

No. 25-5220

IN THE SUPREME COURT OF THE UNITED STATES

JONATHAN R. HOWARD, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH 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," may be applied to petitioner consistent with the Second Amendment.

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OPINION BELOW

The opinion of the court of appeals (Pet. App. a1-a2) is available at 2025 WL 1233521.

JURISDICTION

The judgment of the court of appeals was entered on April 29, 2025. The petition for a writ of certiorari was filed on July 25, 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 Northern District of Texas, petitioner was convicted of

possessing a firearm following a felony conviction, in violation of 18 U.S.C. 922(g)(1). Pet. App. a25. He was sentenced to 120 months of imprisonment and three years of supervised release. Id. at a26. The court of appeals affirmed. Id. at a1-a2.

1. In February 2023, officers from the Fort Worth Police Department responded to a shooting at a residence. Presentence Investigation Report (PSR) ¶ 7. They encountered a victim with a gunshot wound to the abdomen and transported her to the hospital. Ibid. Officers observed bullet holes in the victim's fence and found shell casings in petitioner's backyard, which was across an alley from the victim's home. PSR ¶ 8. Petitioner told police that he had been at a convenience store before speaking to them and denied hearing gunshots or shooting a gun, although he admitted that a firearm was in his house. PSR ¶ 9. Petitioner, who was on parole, gave police permission to retrieve the firearm from his home and claimed that his girlfriend had purchased it eight years ago. PSR ¶¶ 9-10. Officers searched petitioner's home and vehicle and found multiple additional firearms, ammunition, and drugs. PSR ¶¶ 11-12. At the time, petitioner had sustained prior felony convictions for drug trafficking. PSR ¶¶ 17-18, 50-51.

2. A federal grand jury in the Northern District of Texas indicted petitioner on one count of possessing a firearm following a felony conviction, in violation of 18 U.S.C. 922(g)(1). Indictment 1-2. Petitioner moved to dismiss the indictment, arguing that Section 922(g)(1) violates the Second Amendment. See

Pet. App. a8-a11. The district court denied that motion, see D. Ct. Doc. 21 (Apr. 28, 2023), and petitioner pleaded guilty, Pet. App. a25.

3. The court of appeals affirmed. Pet. App. a1-a2. The court determined that petitioner's facial Second Amendment challenge to Section 922(g)(1) was foreclosed by circuit precedent. Id. at a2 (citing United States v. Contreras, 125 F.4th 725, 729 (5th Cir. 2025)). It further determined that petitioner's "unpreserved as-applied challenge fails on plain error review" because he had not shown that applying Section 922(g)(1) based on a prior drug-trafficking conviction amounts to a clear or obvious error. Ibid. (citing United States v. Jones, 88 F.4th 571, 573-574 (5th Cir. 2023) (per curiam), cert. denied, 144 S. Ct. 1081 (2024); United States v. Cisneros, 130 F.4th 472, 476-477 (5th Cir. 2025) (per curiam)).

ARGUMENT

Petitioner renews his contention (Pet. 6-13) that Section 922(g)(1) violates the Second Amendment as applied to him. As the court of appeals correctly observed, Pet. App. a2, petitioner failed to raise an as-applied challenge in the district court. Petitioner resists that determination (Pet. 11-12), arguing that he never labeled his challenge as facial or as-applied, and that a facial challenge necessarily includes an as-applied challenge as to all people, including himself. The court should reject that argument, as petitioner's motion to dismiss contains no as-applied

Second Amendment challenge that discusses his specific circumstances. Pet. App. a8-a11. Throughout the time that United States v. Rahimi, 602 U.S. 680 (2024), was pending and after it was decided, this Court consistently denied petitions raising Second Amendment challenges to Section 922(g)(1) when the petitioners failed to preserve their claims in the lower courts. 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). The Court should follow the same course here.

In any event, for the reasons set out in the government's brief opposing certiorari in Vincent v. Bondi, No. 24-1155 (Aug. 11, 2025), the contention that Section 922(g)(1) violates the Second Amendment as applied to petitioner does not warrant this Court's review. Although there is some disagreement among the courts of appeals regarding whether Section 922(g)(1) is susceptible to individualized as-applied challenges, that disagreement is shallow. See Br. in Opp. at 11-14, Vincent, *supra* (No. 24-1155). This Court has previously denied plenary review when faced with similarly narrow disagreements among the circuits about the availability of as-applied challenges to Section 922(g)(1). See *id.* at 13-14. And any disagreement among the circuits 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 8-11, Vincent, supra (No. 24-1155).

Moreover, Section 922(g)(1) does not raise any constitutional concerns as applied to petitioner. As petitioner recognizes (Pet. 12-13), he was on parole when he violated Section 922(g)(1). See PSR ¶¶ 9, 50. Every court of appeals to consider the question has accepted Section 922(g)(1)'s validity as applied to a convicted felon who is still on parole or another form of supervision. See United States v. Quailles, 126 F.4th 215, 221-224 (3d Cir. 2025), cert. denied, No. 24-7033 (Oct. 6, 2025); United States v. Moore, 111 F.4th 266, 272 (3d Cir. 2024), cert. denied, 145 S. Ct. 2849 (2025); 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); see also Range v. Attorney General, 124 F.4th 218, 232 (3d Cir. 2024) (en banc) (emphasizing that the challenger had "completed his sentence").

Moreover, petitioner possessed a firearm in this case after having sustained felony convictions for drug trafficking. PSR ¶¶ 50-51. Given his 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"); United States v. White, No. 23-3013, 2025 WL 384112, at *2 (3d Cir. Feb. 4, 2025)

(rejecting an as-applied challenge brought by a felon with a previous conviction for, inter alia, drug distribution), cert. denied, 145 S. Ct. 2805 (2025).*

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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OCTOBER 2025

* A copy of the government's brief in opposition in Vincent is being served on petitioner.