

IN THE SUPREME COURT OF THE UNITED STATES

DEVEON JAMEAR SMITH, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

D. JOHN SAUER
Solicitor General
Counsel of Record

MATTHEW R. GALEOTTI
ANN O'CONNELL ADAMS
Attorneys

Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

QUESTION PRESENTED

Whether 18 U.S.C. 922(g)(3), the federal statute that prohibits the possession of firearms by a person who "is an unlawful user of or addicted to any controlled substance," violates the Second Amendment on its face.

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No. 24-6936

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. C1-C3) is available at 2025 WL 25946. The order of the district court (Pet. App. A1-A3) is available at 2023 WL 12066737.

JURISDICTION

The judgment of the court of appeals was entered on January 3, 2025. The petition for a writ of certiorari was filed on March 31, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a guilty plea in the United States District Court for the Southern District of Iowa, petitioner was convicted of possessing a firearm as an unlawful user of a controlled substance, in violation of 18 U.S.C. 922(g)(3) and 924(a)(8). Pet. App. B1. The district court sentenced petitioner to 57 months of imprisonment, to be followed by three years of supervised release. Id. at B2-B3. The court of appeals affirmed. Id. at C1-C3.

1. On August 13, 2022, police officers in Altoona, Iowa, conducted a traffic stop and found marijuana, a loaded firearm, and a digital scale under the front passenger seat. Presentence Investigation Report (PSR) ¶ 16. Petitioner was seated in the back passenger seat directly behind those items, and he admitted during a police interview that the marijuana and firearm belonged to him. PSR ¶¶ 16-17. He also admitted that he used marijuana and that he had smoked marijuana earlier that day. PSR ¶ 17.

2. A federal grand jury indicted petitioner for possessing a firearm as an unlawful user of a controlled substance, in violation of 18 U.S.C. 922(g)(3) and 924(a)(8). See Pet. App. A1. Petitioner moved to dismiss the indictment on the ground that Section 922(g)(3) violates the Second Amendment. See ibid. The district court denied the motion, concluding that Section 922(g)(3) is consistent with the Nation's historical tradition of firearm regulation. Id. at A1-A3.

Petitioner entered a conditional guilty plea and reserved the right to appeal the district court's denial of the motion to dismiss. Pet. App. C1-C2. He admitted in the plea agreement that he was an unlawful user of marijuana and that he had smoked marijuana on the day he possessed a firearm. Plea Agreement ¶ 7. The court sentenced petitioner to 57 months of imprisonment, to be followed by three years of supervised release. Pet. App. B2-B3.

3. The court of appeals affirmed. Pet. App. C1-C3.

The court of appeals first rejected petitioner's facial challenge to Section 922(g)(3). Pet. App. C2-C3. The court noted that it had recently rejected a facial challenge to that statute in United States v. Veasley, 98 F.4th 906 (8th Cir.), cert. denied, 145 S. Ct. 304 (2024), and it determined that nothing in this Court's intervening decision in United States v. Rahimi, 602 U.S. 680 (2024) had called that holding into question. Pet. App. C2-C3.

The court of appeals then rejected petitioner's as-applied challenge to Section 922(g)(3). See Pet. App. C3. The court explained that "such [a] challenge does not survive a guilty plea" and that petitioner "failed to preserve this challenge in his conditional guilty plea." Ibid.; see ibid. (Petitioner "waived his right to assert an as-applied challenge on appeal.").

ARGUMENT

Petitioner renews his contention (Pet. 5-14) that Section 922(g)(3) violates the Second Amendment on its face. The court of appeals correctly rejected that contention, and its decision does not conflict with any decision of this Court or another court of appeals. This Court should deny the petition for a writ of certiorari.

1. A facial challenge to a federal statute is the “‘most difficult challenge to mount successfully,’ because it requires a defendant to ‘establish that no set of circumstances exists under which the Act would be valid.’” United States v. Rahimi, 602 U.S. 680, 693 (2024) (citation omitted). If the challenged statute complies with the Constitution in even “some of its applications,” the facial challenge fails. Ibid.

Section 922(g)(3) plainly has at least some valid applications. For instance, the government may apply Section 922(g)(1) to unlawful drug users who misuse firearms while under the influence of drugs. See United States v. Connelly, 117 F.4th 269, 282 (5th Cir. 2024). “All it takes” to locate examples “is a few minutes flipping through the pages of the Federal Reporter.” United States v. Veasley, 98 F.4th 906, 917 (8th Cir.), cert. denied, 145 S. Ct. 304 (2024); see, e.g., Ochoa v. City of Mesa, 26 F.4th 1050, 1057 (9th Cir. 2022) (defendant “under the influence of heroin or meth” “engaged in a domestic dispute that allegedly

involved a gun"); United States v. Ferguson, 889 F.3d 314, 315-316 (7th Cir. 2018) ("high and drunk" defendant used a firearm to shoot a carjacking victim "several times" while "[t]he victim's niece and the niece's 4-year-old daughter witnessed"); Jackson v. Calderon, 211 F.3d 1148, 1151 (9th Cir. 2000) (defendant "shot and killed" a police officer "while grossly intoxicated with phencyclidine"), cert. denied, 531 U.S. 1072 (2001).

In short, whether or not Section 922(g)(3) is amenable to as-applied challenges in some cases, it complies with the Second Amendment at least in "some," if not all, "of its applications." Rahimi, 602 U.S. at 693. That ends the facial challenge.

2. The question presented does not warrant this Court's review. The two courts of appeals to consider the question since New York State Rifle & Pistol Ass'n v. Bruen, 597 U.S. 1 (2022), the Fifth and Eighth Circuits, have rejected facial challenges to Section 922(g)(3) and have held that the statute has at least some valid applications. See Veasley, 98 F.4th at 918; Connelly, 117 F.4th at 280-282. And the Seventh Circuit has held, in a pre-Bruen decision that relied on the history-and-tradition test that Bruen approved, that Section 922(g)(3) complies with the Second Amendment at least as a general matter. See United States v. Yancey, 621 F.3d 681, 682-687 (2010).

The United States has filed a petition for a writ of certiorari asking this Court to address a conflict in the circuits

concerning as-applied challenges to Section 922(g)(3). See Pet. at 7-26, United States v. Hemani, No. 24-1234 (filed June 2, 2025). But this case does not implicate that circuit conflict because petitioner raises only a facial challenge. See Pet. i (asking whether Section 922(g)(3) “[f]acially” violates the Second Amendment); Pet. 11 (“This is a facial attack on the statute.”); Pet. App. C3 (finding that petitioner waived an as-applied challenge). This Court has emphasized repeatedly in recent years that facial challenges are disfavored and that as-applied challenges remain the preferred path to resolving important constitutional questions. See Moody v. NetChoice, LLC, 603 U.S. 707, 723 (2024); Rahimi, 602 U.S. at 693; United States v. Hansen, 599 U.S. 762, 784-785 (2023). There is no sound basis to depart from that preference here.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

D. JOHN SAUER
Solicitor General

MATTHEW R. GALEOTTI
ANN O’CONNELL ADAMS
Attorneys

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