No. 26-5025

In the Supreme Court of the United States

ALEXANDER WESLEY LEDVINA,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

SUPPLEMENTAL BRIEF FOR THE PETITIONER

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SUPPLEMENTAL BRIEF

Pursuant to Rule 15.8, petitioner submits this supplemental brief to address the relevance of *United States v. Hemani*, 608 U.S. ___, 146 S. Ct. 1677 (2026), *United States v. Baxter*, No. 25-2752 (8th Cir. July 13, 2026) and *United States v. Striplin*, No. 24-2969 (8th Cir. July 28, 2026) which were decided after the petition for writ of certiorari was filed.

In *Hemani*, the Court unanimously ruled that the government violates the Second Amendment when it prosecutes an individual under 18 U.S.C. § 922(g)(3) based solely on one's status as a regular marijuana user. The Court rejected the government's comparison to founding-era "habitual drunkard," civil commitment, surety, and vagrancy laws. Those historical regulations did not automatically disarm citizens just for drinking regularly. Instead, the Court clarified that historical laws targeted individuals suffering from chronic mental incapacity to the point where they could not manage their own affairs and did not share the same purpose as § 922(g)(3). It further emphasized that unlike § 922(g)(3), they provided process before an individual lost any liberties. The Court, however, did not resolve the split regarding the various tests announced by the appellate courts and the divergent procedures they have followed for resolving as-applied challenges.

In *Baxter*, the Eighth Circuit upheld a § 922(g)(3) conviction against an as applied Second Amendment challenge following a prior remand. In the initial appeal, arising from a pretrial motion to dismiss and a guilty plea, the Eighth Circuit reversed and remanded because the district court failed to make factual findings on the record. On remand, Baxter was found guilty after a stipulated bench trial. Rather than limiting its constitutional review to facts proven at trial beyond a reasonable doubt, the district court held a post-trial evidentiary hearing. Applying the pre-*Hemani* test from *United States v. Cooper*, 127 F.4th 1092 (8th Cir. 2025), the court rejected the challenge. Crucially, the court used a preponderance of the evidence standard to find disputed facts regarding the defendant's conduct, utilizing those extra-record facts to justify the prosecution under purported historical "terror of the people" and "confinement of the mentally ill" analogues. The Eighth Circuit affirmed based solely on the "going armed" analogy, offering minimal discussion of *Hemani* and without any supplemental briefing on its impact. It further explicitly approved this post-trial fact-finding practice, authorizing criminal punishment based on facts found under the preponderance of the evidence standard.

In *Striplin*, the Eighth Circuit reversed the district court's denial of an as-applied Second Amendment challenge to § 922(g)(3), which arose from a pretrial motion to dismiss that was followed by a stipulated bench trial. As in the instant matter, rather than resolving the constitutional claim on the trial record, the Eighth Circuit vacated the conviction and remanded for further factual development. While the court acknowledged that *Hemani* invalidates disarmament based solely on using marijuana a few times a week, it continued to treat both prongs of the pre-*Hemani Cooper* test as binding circuit law. The court also recognized that historical "going armed" laws are not automatically analogous to § 922(g)(3) because they punished the offensive use of a firearm rather than mere possession but left that prong of the *Cooper* test intact.

These cases demonstrate the need for the Court to revisit the constitutionality of § 922(g)(3) under the Second Amendment in order to clarify the validity of the various conflicting tests announced by the lower courts and resolve the split regarding procedure in adjudicating as-applied challenges. The Eighth Circuit continues to rely on a test that was formulated using analogues that were expressly rejected by *Hemani*, as well as other circuits, and has entrenched procedures for resolving such challenges that raise further concerns under other constitutional provisions. It's continued practice of remanding for further fact-finding following trials conflicts with this Court's Double Jeopardy jurisprudence and the procedure followed by this Court in resolving *Hemani*. The approval of post-trial judicial finding of facts necessary to authorize punishment, which were not alleged in the indictment, under a preponderance of evidence standard further raises concerns under both the Fifth and Sixth Amendments. This Court's intervention is desperately needed to halt these compounding constitutional errors and definitively resolve the ongoing split regarding Second Amendment challenges to § 922(g)(3).

This case remains an ideal vehicle for fully resolving the continuing circuit split regarding Second Amendment challenges to § 922(g)(3) because it stems from a stipulated bench trial which provides a contractually fixed universe of facts to resolve questions of law.[1] Having preserved the Second Amendment challenge

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[1] *See* Joint Stipulation Lieu of Trial Evidence, Dist. Ct. Dkt. 52 ("Defendant Alexander Wesley Ledvina and the United States of America stipulate and agree that the following facts are true and may be considered by the Court without further evidence being offered").

below, the petition arrives from the Eighth Circuit, which has produced the most troubling, outlier method for resolving as-applied challenges. The case is subject to all of the problematic practices of the Eighth Circuit and sits in the precise procedural posture to directly challenge them.[2] For these reasons, and those stated in the petition, the petition for a writ of certiorari should be granted, or alternatively, a GVR should issue.

I. The Eighth Circuit's Approach is Inconsistent with *Hemani*

In *Baxter* and *Striplin*, the Eighth Circuit entrenched a pre-existing methodology that is fundamentally inconsistent with *Hemani*. Its test for resolving as-applied Second Amendment challenges to § 922(g)(3) is predicated on analogues and reasoning that were rejected by *Hemani* and the procedures followed to adjudicate such challenges conflict with how the Court resolved *Hemani*.

To begin with, the "mentally ill and dangerous" prong of the *Cooper* test relies on the very same civil commitment laws that were rejected in *Hemani*. *Cooper*, 127 F.4th at 1095. The *Cooper* test and its analogues ultimately derive from the analysis in *United States v. Veasley*, 98 F.4th 906 (8th Cir. 2024). *Id.* In *Veasley*, the Eighth Circuit analogized intoxication with madness and cited civil commitment laws as a direct analogy. 98 F.4th at 912-16.

Hemani expressly rejected these laws on several metrics, including by repeatedly pointing out that they require someone's condition render them

[2] On August 10, 2026, the district court paused the remand proceedings pending the disposition of the petition for writ of certiorari. Dist. Ct. Dkt. 123.

incompetent to the point that they were incapable of managing their own affairs. *Hemani*, slip op. at 8, 10, 12-13. The Court also pointed out that these laws "usually provided some form of process before an individual lost any of his liberties, even temporarily" and "[n]one of that holds true for § 922(g)(3)." *Id.* at 15. The Eighth Circuit didn't find this to be an issue, reasoning that "there is a finding required under § 922(g)(3), it just comes later." *Veasley*, 98 F.4th at 916. *Hemani* expressly rejected this argument because "§ 922(g)(3) offers an unlawful user no pre-deprivation process before his 'temporary disarmament.'" Slip op. at 15.

While *Hemani* did not discuss the "terror of the people" laws, it's methodology in rejecting the other analogues the government proffered demonstrates why the Eighth Circuit's reliance on "going armed" laws is misplaced. As *Striplin* recognized, "§ 922(g)(3) is not automatically analogous to founding-era 'going armed' laws because those laws were not about mere possession of firearm, but required ... the offensive *use* of a firearm in a way that terrorized others." Slip op. at 3 (quotes and brackets omitted). This observation is precisely why the analogy fails. Just as *Hemani* rejected civil commitment laws because they required an inability to manage one's affairs and a pre-deprivation process, the "going armed" laws similarly fail because they required offensive firearm use—a component entirely absent from § 922(g)(3). If a defendant allegedly committed such conduct, they can be prosecuted under statutes prohibiting that conduct rather than mere possessory offenses based on their status.[3]

[3] *See, e.g.,* 18 U.S.C. 924(c)(1)(A) (using a firearm in relation to a crime of violence); Iowa Code §

Finally, the Eighth Circuit's practice of remanding for further fact finding is inconsistent with how *Hemani* was adjudicated. *Hemani* stemmed from a pre-trial motion to dismiss that was granted in the district court. Rather than remanding for further fact finding to see if the prosecution is permissible under some other test, the Court affirmed the dismissal on the factual record before the district court at the time the motion was decided. If further fact finding was unwarranted in *Hemani* before the case ever reached trial, it is even less appropriate when a trial has already occurred.

II. The Eighth Circuit's Procedure Violates the Fifth and Sixth Amendments

The Eighth Circuit's procedural framework for as-applied Second Amendment challenges triggers compounding Fifth and Sixth Amendment violations. First, it permits post-trial fact-finding that violates the Double Jeopardy Clause. Second, it circumvents the Grand Jury Clause by allowing the government to present evidence of conduct necessary to authorize punishment that was never returned by a grand jury in the indictment. Third, it sanctions judicial fact-finding outside the trial record under a preponderance of the evidence standard to establish criminal liability, defying the Due Process Clause and the right to a trial by jury.

A. Double Jeopardy

The Eighth Circuit's framework improperly allows the government to reopen a finalized trial record. In *Striplin*, just as in *Cooper* and the instant matter, the court

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708.1(2)(c) (pointing or displaying in a firearm in a threatening manner); Iowa Code § 708.8 (going armed with intent).

remanded for further fact finding rather than deciding the as-applied challenge on the existing trial record. This practice "afford[s] the prosecution another opportunity to supply evidence which it failed to muster in the first proceeding." *Burks v. United States*, 437 U.S. 1, 11 (1978). The court justified this remand by declaring that "[t]he factual record is thin, given that the case proceeded to a bench trial on stipulated facts," making it appropriate to "supplement the record." *Striplin*, slip op. at 6 (quoting *Cooper*, 127 F.4th at 1098). Permitting the government to reopen and expand a closed record to establish criminal culpability directly conflicts with this Court's Double Jeopardy jurisprudence.

This Court classifies rulings into two categories for the purposes of Double Jeopardy: "substantive rulings," which bar retrial, and "procedural rulings," which permit retrial. *Evans v. Michigan*, 568 U.S. 313, 318 (2013). Substantive rulings include any "factual finding that necessarily establishes the criminal defendant's lack of culpability, and any other ruling which relates to the ultimate question of guilt or innocence." *Id.* (cleaned up). "Culpability (i.e., the 'ultimate question of guilt or innocence') is the touchstone, not whether any particular elements were resolved." *Id.* at 324 (citation omitted).

A determination of whether a statute is unconstitutional as-applied to the facts of a case is a substantive ruling because it is "an affirmative defense bearing directly on [a defendant's] guilt or innocence." *United States v. Pope*, 613 F.3d 1255, 1261 (10th Cir. 2010) (Gorsuch, J.). The government's failure to prove facts sufficient to establish a valid application means that "he cannot be guilty of the charged offense by dint of the Constitution's guarantees." *Id*. Such a determination is a substantive ruling because it is a "finding of insufficient evidence of culpability." *Evans*, 568 U.S. at 324.

In *Burks*, "insanity," like an as-applied challenge, "was an affirmative defense to criminal liability." *Id*. "Lack of insanity was not an 'element' of Burks' offense." *Id*. The Court "held that when a defendant raises insanity as a defense, and a court decides the 'Government ha[s] failed to come forward with sufficient proof of [the defendant's] capacity to be responsible for criminal acts,' the defendant has been acquitted because the court decided that 'criminal culpability ha[s] not been established.'" *Id*. (quoting *Burks*, 437 U.S. at 10). The Court's "conclusion thus depended upon equating a judicial acquittal with an order finding insufficient evidence of culpability, not insufficient evidence of any particular element of the offense." *Id*.

The Eighth Circuit's "thin record" justification does not create an exception to these bedrock principles. In any other context—whether involving an affirmative defense or a standard sufficiency challenge—it is impermissible to let the government take a "second bite at the apple" to provide additional evidence to establish culpability after a trial has ended. *Burks*, 437 U.S. at 17. When the government has chosen to proceed via a stipulated bench trial, it "took a chance," and "[t]he situation presented is simply one where the [government] entered upon the trial of the case without sufficient evidence to convict." *Downum v. United States*, 372 U.S. 734, 737 (1963) (citation omitted). "[T]he prosecution cannot complain of prejudice, for it has been given one fair opportunity to offer whatever proof it could assemble."[4] *Burks*, 437 U.S. at 16. The government was well aware of its burden to prove constitutionality under *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022), when it went to trial.

This unconstitutional practice is not limited to bench trials. As shown in *United States v. Perez*, 145 F.4th 800 (8th Cir. 2025), the Eighth Circuit has remanded while allowing further fact-finding even following a jury trial, "permit[ing] [the prosecutor] to re-examine the weaknesses in his first presentation in order to strengthen the second." *United States v. Wilson*, 420 U.S. 332, 352 (1975). This Court's intervention is necessary to check this systemic overreach and preserve the core guarantees of the Double Jeopardy Clause.

B. Grand Jury Clause

The government cannot broaden a criminal charge after the grand jury has spoken. Once a grand jury has determined the factual basis on which a defendant must answer for a crime, that determination cannot be expanded by the government or the courts after the fact. Yet that is precisely what the Eighth Circuit's framework for as-applied challenges permits: the government may, after indictment, supply a factual basis for culpability that the grand jury itself never found. The Grand Jury Clause does not permit the government to establish criminal liability on facts that were never alleged in the indictment.

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[4] In this case, the district court permitted the government to present additional evidence, in violation of the stipulation, and specifically asked if the government had "any additional evidence it wishes to present, either in the form of exhibits or testimony at this trial." Dist. Ct. Dkt. 99 at 13:7-10.

It is well-established that "a court cannot permit a defendant to be tried on charges that are not made in the indictment against him." *Stirone v. United States*, 361 U.S. 212, 217 (1960). "[T]he very purpose" of the Grand Jury Clause is to "limit [a defendant's] jeopardy to offenses charged by a group of his fellow citizens." *Id.* "[A]fter an indictment has been returned, its charges may not be broadened through amendment except by the grand jury itself." *Id.* at 215-16. A defendant may not be held liable on the basis of facts "not found by, and perhaps not even presented to, the grand jury which indicted him." *Russell v. United States*, 369 U.S. 749, 770 (1962).

By requiring the government to establish that a defendant acted like they were "mentally ill and dangerous" or used a firearm to the terror others, the Eighth Circuit has made those factual circumstances part of what must be established to sustain criminal liability under § 922(g)(3). If those facts were not alleged in the indictment, the government cannot supply them after the fact without resubmitting the charge to the grand jury. Alleging merely that the defendant unlawfully used a controlled substance and possessed a firearm is substantially different from alleging that the defendant engaged in violence or other dangerous conduct.

In *Baxter*, *Striplin*, and the instant matter, the Eighth Circuit has expressly authorized the government to do precisely that. The government cannot circumvent the Grand Jury Clause by obtaining a charge on one factual basis and establishing criminal liability on another. This framework needs reviewed by this Court in order to preserve the role of the grand jury in § 922(g)(3) prosecutions.

C. Due Process and the Right to Trial by Jury

Baxter approved the finding of facts necessary to establish criminal liability by a judge in post-trial hearings under the preponderance of the evidence standard. This procedure violates the Fifth and Sixth Amendment right to have all facts necessary for punishment be found by a jury beyond a reasonable doubt.

This Court has long held "that the Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged." *In re Winship*, 397 U.S. 358, 364 (1970). "Only a jury, acting on proof beyond a reasonable doubt, may take a person's liberty. That promise stands as one of the Constitution's most vital protections against arbitrary government." *United States v. Haymond*, 139 S. Ct. 2369, 2373 (2019) (plurality). For this reason, "the government must prove beyond a reasonable doubt to a unanimous jury the facts necessary to sustain the punishment it seeks." *Erlinger v. United States*, 144 S. Ct. 1840, 1858 (2024).

The Eighth Circuit disregarded this guarantee by holding "that adopting a preponderance standard does not violate [a defendant's] due process rights because determining whether the application of § 922(g)(3) as applied to him is consistent with the Nation's historical tradition of firearm regulation is not an element of the crime." *Baxter*, slip op. at 6. This line of reasoning is in direct conflict with this Court's jurisprudence.

"If [the government] makes an increase in a defendant's authorized punishment contingent on the finding of a fact, that fact—no matter how the [government] labels it—must be found by a jury beyond a reasonable doubt." *Ring v. Arizona*, 536 U.S. 584, 602 (2002). "[T]he relevant inquiry is one not of form, but of effect—does the required finding expose the defendant to a greater punishment than that authorized by the jury's guilty verdict?" *Apprendi v. New Jersey*, 530 U.S. 466, 494 (2000). Jurists have traditionally "defined 'crime' as consisting of every fact which 'is in law essential to the punishment sought to be inflicted.'" *Alleyne v. United States*, 570 U.S. 99, 109 (2013) (quoting 2 J. Bishop, *Criminal Procedure* 50 (2d ed. 1872)). "If a fact was essential to the penalty, it was an element of the offense." *Id*. The additional facts required to establish the constitutional application of a statute fit firmly in this definition because they are essential to *any* punishment. Without them, the statute cannot constitutionally be applied to the defendant at all.

The Eighth Circuit's approach specifically undermines the Sixth Amendment right to a jury trial by its approval of using post-trial hearings where the facts are found by a judge without the normal protections of a trial. Whether these facts are found in a dedicated evidentiary hearing as in *Baxter* or using facts found by a judge at sentencing as the government requested the appellate court to do in this case,[5] this practice is in direct conflict with this Court's jury-trial right jurisprudence from *Apprendi* to *Erlinger* as outlined above.

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[5] On appeal, the government relied heavily on uncharged allegations found at sentencing by the district court in support of affirming the convictions. 8th Cir. Entry 5507851 at 30-32. Petitioner objected to judicial fact-finding under the preponderance of evidence standard at sentencing as violating the Fifth and Sixth Amendments. Dist. Ct. Dkt. 85 at 1-6.

It is anticipated that the government may argue that in cases like *Baxter*, *Striplin*, and the instant matter where the defendant consents to a stipulated bench trial, they lack standing to raise a Sixth Amendment violation. However, this further implicates the Due Process Clause. When defendants enter into such a trial arrangement, they typically go in with the understanding that their criminal liability would be determined on a fixed universe of facts. They agreed to a bench trial based on the facts in the stipulation, not other allegations. They could not have predicted that their culpability would later be decided in a post-trial hearing with outside evidence and a lower evidentiary standard. This type of bait and switch gives the government its benefits while robbing the defendant of "the benefit of his bargain." *United States v. Hyde*, 520 U.S. 670, 677 (1997).

This Court's intervention is desperately needed to prevent the further proliferation of the Eighth Circuit's now systematic denial of defendants' due process and jury trial rights in the adjudication of as applied challenges to § 922(g)(3).

III. This Case Remains an Ideal Vehicle

Hemani, *Baxter* and *Striplin* further demonstrate the need for immediate plenary review. Following this Court's decision in *Hemani*, the Eighth Circuit had an opportunity to reconsider its approach to as-applied challenges to § 922(g)(3). Instead, the Eighth Circuit treated *Hemani* as though it had little to no impact and doubled down on its prior methodology, while further expanding that methodology in ways that raise additional constitutional concerns. Plenary review would enable this Court to directly tackle these compounding constitutional implications head on and clean up this area of law.

This case remains an ideal vehicle for definitively resolving the ongoing circuit split concerning as-applied challenges to § 922(g)(3). The stipulated bench trial gives the Court an established factual foundation from which to resolve the questions of law presented. The Second Amendment challenge was preserved below, and because this petition comes from the Eighth Circuit, it presents the Court with a direct opportunity to review the troubling procedures that Circuit has developed for adjudicating these challenges, in a procedural posture that permits those practices to be directly challenged.

Conclusion

For the foregoing reasons, together with those set forth in the petition, this Court should grant the petition for a writ of certiorari or, alternatively, grant, vacate, and remand for further proceedings.

Respectfully submitted,

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