No. 24-968

In the Supreme Court of the United States

DIONTAI MOORE, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether 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," violates the Second Amendment as applied to petitioner.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-15) is reported at 111 F.4th 266. The district court's memorandum opinion (Pet. App. 18-31) and memorandum order (Pet. App. 32-34) are available at 2022 WL 17490023 and 2022 WL 17490021.

JURISDICTION

The judgment of the court of appeals was entered on August 2, 2024. A petition for rehearing was denied on October 9, 2024 (Pet. App. 16-17). On December 27, 2024, Justice Alito extended the time within which to file a petition for a writ of certiorari to and including February 6, 2025. On January 27, Justice Alito further extended the time to and including March 8, 2025. The petition was filed on March 7, 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 Western District of Pennsylvania, petitioner was convicted of possessing a firearm as a convicted felon, in violation of 18 U.S.C. 922(g)(1). Judgment 1. The district court sentenced him to 84 months of imprisonment, to be followed by three years of supervised release. Judgment 2-3. The court of appeals affirmed. Pet. App. 1-15.

1. Petitioner has a significant criminal record. He has two Pennsylvania felony convictions for possessing heroin with intent to deliver, each resulting from a traffic stop in which police officers found dozens of bags of heroin in his car. See Gov't C.A. Br. 4. While on parole for those offenses, he sold crack cocaine, leading to a federal felony conviction under 21 U.S.C. 841(b)(1)(C) for distributing cocaine base. See Gov't C.A. Br. 5. While on supervised release for that crime, he unlawfully possessed a handgun, leading to his first federal felony conviction under Section 922(g)(1) for possessing a firearm as a convicted felon. See Pet. App. 2. The district court sentenced him to 60 months of imprisonment, to be followed by three years of supervised release, for that offense. See *ibid.* The court specifically ordered petitioner, as a condition of supervised release, not to "possess a firearm." *Ibid.* (citation omitted).

While petitioner was on supervised release for that crime, he again possessed a firearm—and used it in a shooting incident. See Pet. App. 2-3. Although the details of that incident are unclear, surveillance footage shows that two males had entered a parking lot and had broken into a car belonging to petitioner's fiancée. See D. Ct. Doc. 118, at 27 (June 20, 2023). They rummaged through the car for around a minute and then raised

their heads, turned, and fled. See *ibid.* The footage shows that, as they ran away, petitioner walked up behind them and fired multiple shots. See *ibid.* One shot hit one of the fleeing individuals, a 15-year-old boy, in the back of the thigh. See *ibid.*

2. A grand jury indicted petitioner for possessing a firearm as a convicted felon, in violation of 18 U.S.C. 922(g)(1). See Pet. App. 4. Petitioner moved to dismiss the charge, arguing that Section 922(g)(1) violated the Second Amendment. See *id.* at 32-33. The district court denied the motion, holding that Section 922(g)(1) complied with the Second Amendment as applied to "dangerous people," such as convicted drug traffickers. *Id.* at 34 (citation omitted); see *id.* at 32-34.

Petitioner also asserted an affirmative defense of justification. See D. Ct. Doc. 66 (Aug. 22, 2022). Under Third Circuit precedent, a defendant may assert that defense to a felon-in-possession charge if "he was under unlawful and present threat of death or serious bodily injury" when possessing the firearm and if he satisfies certain other requirements. *United States* v. *Alston*, 526 F.3d 91, 95 (2008) (citation omitted). The district court held a pretrial evidentiary hearing to determine whether petitioner could raise that defense at trial. See D. Ct. Doc. 82 (Dec. 6, 2022).

Before the district court could rule, petitioner agreed to plead guilty, reserving the right to argue on appeal that Section 922(g)(1) violates the Constitution. See Pet. App. 4. The court sentenced him to 84 months of imprisonment, to be followed by three years of supervised release. See *ibid.*

3. The Third Circuit affirmed, rejecting petitioner's facial and as-applied Second Amendment challenges to Section 922(g)(1). Pet. App. 1-15. The court held that

Section 922(g)(1), at a minimum, is valid as applied to a "convict on supervised release." *Id.* at 13. The court cited various founding-era statutes that required convicted criminals "to forfeit their weapons" and that "prevented [them] from reacquiring arms until they had finished serving their sentences." *Id.* at 11; see *id.* at 11-12. The court reasoned that, because a term of supervised release forms part of the sentence, the "historical practice of disarming a convict during his sentence" supports "disarming a convict on supervised release." *Ibid.*

The court of appeals also noted that "the doctrine of necessity or justification 'is a valid defense to a felon-in-possession charge.'" Pet. App. 14 n.4 (citation omitted). But it observed that petitioner "failed to preserve the argument that this defense applies" here. *Ibid.*

ARGUMENT

Petitioner renews his contention (Pet. 14-21) that Section 922(g)(1) violates the Second Amendment. The court of appeals correctly rejected that contention, and its decision does not conflict with any decision of this Court or of any other court of appeals. The petition for a writ of certiorari should be denied.

1. As the government recently explained in its brief in opposition in *Jackson* v. *United States*, No. 24-6517, 2025 WL 1426707 (May 19, 2025), Section 922(g)(1) complies with the Second Amendment at least as a general matter. See Br. in Opp. at 6-9, *Jackson*, *supra* (No. 24-6517); see also *Jackson*, 2025 WL 1426707 (denying certiorari). While there is some disagreement among the courts of appeals regarding the availability of individualized as-applied challenges to Section 922(g)(1), that disagreement is shallow—and 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 12-15, *Jackson*, *supra* (No. 24-6517).

This case, however, presents no occasion to consider those issues because Section 922(g)(1) is, at the very least, constitutional as applied to convicted felons who are still on supervised release, parole, probation, or other form of supervision. Supervised release is "part of the sentence" for a federal crime. 18 U.S.C. 3583(a); see *United States* v. *Haymond*, 588 U.S. 634, 648 (2019) (plurality opinion) ("part of the final sentence"). "Just as other punishments for criminal convictions curtail an offender's freedoms," an offender on supervised release may be deprived of "some freedoms enjoyed by law-abiding citizens." *United States* v. *Knights*, 534 U.S. 112, 119 (2001); see *Johnson* v. *United States*, 529 U.S. 694, 697 (2000).

Consistent with those principles, every court of appeals to consider the question since *United States* v. *Rahimi*, 602 U.S. 680 (2024), has held that Section 922(g)(1) is valid as applied to convicted felons on supervised release, parole, or probation. See Pet. App. 1-15 (3d Cir.); *United States* v. *Giglio*, 126 F.4th 1039, 1042-1046 (5th Cir. 2025); *United States* v. *Goins*, 118 F.4th 794, 804-805 (6th Cir. 2024); *United States* v. *Gay*, 98 F.4th 843, 847 (7th Cir. 2024). And in the only post-*Rahimi* court-of-appeals decision validating an as-applied challenge to Section 922(g)(1), the court emphasized that the challenger had "completed his sentence." *Range* v. *Attorney General*, 124 F.4th 218, 232 (3d Cir. 2024) (en banc); see *id.* at 223 ("Range was sentenced to three years' probation, which he completed.").

Petitioner does not meaningfully dispute that the Second Amendment permits Congress to restrict a per-

son's possession of arms while he is on supervised release. Petitioner instead contends (Pet. 21, 30) that his supervised-release status is "entirely irrelevant" because Section 922(g)(1), on its face, "regulates possession of a firearm by an individual who has been convicted of a felony, not possession of a firearm by an individual on supervised release." But as the court of appeals explained, "an as-applied challenge" necessarily "requires [the court] to ask whether a statute's 'application to a particular person under particular circumstances deprived that person of a constitutional right.'" Pet. App. 13 (citation omitted). The relevant circumstances here include the fact that petitioner "was on supervised release when he possessed the firearm." *Ibid.* In addition, Congress has enacted a severability clause providing that, "[i]f any provision of [the statute] or the application thereof to any person or circumstance is held invalid, the remainder of the [statute] and the application of such provision to other persons not similarly situated or other circumstances shall not be affected thereby." 18 U.S.C. 928. Under that provision, Section 922(g)(1)'s application to felons on supervised release is severable from any other applications that might raise constitutional concerns.

In all events, Section 922(g)(1) is constitutional as applied to petitioner even putting aside the fact that he was on supervised release. Petitioner's criminal record includes two felony convictions for possessing heroin with intent to distribute, a conviction for distributing cocaine base, and a previous conviction for violating Section 922(g)(1). See p. 2, *supra*. Given that criminal history, petitioner cannot show that he would prevail on an as-applied challenge in any circuit. See, *e.g.*, *United States* v. *Williams*, 113 F.4th 637, 659 (6th Cir. 2024)

(recognizing Section 922(g)(1)'s constitutionality as applied to those convicted of "drug trafficking").

2. Petitioner separately asserts (Pet. 8) that he made "momentary use" of a firearm for "self-defense." That assertion has no bearing on the resolution of the question presented.

As the court of appeals recognized, "the doctrine of necessity or justification 'is a valid defense to a felon-in-possession charge.'" Pet. App. 14 n.4 (citation omitted). That affirmative defense protects a person who "was under unlawful and present threat of death or serious bodily injury" and who satisfies certain other requirements. *United States* v. *Alston*, 526 F.3d 91, 95 (3d Cir. 2008) (citation omitted). Although petitioner at first raised that defense, he later relinquished it by pleading guilty. See Pet. App. 4. Petitioner also "failed to preserve [in the court of appeals] the argument that this defense applies." *Id.* at 14 n.4. Similarly, the petition for a writ of certiorari does not present any question based on that defense. See Pet. i. And petitioner does not rely on the alleged facts underlying that defense to support his Second Amendment challenge. See Pet. 14-21.

As the government explained in the court of appeals, moreover, petitioner's account of the facts rests largely on "his own self-serving, unsworn description of the shooting incident in a police interview." Gov't C.A. Br. 7 n.3. That description was never admitted as evidence. *Ibid.* At the pretrial hearing, petitioner proffered testimony "consistent with" that description, but the district court rejected that proffer as inadequate and directed petitioner to proffer specific facts. *Id.* at 8 n.3 (citation omitted). Instead of doing so, petitioner pleaded guilty. See *ibid.* The government thus had no oppor-

tunity to cross-examine petitioner, and the lower courts had no opportunity to evaluate his factual claims. See *ibid.* Petitioner's account of the shooting incident (*e.g.*, Pet. 6-7) accordingly deserves no weight.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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