

No. 25-5259

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IN THE SUPREME COURT OF THE UNITED STATES

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ANTONIO MARSHALL, PETITIONER

v.

UNITED STATES OF AMERICA

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

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BRIEF FOR THE UNITED STATES IN OPPOSITION

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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

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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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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-2a) is available at 2025 WL 1397406. The opinion and order of the district court (Pet. App. 3a-4a) is available at 2024 WL 584037.

JURISDICTION

The judgment of the court of appeals was entered on May 14, 2025. The petition for a writ of certiorari was filed on July 28, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

## STATEMENT

Following a conditional guilty plea in the United States District Court for the District of South Dakota, petitioner was convicted of possessing a firearm following a felony conviction, in violation of 18 U.S.C. 922(g)(1). Judgment 1. He was sentenced to 26 months of imprisonment, to be followed by three years of supervised release. Id. at 2-3. The court of appeals affirmed. Pet. App. 1a-2a.

1. In August 2023, while petitioner was on supervised release, the Probation Office received information that he had threatened someone by sending a text message and a photo of a firearm. Presentence Investigation Report (PSR) ¶ 5. The Probation Office coordinated with the Rosebud Sioux Tribe to search petitioner's home, and during that search officers located a short-barreled shotgun under petitioner's mattress and ammunition through his bedroom. Ibid. Petitioner's criminal record included prior felony convictions for conspiring to distribute a controlled substance and possessing a firearm as a prohibited person. Ibid.

2. A federal grand jury in the District of South Dakota indicted petitioner on one count of possessing a firearm following a felony conviction, in violation of 18 U.S.C. 922(g)(1). Pet. App. 1a. Petitioner moved to dismiss the indictment, arguing that Section 922(g)(1) violates the Second Amendment facially and as applied to him. Id. at 1a-2a; D. Ct. Doc. 21 (Feb. 12, 2024). The district court denied that motion, Pet. App. 3a-4a, and

petitioner pleaded guilty while reserving his right to appeal, id. at 2a.

3. The court of appeals affirmed, rejecting petitioner's contention that Section 922(g)(1) violates the Second Amendment facially or as applied to him. Pet. App. 1a-2a. The court held that petitioner's challenge was foreclosed by circuit precedent. Id. at 2a (quoting United States v. Cunningham, 114 F. 4th 671, 675 (8th Cir. 2024); United States v. Jackson, 110 F.4th 1120, 1126 (8th Cir. 2024), cert. denied, 145 S. Ct. 2708).

#### ARGUMENT

Petitioner renews his contention (Pet. 15-20) that Section 922(g)(1) violates the Second Amendment as applied to him. 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 reestablishment 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 noted, petitioner was on supervised release when he violated Section 922(g)(1). See PSR ¶¶ 5, 33. 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").

Additionally, petitioner possessed a firearm in this case after having sustained felony convictions for theft, cocaine trafficking, and possessing a firearm as a prohibited person. PSR ¶¶ 32-33. 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 previous convictions for, inter alia, drug distribution and a firearm offense), cert. denied, 145 S. Ct. 2805 (2025); United States v. Morgan, 147 F.4th 522, 528 (5th Cir. 2025) (rejecting an as-applied challenge by a felon with a prior state felony conviction for illegal use of weapons).\*

#### 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

OCTOBER 2025

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