

No. 25-5327

IN THE SUPREME COURT OF THE UNITED STATES

ANDREW RAPHAEL REESE, PETITIONER

v.

UNITED STATES OF AMERICA

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

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

D. JOHN SAUER
Solicitor General
Counsel of Record
Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

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Petitioner contends (Pet. 6-12) that 18 U.S.C. 922(g)(1) violates the Second Amendment on its face and as applied to him. For the reasons set out in the government's brief opposing certiorari in French v. United States, 145 S. Ct. 2309 (2025), the contention that Section 922(g)(1) is facially unconstitutional does not warrant this Court's review. See ibid. (denying certiorari). As the government explained in French, that contention plainly lacks merit, and every court of appeals to consider the issue since United States v. Rahimi, 602 U.S. 680 (2024), has determined that the statute has at least some valid

applications. See Br. in Opp. at 3-6, French, supra (No. 24-6623).

Similarly, 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).

As petitioner appears to recognize, this case would be a poor vehicle for review. He instead contends (Pet. 5) that the Court should grant certiorari in Vincent, "rule that § 922(g)(1) is unconstitutional on its face or in some applications," and then grant his petition and "afford [him] the benefit of its new Second Amendment ruling." But for the reasons given in the government's brief in Vincent, that case does not warrant review. Regardless,

even a decision in favor of the petitioner in Vincent would not necessarily help petitioner here. Unlike the civil plaintiff in that case, petitioner did not comply with the law while challenging Section 922(g)(1) in a civil action. Instead, he knowingly violated the law by possessing a firearm and then raised a Second Amendment defense after he was caught and criminally prosecuted.

Additionally, as petitioner acknowledges (Pet. 2), petitioner was on supervised released when he violated Section 922(g)(1). 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 has sustained multiple prior felony drug convictions and, in fact, possessed a firearm in this case while taking part in a drug transaction. Presentence Investigation Report ¶¶ 8-9, 13, 58-59. 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).

The petition for a writ of certiorari should be denied.*

Respectfully submitted.

D. JOHN SAUER
Solicitor General

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* Copies of the government's briefs in opposition in French and Vincent are being served on petitioner. The government waives any further response to the petition for a writ of certiorari unless this Court requests otherwise.