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Legal Sidebar

Supreme Court Rules Federal Gun Ban Unconstitutional as Applied to Marijuana User

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Federal law prohibits nine categories of individuals from possessing firearms or ammunition. One such prohibition, 18 U.S.C. § 922(g)(3), forbids any person "who is an unlawful user of or addicted to any controlled substance" from such possession. In *United States v. Hemani*, the Supreme Court established Second Amendment limits on the scope of § 922(g)(3). In the words of the Court, the federal government had argued that § 922(g)(3) "automatically disarms anyone who regularly uses any amount of any controlled substance for anything other than its 'prescribed purpose,'" regardless of individualized circumstances, including "what controlled substance an individual uses, in what amounts he does so, or whether his drug use has ever made him a danger to himself or others." In *Hemani*, the Court determined that the government presented insufficient historical support for this "ambitious" and "expansive" interpretation of § 922(g)(3), and, in doing so, the Court ruled that the prosecution of the defendant based solely on his use of marijuana "a few times a week"—without proof of relevant individual circumstances—violated the Second Amendment.

This Sidebar provides an overview of the *Hemani* case. It begins with a brief sketch of modern Supreme Court cases on the Second Amendment and then discusses the majority and three concurring opinions produced in *Hemani*. The Sidebar closes with considerations for Congress.

Modern Second Amendment Jurisprudence

The Second Amendment, ratified in 1791, provides, "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." Over two hundred years later, the Court engaged in its "first thorough" examination of the meaning of the Second Amendment.

An Individual Right to Keep and Bear Arms

In 2008, in *District of Columbia v. Heller*, the Supreme Court held that the Second Amendment protects an individual right to possess an operable firearm for certain purposes, particularly self-defense in the

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home. As the right is an individual one, the Court disagreed it belongs only to those in military service. Whatever the full extent of the Second Amendment right, the Court wrote, it "surely" includes "the right of law-abiding, responsible citizens to use arms in defense of hearth and home." In 2010, in *McDonald v. City of Chicago*, the Court recognized that, by virtue of the Fourteenth Amendment, firearms laws and regulations enacted at the federal level, as well as at the state and local levels, must comply with the Second Amendment.

A History-Based Test for Second Amendment Challenges

In 2022, the Supreme Court issued *New York State Rifle & Pistol Association, Inc. v. Bruen* and announced a history-centric test to apply to Second Amendment challenges. "We looked to history," the Court reasoned, "because it has always been widely understood that the Second Amendment . . . codified a *pre-existing* right." Under this history-based test, "when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct." The government may overcome this presumption, the Court added, by "demonstrat[ing] that the regulation is consistent with this Nation's historical tradition of firearm regulation." The Court clarified that, to meet this burden, the government need only put forward "a well-established and representative historical *analogue*, not a historical *twin*." The Court declined to "provide an exhaustive survey" of what may constitute a proper historical analogue, but the Court did identify the "why" and "how" of the laws as two relevant "metrics." Whatever the ultimate scope of the right, the Court made clear that the Second Amendment applies outside of the home, to nonsensitive public spaces where "confrontation" may occur.

Disarming Those Determined to Be Dangerous

In 2024, in *United States v. Rahimi*, the Supreme Court rejected a Second Amendment "facial" challenge to 18 U.S.C. § 922(g)(8), which bars individuals subject to certain domestic violence restraining orders from possessing a firearm or ammunition. (A "facial" challenge argues that a statute is unconstitutional in all applications, in contrast with an "as applied" challenge, which argues that a statute is unconstitutional in specific circumstances.) Addressing the *Bruen* test, the Supreme Court emphasized that a modern firearms law does not have to "precisely match its historical precursors" or be "identical" to laws from 1791, as if the Second Amendment was "trapped in amber." Instead, the Court explained that a court is required to assess whether a challenged law is "relevantly similar" to laws from the country's regulatory tradition, and described the "why" and the "how" considerations as "central" to this inquiry.

In the context of § 922(g)(8), the Supreme Court held that sufficient historical support existed for the principle that "[w]hen an individual poses a clear threat of physical violence to another, the threatening individual may be disarmed" temporarily. In particular, the Court pointed to historical surety laws, which were designed to prevent firearm violence by requiring an individual who posed a credible threat of violence to another to post a monetary sum, and "going armed" laws, which punished individuals who had menaced others or disturbed the public order with firearms through imprisonment or disarmament. Section 922(g)(8), which disarms individuals found to threaten the physical safety of another, "fits neatly" within the tradition of these two legal regimes, especially as all three involve judicial determinations that the individuals threatened or would threaten others, the Court concluded. Moreover, the Court took note that § 922(g)(8) is of "limited duration," prohibiting firearm possession only for "so long as the defendant 'is' subject to a restraining order."

As a qualifying judicial determination was made with respect to the defendant, and as his disarmament was temporary, Supreme Court held that § 922(g)(8) was constitutional as applied to him. The Court's finding that § 922(g)(8) has some valid applications defeated the defendant's facial challenge to this provision.

United States v. Hemani

Background and Procedural History

The *Hemani* case arose out of a search of the criminal suspect's home, during which he surrendered a firearm that he kept in the home and informed law enforcement that he used marijuana "about every other day." The defendant was indicted under § 922(g)(3), but a federal district court dismissed the indictment, citing Fifth Circuit precedent applying *Bruen* to § 922(g)(3). That precedent recognized historical support for modern laws restricting the possession of firearms of people who are actively intoxicated or potentially where the defendant's use is of sufficient temporal proximity to the firearm possession, but not for restricting firearm possession on account of occasional drug use. In two earlier cases, for example, the Fifth Circuit clarified that "habitual or occasional" drug use as well as routine intoxication fall short of this standard, declaring, for example, that "there is a substantial difference between an actively intoxicated person and an 'unlawful user' under § 922(g)(3)." The circuit court also expressed concern that a broader reading of § 922(g)(3) could mean that § 922(g)(3) could ensnare "anyone who has multiple alcoholic drinks a week" or even someone who "had not used [marijuana] for several weeks." Against this backdrop, in 2025 the Fifth Circuit concluded that § 922(g)(3) could not be constitutionally applied to a defendant who used marijuana "roughly half the days of each month" or to a defendant who used marijuana "at times."

Upon the district court's dismissal of the criminal defendant's indictment in *Hemani*, the government filed a joint motion for summary affirmance with the Fifth Circuit to fast-track an appeal to the Supreme Court. The Fifth Circuit granted the motion, and the Supreme Court thereafter granted the government's petition for review.

Majority Opinion

On June 18, 2026, the Supreme Court affirmed the Fifth Circuit's ruling in favor of the defendant. Justice Gorsuch, writing for a seven-Justice majority, acknowledged that there was no dispute as to whether the defendant's challenge satisfied the first step of the *Bruen* inquiry. The Court observed that § 922(g)(3) restricts conduct covered by the plain text of the Second Amendment in that the "statute bans a class of people . . . from possessing essentially any firearm for any purpose." The Court next examined whether the government had provided a historic analogue consistent with its interpretation of § 922(g)(3). According to the Court, the government argued that § 922(g)(3) "automatically bans an individual from possessing a gun from the moment he becomes an unlawful user of any controlled substance until he ceases being one." At oral argument, the government told the Justices that § 922(g)(3)'s prohibition is categorical and not susceptible to individualized considerations. The Court expressed concern that, under this reading of § 922(g)(3), several factors—including the nature of the controlled substance, the amount of the usage, and whether that usage makes the defendant a danger to himself or others—do not matter. The Court wrote that the defendant was prosecuted "solely" because of his "admitted use of marijuana about every other day," without proof that "his drug use had ever led him to pose a danger to himself or others" or that he "had done anything with his gun other than possess it in his home." Given the government's broad construction and application of § 922(g)(3), the Court characterized the government's burden at step two of the *Bruen* framework as a "considerable" one.

The Court concluded that the government "cannot carry the burden it has set for itself." The government sought to meet its burden by arguing that historical "habitual drunkard" laws—regulating vagrancy, authorizing civil commitment, and requiring surety bonds to ensure good behavior—provide sufficient historical support for § 922(g)(3). The Court disagreed, highlighting three "dramatic[]" mismatches—in

terms of the subjects, purposes (the "why"), and implementation (the "how")—between these historic laws and § 922(g)(3).

First, the Court posited that "habitual drunkards" generally drank to such an extent that they became "practically incapacitated and incapable of managing their affairs," whereas the government has cast a wider net encompassing anyone who uses a controlled substance regularly regardless of the frequency of such use, whether such use produced an "incapacitating effect," or whether the defendant posed a threat to himself or others on account of such use. Illustrating how far the government's interpretation of § 922(g)(3) could stretch, the Court hypothesized that the government's theory—predicated only on unlawful use—"extends . . . to a husband who regularly takes his wife's prescription Ambien to sleep and a college student who routinely uses a friend's Adderall to cram for exams."

Second, the Court described a disconnect between the goals of the habitual drunkard laws and § 922(g)(3). Whereas the habitual drunkard laws sought to promote productivity, curtail vice, protect habitual drunkards and their families from the general negative consequences of their poor decisionmaking, and generally safeguard public order, § 922(g)(3) has a different aim, specifically to disarm "unlawful users" to reduce the risk of potential violence.

Third, the Court determined that the two sets of laws differ in operation. Whereas the historical laws generally provided habitual drunkards with some process prior to the deprivation of their liberty, § 922(g)(3) demands no such process, as the unlawful use itself is what brings one within the ambit of this federal prohibition.

The majority added that the Controlled Substances Act, which forms the universe of what constitutes a "controlled substance" for purposes of § 922(g)(3), schedules drugs "for a variety of reasons having little or nothing to do with their potential to induce violence." The Court noticed that the federal government has at least tolerated marijuana by prosecuting its possession in fewer cases and signaling that it will be dropping some marijuana products to a less-restrictive schedule reflecting both a decreased concern about potential for abuse and a growing recognition of accepted medical uses. This increasingly permissive attitude toward marijuana, the Court observed, has left the federal government "awkwardly positioned to suggest that the millions of Americans who regularly use marijuana are categorically and unusually dangerous."

In closing, the Court described its opinion as a "narrow" one that strikes down the government's "expansive" view of § 922(g)(3), but does not, for example, disturb prosecutions of "addicts or those presently intoxicated." The Court also left open the possibility that a § 922(g)(3) prosecution could be sustained upon individualized proof that the defendant is dangerous due to his use or that the drug at issue is particularly dangerous.

Concurring Opinions

Justice Thomas joined the majority opinion in full, but wrote separately to register his sense that Congress lacked authority under the Commerce Clause to enact § 922(g)(3) in the first place. Justice Thomas suggested that § 922(g) is not a valid exercise of Congress's Commerce Clause power because the crime does not require the interstate purchase or sale of the firearm and mere possession is not an economic activity.

Justice Jackson, joined by Justice Sotomayor, also joined the majority opinion in full, but wrote separately to register doubt that the *Bruen* historical framework is either workable (given the difficulty of parsing through historical records) or beneficial (in anchoring modern firearms laws to historical policy choices). She further argued that the Court should "return" to a means-ends analysis—under which courts would "measure[] the strength of the government's justification for the firearm restriction against the burden that restriction imposed on Second Amendment rights"—that she asserted is a more "straightforward"

approach for Second Amendment challenges and which is reflected already in the Court's analysis of the "how" and "why" of the relevant laws.

Justice Alito, joined by Justice Kagan, concurred in the judgment. Justice Alito would have rested the holding on the mismatch between historical laws addressing habitual drunkards and the application of § 922(g)(3) to the defendant's circumstances, and would have ended the analysis there. This concurring opinion did not directly indicate which parts of the majority opinion it disagreed with or otherwise found unnecessary to resolve the case.

Considerations for Congress

The *Hemani* Court stressed that its ruling is a "narrow" one and explicitly recognized room for legislative action in this area. In outlining the limited scope of its decision, the Court wrote that "[w]e do not address other prophylactic laws Congress might adopt after determining that users of a particular drug pose a special risk of misusing firearms." Congress may accept this invitation to amend § 922(g)(3) if it chooses. For example, Congress might opt to amend the law to more narrowly capture only those individuals who may, because of their use or the nature of the drug involved, present a danger to themselves or others.

Congress may be interested in modifying other categorical prohibitions in § 922(g) in light of the Court's discussion of historical laws, particularly to the extent that the government may turn to these laws in future cases to defend the constitutionality of a modern firearms restriction.

Alternatively, Congress may allow lower courts to sort out any residual questions from *Hemani*, including how the "addicted to" component of § 922(g)(3) may apply consistent with the Second Amendment. A number of petitions for review raising Second Amendment issues have been filed with the Court. Should the Court grant any such petitions, Congress may have more information to consider when determining whether and what adjustments to § 922(g) may be appropriate.

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