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STUDENT MATERIALS

*UNITED STATES V. HEMANI*

146 S. CT. 1677 (2026)

As the final print version of this casebook was sent to the publisher, the U.S. Supreme Court issued its opinion in *United States v. Hemani*, 146 S. Ct. 1677 (2026). See Ch. 4.A.3.c.

18 U.S.C. § 922(g)(3) prohibits the possession of firearms by any person who is an “unlawful user of” a controlled substance. The defendant was charged with possessing a firearm while being an unlawful user of marijuana. He had admitted he used marijuana (still a controlled substance under federal law) “about every other day.” Hemani moved to dismiss the indictment on Second Amendment grounds. The district court granted the motion and the Fifth Circuit sustained the dismissal. The government sought review in the Supreme Court.

In a unanimous decision with three concurrences, the Supreme Court—construing Hemani’s challenge in the district court to be an “as-applied” challenge—upheld the dismissal. The opinion is among the Court’s more compelling treatments of the Second Amendment.

In *Hemani* the Court provided a “how-to” seminar for analyzing “as-applied” challenges to a federal statute from its holdings dating back to *District of Columbia v. Heller*, 554 U.S. 570 (2008). The Court applied the methodology from the *Heller* holding, expressly announced in *New York State Rifle & Pistol Assn., Inc., v. Bruen*, 597 U.S. 1 (2022), along with the further analysis provided in *United States v. Rahimi*, 602 U.S. 680 (2024). The Supreme Court’s decision in *Hemani* provides an even more clear road map for adjudicating Second Amendment claims, leaving less room for lower courts to engage in empty formalistic reasoning to avoid the doctrine announced in *Heller*.

First, the Court found that § 922(g)(3) burdens conduct protected by the Second Amendment, and since Hemani was not otherwise barred from firearm possession, the only disqualifying conduct came from the statute making it a felony to possess a firearm, while also being an “unlawful user” of a “controlled substance.” Under *Bruen*, the burden then shifted to the government to justify the ban based on laws and regulations that would have made sense to the founding generation for disarming someone and imposing felony sanctions.

Second, the Court noted that several of the other § 922(g) disqualifiers required some form of due process before the ban could be enforced. E.g., the felon ban found at (g)(1) requires a conviction, the mental illness ban at (g)(4) requires a court-ordered commitment to an institution, and the Court had

already addressed what kind of hearing is necessary in *Rahimi* under (g)(8). But that (g)(3) required no such pre-deprivation finding by a judicial officer.

Third, while the Court noted that habitual drunkards were not unknown to the Founders, the Court noted (a) that the government had not made the case that Hemani was incapacitated or lacked rational capacity through his marijuana use, and (b) that many prominent early Americans regularly consumed intoxicants without ill effects on their status as law-abiding citizens, or right to keep and bear arms.

Had habitual drunkard laws applied to those who simply drank regularly, many notable early Americans could have faced trouble. John Adams took “a tankard of hard cider” with his “daily breakfast.” W. Rorabaugh, *The Alcoholic Republic* 6 (1979) (Rorabaugh). Some say James Madison “consumed a pint of whiskey daily.” D. Okrent, *Last Call: The Rise and Fall of Prohibition* 8 (2010); *but see* M. Will-Weber, *Mint Juleps with Teddy Roosevelt: The Complete History of Presidential Drinking* 29 (2014) (arguing Madison “championed wine . . . as a healthier and more respectable choice”). George Washington often drank three glasses of madeira in the evening—“not enough to be considered a heavy drinker in his day.” *Id.* at 5. Thomas Jefferson enjoyed “3 or 4 glasses [of wine] at dinner.” J. Gabler, *Passions: The Wines and Travels of Thomas Jefferson* 223 (1995). In fact, just a few days before the framers signed the Constitution, a farewell party gathered for General Washington at Philadelphia’s City Tavern where 55 guests are said to have ordered 54 bottles of madeira, 60 bottles of wine, 8 bottles of “Old stock,” 22 bottles of porter, 8 bottles of cider, 12 bottles of beer, and 7 large bowls of punch. National Park Service, C. Hershey, *Historic Furnishings Plan: City Tavern* 64-65 (1974).

*Hemani*, 146 S. Ct. at 1688.

Finally, once the government’s case came down to equating regular marijuana use, that had not been shown to cause cognitive incapacitation similar to the disease of chronic alcoholism, the result (a 9-0 decision) was foreordained. Justice Gorsuch explained the disconnect:

The government considers Mr. Hemani an unlawful user of a controlled substance because he admits to using marijuana about every other day. But how much marijuana does Mr. Hemani use, in what potency, and to what effect? Is he routinely unable to manage his affairs, a risk to himself or his family? Or does he use a mild gummy as a sleep aid a few times a week? We do not know and, the government says, it doesn’t matter. The government asks us to analogize him to a habitual drunkard all the same.

Nor does the government's theory stop at Mr. Hemani. It extends equally 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. *Id.*, at 56-58. The drug involved makes no difference. Nor, again, does it matter how much an individual uses or the effects it has on him. That someone regularly uses any substance found on any of the CSA's five schedules for anything other than its "prescribed purpose" is enough. *Id.* at 57. Without more, the government asks us to analogize all such persons to habitual drunkards. To state the analogy is to expose its deficiency.

*Hemani*, 146 S. Ct. at 1689.

What makes the *Hemani* opinion worthy of a closer read is the Court's exegesis of *Bruen's* requirement that a court analyze the purpose or the "why" of an ancient law before using it to uphold a modern law that impacts Second Amendment rights. Vague references to public safety or the sheer inertia of persistent misconceptions about "drug use" are insufficient.

We see one more problem yet with the government's submission. Recall its claim about §922(g)(3)'s "why." The government argues that, consistent with historical laws, §922(g)(3)'s unlawful user provision disarms individuals who are, as a "category," "violen[t]" and "unusually dangerous." Brief for United States 4, 10-11. So far, we have spotted the government its assertion about §922(g)(3)'s purpose. But there are at least two reasons to doubt it has established even that much.

The first has to do with §922(g)(3)'s reliance on the CSA. The former does not define its own category of people to disarm. Instead, according to the government, it disarms anyone who regularly uses any drug found on any CSA schedule for something other than its "prescribed purpose." Tr. of Oral Arg. 57. The CSA, in turn, was adopted to protect "the health and general welfare of the American people." 21 U. S. C. §801(2). Drugs can be added to its schedules for a variety of reasons having little or nothing to do with their potential to induce violence—reasons that include "[t]he state of current scientific knowledge" about a substance, whether that substance "is an immediate precursor" to another controlled substance, and the risk to "public health." §811(c). Without question, some unlawful users of controlled substances can pose a risk of violence. But, by defining its scope through the CSA—a statute animated by a variety of other concerns—it is far from obvious that 18 U. S. C. §922(g)(3) confines its reach to those who are categorically and unusually dangerous.

The second reason has to do with the government's approach to the drug at issue here. As this case came to us, marijuana was

listed on Schedule I—a schedule reserved for drugs with “a high potential for abuse” with “no currently accepted medical use.” 21 U. S. C. §812(b)(1). But after we heard oral argument, the government moved some marijuana products to Schedule III, 91 Fed. Reg. 22714 (2026), a schedule that applies to drugs with a lower potential for dependence and abuse and for which a “currently accepted medical use” exists, §812(b)(3). Years before that, too, the Department of Justice issued a memorandum directing federal prosecutors nationwide to curtail their enforcement efforts against marijuana users even while all marijuana products remained on Schedule I. Attorney General Memo (Aug. 29, 2013). . .

In saying this much, we do not question that sometimes an individual’s unlawful use of marijuana (or any other controlled substance) may render him a danger to others. But, again, the government disclaims the need to show anything like that in this case. Instead, it asks us to conclude that anyone who regularly uses marijuana is categorically violent and dangerous without any further showing. All based on little more than its current say-so, one at odds with its own regulatory actions. And affording the government that kind of “broad power to designate any group as dangerous and thereby disqualify its members from having a gun” would risk allowing it to “quickly swallow” the Second Amendment. *Kanter v. Barr*, 919 F. 3d 437, 465 (7th Cir. 2019) (Barrett, J., dissenting).

*Hemani*, 146 S. Ct. at 1692-1693.

The majority opinion concludes with:

In many respects, this case is a narrow one. We do not address efforts to ban addicts or those presently intoxicated, from possessing a firearm. We do not address other prophylactic laws Congress might adopt after determining that users of a particular drug pose a special risk of misusing firearms. We do not address 18 U. S. C. §922(g)(1)’s provision disarming individuals convicted of felonies (often including drug-related ones). *Id.* We do not even address whether the government could bring a prosecution under §922(g)(3) accompanied by individualized proof that the defendant’s use of marijuana (or any other drug) renders him a danger to himself or others. Or proof that a certain drug always renders its users dangerous because of its potency or for some other reason. None of those issues is before us and we do not pass on them either way.

All that is before us is one, if surely ambitious, theory. The government maintains that it may automatically strip Mr. Hemani of his Second Amendment right to possess a firearm

because he uses marijuana a few times a week. More than that, because he possessed a gun despite this prohibition, the government insists it may imprison him for up to 15 years and disarm him for life. According to the government, none of this turns on how much marijuana Mr. Hemani uses or what effect it has on him. It makes no difference either if he keeps a firearm only in his home for self-defense, never misuses a gun while intoxicated, and never poses a danger to himself or others as a result of his marijuana use. The only thing the government must show, it says, is that an individual like Mr. Hemani regularly uses any amount of any controlled substance.

To square that expansive theory with the Second Amendment, the government invites us to draw an analogy between its present regulation and historical laws addressing habitual drunkards. Those laws, the government contends, demonstrate a tradition of firearm regulation consistent with its effort to disarm any regular user of any controlled substance without any further showing. But the government's analogy fails under every measure it asks us to consider: The historical laws on which it relies targeted different kinds of people, did so for different reasons, and operated in different ways. And faced with all these shortcomings in the government's submission, we cannot say it has carried its conceded burden of showing its prosecution of Mr. Hemani complies with the Second Amendment.

*Hemani*, 146 S. Ct. at 1693-1694.

Justice Thomas joined the majority opinion but wrote separately to criticize the use of Article I, Sec. 8's Commerce Clause to criminalize an unlawful drug user's possession of a firearm or ammunition as a matter of both original meaning and the Supreme Court's own precedents addressing Congress's Commerce Clause power. *Id.* at 1694.

Justices Jackson and Sotomayor concurred but continue to believe that *Bruen* was wrongly decided and should be overruled. Without expressly stating that the Court's earlier "means-end scrutiny" test would have reached the same result, Jackson simply noted that the earlier balancing test methodology was preferable, but not before the Court. *Id.* at 1698.

Justices Alito and Kagan also concurred in the result but would have narrowed the holding on the grounds that the government's habitual drunkard analogues were too dissimilar to the mere regular marijuana use at issue in this case. *Id.* at 1701.