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NO. \_\_\_\_\_

IN THE SUPREME COURT OF THE UNITED STATES

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Mani Panoam Deng,

Petitioner,

-vs.-

United States of America,

Respondent.

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**APPENDIX**

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**APPENDIX**

Opinion of the United States Court of Appeals for the Eighth Circuit ..... 1a

District Court Order Re: Motion to Dismiss (D. Ct. Doc. 41)..... 5a

Judgment of the United States District Court for the Southern District of Iowa (D. Ct. Doc. 61) ..... 16a

Order of the United States Court of Appeals for the Eighth Circuit Denying Petition for Rehearing and Rehearing En Banc ..... 23a

**United States Court of Appeals**  
**For the Eighth Circuit**

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No. 23-3545

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United States of America

*Plaintiff - Appellee*

v.

Mani Panoam Deng

*Defendant - Appellant*

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Appeal from United States District Court  
for the Southern District of Iowa - Central

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Submitted: May 7, 2024

Filed: June 20, 2024

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Before SMITH, KELLY, and KOBES, Circuit Judges.

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KOBES, Circuit Judge.

The Government charged Mani Panoam Deng with being an unlawful drug user in possession of a firearm, 18 U.S.C. § 922(g)(3). He moved to dismiss the indictment, arguing that § 922(g)(3) violates the Second Amendment (both facially

and as applied to him) and is void for vagueness. The district court<sup>1</sup> denied his facial Second Amendment challenge and deferred ruling on his other claims because they were bound up with facts about his offense conduct that a jury needed to find. Deng then pleaded guilty unconditionally. He appeals, renewing his constitutional challenges to § 922(g)(3) and arguing that the court erred by deferring a complete decision on his motion to dismiss. We affirm.

## I.

We start with the Second Amendment. Deng argues that § 922(g)(3) violates the Second Amendment facially and as applied to him under *New York State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1 (2022). But after briefing concluded, we held that § 922(g)(3) is facially constitutional. *United States v. Veasley*, 98 F.4th 906, 918 (8th Cir. 2024). That decision binds us here.

Deng’s as-applied challenge fails too because he waived it by pleading guilty unconditionally. *United States v. Seay*, 620 F.3d 919, 922 n.3 (8th Cir. 2010). A “knowing and intelligent guilty plea” generally “forecloses independent claims relating to the deprivation of constitutional rights that occurred before the entry of the guilty plea.” *United States v. Morgan*, 230 F.3d 1067, 1071 (8th Cir. 2000) (cleaned up) (citation omitted). There is a narrow exception for “jurisdictional” claims, or those that attack the “State’s power to bring any indictment at all.” *Seay*, 620 F.3d at 921 (citation omitted); *see also United States v. Nunez-Hernandez*, 43 F.4th 857, 860 (8th Cir. 2022) (noting “jurisdiction” in this context has “nothing to do with subject-matter jurisdiction” and is instead shorthand for the “limited class of defenses that survive a guilty plea”). Facial constitutional challenges fit the bill, *Morgan*, 230 F.3d at 1071; as-applied challenges to § 922(g)(3) do not, *Seay*, 620 F.3d at 922 n.3; *Veasley*, 98 F.4th at 908.

<sup>1</sup>The Honorable Stephanie M. Rose, Chief Judge, United States District Court for the Southern District of Iowa.

Deng points out that he pleaded guilty without a plea agreement and so did not agree to an appeal waiver. But it is his guilty plea itself that “waives all non-jurisdictional defects and defenses,” independent of any appeal waiver. *See United States v. Limley*, 510 F.3d 825, 827 (8th Cir. 2007). A defendant may, of course, enter a conditional guilty plea, preserving his right to appeal an issue. *See id.* (citing Fed. R. Crim. P. 11(a)(2)). That is not what happened here.

Now to Deng’s vagueness challenge. A criminal statute is void for vagueness under the Fifth Amendment’s Due Process Clause “if it fails to give ordinary people fair notice of the conduct it punishes or is so standardless that it invites arbitrary enforcement.” *United States v. Turner*, 842 F.3d 602, 604 (8th Cir. 2016) (cleaned up) (quoting *Johnson v. United States*, 576 U.S. 591, 595 (2015)). To win a facial challenge, the only type available after his guilty plea, Deng “need not prove that § 922(g)(3) is vague in all its applications,” but he still must show that the statute “is vague as applied to his particular conduct.” *United States v. Bramer*, 832 F.3d 908, 909–10 & n.2 (8th Cir. 2016) (per curiam). That’s because a defendant “who engages in some conduct that is clearly proscribed cannot complain of the vagueness of the law as applied to the conduct of others.” *United States v. Cook*, 782 F.3d 983, 987 (8th Cir. 2015) (quoting *Holder v. Humanitarian L. Project*, 561 U.S. 1, 18–19 (2010)). We review vagueness challenges *de novo*. *United States v. Burgee*, 988 F.3d 1054, 1060 (8th Cir. 2021).

Section 922(g)(3) prohibits anyone “who is an unlawful user of or addicted to any controlled substance” from possessing firearms. Because the term “unlawful user” “runs the risk of being unconstitutionally vague,” we interpret it to “require a temporal nexus” between the gun possession and regular drug use. *United States v. Carnes*, 22 F.4th 743, 748 (8th Cir. 2022) (citation omitted). Admittedly, § 922(g)(3) might still be unconstitutionally vague on “the right fact[s],” *Bramer*, 832 F.3d at 909, but this isn’t that case. Deng admitted that he frequently used marijuana and knew that he was a marijuana user when he possessed the gun. *See id.* at 909–10 (holding that a defendant who possessed guns while regularly using marijuana had adequate notice that his conduct was criminal under § 922(g)(3)).

Because he has failed to show that § 922(g)(3) is unconstitutionally vague as applied to him, he cannot mount a facial challenge.

Nor can Deng prevail under the rule of lenity.<sup>2</sup> This canon of statutory construction is a “junior version of the vagueness doctrine” that “ensures fair warning by . . . resolving ambiguity in a criminal statute as to apply it only to conduct clearly covered.” *United States v. Lanier*, 520 U.S. 259, 266 (1997) (citation omitted). But the canon “only applies” when a “grievous ambiguity” remains after we have used the normal tools of statutory interpretation. *United States v. Castleman*, 572 U.S. 157, 172–73 (2014) (citation omitted). Because § 922(g)(3), “as interpreted by our case law, makes clear that [Deng’s] conduct is proscribed,” there is no need to resort to lenity. *See United States v. Shellef*, 507 F.3d 82, 106 (2d Cir. 2007).

One final issue. Deng argues that the district court erred by deferring a ruling on his vagueness and as-applied Second Amendment challenges. But he waived this claim too by pleading guilty. *See Limley*, 510 F.3d at 828 (unconditional guilty plea waived right to appeal denial of motion for a *Franks* hearing).

## II.

We affirm the district court’s judgment.

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<sup>2</sup>We assume without deciding that a defendant who pleaded guilty unconditionally may invoke the rule of lenity on appeal.

IN THE UNITED STATES DISTRICT COURT  
 FOR THE SOUTHERN DISTRICT OF IOWA  
 CENTRAL DIVISION

UNITED STATES OF AMERICA,	)	Case No. 4:23-cr-00041-SMR-WPK-1
	)	
Plaintiff,	)	
	)	ORDER ON MOTION TO DISMISS
v.	)	
	)	
MANI PANOAM DENG,	)	
	)	
Defendant.	)	

I. PROCEDURAL BACKGROUND

On March 22, 2023, a grand jury indicted Defendant Mani Panoam Deng on one count of Unlawful User in Possession of a Firearm in violation of 18 U.S.C. § 922(g)(3). [ECF No. 1 at 1]. On April 19, 2023, Defendant filed a Motion to Dismiss the Indictment on the ground 18 U.S.C. § 922(g)(3) is unconstitutional. [ECF No. 20 at 1]. The Motion asserts that 18 U.S.C. § 922(g)(3), which prohibits possession of firearms by unlawful drug users, violates the Second Amendment of the United States Constitution following the United States Supreme Court’s decision in *N.Y. State Rifle & Pistol Ass’n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022). *Id.* The Motion also contends the law is unconstitutional under the Fifth Amendment’s Due Process Clause because it is vague facially and as applied to him. *Id.* The Government resists, asserting the statute is constitutional and survives these challenges. [ECF No. 25]. For the reasons discussed below, the facial challenge to 18 U.S.C. § 922(g)(3) under the Second Amendment is DENIED. The three other challenges cannot be ruled on until after a full trial on the merits. *United States v. Turner*, 842 F.3d 602, 604 (8th Cir. 2016) (citing Fed. R. Crim. P. 12(b)(1)); *United States v. Stephens*, 594 F.3d 1033, 1039 (8th Cir. 2010). A ruling on these grounds for relief is therefore DEFERRED.

## II. GOVERNING LAW

### A. *Second Amendment*

The Second Amendment of the United States Constitution provides that “[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.” U.S. Const. amend. II. The Supreme Court has interpreted this language to confer the “right to keep and bear arms” on individuals. *D.C. v. Heller*, 554 U.S. 570, 626 (2008). The Supreme Court further examined these rights in *Bruen*, stating, “when the Second Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects that conduct.” *United States v. Black*, CRIMINAL No. 22-133-01, 2023 WL 122920, at \*2 (W.D. La. Jan. 6, 2023) (quoting *Bruen*, 142 S. Ct. at 2126). To justify a restriction, the government must show a “regulation is consistent with this Nation’s historical tradition of firearm regulation.” *Fried v. Garland*, Case No. 4:22-cv-164-AW-MAF, 2022 WL 16731233, at \*4 (N.D. Fla. Nov. 4, 2022) (quoting *Bruen*, 142 S. Ct. at 2126). The Court explained this analysis requires courts to determine if there are appropriate historical analogues to the challenged provision and reason by analogy. *United States v. Seiwert*, Case No. 20 CR 443, 2022 WL 4534605, at \*2 (N.D. Ill. Sept. 28, 2022) (quoting *Bruen*, 142 S. Ct. at 2132); see *United States v. Lewis*, Case No. CR-22-368-F, 2023 WL 187582, at \*4 (W.D. Okla. Jan. 13, 2023).

The Supreme Court has described the outer boundaries of the Second Amendment in prior decisions. The Second Amendment is limited to “law-abiding citizens.” *United States v. Sanchez*, W-21-CR-00213-ADA, 2022 WL 17815116, at \*1 (W.D. Tex. Dec. 19, 2022) (citation omitted). The Second Amendment only protects weapons used for lawful purposes. *Heller*, 554 U.S. at 625 (finding that “the Second Amendment does not protect those weapons not typically possessed by law-abiding citizens for lawful purposes.”). Multiple Justices in *Heller*, *McDonald*, and *Bruen*,



have emphasized that the decisions do not “cast doubt on longstanding traditions on possession of firearms by” individuals who are felons or suffer from mental illness. *Bruen*, 142 S. Ct. at 2162 (Kavanaugh, J. concurring). Some courts since *Bruen* have found that alcoholics and felons were historically excluded from gun ownership. *See United States v. Daniels*, 610 F. Supp. 3d 892, 896 (S.D. Miss. July 8, 2022) (citing *United States v. Yancey*, 621 F.3d 681, 684 (7th Cir. 2010) (discussing how states found habitual drug users to be “unfit to possess firearms.”)); *but see United States v. Harrison*, Case No. CR-22-00328-PRW, 2023 WL 1771138 (W.D. Okla. Feb. 3, 2023) (holding that prior exclusions were insufficient to justify 18 U.S.C. § 922(g)(3)).

### *B. Void for Vagueness*

The Fifth Amendment of the United States Constitution provides, “[n]o person shall . . . be deprived of life, liberty, or property, without due process of the law.” U.S. Const. amend V. An essential component of due process is “[t]he prohibition of vagueness in criminal statutes.” *Sessions v. Dimaya*, 138 S. Ct. 1204, 1212 (2018) (citations and quotations omitted). A challenged law is unconstitutionally vague if it “fails to provide a person of ordinary intelligence fair notice of what is prohibited” or “is so standardless that it authorizes or encourages seriously discriminatory enforcement.” *United States v. Stupka*, 418 F. Supp. 3d 402, 405 (N.D. Iowa 2019). In the first situation, “a law is unconstitutionally vague due to a lack of fair notice when the law fails to give a ‘person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly.’” *Id.* (quoting *Grayned v. City of Rockford*, 408 U.S. 104, 108–09 (1972)). Arbitrary enforcement becomes a concern when judges or law enforcement are “free to decide, without any legally fixed standards, what is prohibited and what is not in each particular case.” *Id.* (quoting *Beckles v. United States*, 580 U.S. 256, 266 (2017)).

A void-for-vagueness challenge may be brought in one of two ways. First a party may argue the law is unconstitutional on its face and the law is vague “in the sense that no standard of conduct is specified at all.” *Coates v. City of Cincinnati*, 402 U.S. 611, 614 (1971). An individual must show that a statute is “unconstitutionally vague as applied to him” to bring this type of challenge. *Holder v. Humanitarian Law Project*, 561 U.S. 1, 20 (2010) (holding that “[a] plaintiff who engages in some conduct that is clearly proscribed cannot complain about the vagueness of the law.”). If the conduct at issue is clearly within the scope of the law, the challenger cannot assert a facial challenge. *United States v. Bramer*, 832 F.3d 908, 909 (8th Cir. 2016). In the second manner, a party can assert that the law is unconstitutional as applied to their specific circumstances. *F.C.C. v. Fox Television Stations, Inc.*, 567 U.S. 239, 254 (2012).

### III. ANALYSIS

#### A. Second Amendment Facial Challenge

Defendant maintains the Second Amendment challenge should succeed because 18 U.S.C. § 922(g)(3) is unconstitutional on its face and as applied to him, “an alleged marijuana user.” [ECF No. 20-1 at 5]. The Government responds the law should be upheld because there are broad classes of unlawful drug users not protected by the Second Amendment, including Defendant, and there is a historical analogue in the form of prohibitions on the possession of firearms by alcoholics and felons. [ECF No. 25 at 8–9]. There are many circumstances where 18 U.S.C. § 922(g)(3) can be applied without implicating the Second Amendment or where there is a sufficient historical analogue, which means it survives the facial challenge.

##### i. Coverage of Conduct

The first step is to consider whether conduct falls within the text of the Second Amendment. *United States v. Sitladeen*, 64 F.4th 978, 985 (8th Cir. 2023) (citation omitted); *United States v.*

*Randall*, No. 4:22-cr-00099-SMR-HCA-3, 2023 WL 3171609, at \*2 (S.D. Iowa Feb. 14, 2023). The Second Amendment states that “the right of the people to keep and bear Arms shall not be infringed.” U.S. Const. amend. II. This phrase is interpreted to “‘guarantee[] the individual right to possess and carry weapons in case of confrontation.’” *Bruen*, 142 S. Ct. at 2127 (quoting *Heller*, 554 U.S. at 592). “[O]f the people” is limited to “ordinary, law-abiding, adult citizens.” *Id.* at 2134 (holding “Koch and Nash – two ordinary, law-abiding, adult citizens – are part of ‘the people’ whom the Second Amendment protects.”). In short, the Second Amendment does not protect individuals who are not law-abiding. *Bruen*, 142 S. Ct. at 2127; *Sitladeen*, 64 F.4th at 985.

The challenged statute reads, “[i]t shall be unlawful for any person . . . who is an unlawful user of or addicted to any controlled substance . . . to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition[.]” 18 U.S.C. § 922(g)(3). The statute prohibits individuals from “receiv[ing] any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.” *Id.* The key language is “an unlawful user,” which refers to individuals whose conduct violates the Controlled Substances Act. 21 U.S.C. § 802(6) (noting that the term “controlled substance” includes drugs in “schedule I, II, III, IV, or V of part B of this subchapter.”). By virtue of their conduct, many individuals charged under the law are not law-abiding for the purposes of the Second Amendment. *Bruen*, 142 S. Ct. at 2134; *Sitladeen*, 64 F.4th at 985; *Seiwert*, 2022 WL 4534605, at \*2.

There are classes of individuals charged under the statute who are not entitled to the Second Amendment’s protection because of their conduct. *Sitladeen*, 64 F.4th at 985; *Randall*, 2023 WL 3171609, at \*2. This means that 18 U.S.C. § 922(g)(3) clearly criminalizes conduct not protected by the Second Amendment and therefore has many constitutional applications. This is sufficient to defeat a facial challenge to the law. *United States v. Stevens*, 559 U.S. 460, 472 (2010); *but see*

*Johnson v. United States*, 576 U.S. 591, 602 (2015) (citing *Coates v. City of Cincinnati*, 401 U.S. 611 (1971) (“our holdings squarely contradict the theory that a vague provision is constitutional merely because there is some conduct that clearly falls within the provision’s grasp.”)).

ii. *Historical Analogue*

The second step under *Bruen* requires a court to consider whether the challenged regulation “fits within America’s historical tradition of firearm regulation.” *Sitladeen*, 64 F.4th at 986 (citing *Bruen*, 142 S. Ct. at 2126) (holding that this step needs to be addressed only if the answer to the first question is “yes”). This “‘involve[s] reasoning by analogy,’ which ‘requires a determination of whether the two regulations are ‘relevantly similar.’” *Black*, 2023 WL 122920, at \*2 (quoting *Bruen*, 142 S. Ct. at 2132). For a law to survive, the government must “identify a well-established and representative historical analogue, not a historical twin.” *Bruen*, 142 S. Ct. at 2133. Laws “pass constitutional muster” if it is “analogous enough . . . [to] historical precursors.” *Id.* The burden of this step falls on the Government. *Lewis*, 2023 WL 187582, at \*4 (citation omitted).

The laws within the United States have long excluded individuals with mental illness from gun ownership. *Heller*, 554 U.S. at 626; *McDonald*, 561 U.S. at 786. There is an extensive history of states barring alcoholics from possessing firearms due to a “heightened danger to the public.” *Lewis*, 2023 WL 187582, at \*4. It is difficult to believe “a colonial legislature would have seen much difference between the hazard presented by an armed ‘lunatic’ . . . or an armed and intoxicated person versus the hazard presented by an armed habitual user of illegal drugs.” *Id.* This comparison is appropriate because “[t]he manner in which the modern restriction burdens Second Amendment rights is comparable to how the intoxication statutes burdened those rights.” *Fried*, 2022 WL 16731233, at \*7 (noting alcoholics were permanently disarmed, while individuals who use illicit substances are prohibited from ownership only while they are “a current user of a

controlled substance.”). Based on this comparison, the Court is satisfied the Government has met its burden through presentation of a historical twin. *See Bruen*, 142 S. Ct. at 2133.

Even presuming the conduct of an individual charged with violating 18 U.S.C. § 922(g)(3) was covered by the Second Amendment, there are many classes of individuals whose restricted access to firearms had a historical comparator. This means that there are circumstances where the application of 18 U.S.C. § 922(g)(3) is constitutional under the Second Amendment’s historical analogue framework. This is sufficient to defeat a facial challenge. *Stevens*, 559 U.S. at 472.

### *B. Second Amendment As-Applied Challenge*

Defendant maintains that the challenged statute is unconstitutional as applied in the specific circumstances of the case. [ECF No. 20-1 at 13]. The Government responds, asserting “Defendant cannot show that the Second Amendment’s plain text covers his conduct” and “Defendant admitted that he was at least a twice-daily user of marijuana, including on the date of the search warrant.” [ECF No. 25 at 18–19]. For the reasons below, the Court DEFERS ruling on the Motion until trial.

Federal Rule of Criminal Procedure 12(b)(1) states, “[a] party may raise by pretrial motion any defense, objection, or request that the court can determine without a trial on the merits.” Fed. R. Crim. P. 12(b)(1). A motion can be decided as a pretrial matter if “the facts surrounding the commission of the alleged offense would be of no assistance” in determining the outcome of the motion. *United States v. Covington*, 395 U.S. 57, 60 (1969). Under this rule, “[c]ourts may not . . . make factual findings when an issue is ‘inevitably bound up with evidence about the alleged offense itself.’” *Turner*, 842 F.3d at 605 (quoting *United States v. Grimmett*, 150 F.3d 958, 962 (8th Cir. 1998)). This rule also exists to prohibit courts from ruling on as-applied challenges on a “fact-poor record.” *Stephens*, 594 F.3d at 1040 (internal quotation omitted).

This case may not be addressed pretrial. This is because determination of the as-applied challenge before trial would require the Court to make findings of fact about Defendant's alleged drug use and possession of firearms. The findings would, as noted in *Turner*, resolve factual issues related to the alleged offense and prejudice Defendant.<sup>1</sup> Therefore, the challenge must be decided after a trial pursuant to Federal Rule of Criminal Procedure 12(b)(1). The Court will DEFER its ruling until a full trial on the merits, as it has done before. *Randall*, 2023 WL 3171609, at \*1 n.1.

### C. Void for Vagueness

Defendant asks the Court to find that 18 U.S.C. § 922(g)(3) is unconstitutionally vague as applied to him and on its face. [ECF No. 20-1 at 15]. The Government resists.<sup>2</sup> [ECF No. 25]. For the reasons below, the Court must DEFER a ruling on this motion until a full trial on the merits.

#### i. As-Applied Challenge

The United States Court of Appeals for the Eighth Circuit has provided binding case law on this precise motion. *Turner*, 842 F.3d at 605. In *Turner*, a defendant challenged 18 U.S.C. § 922(g)(3) as unconstitutionally vague as applied to him because the statute did not define “unlawful user” in its statutory text. *United States v. Turner*, No. 15-CR-72-LRR, 2015 WL 6479470 (N.D. Iowa Oct. 27, 2015). The district judge denied a motion to dismiss on this ground, explaining that “[t]he government has made a sufficient showing that Defendant’s drug use was

<sup>1</sup> In a supplemental brief, Defendant maintains the primary holding of *Turner* is an “uncited contention” that “did not explain how [its] reading comports within the fundamental basis of judicial review – that whether someone falls within the grasp of a criminal statute has no bearing on whether that statute is constitutional.” [ECF No. 37 at 4]. Defendant also contends that *Turner* does not explain “what factfinding would be constitutional” or when such a motion could be properly decided. *Id.* at 5. Although these issues certainly undermine the logical persuasiveness of *Turner*, the Court does not have the authority to depart from binding law even if it were wrongly decided. Only the Eighth Circuit sitting *en banc* or the Supreme Court may address the matter.

<sup>2</sup> The Court refers to this resistance with generic language because the Government did not fully discuss the void for vagueness issue in its resistance. *See generally* [ECF No. 25].

regular and that it overlapped with his possession of a firearm.” *Id.* at \*2. This led the court to conclude “Defendant’s conduct was clearly proscribed by 18 U.S.C. § 922(g)(3).” *Id.* at \*3. Because the conduct was clearly proscribed, the court held, “the statute provided sufficient notice and was not arbitrarily enforced.” *Id.* Defendant entered a conditional plea and appealed. *Id.*

On consideration of the merits of the appeal, the Eighth Circuit reversed the district court’s denial of the motion. *Turner*, 842 F.3d at 606. It held the court erred when it ruled on the motion before trial because the motion could not be decided “without resolving factual issues related to [defendant’s] alleged offense.” *Id.* at 605. Specifically, the error occurred when the court made factual determinations on the “extent of [defendant’s] drug use” and these findings “prejudiced Turner’s ability to obtain appellate review.” *Id.* The panel explained that the appropriate course of conduct was for the trial court to defer “ruling until trial.” *Id.*

This case is analogous to *Turner* in both the factual and procedural sense. There were no agreed upon facts at the motion to dismiss stage. The challenge before the Court, an as-applied challenge to the phrases “unlawful drug user” and “is” in 18 U.S.C. § 922(g)(3) under the void for vagueness doctrine, is substantially the same challenge raised in *Turner*. Comparable to *Turner*, this case cannot be adjudicated without the Court issuing factual findings on alleged drug use and potential possession of firearms. Entry of findings on these topics would resolve “issues related to [Defendant’s] alleged offense.” *Turner*, 842 F.3d at 605. Given the similarities, the Court must abstain from ruling on Defendant’s as-applied challenge. *Id.* The Motion is DEFERRED.

ii. Facial Challenge

There is some case law on facial challenges to 18 U.S.C. § 922(g)(3) under the void for vagueness doctrine. *Bramer*, 832 F.3d at 908. In *Bramer*, the Eighth Circuit considered whether the terms “unlawful user” and “addicted to” were invalid under the doctrine. *Id.* at 909. The panel

explained that this “argument could be meritorious under the right factual circumstances” but “it fails here” because the law required a defendant “to show that the statute is vague as applied to his particular conduct.” *Id.* (citing *United States v. Cook*, 782 F.3d 983, 987 (8th Cir. 2015)). In short, the Eighth Circuit did not rule because the defendant’s marijuana use and possession of firearms, to which he admitted in a plea agreement, was proscribed by the statute. *Id.*

While *Bramer* provides the framework for addressing void for vagueness facial challenges against 18 U.S.C. § 922(g)(3), its reasoning is not dispositive and complicates the resolution of the motion.<sup>3</sup> For this Motion, the Court must determine whether Defendant’s conduct is sufficiently in the scope of 18 U.S.C. § 922(g)(3) to allow a facial challenge. *Bramer*, 832 F.3d at 908 (citing *Cook*, 782 F.3d at 987)). Unlike *Bramer*, however, there is no stipulation to allow the Court to resolve the matter. *Stupka*, 418 F. Supp. 3d. at 407 (providing a comparable procedural posture). The issue can only be addressed by the Court making findings of fact on matters entangled with the underlying offense. This is not permitted under Federal Rule of Criminal Procedure 12(b)(1). *Grimmett*, 150 F.3d at 962; *Turner*, 842 F.3d at 606. Given this history, the Motion to Dismiss on this ground is DEFERRED until trial.<sup>4</sup>

<sup>3</sup> Northern District of Iowa Chief United States District Judge Leonard Strand extensively discussed the “logical inconsistencies and gaps” in *Bramer*. *Stupka*, 418 F. Supp. 3d at 407. Chief Judge Strand noted that where “a defendant is able to show that a law is unconstitutionally vague as applied . . . there would be no need for that defendant to show . . . that the law is unconstitutional on its face.” *Id.* He further explained that 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” because *Bramer* effectively merged the inquiries. *Id.*

<sup>4</sup> Binding case law may well resolve the matter once the underlying facts are adjudicated through the entry of a guilty plea or a trial on the merits. *Bramer*, 832 F.3d at 909 (“[w]e . . . have no basis in the record to conclude that the term ‘unlawful user’ of a controlled substance was unconstitutionally vague as applied to . . . an unlawful user of marijuana while in knowing possession of at least three firearms.”).

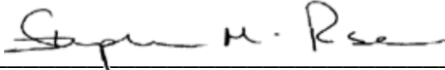


IV. CONCLUSION

The Court holds Defendant's facial challenge to 18 U.S.C. § 922(g)(3) under the Second Amendment to the United States Constitution does not succeed. The Motion to Dismiss is DENIED. The remainder of the Motion to Dismiss is DEFERRED until a trial on the merits.

IT IS SO ORDERED.

Dated this 22nd day of May, 2023.

  
STEPHANIE M. ROSE, CHIEF JUDGE  
UNITED STATES DISTRICT COURT



DEFENDANT: MANI PANOAM DENG  
CASE NUMBER: 4:23-cr-00041-001

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

46 months as to Count One of the Indictment filed on March 22, 2023, to be served concurrently to the sentence imposed U.S. District Court for the District of Nebraska, Docket Number 4:22-CR-03009.

The court makes the following recommendations to the Bureau of Prisons:

That the defendant be placed as close to Iowa as possible, as commensurate with his security and classification needs.

The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district:

at \_\_\_\_\_  a m.  p m. on \_\_\_\_\_

as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

before \_\_\_\_\_ on \_\_\_\_\_

as notified by the United States Marshal.

as notified by the Probation or Pretrial Services Office.

**RETURN**

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_

a \_\_\_\_\_, with a certified copy of this judgment.

UNITED STATES MARSHAL

By \_\_\_\_\_

DEPUTY UNITED STATES MARSHAL

DEFENDANT: MANI PANOAM DENG  
CASE NUMBER: 4:23-cr-00041-001

### SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of :

Three years as to Count One of the Indictment filed on March 22, 2023, to be served concurrently to the term imposed U.S. District Court for the District of Nebraska, Docket Number 4:22-CR-03009.

### MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
  - The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4.  You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5.  You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6.  You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7.  You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: MANI PANOAM DENG  
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### STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

### U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: [www.uscourts.gov](http://www.uscourts.gov).

Defendant's Signature \_\_\_\_\_

Date \_\_\_\_\_

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### **SPECIAL CONDITIONS OF SUPERVISION**

You must participate in a program of testing and/or treatment for substance abuse, as directed by the Probation Officer, until such time as the defendant is released from the program by the Probation Office. At the direction of the probation office, you must receive a substance abuse evaluation and participate in inpatient and/or outpatient treatment, as recommended. Participation may also include compliance with a medication regimen. You will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third-party payment. You must not use alcohol and/or other intoxicants during the course of supervision.

You shall not knowingly associate or communicate with any member of the Trip Set criminal street gang, or any other criminal street gang.

You must not patronize business establishments where more than fifty percent of the revenue is derived from the sale of alcoholic beverages.

You will submit to a search of your person, property, residence, adjacent structures, office, vehicle, papers, computers (as defined in 18 U.S.C. § 1030(e)(1)), and other electronic communications or data storage devices or media, conducted by a U.S. Probation Officer. Failure to submit to a search may be grounds for revocation. You must warn any other residents or occupants that the premises and/or vehicle may be subject to searches pursuant to this condition. An officer may conduct a search pursuant to this condition only when reasonable suspicion exists that you have violated a condition of your release and/or that the area(s) or item(s) to be searched contain evidence of this violation or contain contraband. Any search must be conducted at a reasonable time and in a reasonable manner. This condition may be invoked with or without the assistance of law enforcement, including the U.S. Marshals Service.

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**CRIMINAL MONETARY PENALTIES**

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

- Pursuant to 18 U.S.C. § 3573, upon the motion of the government, the Court hereby remits the defendant's Special Penalty Assessment; the fee is waived and no payment is required.

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
<b>TOTALS</b>	\$ 100.00	\$0.00	\$ 0.00	\$ 0.00	\$ 0.00

- The determination of restitution is deferred until \_\_\_\_\_. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.
- The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss***</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
<b>TOTALS</b>		\$0.00	\$0.00

- Restitution amount ordered pursuant to plea agreement \$ \_\_\_\_\_
- The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- The court determined that the defendant does not have the ability to pay interest and it is ordered that:
  - the interest requirement is waived for the  fine  restitution.
  - the interest requirement for the  fine  restitution is modified as follows:

\*Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.  
 \*\* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.  
 \*\*\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: MANI PANOAM DENG  
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**SCHEDULE OF PAYMENTS**

Having assessed the defendant’s ability to pay, payment of the total criminal monetary penalties is due as follows:

- A  Lump sum payment of \$ 100.00 due immediately, balance due
  - not later than \_\_\_\_\_, or
  - in accordance  C,  D,  E, or  F below; or
- B  Payment to begin immediately (may be combined with  C,  D, or  F below); or
- C  Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after the date of this judgment; or
- D  Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E  Payment during the term of supervised release will commence within \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant’s ability to pay at that time; or
- F  Special instructions regarding the payment of criminal monetary penalties:

All criminal monetary payments are to be made to:  
 Clerk’s Office, United States District Court, P.O. Box 9344, Des Moines, IA 50306-9344.

While on supervised release, you shall cooperate with the United States Probation Office in developing a monthly payment plan, which shall be subject to the approval of the Court, consistent with a schedule of allowable expenses provided by the United States Probation Office.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons’ Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Joint and Several

Case Number Defendant and Co-Defendant Names (including defendant number)	Total Amount	Joint and Several Amount	Corresponding Payee, if appropriate
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- The defendant shall pay the cost of prosecution.
- The defendant shall pay the following court cost(s):
- The defendant shall forfeit the defendant’s interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVT A assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.



**UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT**

No: 23-3545

United States of America

Appellee

v.

Mani Panoam Deng

Appellant

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Appeal from U.S. District Court for the Southern District of Iowa - Central  
(4:23-cr-00041-SMR-1)

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**ORDER**

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

July 17, 2024

Order Entered at the Direction of the Court:  
Acting Clerk, U.S. Court of Appeals, Eighth Circuit.

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/s/ Maureen W. Gornik