

FOR PUBLICATION

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

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DYLAN JAMES YOUNGBLOOD,

Defendant - Appellant.

No. 24-7629

D.C. No.
9:24-cr-00022-
DWM-1

OPINION

Appeal from the United States District Court
for the District of Montana
Donald W. Molloy, District Judge, Presiding

Submitted September 18, 2026*
Seattle, Washington

Filed October 13, 2026

Before: Richard C. Tallman, John B. Owens, and Ryan D.
Nelson, Circuit Judges.

Opinion by Judge Tallman

* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

SUMMARY**

Criminal Law

The panel affirmed Dylan Youngblood’s conviction under 18 U.S.C. § 922(g)(3) for possessing a firearm while being an unlawful user of or addicted to a controlled substance.

Youngblood contended that § 922(g)(3) is both facially unconstitutional and unconstitutional as applied to him under the Second Amendment. Applying the Second Amendment analysis laid out in *New York State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1 (2022), the district court concluded that the Second Amendment covered Youngblood’s conduct, but that the application of § 922(g)(3) to frequent methamphetamine and fentanyl users such as Youngblood was consistent with a “historical tradition of temporarily disarming intoxicated individuals.” Because § 922(g)(3) was constitutional as applied to Youngblood, the district court found that it was necessarily facially constitutional.

After Youngblood filed his Opening Brief on appeal and before the government filed its Answering Brief, this court held that § 922(g)(3) is facially constitutional. *United States v. Stennerson*, 150 F.4th 1276, 1285 (9th Cir. 2025). After Youngblood filed his Reply Brief, the Supreme Court ruled that § 922(g)(3) was unconstitutional as applied to an individual who “used marijuana ‘about every other

** This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

day.’’ *United States v. Hemani*, 608 U.S. 772, 778, 795 (2026).

The panel held that *Stennerson*’s holding that § 922(g)(3) is facially constitutional remains binding on this court post-*Hemani*. *Stennerson*, like *Hemani*, applied the two-step burden shifting Second Amendment analysis laid out in *Bruen*. Both cases found that § 922(g)(3) regulated conduct covered by the plain text of the Second Amendment. But *Hemani* did not consider the statute’s facial constitutionality, addressed a narrow as-applied challenge, and left the question of § 922(g)(3)’s applicability to presently intoxicated individuals unresolved. As *Stennerson*’s reasoning and theory are not clearly irreconcilable with *Hemani*, the panel held that *Stennerson* remains good law and applied its holding here.

The panel held that Youngblood waived his as-applied challenge by failing to specifically and distinctly argue it.

COUNSEL

Brian C. Lowney, Assistant United States Attorney, Office of the United States Attorney, United States Department of Justice, Missoula, Montana; Timothy A. Tatarka, Assistant United States Attorney; Mark S. Smith, Acting United States Attorney; Kurt G. Alme, United States Attorney; Office of the United States Attorney, United States Department of Justice, Billings, Montana; for Plaintiff-Appellee.

John Rhodes, Assistant Federal Defender; Rachel Julagay, Federal Defender; Federal Defenders of Montana, Missoula, Montana; for Defendant-Appellant.

OPINION

TALLMAN, Circuit Judge

Following his entry of a conditional guilty plea, Dylan Youngblood appeals the district court’s denial of his motion to dismiss his indictment for possessing a firearm while being an unlawful user of or addicted to a controlled substance in violation of 18 U.S.C. § 922(g)(3). Youngblood contends that § 922(g)(3) is both facially unconstitutional and unconstitutional as applied to him under the Second Amendment.

After Youngblood filed his Opening Brief and before the government filed its Answering Brief, our court held that § 922(g)(3) is facially constitutional. *United States v. Stennerson*, 150 F.4th 1276, 1285 (9th Cir. 2025). Then, after Youngblood filed his Reply Brief, the Supreme Court ruled that § 922(g)(3) was unconstitutional as applied to an individual who “used marijuana ‘about every other day.’” *United States v. Hemani*, 608 U.S. 772, 778, 795 (2026). Because *Stennerson* remains binding on this court post-*Hemani* and Youngblood has waived his as-applied challenge, we affirm.

I

In September 2023, Youngblood was arrested on an outstanding felony warrant in Kalispell, Montana. During the arrest, Kalispell Police Department officers found fentanyl pills on Youngblood’s person and located two pistols, along with drug paraphernalia and suspected methamphetamine, in his car. Youngblood admitted that one of the pistols was his and that he had used fentanyl earlier that day. He was subsequently indicted for possessing a

firearm while being both (1) “an unlawful user of” and (2) “addicted to” a controlled substance in violation of 18 U.S.C. § 922(g)(3).

Youngblood moved to dismiss the indictment on the grounds that § 922(g)(3) was unconstitutional both on its face and as applied to him based on the “alleged facts . . . taken from the government’s discovery.” The government, in turn, argued that the statute was categorically constitutional in all applications.

After a hearing, the district court denied the motion in a written order. Applying the Second Amendment analysis laid out in *New York State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1 (2022), the district court concluded that the Second Amendment covered Youngblood’s conduct, but that the application of § 922(g)(3) to frequent methamphetamine and fentanyl users such as Youngblood was consistent with a “historical tradition of temporarily disarming intoxicated individuals.” And because § 922(g)(3) was constitutional as applied to Youngblood, the district court found that it was necessarily facially constitutional. The district court did not address the “addicted to” prong of § 922(g)(3), under which Youngblood had also been charged.

Following the denial of his motion, Youngblood conditionally pled guilty to possessing a firearm while being both “an unlawful user of” and “addicted to” a controlled substance, while preserving his right to challenge the district court’s denial of his motion to dismiss. This timely appeal followed.

II

We review de novo the district court’s denial of a pretrial motion to dismiss an indictment challenging “the

constitutionality of the statute under which the defendant was charged.” *Stennerson*, 150 F.4th at 1280 (citing *United States v. Howald*, 104 F.4th 732, 736 (9th Cir.), *cert. denied*, 145 S. Ct. 781 (2024)).

III

A

To succeed on his facial challenge, Youngblood must “establish that no set of circumstances exists under which [§ 922(g)(3)] would be valid.” *United States v. Rahimi*, 602 U.S. 680, 693 (2024) (quoting *United States v. Salerno*, 481 U.S. 739, 745 (1987)). “That means that to prevail, the Government need only demonstrate that [§ 922(g)(3)] is constitutional in some of its applications.” *Id.*

The Supreme Court has established a two-step analysis to determine whether a statute is constitutional under the Second Amendment. “First, a court must determine whether the law before it clashes with the ‘plain text’ of the Amendment’s language.” *Wolford v. Lopez*, 609 U.S. 185, 195 (2026) (quoting *Bruen*, 597 U.S. at 24). To do so, courts must consider whether the challenged law (1) applies to “the people,” or in other words, to “all members of the political community,” (2) implicates “any form of ‘Arms,’” and (3) restricts the keeping or bearing of arms. *Id.* (citations omitted). If the answer to all three of these questions is “yes,” then the law “is presumptively unconstitutional,” *id.* at 196, and the government bears the burden of proving that the challenged law “is consistent with the Nation’s historical tradition of firearm regulation,” *Bruen*, 597 U.S. at 24. To determine a law’s consistency with the nation’s historical tradition of firearm regulation, courts “must ascertain whether the new law is ‘relevantly similar’ to [historical]

laws that our tradition is understood to permit.” *Rahimi*, 602 U.S. at 692 (quoting *Bruen*, 597 U.S. at 29).

At the first step of *Stennerson*’s *Bruen* analysis, we concluded that the Second Amendment’s plain text presumptively protected *Stennerson*’s possession of a firearm because § 922(g)(3) implicates the ability “to keep and bear arms” and he was a part of “the people.” 150 F.4th at 1281–82.¹ At *Bruen*’s second step, we held that § 922(g)(3) was facially constitutional because, at minimum, its application to “presently intoxicated” individuals “is consistent with the Nation’s historical tradition of firearm regulation.” *Id.* at 1285 (quoting *Bruen*, 597 U.S. at 24). We did not consider the constitutionality of § 922(g)(3) as applied to *Stennerson*, nor did we decide whether the statute was also categorically constitutional. *Id.*

Accordingly, under *Stennerson*, *Youngblood*’s facial argument would fail. Before rejecting *Youngblood*’s facial challenge, however, we must first determine whether

¹ Though *Stennerson* only addressed a facial challenge, the first step of its *Bruen* analysis was largely framed as determining “whether *Stennerson* is part of ‘the people’ who have Second Amendment rights.” 150 F.4th at 1281. Nevertheless, the panel’s conclusion that *Stennerson* was one of “the people” was not reliant on any facts specific to that case, and though it did not explicitly state that all drug users, or all drug addicts, are a part of “the people,” we can easily imply that conclusion. *See id.* at 1282 (“[T]hose ‘who are part of a national community or who have otherwise developed sufficient connection with this country to be considered part of that community’ are part of ‘the people’ who have Second Amendment rights.” (quoting *United States v. Duarte*, 137 F.4th 743, 752 (9th Cir. 2025) (en banc))). Because the parties have not spilled ink on this distinction, we assume that *Stennerson*’s holding generally applies to any drug user or addict charged under § 922(g)(3), and not just *Stennerson* himself.

Stennerson remains good law after *United States v. Hemani*. We conclude that it does.

In *Hemani*, the Supreme Court held that § 922(g)(3) was unconstitutional as applied to an individual who “used marijuana ‘about every other day,’” but it did not consider the statute’s facial constitutionality. 608 U.S. at 778, 794–95. The Court was clear that the only issue before it was the government’s “ambitious” and “expansive” categorical construction of § 922(g)(3) to “automatically ban[] an individual from possessing a gun from the moment he becomes an unlawful user of any controlled substance until he ceases being one,” regardless of the type of substance, the amount he uses, or the potential danger he presents to others. *Id.* at 781, 794. This holding, the Court explained, was a “narrow one,” and did “not address efforts to ban . . . those presently intoxicated[] from possessing a firearm.” *Id.* at 794.

Generally, an opinion by a three-judge panel of our court is binding on subsequent panels. *United States v. Easterday*, 564 F.3d 1004, 1010 (9th Cir. 2009). A later panel may only reexamine “controlling circuit precedent” in the face of an intervening Supreme Court decision when the “prior circuit authority is clearly irreconcilable with the reasoning or theory” of the Supreme Court decision. *Miller v. Gammie*, 335 F.3d 889, 892–93 (2003) (en banc). “It is not enough for there to be ‘some tension’ between the intervening higher authority and prior circuit precedent, or for the intervening higher authority to ‘cast doubt’ on the prior circuit precedent.” *Lair v. Bullock*, 697 F.3d 1200, 1207 (9th Cir. 2012) (citations omitted). “[A]s long as we can apply our prior circuit precedent without ‘running afoul’ of the intervening authority, we must do so.” *Id.* (citation omitted).

In its Supplemental Brief, the government argues that because *Hemani* expressly declined to rule on § 922(g)(3)’s application to presently intoxicated individuals, *Stennerson* remains good law. Youngblood, in turn, does not substantively argue that *Stennerson* is clearly irreconcilable with *Hemani*, and only contends—without explanation—that “*Hemani* displaces *Stennerson*.” We agree with the government.

Stennerson, like *Hemani*, applied the two-step burden shifting Second Amendment analysis laid out in *Bruen*. Both cases found that § 922(g)(3) regulated conduct covered by the plain text of the Second Amendment. *Hemani*, 608 U.S. at 781; *Stennerson*, 150 F.4th at 1282. The two cases relied on different historical laws in their analyses. And while *Stennerson* only addressed a facial challenge, *Hemani* addressed a narrow as-applied challenge, and clearly left the question of § 922(g)(3)’s applicability to presently intoxicated individuals unresolved.

Because “we can apply our precedent consistently with that of the higher authority, we must do so.” *Avilez v. Garland*, 69 F.4th 525, 533 (9th Cir. 2023) (citation omitted). As *Stennerson*’s reasoning and theory are not clearly irreconcilable with *Hemani*, we hold that *Stennerson* remains good law and apply its holding here. Therefore, Youngblood’s facial challenge fails.

B

We decline to address any argument that § 922(g)(3) is unconstitutional as applied to Youngblood. “We review only issues which are argued specifically and distinctly in a party’s opening brief.” *Greenwood v. FAA*, 28 F.3d 971, 977 (9th Cir. 1994) (citation omitted). “Our circuit has repeatedly admonished that we cannot ‘manufacture

arguments for an appellant.”” *Indep. Towers of Wash. v. Washington*, 350 F.3d 925, 929 (9th Cir. 2003) (citation omitted). As is often repeated, “judges are not like pigs, hunting for truffles buried in briefs.” *Greenwood*, 28 F.3d at 977 (citation and alteration omitted).

The scope of Youngblood’s as-applied argument in his Opening Brief is a single sentence: “No historical firearm law imposed a similar restriction [to § 922(g)(3)] and certainly not on a person like Mr. Youngblood, whose offense did not involve violence.” At no point in his briefing does Youngblood provide an as-applied argument containing “contentions and the reasons for them, with citations to the authorities and parts of the record on which [he] relies.” Fed. R. App. P. 28(a)(8)(A). After the government noted this deficiency in its Answering Brief, Youngblood responded in his Reply Brief that he “extensively briefed and argued the facts of his case in his Opening Brief,” seemingly suggesting that he expects the court to discern an as-applied challenge from the facts section of his Opening Brief. We decline to do so. *See Stennerson*, 150 F.4th at 1281 n.1 (declining counsel’s invitation at oral argument to consider an alternative as-applied challenge based on the fact that he “briefed the facts of his case”). We accordingly hold that Youngblood has waived his as-applied challenge by failing to specifically and distinctly argue it.

* * *

Accordingly, Youngblood’s conviction under 18 U.S.C. § 922(g)(3) is **AFFIRMED**.