No. 24-6517

IN THE SUPREME COURT OF THE UNITED STATES

EDELL JACKSON, 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

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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. A1-A20) is reported at 110 F.4th 1120. A prior opinion of the court of appeals (Pet. App. A36-A58) is reported at 69 F.4th 495. The order of the district court (Pet. App. A28-A35) is available at 2022 WL 4226229.

JURISDICTION

The judgment of the court of appeals was entered on August 8, 2024. A petition for rehearing was denied on November 5, 2024 (Pet. App. A91-A101). The petition for a writ of certiorari was

filed on February 3, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the U.S. District Court for the District of Minnesota, petitioner was convicted of possessing a firearm as a felon, in violation of 18 U.S.C. 922(g)(1). Judgment 1. He was sentenced to 108 months of imprisonment, to be followed by three years of supervised release. Judgment 2-3. The court of appeals affirmed. Pet. App. A36-A58. On remand from this Court, see 144 S. Ct. 2710, the court of appeals again affirmed, Pet. App. A1-A20.

1. This case arises out of a reported domestic assault in January 2021 at an apartment complex in Brooklyn Center, Minnesota. See Presentence Investigation Report (PSR) ¶ 6. Petitioner's girlfriend reported that petitioner had punched and kicked her in the head, face, and torso before firing a gun at her. See ibid. Police officers responding to the report found petitioner in a car in a nearby parking lot. See PSR ¶ 8. Petitioner tried to drive away, prompting the police to barricade the car. See ibid. Petitioner then fled on foot, but the police caught and arrested him. See ibid. The police found a handgun in a jacket that petitioner had dropped while fleeing. See PSR ¶¶ 8-9.

Petitioner had 11 previous felony convictions at the time of his arrest. See Pet. App. A33. He had eight previous felony convictions in Illinois: five for possessing a controlled

substance, one for possessing a controlled substance with intent to deliver, one for manufacturing or delivering a controlled substance, and one for possessing a weapon as a felon. See PSR ¶¶ 33, 38-43. He also had three previous felony convictions in Minnesota: two for selling a controlled substance and one for possessing a controlled substance. See PSR ¶¶ 44, 46.

2. A federal grand jury indicted petitioner on one count of possessing a firearm as a felon, in violation of 18 U.S.C. 922(g)(1). See Indictment 1-2. At trial, the government proved two of petitioner's previous felony convictions -- his two Minnesota convictions for selling controlled substances -- as predicates for that charge. See Gov't C.A. Br. 4. A jury found petitioner guilty. See Judgment 1.

The district court denied petitioner's post-trial motion to dismiss the indictment. Pet. App. A28-A35. As relevant here, the court rejected petitioner's contention that Section 922(g)(1) violates the Second Amendment as applied to him. See id. at A31-A34. The court determined that, although petitioner's previous convictions involved nonviolent felonies, petitioner had "proven himself to be both dangerous and unable to abide by the law." Id. at A33. The court later sentenced petitioner to 108 months of imprisonment, to be followed by three years of supervised release. Judgment 2-3.

3. The court of appeals affirmed, rejecting petitioner's contention that Section 922(g)(1) violates the Second Amendment as

applied to him. Pet. App. A36-A58. This Court granted a petition for a writ of certiorari, vacated the judgment, and remanded the case for further consideration in light of United States v. Rahimi, 602 U.S. 680 (2024). See 144 S. Ct. 2710.

On remand, the court of appeals again rejected petitioner's contention that Section 922(g)(1) violates the Second Amendment as applied to him. Pet. App. A1-A20. The court cited this Court's statement in District of Columbia v. Heller, 554 U.S. 570 (2008), that nothing in that opinion "should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons." Pet. App. A10-A11 (quoting Heller, 554 U.S. at 626). Given that assurance and the history supporting it, the court of appeals perceived "no need for felony-by-felony litigation regarding the constitutionality of § 922(g)(1)." Id. at A11.

The court of appeals also cited historical evidence -- including 17th-century English laws, 17th- and 18th-century colonial laws, and a founding-era precursor to the Second Amendment -- that, in the court's view, showed that legislatures could "disqualify categories of people from possessing firearms" based on their "deviat[ion] from legal norms." Pet. App. A15. The court further reasoned that, even "[i]f the historical regulation of firearms possession is viewed instead as an effort to address a risk of dangerousness," Section 922(g)(1) "still passes muster." Id. at A16. The court concluded that "[l]egislatures historically prohibited possession by categories of persons based on a

conclusion that the category as a whole presented an unacceptable risk of danger if armed," ibid., and that the Second Amendment allows Congress to conclude that felons, as a category, pose such a risk, see id. at A16-A18.

Judge Stras, joined by three other judges, dissented from the denial of rehearing en banc. Pet. App. A92-A101. In Judge Stras's view, the court of appeals' conclusion that Section 922(g)(1) was not subject to individualized as-applied challenges conflicted with both this Court's decision in Rahimi and the original public meaning of the Second Amendment. Id. at A92-A94.

ARGUMENT

Petitioner renews his contention (Pet. 10-24) that Section 922(g)(1) violates the Second Amendment as applied to him. The court of appeals' judgment rejecting that as-applied challenge was correct. Although there is some disagreement among the courts of appeals regarding whether Section 922(g)(1) is susceptible to individualized as-applied challenges, that question does not warrant this Court's review at this time, especially given the Department of Justice's recent revitalization of an administrative process through which convicted felons can regain their ability to possess firearms. Given petitioner's long criminal record and obvious dangerousness, moreover, this case would be a poor vehicle for determining the availability of individualized as-applied challenges to Section 922(g)(1). This Court should deny the petition for a writ of certiorari.

1. The court of appeals correctly held that Section 922(g)(1) is constitutional as applied to petitioner. At least as a general matter, the disarmament of convicted felons complies with the Second Amendment. Although some courts have suggested that Section 922(g)(1) could raise constitutional concerns in some unusual applications, the government recently addressed those concerns by re-establishing an administrative process through which convicted felons can regain their right to possess firearms. And petitioner has not shown that he would have been eligible for relief through that process or that Section 922(g)(1) otherwise raises any constitutional concerns as applied to him.

a. This Court has repeatedly indicated that the Second Amendment permits the disarmament of felons. In District of Columbia v. Heller, 554 U.S. 570 (2008), the Court stated that "nothing in [its] opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms," and it described such prohibitions as "presumptively lawful regulatory measures." Id. at 626-627 & n.26. In McDonald v. City of Chicago, 561 U.S. 742 (2010), a plurality repeated Heller's "assurances" concerning "such longstanding regulatory measures as 'prohibitions on the possession of firearms by felons.'" Id. at 786 (citation omitted). In NYSRPA v. Bruen, 597 U.S. 1 (2022), five Justices reiterated Heller's approval of "longstanding prohibitions on the possession of firearms by felons." Id. at 81 (Kavanaugh, J., joined by Roberts, C.J., concurring); see id. at 129 (Breyer, J.,

joined by Sotomayor and Kagan, J.J., dissenting). And in United States v. Rahimi, 602 U.S. 680 (2024), the Court repeated Heller's statement that laws disarming "felons" are "presumptively lawful." Id. at 699 (citation omitted).

Those statements accord with history and tradition. Death was "the standard penalty for all serious crimes" at the founding. Bucklew v. Precythe, 587 U.S. 119, 129 (2019) (citation omitted). American colonies imposed that penalty even for non-violent crimes such as counterfeiting, squatting on Indian land, burning timber intended for house frames, horse theft, and smuggling tobacco. See Stuart Banner, The Death Penalty: An American History 8 (2002). Under this Court's precedents, founding-era laws imposing capital punishment for serious crimes support the lesser restriction of disarmament imposed by Section 922(g)(1). Cf. Rahimi, 602 U.S. at 699 ("[I]f imprisonment was permissible to respond to the use of guns to threaten the physical safety of others, then the lesser restriction of temporary disarmament that Section 922(g)(8) imposes is also permissible.").

In addition, the founding generation recognized that disarmament could properly result from conviction even for certain non-capital crimes. During the Revolutionary War, legislatures disarmed persons convicted of various offenses.[1] At Pennsylvania's

[1] See, e.g., Resolutions of Sept. 1., 1775, reprinted in 1 Journals of the Provincial Congress, Provincial Convention, Committee of Safety and Council of Safety of the State of New-York 132 (1842) (furnishing provisions to the British army); Resolution of Mar. 13, 1776, reprinted in Journal of the Provincial Congress

convention to ratify the U.S. Constitution, Anti-Federalists proposed a bill of rights that, among other things, would have prohibited "disarming the people, or any of them, unless for crimes committed, or real danger of public injury from individuals." 2 The Documentary History of the Ratification of the Constitution 598 (Merrill Jensen ed., 1976) (emphasis added). "Given the Anti-Federalists' vehement opposition" to federal power, Adoptive Couple v. Baby Girl, 570 U.S. 637, 664 (2013) (Thomas, J., concurring), it is telling that even they accepted the disarmament of convicted criminals as consistent with the traditional right to bear arms. And in the early 1820s, Edward Livingston drafted influential penal codes that authorized the suspension and permanent forfeiture of certain rights, including the right to bear arms, as punishments for certain offenses. See Edward Livingston, System of Penal Law—Prepared for the State of Louisiana 26-28, 49, 73, 138 (1824); Edward Livingston, A System of Penal Law for the United States of America 19, 20, 40, 79, 126 (1828). Although those codes ultimately were not adopted, they received wide approval. See Elon H. Moore, The Livingston Code, 19 J. Am. Inst. Crim. L. & Criminology 344, 354, 355 (May 1928-Feb. 1929); see also Letter from John Marshall to Edward Livingston (Oct. 24,

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of South Carolina, 1776, at 77 (1776) (bearing arms against the Continental Congress); Act of Dec. 6, 1775, reprinted in The Public Records of the Colony of Connecticut From May, 1775 to June, 1776, inclusive 193 (Charles J. Hoadly ed., 1890) (seditious libel).

1825) (endorsing Livingston's proposal to impose the "deprivation of civil and political rights" as a punishment for crime).[2]

Section 922(g)(1) also fits within the broader principle that the Second Amendment permits legislatures to restrict the possession of firearms by dangerous individuals. Rahimi involved one aspect of that principle: restrictions based on a judicial finding that "an individual poses a clear threat of physical violence to another." 602 U.S. at 698. This case involves a different aspect of that principle: restrictions based on a legislative judgment that a "categor[y] of persons" poses "a special danger of misuse." Ibid.; see Gov't Br. at 22-27, Rahimi, supra (No. 22-915) (collecting historical examples of categorical restrictions); cf. Vidal v. Elster, 602 U.S. 286, 319 (2024) (Barrett, J., concurring in part) ("Congress is entitled to make categorical judgments, particularly where heightened scrutiny does not apply."). This Court has repeatedly recognized that persons who have been "convicted of serious crimes," as a class, can "be expected to misuse" firearms. Dickerson v. New Banner Institute, Inc., 460 U.S. 103, 119 (1983); see, e.g., Lewis v. United States, 445 U.S. 55, 67 (1980) (Section 922(g)(1) "keep[s] firearms away from potentially dangerous persons"). And more broadly, legislatures have long used felony convictions as a proxy for an individual's fitness to exercise a variety of legal rights. See, e.g. Hawker v. New York, 170 U.S. 189, 197 (1898).

[2] http://findingaids.princeton.edu/catalog/C0280_c3493

b. While this Court has described Section 922(g)(1) as "presumptively lawful," Heller, 554 U.S. at 627 n.26, some lower courts have suggested that the statute could raise constitutional concerns in some unusual applications. See pp. 13-14, infra. But Congress has addressed those concerns through 18 U.S.C. 925(c). Under that provision, a person who is disqualified from possessing firearms, including a person disqualified under Section 922(g)(1), "may make application to the Attorney General for relief from the disabilities." Ibid. "[T]he Attorney General may grant such relief" if the applicant shows that "the circumstances regarding the disability, and the applicant's record and reputation, are such that the applicant will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest." Ibid. A person whose application is denied may seek judicial review in federal district court. See ibid.

Before 2025, that statutory authority had been delegated to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). See United States v. Bean, 537 U.S. 71, 74 (2002). Since 1992, however, appropriations statutes have included provisos prohibiting ATF from using appropriated funds to act on Section 925(c) applications. See ibid. In combination, the delegation and the appropriations bar effectively suspended the Section 925(c) relief-from-disabilities program.

Recognizing that the appropriations bar applies only to ATF, the Attorney General recently issued an interim final rule withdrawing the delegation of authority to ATF to administer Section 925(c). See Withdrawing the Attorney General's Delegation of Authority, 90 Fed. Reg. 13,080 (Mar. 20, 2025). The Attorney General described the withdrawal of that delegation as an "appropriate first step"; the Department of Justice "anticipates future actions, including rulemaking consistent with applicable law, to give full effect to 18 U.S.C. 925(c) while simultaneously ensuring that violent or dangerous individuals remain disabled from lawfully acquiring firearms." Id. at 13,083; see ibid. ("[T]he specific contours of any new approach to the implementation of 18 U.S.C. 925(c) may be refined through rulemaking.").

By providing a mechanism through which convicted felons can regain their ability to possess firearms, Section 925(c) addresses any constitutional concerns about the breadth and duration of the restriction imposed by Section 922(g)(1). Section 925(c) also provides a more workable process for restoring firearms rights than would a court-administered regime of as-applied challenges. See Bean, 537 U.S. at 77 ("Whether an applicant is 'likely to act in a manner dangerous to public safety' presupposes an inquiry into that applicant's background -- a function best performed by the Executive, which, unlike courts, is institutionally equipped for conducting a neutral, wide-ranging investigation.").

c. The Section 925(c) process was not operative at the time of petitioner's offense conduct. Petitioner, however, has 11 previous felony convictions, including for drug crimes and for possessing a weapon as a felon. See pp. 2-3, supra. The district court also found that petitioner had "proven himself to be both dangerous and unable to abide by the law." Pet. App. A33. And in the episode that led to petitioner's Section 922(g)(1) conviction, petitioner punched and kicked his girlfriend, fired a gun at her, and then sought to flee from the police. See p. 2, supra. Petitioner accordingly cannot show that he would have been eligible for relief under Section 925(c), which asks whether "the circumstances regarding the disability, and the applicant's record and reputation, are such that the applicant will not be likely to act in a manner dangerous to public safety." 18 U.S.C. 925(c). Nor can petitioner plausibly argue that Section 922(g)(1) otherwise raises serious constitutional concerns as applied to him. Tellingly, although petitioner argues (Pet. 10-14) in the abstract that courts should entertain individualized as-applied challenges to Section 922(g)(1), he neither proposes a standard for resolving such challenges nor explains why he would meet that standard.

2. The question presented does not warrant this Court's review at this time. Although there is some disagreement among the courts of appeals about how to evaluate as-applied challenges to Section 922(g)(1), that disagreement is shallow; the recent

revitalization of the Section 925(c) process may resolve it; and petitioner's long criminal record makes this case a poor vehicle for addressing the question presented.

a. Since Rahimi, three courts of appeals -- the Fourth, Eighth, and Tenth Circuits -- have held that Section 922(g)(1) is not susceptible to case-by-case as-applied challenges. See Pet. App. A11; United States v. Hunt, 123 F.4th 697, 705-708 (4th Cir. 2024), petition for cert. pending, No. 24-6818 (filed Mar. 17, 2025); Vincent v. Bondi, 127 F.4th 1263, 1266 (10th Cir. 2025). Two more courts of appeals -- the Fifth and Sixth Circuits -- have left open the possibility of as-applied challenges. See United States v. Diaz, 116 F.4th 458, 469 (5th Cir. 2024) ("[s]imply classifying a crime as a felony" is insufficient for disarmament), petition for cert. pending, No. 24-6625 (filed Feb. 18, 2025); United States v. Williams, 113 F.4th 637, 657 (6th Cir. 2024) (Section 922(g)(1) "might be susceptible to an as-applied challenge in certain cases"). But neither court has yet actually held Section 922(g)(1) unconstitutional in any application; to the contrary, both courts have rejected many such claims.[3]

[3] See, e.g., United States v. Giglio, 126 F.4th 1039, 1042-1046 (5th Cir. 2025); United States v. Contreras, 125 F.4th 725, 729-733 (5th Cir. 2025); United States v. Bullock, No. 23-60408, 2024 WL 4879467, at *1 (5th Cir. Nov. 25, 2024); United States v. Collette, No. 22-51062, 2024 WL 4457462, at *2 (5th Cir. Oct. 10, 2024), petition for cert. pending, No. 24-6997 (filed Feb. 3, 2025); United States v. Morton, 123 F.4th 492, 496-500 (6th Cir. 2024); United States v. Parham, 119 F.4th 488, 495-496 (6th Cir. 2024); United States v. Goins, 118 F.4th 794, 797-805 (6th Cir. 2024); United States v. Fordham, No. 24-1491, 2025 WL 318229, at

Only the Third Circuit has, since Rahimi, found Section 922(g)(1) unconstitutional in any application. Specifically, in Range v. Attorney General United States, 124 F.4th 218 (2024), the en banc Third Circuit held Section 922(g)(1) unconstitutional as applied to a civil plaintiff with a nearly 30-year-old state misdemeanor conviction for understating his income on a food-stamp application. See 18 U.S.C. 921(a)(20)(B) (providing that Section 922(g)(1) extends to state offenses that are classified as misdemeanors if the offenses are punishable by more than two years of imprisonment). The Third Circuit described its decision as "narrow," emphasizing that the plaintiff had been "convicted of food-stamp fraud," that he had "completed his sentence," that his conviction was "[m]ore than two decades" old, that the "record contain[ed] no evidence that [he] pose[d] a physical danger to others," and that he had filed a civil suit seeking "protection from prosecution under § 922(g)(1) for any future possession of a firearm." Range, 124 F.4th at 232. The Third Circuit has upheld other applications of Section 922(g)(1), including to a felon with prior convictions for drug distribution, aggravated assault, and carrying a firearm without a license. See United States v. White, No. 23-3013, 2025 WL 384112, at *2 (3d Cir. Feb. 4, 2025).

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*4-*5 (6th Cir. Jan. 28, 2025); United States v. Garrison, No. 24-5455, 2024 WL 5040626, at *2 (6th Cir. Dec. 9, 2024); United States v. Vaughn, No. 23-5790, 2024 WL 4615853, at *2-*3 (6th Cir. Oct. 30, 2024).

Seeking to magnify the scope of the disagreement among the courts of appeals, petitioner argues (Pet. 21) that the Fourth and Eighth Circuits have held that felons are not among the "people" protected by the Second Amendment, but that other courts have rejected that argument. But the Fourth Circuit, in the case on which petitioner relies (Pet. 23), did not hold that the term "people" excludes felons; rather, it held that felons fall outside the Second Amendment's "scope" as defined by "historical tradition." Hunt, 123 F.4th at 705. Similarly, the Eighth Circuit in this case did not hold that felons fall outside the scope of the term "people"; rather, it held that Section 922(g)(1) is "consistent with the Nation's historical tradition of firearm regulation." Pet. App. A11. Regardless, the possibility that different courts of appeals have used different analytical paths to reach the same legal outcome does not establish a circuit conflict that merits certiorari. See Black v. Cutter Laboratories, 351 U.S. 292, 297 (1956) (This Court "reviews judgments, not statements in opinions.")

b. Any tension between the Third Circuit's decision in Range and the decisions of other circuits does not warrant this Court's review at this time. This Court has previously declined to grant review when faced with similar conflicts of authority. In 2017, this Court declined to review a decision in which the en banc Third Circuit had held Section 922(g)(1) unconstitutional as applied in narrow circumstances involving state misdemeanors. See

Binderup v. Attorney General, 836 F.3d 336 (2016), cert. denied, 582 U.S. 943 (2017). And last Term, the Court rejected the government's request for plenary review in Garland v. Range, 144 S. Ct. 2706 (2024), despite a similar, narrow disagreement among the circuits regarding the availability of as-applied challenges to Section 922(g)(1), see Pet. at 22-23, Range, supra (No. 23-374). The Court should likewise deny the petition for a writ of certiorari here.

In addition, any disagreement among the circuits is likely of limited prospective importance -- and may even evaporate entirely -- because of the Department of Justice's recent re-establishment of the Section 925(c) relief-from-disability program. Courts that have raised constitutional concerns about some of Section 922(g)(1)'s applications have suggested that making Section 925(c) operational would alleviate those concerns. See, e.g., Range, 124 F.4th at 230, 232 (objecting to "permanent" disarmament and concluding that the civil plaintiff was entitled to an opportunity to seek "protection" for "future possession of a firearm"); Williams, 113 F.4th at 661 ("Were the ATF program operational and funded, it might provide disarmed felons the chance required by the Second Amendment to make an individualized showing of qualification to keep and bear arms."). Because courts of appeals have not yet had the opportunity to consider the effect of Section 925(c) on the constitutional analysis, this Court's intervention is not yet warranted.

c. This case, at any rate, would be a poor vehicle for review because petitioner cannot show that he would be entitled to relief even under the Third Circuit's decision in Range. The plaintiff in Range filed a civil suit in which he "sought protection from prosecution * * * for any future possession of a firearm," 124 F.4th at 232; petitioner, by contrast, violated Section 922(g)(1) without first seeking to have the disability lifted. The record in Range "contain[ed] no evidence that [the civil plaintiff there] pose[d] a physical danger to others," ibid.; here, by contrast, the district court found that petitioner was "both dangerous and unable to abide by the law," Pet. App. A33. And while the civil plaintiff in Range had a decades-old conviction for a state-law misdemeanor, see 124 F.4th at 223, petitioner has 11 prior felony convictions, including for drug distribution and possessing a weapon as a felon, see Pet. App. A33. The Third Circuit has upheld Section 922(g)(1)'s application to a defendant with a criminal history similar to petitioner's. See White, 2025 WL 384112, at *2 (previous convictions for drug distribution, aggravated assault, and carrying a firearm without a license). This case accordingly does not implicate any conflict between the Third Circuit and other courts of appeals.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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APRIL 2025