

No. 24-7188

IN THE SUPREME COURT OF THE UNITED STATES

XZAVIER JUSTIN LEE CLARK, 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 RESPONDENT IN OPPOSITION

D. JOHN SAUER
Solicitor General
Counsel of Record

MATTHEW R. GALEOTTI
Acting Assistant Attorney General

ANN O'CONNELL ADAMS
Attorney

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 or as applied to petitioner.

IN THE SUPREME COURT OF THE UNITED STATES

No. 24-7188

XZAVIER JUSTIN LEE CLARK, 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 RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. a11-a13) is reported at 124 F.4th 1109. The order of the district court (Pet. App. a1-a9) is available at 2023 WL 12007029.

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 4, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

In 2019, a grand jury in the U.S. District Court for the Southern District of Iowa 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)(2). See Pet. App. a1. Petitioner pleaded guilty, and the court sentenced him to 120 months of imprisonment. See id. at a1-a2. The Eighth Circuit affirmed. See id. at a2.

Petitioner later filed a motion under 28 U.S.C. 2255 to vacate, set aside, or correct his sentence, arguing (as relevant here) that Section 922(g)(3) violates the Second Amendment on its face and as applied to him. See Pet. App. a2. The district court rejected petitioner's Second Amendment claims and denied his motion. See id. at a1-a9.

The Eighth Circuit affirmed. See Pet. App. a11-a13. Citing circuit precedent, the court rejected petitioner's facial challenge. See id. at a12 (citing United States v. Veasley, 98 F.4th 906, 918 (8th Cir.), cert. denied, 145 S. Ct. 304 (2024)). The court then concluded that petitioner's guilty plea foreclosed him from raising his as-applied challenge on collateral review. See id. at a12-a13.

ARGUMENT

Petitioner renews his contention (Pet. 5-11) that Section 922(g)(3) violates the Second Amendment on its face and as applied

to him. The court of appeals correctly rejected his facial challenge, and its decision does not conflict with any decision of this Court or of any other court of appeals. Petitioner's as-applied claim does not warrant this Court's review given petitioner's failure to challenge the court of appeals' determination that petitioner's relinquished that claim. The petition for a writ of certiorari should be denied.

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)(3) 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 in at least "some," if not all, "of its applications." Rahimi, 602 U.S. at 693. That ends the facial challenge.

Petitioner's facial challenge does not warrant further review. The three courts of appeals to consider the question since New York State Rifle & Pistol Ass'n v. Bruen, 597 U.S. 1 (2022) -- the Third, Fifth, and Eighth Circuits, have determined that Section 922(g)(3) does not violate the Second Amendment on its face and has at least some valid applications. See United States v. Harris, No. 21-3031, 2025 WL 1922605, at *5-*8 (3d Cir. July 14, 2025); Connelly, 117 F.4th at 280-282 (5th Cir.); Veasley, 98 F.4th at 918 (8th Cir.). 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).

2. 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). The United States also has asked the Court to hold other petitions for writs of certiorari pending the resolution of Hemani because they present as-applied challenges to Section 922(g)(3). See Pet. at 3-4, United States v. Cooper, No. 24-1247 (filed June 5, 2025); Pet. at 4-5, United States v. Daniels, No. 24-1248 (filed June 5, 2025); Pet. at 3, United States v. Sam, No. 24-1249 (filed June 5, 2025); Pet. at 3-5, United States v. Baxter, No. 24-1328 (filed June 27, 2025).

That course is not warranted here, however, because petitioner has not challenged the court of appeals' conclusion that his guilty plea precluded him from raising his as-applied challenge on collateral review. See Pet. App. a12-a13. This Court has generally denied, rather than held, petitions for writs of certiorari where procedural obstacles have stood in the way of the petitioners' Second Amendment claims. See, e.g., Trammell v. United States, 145 S. Ct. 561 (2024) (No. 24-5723); Chavez v. United States, 145 S. Ct. 459 (2024) (No. 24-5639); Dorsey v. United States, 145 S. Ct. 457 (2024) (No. 24-5623).

Petitioner, moreover, has not asked this Court to review the procedural holding underpinning the court of appeals' decision.

The question presented (Pet. i) addresses the merits but does not mention the threshold procedural issue the court of appeals identified regarding petitioner's guilty plea. See Sup. Ct. R. 14.1(a) ("Only the questions set out in the petition, or fairly included therein, will be considered by the Court."); Yee v. City of Escondido, 503 U.S. 519, 535 (1992) ("[W]e ordinarily do not consider questions outside those presented in the petition for certiorari."). And though petitioner briefly disputes the procedural conclusion in the body of his petition for a writ of certiorari (at 11), he does not argue that the procedural issue independently warrants this Court's review. Nor does petitioner address other procedural obstacles, such as his failure to raise his current claim on direct review.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

D. JOHN SAUER
Solicitor General

MATTHEW R. GALEOTTI
Acting Assistant Attorney General

ANN O'CONNELL ADAMS
Attorney

AUGUST 2025