No. 24-7033

IN THE

SUPREME COURT OF THE UNITED STATES

AQUDRE QUAILES,

Petitioner

v.

UNITED STATES OF AMERICA,

Respondent

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Third Circuit

REPLY BRIEF OF PETITIONER

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REPLY ARGUMENT

Citing its brief in opposition to certiorari in *Jackson v. United States*, No. 24-6517, the government begins its argument by observing that "there is some disagreement among the courts of appeals regarding whether Section 922(g)(1) is susceptible to individualized as-applied challenges." Mem. In Opp. At 1-2. While not a model of clarity, presumably the government is acknowledging the existence of a circuit divide as opposed to asserting that an individual cannot bring an as-applied challenge to the constitutionality of Section 922(g)(1). *Cf. United States v. Jackson*, 110 F.4th 1120, 1125 (8th Cir. 2024) (concluding that Section 922(g)(1) was not unconstitutional as applied to Jackson based on his "particular felony convictions"). In any event, the government maintains that there is little disagreement among the circuits, a new administrative process resolves any issue over the permanent disenfranchisement of Second Amendment rights, and parolees like Petitioner have no Second Amendment argument. None of these proffered bases for declining further review should cause this Court any pause.

A. The Division of Authority in the Courts of Appeal Merits this Court's Intervention.

Contrary to the government's view, "no single Second Amendment issue has divided the lower courts more than the constitutionality of the 18 U.S.C. § 922(g)(1) felon-disarmament rule's application to certain nonviolent felons." *United States v. Duarte*, 108 F.4th 786, 787 (9th Cir. 2024) (VanDyke, J., dissenting from the grant of rehearing en banc). Indeed, not long ago the government agreed—in *Jackson v. United States* no less—that the constitutionality of Section 922(g)(1) divided the courts of appeal and that the conflict was unlikely to resolve itself. *See* Supplemental Brief for Federal Parties, *Jackson v. United States*, No's. 23-374, 23-683, 23-6170, 23-

6170, 23-6602 & 23-6842 at 2-3, 5. Nothing has changed since then other than the government's rhetoric.

B. The Potential for a future Administrative Remedy Provides No Basis for Denying Review.

The government's reliance on 18 U.S.C. § 925(c) is speculative, at best. The administrative remedy that Section 925(c) provides has been unfunded by Congress for decades. *See generally Pontarelli v. U.S. Dep't of the Treasury*, 285 F.3d 216, 230 (3d Cir. 1996) (discussing the history behind Congress' appropriations ban for Section 925(c)). And the current Administration's change in position leaves the contours of this administrative remedy unclear. *See generally* Withdrawing the Attorney General's Delegation of Authority, 90 Fed. Reg. 13080, 13082-83 (March 20, 2025) (observing that the specific contours may be refined through rule making). Moreover, even if there is a future administrative remedy under Section 925(c), it does not resolve the circuit divide respecting as-applied challenges to Section 922(g)(1). Finally, the possibility of a future administrative remedy provides no relief for those like Petitioner who have been either indicted or convicted under Section 922(g)(1).

C. Petitioner's Supervision Status Does Not Provide a Reason for Denying Further Review.

The government's hyperbolic description of Petitioner's criminal history, *see* BIO at 3, does not change the district court's finding that his prior drug offenses involved neither firearms nor violence. Pet. App. 52a. As the government emphasizes, however, he was under parole supervision at the time of his arrest for the Section 922(g) offense. The government cites to *United States v. Moore*, 11 F.4th 266 (3d Cir. 2024), as a reason to deny review. But *Moore* is pending certiorari, *see*

No. 24-968, and, as Petitioner argued in his certiorari petition, his case should be held pending a disposition in *Moore*. Apart from citing to *Moore, et al.*, the government does little to address the underlying issue.

The methodology used by the Third Circuit in Petitioner's case reflects the fracture over how the courts of appeal address as-applied challenges to Section 922(g). For example, some courts of appeal have held that individuals cannot bring as applied challenges to Section 922(g)(1). *E.g., United States v. Hunt*, 124 F.4th 696, 707 (4th Cir. 2024). Here, the Third Circuit did not analyze whether this regulation was historically consistent with the Second Amendment in the context of a prior non-violent drug felony. Instead, the Circuit looked at Mr. Quailes' status as a parolee and addressed whether those under parole supervision can, consistent with historical tradition, be deprived of their Second Amendment right to keep and bear arms. Pet. App. 11a-14a. The Circuit concluded that "[c]onsistent with this principle, modern firearm regulations, such as § 922(g)(1), may disarm convicts on parole, probation, or supervised release." Pet. App. 14a (internal quotations and citation omitted). But this reasoning and conclusion are fallacious. Mr. Quailes is not being prosecuted under Section 922(g)(1) for possessing a firearm while on parole. He is being prosecuted for possessing a firearm after being convicted of a felony—that's the Section 922(g) offense. Pet. App. 21a.

CONCLUSION

For these reasons and those set forth in the petition for a writ of certiorari, this Honorable Court should hold Petitioner, Aqudre Quailes' case pending the disposition in *Moore v. United States*, No. 24-968, or, in the alternative, grant the petition for a writ of certiorari.

Respectfully submitted,

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