No. 24-6517

In The Supreme Court of The United States

Edell Jackson,

Petitioner,

vs.

United States of America,

Respondent.

On Petition for Writ of Certiorari
To The United States Court of Appeals
For The Eighth Circuit

REPLY TO RESPONDENT'S BRIEF IN OPPOSITION TO THE PETITION FOR CERTIORARI

Daniel L. Gerdts
Counsel of Record for Petitioner
331 Second Avenue South, Suite 705
Minneapolis, Minnesota 55401
(612) 800-5086
daniel@danielgerdtslaw.com

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

OTHER AUTHORITIES

Argument In Reply

The Government's brief in opposition attempts to assure this Court that there is no need to resolve what it now calls "some disagreement" in the courts of appeals regarding whether 18 U.S.C. § 922(g)(1) is susceptible to individualized as-applied challenges. Brief in Opposition (BIO) at 5. Its new argument relies heavily on 18 U.S.C. § 925(c) and the "revitalization of an administrative process through which convicted felons can regain their ability to possess firearms." BIO at 5.

But the new characterization of circuit disagreement as "shallow," BIO at 12, is simply specious, and the Government's speculation that it "may even evaporate entirely" once the "relief-from-disability program" is given time to work, BIO at 16, is unavailing for obvious reasons discussed below.

A. The Split of Authority in the Lower Courts Requires this Court's Intervention.

Contrary to the Government's new position, the lower courts have observed that the "disagreement" regarding the susceptibility of Section 922(g)(1) to as-applied challenges is anything but shallow: "perhaps 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, Circuit Judge, dissenting from the grant of rehearing en banc) (cleaned up). And contrary to the argument in opposition,

the lower courts frankly wish this Court would have taken up the issue last Term, rather than pushing it down the road: "The Supreme Court should have granted one or more of those cases, and this case illustrates why." *Id*.

The Government's supplemental briefing to this Court just ten months ago, filed in five of those cases from the Third, Eighth, and Tenth Circuits, took the opposite view from the argument it now makes:

> Section 922(g)(1)'s constitutionality has divided courts of appeals and district courts. . . . And given the frequency with which the government brings criminal cases under Section 922(g)(1), the substantial costs of prolonging uncertainty about the statute's constitutionality out-weigh any benefits of further percolation.
> . . . .
> [T]he present conflict is unlikely to resolve itself without further intervention by this Court. And the costs of deferring this Court's review would be substantial: Disagreement about Section 922(g)(1)'s constitutionality has already had widespread and disruptive effects.

Supplemental Brief for the Federal Parties, *Jackson* v. *United States,* 23-6170, at 2-3, 5.

B. Section 925(c) Cannot Effectively Restore the Right to Possess Firearms by Convicted Felons.

The Government's argument that its new rule change will "revitalize" Section 925(c) and restore the opportunity for felons to re-arm themselves is as myopic as is the proposed rule change itself. Section 925(c), by its express terms, only permits "relief from the disabilities imposed by Federal laws." That

is no relief at all for the majority of the population who live in states that also impose indefinite prohibitions on the possession of firearms by felons.[1]

In contrast, a judicial finding that dispossession under Section 922(g)(1) as applied to a particular individual violates her Second Amendment rights would apply fully and equally to her state's own statutory dispossession because the Second Amendment applies equally to the states through the Fourteenth Amendment. *McDonald v. City of Chicago, Ill.*, 561 U.S. 742, 791 (2010). The "incorporated Bill of Rights protections are all to be enforced against the States . . . according to the same standards that protect those personal rights against federal encroachment." *Ibid.*, at 765 (cleaned up). Therefore, even if an authentic remedy for federal firearms dispossession really did arise from the dormant shell of Section 925(c), it would not replace as-applied Second Amendment challenges to firearms dispossession in the federal courts, nor would it diminish the need for this Court to resolve the split of authority that effectively prohibits such challenges in significant parts of the country, while permitting them elsewhere.

---

[1] *See, e.g.,* Ariz. Rev. Stat. § 13-904(A)(5); Cal. Penal Code § 29800(a)(1); Colo. Rev. Stat. § 18-12-108(1); Conn. Gen. Stat. § 53a-217c(a); 11 DE Code § 1448(a)(1); Fla. Stat. § 790.23(1); HI Rev. Stat. § 134-7(b); IA Code § 724.26(1); KS Stat § 21-6304(1); 15 ME Rev. Stat. § 393; MD Public Safety Code §§ 5-133, 5-101(g)(2); Minn. Stat. § 624.713, subd. (1)(10)(i); Mo. Rev. Stat. § 571.070(1)(1); Neb. Rev. Stat. § 28-1206(1)(a)(i); Nev. Rev. Stat. § 202.360(1)(b); N.Y. Penal Law § 400.00(1)(c); NC Gen. Stat. § 14-415.1; 21 OK Stat. § 1283(A); SC Code 16-23-500(A); UT Code § 76-10-503(2); VA Code § 18.2-308.2(A); W. Va. Code § 61-7-7(a)(1); Wyo. Stat. § 6-8-102(a).

What is more, the Government's reliance on Section 925(c) is rank speculation at present, as the "specific contours" of its implementation remain to be seen. BIO at 11; *see also* Withdrawing the Attorney General's Delegation of Authority, 90 Fed. Reg. 13,080, 13,082 (March 20, 2025) ("the Department has begun that review process in earnest and will provide the President with a plan as required by Order 14206"); *Ibid*., at 13,083 ("the Department anticipates future actions, including rulemaking consistent with applicable law, to give full effect to 18 U.S.C. 925(c)." And this Court highly disfavors speculation as the basis for its decisions. *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 454 (2008). What is *not* speculation is that Section 925(c) provides only an administrative stop on the way to the judicial review that it also expressly authorizes.

While the potential for administrative relief certainly should be relevant to the analysis of the first metric identified in *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022) (whether modern and historical regulations impose a comparable burden on the right of armed self-defense), the Eighth Circuit did not even discuss the first metric in its decision below, apparently finding no need. *See*, Petitioner's Appendix, at A-100 (Stras, J., dissenting from denial of rehearing *en banc*) ("*Jackson II* . . . makes no attempt to explain how the burden imposed by the felon-in-possession statute, which lasts for a lifetime, is comparable to any of the Founding-era laws it discusses"). Therefore, even if the potential for administrative relief were not merely

illusory, it is hard to fathom how it might improve the availability and breadth of judicial review of such cases arising within the geographic jurisdiction of the Eighth Circuit.

From all the above, one conclusion is certain: § 925(c) does not resolve the circuit split of authority regarding as-applied challenges. At best, it merely adds an administrative hearing before arriving at the same crossroads of geographic happenstance. Litigants in the Fourth, Eighth, and Tenth Circuits (like Mr. Jackson) are forbidden even from bringing an as-applied challenge to 18 U.S.C. § 922, while those in the Third, Fifth, and Sixth Circuits are free to do so. The enforcement of fundamental constitutional rights cannot be contingent on geography, and this Court's intervention therefore is immediately warranted.

C. This Case is an Excellent Vehicle to Resolve the Split of Authority.

Last Term, the Government not only conceded that the circuit split on this issue warranted the Court's plenary review, it also specifically recommended this very case as a vehicle to resolve that split:

> This Court should also grant the petition for a writ of certiorari in *Jackson*. The petitioner in that case has previous felony convictions for non-violent drug crimes. . . . As discussed above, the Ninth Circuit and multiple district courts have struck down Section 922(g)(1) in cases involving drug offenders. . . . Granting review in *Jackson* would enable this Court to review those holdings—and to address one of the most common and most important contexts in which the government seeks to enforce Section 922(g)(1).

Supplemental Brief for the Federal Parties, *Jackson* v. *United States,* 23-6170, at 7. Mr. Jackson agrees.

In its most recent filing, the Government now argues that the petition should be denied "because petitioner cannot show that he would be entitled to relief." BIO, at 17. Once again, as stressed by Judge Stras in his first dissent from the denial of *en banc* rehearing in the Eighth Circuit, the Government erroneously seeks to place the burden on Mr. Jackson to show that he is entitled to relief. *See* Petitioner's Appendix, at A-92, n.1.

This Court, however, has been clear that Mr. Jackson's bearing of a firearm is *presumptively protected* by the Second Amendment. *Bruen*, 597 U.S. at 17. For the Section 922(g)(1) prohibition to be lawful as applied to Mr. Jackson, "the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation. Only if a firearm regulation is consistent with this Nation's historical tradition may a court conclude that the individual's conduct falls outside the Second Amendment's 'unqualified command.'" *Ibid.*[2]

The Government's brief in opposition makes no attempt to carry that burden in this case, apparently content to argue that it is Petitioner's contrary

[2] Of course, the first question raised by the Petition in this case, and the one that most divides the circuits, is whether Section 922(g)(1) is susceptible to as-applied constitutional challenges at all. The Fourth, Eighth, and Tenth Circuits have decided that such felony-by-felony litigation is unnecessary – in contrast with at least the Third, Fifth, and Sixth Circuits.

duty. It cited the district court's comments[3] regarding Mr. Jackson's criminal record and its conclusion that "[a]lthough his prior felonies were nonviolent, they involved dangerous conduct." Petitioner's Appendix, at A-33. It is precisely the nature of Petitioner Jackson's non-violent criminal history – consisting of small-time drug distribution and possession offenses, and the non-violent possession of a firearm – that makes this case an ideal vehicle for providing the required guidance to resolve whether firearm dispossession is constitutionally justified in individual cases with the same or similar (extremely common) conviction records.[4]

The Government's brief in opposition fails to identify even a single analogous prohibition at the founding. Indeed, there were no laws at the founding that even prohibited the possession of the cocaine that Mr. Jackson was convicted of possessing and distributing. The Government's argument that Mr. Jackson is not entitled to the relief sought is unavailing.

---

[3] Those comments also improperly shifted the burden to Mr. Jackson on the basis that felon dispossession laws were "presumptively constitutional."

[4] The Government's Brief in Opposition also repeats the false claim that Mr. Jackson assaulted and fired a gun at his girlfriend on the day he was arrested. BIO, at 2. That claim, of course, was officially withdrawn and corrected by the girlfriend (*see* District Court Docket, *United States v. Jackson*, 21-cr-051-DWF-TNL, Doc. 84, at 7-8), and therefore was not relied on by the district court in its findings below.

Conclusion

For the foregoing reasons, Petitioner respectfully reiterates his request that the Court grant this petition for certiorari.

Dated: 24 April 2025

Respectfully submitted,

/s/ *Daniel L. Gerdts*

Daniel L. Gerdts
Counsel of Record
331 Second Avenue South
Suite 705
Minneapolis, MN 55401
(612) 800-5086
daniel@danielgerdtslaw.com