

No. 24-6625

IN THE SUPREME COURT OF THE UNITED STATES

RONNIE DIAZ, JR., PETITIONER

v.

UNITED STATES OF AMERICA

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

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

D. JOHN SAUER
Solicitor General
Counsel of Record
Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

IN THE SUPREME COURT OF THE UNITED STATES

No. 24-6625

RONNIE DIAZ, JR., PETITIONER

v.

UNITED STATES OF AMERICA

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

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner contends (Pet. 19-39) that 18 U.S.C. 922(g)(1), the federal statute that prohibits a person from possessing a firearm if he has been convicted of “a crime punishable by imprisonment for a term exceeding one year,” ibid., violates the Second Amendment on its face and as applied to him. For the reasons set out in the government’s brief in opposition in French v. United States, No. 24-6623, 2025 WL 1426709 (May 19, 2025), the contention that Section 922(g)(1) is facially unconstitutional does not warrant this Court’s review. See ibid. (denying certiorari). As the government explained in French, that contention plainly lacks merit, and every court of appeals to

consider the issue since United States v. Rahimi, 602 U.S. 680 (2024), has determined that the statute has at least some valid applications. See Br. in Opp. at 3-6, French, supra (No. 24-6623).

Similarly, for the reasons set out in the government's brief in opposition in Jackson v. United States, No. 24-6517, 2025 WL 1426707 (May 19, 2025), the contention that Section 922(g)(1) violates the Second Amendment as applied to petitioner does not warrant this Court's review. See ibid. (denying certiorari). Although there is some disagreement among the courts of appeals regarding whether Section 922(g)(1) is susceptible to individualized as-applied challenges, that disagreement is shallow. See Br. in Opp. at 12-15, Jackson, supra (No. 24-6517). This Court has previously denied plenary review when faced with similarly narrow disagreements among the circuits about the availability of as-applied challenges to Section 922(g)(1). See id. at 15. And any disagreement among the circuits may evaporate given the Department of Justice's recent re-establishment of the administrative process under 18 U.S.C. 925(c) for granting relief from federal firearms disabilities. See Br. in Opp. at 15-16, Jackson, supra (No. 24-6517).

For two independent reasons, this case would also be a poor vehicle to determine whether Section 922(g)(1) is susceptible to individualized as-applied challenges. First, petitioner's Section 922(g)(1) conviction arises out of a traffic stop in which

petitioner was found in possession of a pistol, methamphetamine, heroin, and counterfeit Xanax. See Pet. App. 2a. Based on that conduct, the district court convicted petitioner not only of possessing a firearm as a felon, in violation of 18 U.S.C. 922(g)(1), but also of possessing with intent to distribute 50 grams or more of methamphetamine, in violation of 21 U.S.C. 841(a)(1), and possessing a firearm during and in relation to a drug-trafficking crime, in violation of 18 U.S.C. 924(c). The Second Amendment guarantees a right to possess firearms for "lawful purposes" "such as self-defense," District of Columbia v. Heller, 554 U.S. 570, 577 (2008), not for unlawful purposes such as facilitating drug trafficking. Because the district court found that petitioner possessed the firearm during and in relation to a drug-trafficking crime, petitioner cannot show that his underlying conduct falls within the scope of the Second Amendment.

Second, even putting aside the circumstances under which petitioner possessed the firearm, Section 922(g)(1) does not raise any constitutional concerns as applied to him. Petitioner had previous felony convictions for evading arrest, vehicle theft, and possessing a firearm as a felon. See Pet. App. 2a. His convictions for evading arrest and vehicle theft arose from an incident in which he led police on a high-speed chase in a stolen car before wrecking the vehicle and fleeing on foot. See Presentence Investigation Report ¶¶ 29-30. And his previous felon-in-possession conviction arose from an incident in which he possessed

both methamphetamine and a firearm. See id. ¶ 31. Given petitioner's criminal history, he cannot show that he would prevail on an as-applied challenge in any circuit. See, e.g., Pitsilides v. Barr, 128 F.4th 203, 213 (3d Cir. 2025) (district courts may consider "the context and circumstances" of a previous offense in deciding an as-applied challenge to Section 922(g)(3)).

The petition for a writ of certiorari should be denied.*

Respectfully submitted.

D. JOHN SAUER
Solicitor General

MAY 2025

* Copies of the government's briefs in opposition in French and Jackson are being served on petitioner. The government waives any further response to the petition for a writ of certiorari unless this Court orders otherwise.