *as-applied* Second Amendment challenge. *See Class*, 583 U.S. at 196 n.4 (Alito, J., dissenting) ("Class's Second Amendment argument is that banning firearms in the Maryland Avenue parking lot of the Capitol Building goes too far, at least as applied to him specifically."). The *Morgan* special concurrence recognized the contortion as incompatible with history and the Constitution: "[s]urely it offends our system of ordered liberty to permit a prisoner to remain incarcerated when the statute under which he was convicted exceeded Congress' lawmaking power to enact." *Morgan*, 230 F.3d at 1072 (Bye, J., specially concurring). *Morgan* commenced the divergence—still unresolved—between the Eighth Circuit and this Court. To wit, *Morgan* formed the basis for the appellate panel's declination here. *See* Op., at 2, *Deng*, 104 F.4th at 1054 (citing to and relying on *Morgan*).

The misguided *Morgan* proposition was re-asserted ten years later *in dicta*. The Eighth Circuit considered, in dicta, that as-applied Second Amendment

constitutional challenges are foreclosed by a guilty plea because they "are not jurisdictional." *United States v. Seay*, 620 F.3d 919, 922 n.3 (8th Cir. 2010) (citing *Morgan*, 230 F.3d at 1071). But, *Seay* repeated that "if [defendant] was correct [about the unconstitutionality of the challenged statute], then he should never have been 'haled into court' at all, and his conviction must be reversed. Such challenges to the court's jurisdiction may be pursued despite a defendant's guilty plea." *Id.* at 923. Ultimately, the Court permitted the facial challenge before it. *Id.* ("[W]e hold that Seay's Second Amendment challenge is jurisdictional and, therefore, survives his guilty plea."). *Seay* never confronted an as-applied challenge.

Despite the footnoted dicta in *Seay*, which originated with *Morgan* and directly contradicts the above-the-line text, this distorted "jurisdiction" analysis continued to fester. It was next applied when the Eighth Circuit confronted an equal protection challenge to a criminal reentry statute after a guilty plea. *Nunez-Hernandez*, 43 F.4th at 858–59. The Court nevertheless directly disputed *Seay*'s "jurisdiction" contrivance, by noting "the unconstitutionality of the statute under which the proceeding is brought does not oust a court of jurisdiction." *Id.* at 860 (quoting *United States v. Williams*, 341 U.S. 58, 65, 71 (1951)); *see also id.* ("But these rulings 'are patently not jurisdictional in the strict sense.' " (quoting *Kircher v. Putnam Funds Tr.*, 547 U.S. 633, 642 (2006))). Still, rooted in *Seay* and *Morgan* despite questioning the underlying reasoning, it maintained that only facial challenges are permitted. *Id.*

Finally, most recently, in *Veasley* (pending petition for certiorari), the Eighth Circuit confronted a facial challenge, which the Circuit proclaimed was "the only type

still available to [the defendant]," again relying on the *Morgan* line of cases. *Veasley*, 98 F.4th at 909. Whether *Veasley*'s remarks constitute dicta or an advisory opinion, neither bound Petitioner's appellate panel. "[D]icta, even if repeated, does not constitute precedent…." *Oklahoma v. Castro-Huerta*, 597 U.S. 629, 645 (2022). Nevertheless, in *Veasley*'s case, it relied on the same cases above: *Nunez-Hernandez* and *Seay*. *Veasley*, 98 F.4th at 908. Again, however, *Veasley* essentially conceded why this type of claim falls within *Class*: "An as-applied challenge would focus on Veasley: is applying 'the regulation' to *his* conduct '[in]consistent with his Nation's historical tradition of firearm regulation'?" *Id.* at 909 (emphasis and alteration in original, quotation omitted). Nowhere does such a legal question contradict, or even implicate, the admissions of factual guilt. *Accord Class*, 583 U.S. at 181 (majority). In fact, that there is no dispute of the facts makes such a challenge even more appropriate for review on appeal.

Where the Eighth Circuit has struggled, other circuits have not been troubled with *Menna-Blackledge*. *E.g.*, *United States v. De Vaughn*, 694 F.3d 1141, 1153 (10th Cir. 2012) (noting *Morgan* "conflates the two distinct lines of cases" and suggesting the appropriate recitation would be "[a] guilty plea waives all defenses except those that go to the court's subject-matter jurisdiction and the narrow class of constitutional claims involving the right not be haled into court").[8] Post-*Class*, this contingent has grown. *E.g.*, *United States v. Perez-Paz*, 3 F.4th 120, 125 & n. (4th Cir.

[8] The Eighth Circuit subsequently cited *De Vaughn* with approval. *See Nunez-Hernandez*, 43 F.4th at 860.

2021) ("[A] guilty plea does not 'bar[] a federal criminal defendant from challenging the constitutionality of the statute of conviction on direct appeal.' " (internal quotation omitted)); *United States v. Flores*, 995 F.3d 214, 224 (D.C. Cir. 2021) (holding that because the district court constitutionally lacked the "power to convict and sentence" the defendant, the guilty plea did not bar the constitutional claim); *United States v. Peppers*, 899 F.3d 211, 225 n.7 (3d Cir. 2018) (finding *Class* consistent with prior Third Circuit precedent); *United States v. Bacon*, 884 F.3d 605, 610 (6th Cir. 2018) (permitting constitutional challenges to firearm legislation on appeal after guilty plea); *United States v. Gil*, No. 23-50525, 2024 WL 2186916, at *2 (5th Cir. May 15, 2024) (per curiam) (unpublished) (holding that, despite a guilty plea without a plea agreement, the defendant "preserved his right to challenge the constitutionality of [18 U.S.C. § 922(g)(3)] on direct appeal by raising the challenge in the district court in his motion to dismiss").

In short, the Eighth Circuit has split from other Circuits and the binding word of this Court, by instead finding itself tied to a distorted "jurisdiction" contrivance.[9] *Compare* Op., at 2, *Deng*, 104 F.4th at 1054 ("Facial constitutional challenges fit the bill; as-applied challenges to § 922(g)(3) do not." (citations omitted)), *with Class*, 583 U.S. at 176 ("In our view, a guilty plea by itself does not bar that appeal."). To the

[9] The irony is not lost, however, in Mr. Deng's appellate panel analyzing his "as-applied" vagueness challenge despite his guilty plea. *See* Op., at 4, *Deng*, 104 F.4th at 1055 ("Because he has failed to show that § 922(g)(3) is unconstitutionally vague as applied to him, he cannot mount a facial challenge."). The panel provided no explanation for the disparate treatment.

extent *Class* requires further clarification, certiorari is still warranted.[10] Accordingly, this Court should grant certiorari.[11]

II. Users of drugs were never historically subjected to the categorical prohibition on firearm ownership. (Question Presented No. 2)

First enacted 177 years after the ratification of the Second Amendment, Congress codified a blanket, categorical prohibition on the mere ownership of firearms for drug users. 18 U.S.C. § 922(g)(3). The Government has been consistent in this case; there is no historical analogue. *E.g.*, D. Ct. Doc. 25, at 12 ("A review of early colonial laws has not revealed any statutes that prohibited possession by unlawful drug users."); *Government Appellee Br.*, at 20 (8th Cir. Feb. 23, 2024) ("Prior to 1968, it appears Congress had not enacted a federal law criminalizing the possession of firearms by addicts or drug users."). Under this Court's test, that matters. *Bruen*, 597 U.S. at 17 ("To justify its regulation, the government may not simply posit that the regulation promotes an important interest. Rather, the government must demonstrate that the regulation is consistent with this Nation's

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[10] Indeed, this question is frequently arising. Already the Eighth Circuit has relied on the panel decision below in rejecting as barred an as-applied constitutional challenge. *E.g.*, *United States v. Tucker*, No. 23-2758, 2024 WL 3634232, at *2 (8th Cir. Aug. 2, 2024) (per curiam) (unpublished).

[11] Mr. Deng respectfully submits this Court should also grant certiorari on his second question presented: whether 18 U.S.C. § 922(g)(3) is unconstitutional under the Second Amendment. This Court should, he submits, grant certiorari on both questions and resolve with finality these two important, and ripe, issues of law. To the extent the Court is inclined, however, it may grant certiorari and summarily remand to the United States Court of Appeals for the Eighth Circuit to analyze Mr. Deng's "as-applied" constitutional challenge. *E.g.*, *Wolfe v. Virginia*, 139 S. Ct. 790 (2019) (mem.) (remanding for Court of Appeals review of constitutional claim in light of *Class*); *see also infra* Part IV.

historical tradition of firearm regulation."). Petitioner respectfully requests this Court grant certiorari to determine whether Section 922(g)(3) is incompatible with the Second Amendment. Petitioner submits it is—both facially and as-applied.

Further, certiorari should be granted in this case because the Eighth Circuit declined to consider *Rahimi* when confronted with this Court's new authority, over-relied on the distinction between facial and as-applied challenges which would have overwritten *Heller* itself, and this categorical prohibition operates uniquely and beyond the scope of history. At the very least, the dichotomous results across the nation warrant this Court's review and finality.

A. "The label is not what matters."

The appellate panel below put misplaced emphasis on the distinction between facial and as-applied challenges. "The label is not what matters." *John Doe No. 1 v. Reed*, 561 U.S. 186, 194 (2010). "[T]he substantive rule of law necessary to establish a constitutional violation" is unaffected by the label a litigant or court may give it. *Bucklew v. Precythe*, 587 U.S. 119, 138–39 (2019). Rather, the distinction is only a measure of the precedential value of the case—and the facial/as-applied distinction can be quite blurred. *E.g.*, *Reed*, 561 U.S. at 194 (rejecting the two as being mutually exclusive). Thus, where on the 'facial to as-applied' spectrum the challenge falls is determined not by the label ascribed by the challenger, but by the controlling principle of law the Court applies to resolve it.

The second question presented is one of Congressional authority—did Congress exceed its authority and infringe upon a fundamental constitutional right?

Petitioner submits it exceeded that authority by targeting a class of individuals not historically regulated. In other words, there is no basis to differentiate a facial from an as-applied challenge here; Congress overstepped. Petitioner respectfully submits that to the extent his as-applied challenge is deemed foreclosed by guilty plea (it is not), the Eighth Circuit's overreliance on the label misstates the proper analysis on his challenge.

That analysis has consequences. The Eighth Circuit relies on *United States v. Salerno*, 481 U.S. 739 (1987) regarding the scope of a constitutional challenge. *See Veasley*, 98 F.4th at 909. *Veasley* suggests that *Salerno* requires an "all applications" analysis: "[i]f some applications are constitutional, then facially speaking, the statute is too." *Id.* But *Salerno*'s context matters, and implicates another open question in this Court's jurisprudence: Does *Salerno* actually control the constitutional analysis of *substantive rights*? Petitioner submits "no." *See United States v. Stevens*, 559 U.S. 460, 472 (2010) ("Which standard applies in a typical case is a matter of dispute that we need not and do not address, and neither *Salerno* nor *Glucksberg* is a speech case."). This remains an open question today.

The *Salerno* Court confronted a factor-based Bail Reform Act detention statute which governed *procedure*—not *substantive* rights. *Salerno*, 481 U.S. at 742, 745. The Court was tasked with considering whether a statute provided "due process," a right undefined by explicit text, and not clearly directed at Congress. Accordingly, a challenge to procedure is necessarily dependent on *individual* facts. That is, the scope of procedural due process is fluid and itself dependent on a factored analysis. By

contrast, the scope of substantive constitutional rights is *fixed*, tied as it must be, to straightforward constitutional text. *Rahimi*, 144 S. Ct. at 1898 ("Even when a law regulates arms-bearing for a permissible reason, though, it may not be compatible with the right if it does so to an extent beyond what was done at the founding."); *id.* at 1907 (Gorsuch, J., concurring) ("[T]he Second Amendment 'codified a *pre-existing* right' belonging to the American people, one that carries the same 'scope' today that it was 'understood to have when the people adopted' it." (internal quotation omitted)); *id.* at 1924 (Barrett, J., concurring) ("[T]he meaning of constitutional text is fixed at the time of its ratification.").

Unlike procedural prophylaxis, the substantive scope of the constitutional right is explicitly prescribed and constant. *E.g.*, *id.* at 1919 n.6 (Kavanaugh, J., concurring) ("In [the Due Process Clause] context[], the baseline is 180-degrees different: The text supplies no express protection of any asserted substantive right."). Procedural rights tell Congress what to strive for (but not how), creating infinite permutations of "due process," requiring case-by-case assessment. Conversely, substantive rights tell Congress what it cannot do. *W. Va. Bd. of Educ. v. Barnette*, 319 U.S. 624, 638 (1943) ("The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts."). *Cf.* U.S. CONST. amend. II ("[T]he right of the people to keep and bear Arms[] shall not be infringed.").

Salerno developed in the procedural context—not the substantive context. It

relied on *procedural* authority. *E.g.*, *Schall v. Martin*, 467 U.S. 253, 274 n.23 (1984). Even in that authority, it was clear that the legal test for due process (case-by-case analysis) is different than the scope of substantive rights (history). *Id.*; *Snyder v. Massachusetts*, 291 U.S. 97, 105 (1934) ("The fact that a practice is followed by a large number of states is not conclusive in a decision as to whether that practice accords with due process, but it is plainly worth considering in determining whether the practice 'offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental."). And there is no reason to require *all applications* of a law be unconstitutional to determine whether Congress exceeded its scope—a binary inquiry grounded in text.

In fact, this Court has even discarded the "all applications" adage with respect to some substantive rights, including vagueness challenges and First Amendment challenges. *Johnson v. United States*, 576 U.S. 591, 603 (2015) ("These decisions refute any suggestion that the existence of *some* obviously risky crimes establishes the residual clause's constitutionality." (emphasis in original)); *Sec'y of State of Md. v. Joseph H. Munson Co., Inc.*, 467 U.S. 947, 958 (1984) ("Facial challenges to overly broad statutes are allowed not primarily for the benefit of the litigant, but the benefit of society."). And, this court has questioned application of *Salerno*'s procedural pragmatism to substantive rights generally. *Stevens*, 559 U.S. at 472. In fact, the *Salerno* requirement rewards legislative overstepping—it tells Congress that if it makes a statute *way overbroad*, it cannot, under *Salerno*, be struck down because there will inevitably be *some* constitutional applications. That is not in keeping with

this Court's paradigmatic role of "maintaining the Constitution inviolate." *Accord Napue v. Illinois*, 360 U.S. 264, 271 (1959).

Of course, if the "all applications" standard were appropriate (it is not), this Court's seminal firearms case would probably have been wrongly decided (but it was not). In *Heller*, this Court held a blanket firearm prohibition to be *facially* unconstitutional. *Dist. of Columbia v. Heller*, 554 U.S. 570, 636 (2008). But surely there were felons in D.C.,[12] those adjudicated as mental defectives,[13] and those subject to a domestic abuse restraining order.[14] Surely there were some applications of *Heller*'s firearm ban which were constitutional. Those applications were not fatal to Heller's challenge, however, because what the legislature *targeted* went beyond its Constitutional authority. It did what the Constitution forbade. U.S. CONST. amend. II. And, the classification *targeted* here (drug users) must be assessed *itself* to determine whether Congress exceeded its authority. Just as was done in *Bruen* and *Heller*. *Bruen*, 597 U.S. at 70–71; *Heller*, 554 U.S. at 635–36; *see also Reed*, 561 U.S. at 194 (recognizing a challenge can be facial and as-applied, depending on the perspective). With Section 922(g)(3) specifically, Congress has again done what the Constitution forbids.

In short, the Eighth Circuit's treatment imposes a standard which would essentially write out this Court's precedent. *See Veasley*, 98 F.4th at 912 ("The key

[12] 18 U.S.C. § 922(g)(1).

[13] 18 U.S.C. § 922(g)(4).

[14] 18 U.S.C. § 922(g)(8); *Rahimi*, 144 S. Ct. at 1903 (upholding Section 922(g)(8)).

word is *all*." (emphasis in original)). Because "ambition must be made to counteract ambition," *see* JAMES MADISON, FEDERALIST NO. 51 (1788) (recognizing the constitutional goal as to the three branches of Government is "keeping each other in their proper places"), courts should not, under the guise of circumspection or self-restraint, resist doing what the Constitution demands when Congress shares no such interest. It is error to apply a heightened standard to Mr. Deng's Second Amendment challenge.[15]

B. The historical record is set and courts are divided.

Notwithstanding the foregoing, this Court should grant certiorari to review the constitutionality of 18 U.S.C. § 922(g)(3), whether analyzed as a facial challenge, as-applied challenge, or a combination. Petitioner submits that, on the merits, the law should be found unconstitutional. At this stage, however, that courts are split also warrants review. *Cf.* Supr. Ct. R. 10(a), (c). This important, and often recurring question of federal constitutional law should be decided by this Court.[16]

There is little dispute of the historical record presented below. *Accord Bruen*,

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[15] To the extent the Court denies certiorari as to Question Presented No. 1 (it should grant certiorari), the scope of Mr. Deng's 'facial' challenge should not be constrained in this way. In other words, if Mr. Deng is only permitted to bring a "facial" Second Amendment challenge because he pled guilty, his facial challenge is still meritorious even if there might be ancillary applications to which the law *could* constitutionally apply. A court searching for a hypothetical constitutional application of a statute amounts to precisely the advisory opinion which the *Salerno* rule seeks to curb in the first place. Accordingly, this alternative argument warrants certiorari in the event the first question presented be denied (though it should not be).

[16] The question presented in No. 24-5089, *Veasley*, is a facial challenge to this statute. The *Veasley* Petition appears too deferential to the Eighth Circuit's errant interpretation of the facial/as-applied dichotomy. For this, and the foregoing reasons, this Court should not *limit* its analysis to a facial constitutional challenge.

597 U.S. at 25 n.6 ("[I]n our adversarial system of adjudication, we follow the principle of party presentation." (internal quotation omitted)). On appeal, the Government looked to two *other* categorical bans: felons and persons adjudicated as mental defectives. This Court's recent pronouncement in *Rahimi* underscores why those are inapplicable corollaries. There, the Court "conclude[d] only this: An 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." *Rahimi*, 144 S. Ct. at 1903 (majority) (emphasis supplied); *id.* at 1909 (Gorsuch, J., concurring) ("[W]e do not decide today whether the government may disarm a person without a judicial finding that he poses a 'credible threat' to another's physical safety."). Indeed, a crucial component of *Rahimi*'s holding is absent here.

Section 922(g)(3) does not require any prior judicial finding. It requires no prior conviction, *cf.* 18 U.S.C. § 922(g)(1), no court determination of mental incapacity, *cf.* 18 U.S.C. § 922(g)(4), and no prior judicial finding of credible threat to another, *cf.* 18 U.S.C. § 922(g)(8). Instead, this categorical prohibition, subsection (g)(3), is unique in the law. It applies to retroactively criminalize a person's potentially otherwise lawful ownership of a firearm due solely to their use of drugs (some of which may be legal in their state of domicile). As here, Mr. Deng had no prior convictions before he purchased his firearms. And, the statute broadly, categorically *disarms*—it does not merely prohibit the "use" or "discharge" of firearms while under the influence. *See* 18 U.S.C. § 922(g)(3); *Heller*, 554 U.S. at 633 (distinguishing the dissent's citations to historical regulation because "[a]ll of them punished the discharge (or loading) of

guns"). This was in part why the Fifth Circuit previously found this statute unconstitutional: "Not only was the [historical regulations advanced by the Government] enacted for a different purpose, but it did not even ban gun possession or carry—it only prevented the colonists from misusing the guns they did have during bouts of drinking." *United States v. Daniels*, 77 F.4th 337, 345 (5th Cir. 2023), *remanded for consideration of Rahimi case*, No. 23-376, 2024 WL 3259662 (U.S. July 2, 2024); *see Bruen*, 597 U.S. at 29 (requiring comparisons of *how* and *why* a modern regulation and historical limitation(s) burdened the fundamental right). This is the *Government's* burden. *Id.* at 24. The Fifth Circuit has not yet reconsidered *Daniels* on remand.

But, *Daniels* was not alone. *See, e.g.*, *United States v. Connelly*, 668 F. Supp. 3d 662, 681 (W.D. Tex. 2023) ("Section 922(g)(3) breaks with historical intoxication laws by prohibiting not just firearm use by those who are actively intoxicated but also firearm possession by those who use controlled substances, even somewhat irregularly. And it breaks with broader historical traditions of gun regulation by disarming individuals without any sort of pre-deprivation process."); *United States v. Harrison*, 654 F. Supp. 3d 1191, 1215 n.134 (W.D. Okla. 2023) ("This is yet another attempt by the United States to transform distinct historical examples into roving warrants applicable to whatever conduct it desires. The trick goes something like this: Take a historical example that applied to a distinct class of persons (e.g., dangerous lunatics), extract from it a broad principle (e.g., concerns about people 'lacking self control'), and then fit into that broad category whole new classes of people

(e.g., marijuana users), even if they aren't remotely the sort of persons that were historically regulated."); *see also Rahimi*, 144 S. Ct. at 1926 (Barrett, J., concurring) ("To be sure, a court must be careful not to read a principle at such a high level of generality that it waters down the right.").

This division does not appear to be going away any time soon. *See Veasley*, 98 F.4th at 918 ("[F]or some drug users, § 922(g)(3) is 'analogous enough to pass constitutional muster.' Whether it is for others is a question for another day." (citation and internal quotation omitted)). The Eighth Circuit has shown no interest in reconsidering in light of *Rahimi*. *See* Pet. App. 23a (Denial of Rehearing-Panel and En Banc). It certainly has invited more challenges. Petitioner respectfully submits this important issue, frequently recurring, and marked by divided courts, warrants certiorari on this record—both facially and as-applied.

III. That 18 U.S.C. § 922(g)(3) requires a "judicially-created temporal nexus" seen nowhere in the statute renders it unconstitutionally vague. (Question Presented No. 3)

Finally, Petitioner maintains Section 922(g)(3) suffers from an additional fatal flaw—it is unconstitutionally vague. Twice before the Eighth Circuit has recognized the statute "runs the risk of being unconstitutionally vague." *United States v. Turner*, 842 F.3d 602, 605 (8th Cir. 2016) (quoting *United States v. Turnbull*, 349 F.3d 558, 561 (8th Cir. 2003)).

> Though it is plausible that the terms "unlawful user" of a controlled substance and "addicted" to a controlled substance could be unconstitutionally vague under some circumstances, Bramer does not argue and has not shown, that either term is vague as applied to his particular conduct of possessing firearms while regularly using marijuana.

United States v. Bramer, 832 F.3d 908, 909–10 (8th Cir. 2016). The appellate panel below repeated its concern. *See* Op., at 3, *Deng*, 104 F.4th at 1055 ("Admittedly, § 922(g)(3) might still be unconstitutionally vague on 'the right fact[s],' but this isn't that case." (citation omitted, alteration in original)).

Under this Court's precedent, however, a vagueness challenger does not need demonstrate the statute is vague *in all circumstances*. *Johnson*, 576 U.S. at 602. Even the Eighth Circuit recognized this: "*Johnson*, however, clarified that a vague criminal statute is not constitutional 'merely because there is some conduct that falls within the provision's grasp.' " *Bramer*, 832 F.3d at 909 (internal quotation omitted). This, of course, follows from the fact that *Salerno* should not apply to substantive challenges, *see supra* Section II.A., and the vagueness doctrine has roots in *substantive* due process. *See Johnson*, 576 U.S. at 617 (Thomas, J., concurring in the judgment) (criticizing the vagueness doctrinal roots as couched in substantive due process). While that derivation is maintained, the "unconstitutional in all applications" and the nearly identical 'guilty plea foreclosure' doctrines—considered *supra* in Sections II.A. and I., respectively—cannot apply to vagueness challenges.

Finally, on the merits, the statute fails constitutional muster. "When Congress leaves to the Judiciary of imputing to Congress an undeclared will, the ambiguity should be resolved in favor of lenity." *Bell v. United States*, 349 U.S. 81, 83 (1955). Here, the Circuit had to do just that. *Turner*, 842 F.3d at 605 ("The phrase 'unlawful user of …any controlled substance' in 18 U.S.C. § 922(g)(3) is not defined by statute and 'runs the rusk of being unconstitutionally vague without a *judicially-created*

temporal nexus between the gun possession and regular drug use.' " (internal quotation omitted)). That judicial intervention on behalf of Congress is a constitutionally significant flaw.

Accordingly, because the Eighth Circuit had to judicially amend Congress's law, and because hypothetical vagueness in some scenarios really only means the statute is vague, the Eighth Circuit erred and a writ of certiorari should issue.

IV. In the alternative, this Court should remand for full consideration of the issues presented herein.

Due to the appellate panel's short thrift treatment of Petitioner's Second Amendment challenge, and because it denied rehearing to consider *Rahimi*, 144 S. Ct. 1889, Petitioner alternatively requests this Court summarily remand with instructions to consider the same in the first instance. Further alternatively, this Court can hold the Petition until *Veasley* is resolved—though Petitioner submits his case is more appropriate for certiorari.

Conclusion

For the foregoing reasons, the petition for a writ of certiorari should be granted, and the opinion of the United States Court of Appeals for the Eighth Circuit reversed and remanded. The *first* question deals with a flawed "jurisdiction" test in contravention of *Class*, 583 U.S. 174. The *second* question involves an erroneous application of *Bruen*, 597 U.S. 1. Finally, the *third* question relates to an errant narrowing of *Johnson*, 576 U.S. 591.

Respectfully submitted,

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