No. 25-5514

IN THE
SUPREME COURT OF THE UNITED STATES

JOSEPH LEE BETANCOURT,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Fifth Circuit

SUPPLEMENTAL BRIEF FOR PETITIONER

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SUPPLEMENTAL BRIEF FOR PETITIONER

This case is one of many that raises the question whether 18 U.S.C. § 922(g)(1) violates the Second Amendment. There is no dispute that petitioner's case cleanly presents that question in both a facial and as-applied posture. Pet. 3–4; Mem in Opp. 1. The parties also agree that the courts of appeals have reached conflicting results when confronted with as-applied Second Amendment challenges to Section 922(g)(1), with at least six holding the statute categorically valid as to all modern felons, and at least three holding the statute vulnerable to invalidation as applied to limited subsets of felons with certain types of predicate crimes, Pet. 7–13; U.S. Br. in Opp. 3, 11–13, *Vincent v. Bondi*, No. 24-1155 (Aug. 11, 2025) (*Vincent* BIO).[*] One of the government's primary rationales for nevertheless taking the position that this acknowledged circuit split is "shallow" and undeserving of review "at this time," Mem in Opp. 2; *Vincent* BIO 11–14, is that, of the three circuits that entertain as-applied challenges, "[o]nly the Third Circuit has, after *Rahimi*, found Section 922(g)(1) unconstitutional in any application," whereas the Fifth and Sixth Circuits both "have left open th[at] possibility" but "ha[ve] [not] yet actually held Section 922(g)(1) invalid in any application." *Vincent* BIO 12–13.

In his reply brief, petitioner refuted the contention that this made the question presented any less worthy of review, or the need for this Court's intervention any less pressing. Reply Br. 2–3 (Nov. 19, 2025). Pertinent here, petitioner emphasized that the circuit conflict over the question presented is materially similar, in both scope and dimension, to the circuit split that has likewise persisted and further developed after *Rahimi* respecting the

[*] The government's memorandum in opposition incorporated the "reasons set out in [its] brief opposing certiorari in" *Vincent*. Mem in Opp. 2.

as-applied validity of a neighboring provision, 18 U.S.C. § 922(g)(3), and that the government rightly characterized as "multi-sided," "growing," and "deep" in successfully urging the Court to take up that issue for plenary review. Reply Br. 3 (quoting Reply Brief for the Petitioner at 7-8, *United States v. Hemani*, No. 24-1234 (Aug. 5, 2025)). He also contended that the Court's grant of review in *Hemani* made the case for taking up the as-applied validity of Section 922(g)(1) even stronger, given that the government has consistently proffered an identical historical tradition as justification for its view that both statutes comport with the Second Amendment in all applications. Reply Br. 4–5.

Two days after petitioner submitted his reply brief, the Fifth Circuit became the second circuit, joining the Third Circuit in *Range v. Att'y Gen.*, 124 F.4th 218 (3d Cir. 2024) (en banc), to hold Section 922(g)(1) unconstitutional as applied to an individual defendant. *See United States v. Mitchell*, No. 24-60607, 2025 WL 3251467, at *1 (5th Cir. Nov. 21, 2025). As petitioner has noted (Pet. 6–7, 11–13; Reply Br. 3), and the government nowhere disputes, the Fifth Circuit has adopted a multi-faceted analysis that diverges in several ways from the as-applied standards the Third and Sixth Circuits have adopted post-*Rahimi*. *See Mitchell*, 2025 WL 3251467, at *6–*11 (detailing the Fifth Circuit's post-*Rahimi* precedents, and specifically distinguishing (at *11) its standard from those of the Third and Sixth Circuits). Applying that analysis, *Mitchell* invalidated Section 922(g)(1)'s application as to a defendant whose sole predicate felony consisted of a conviction under Section 922(g)(3) for possessing a firearm as an unlawful user of controlled substances—specifically, a "habitual marijuana user." *Id.* at *11–*19. A detailed discussion of the court's reasoning is beyond the scope of this brief. It suffices to say that the court of appeals concluded that,

"[u]nder *Bruen*, our Nation's historical tradition of using intoxication laws to prohibit carrying firearms while presently intoxicated does not support permanent disarmament of a marijuana user who was not presently intoxicated while in possession of a firearm"—either at the time of either the prior Section 922(g)(3) offense, or at the time of the conduct that led to the challenged Section 922(g)(1) prosecution. *Id.* at *18.

By "hold[ing] that Section 922(g)(1) is unconstitutional as applied to" a defendant with a predicate conviction for nonviolent conduct that would not have resulted in permanent arms forfeiture at or near the time of the founding, *ibid.*, *Mitchell* undermines the government's claim that the question presented is presently unworthy of review because "[o]nly the Third Circuit ha[d], since *Rahimi*, found [the statute] unconstitutional in any application." *Vincent* BIO 13. Now, multiple circuits have held the statute unconstitutional as applied to separate defendants with nonviolent predicate crimes involving distinct types of modern felonious conduct—fraud, and firearm possession by a habitual-but-not-intoxicated user of controlled substances. And those circuits have done so under rationales that both courts acknowledge as at odds with one another. *See Mitchell*, 2025 WL 3251467, at *11, *13 (distinguishing *Range*'s as-applied standard as "allow[ing] courts to examine a defendant's *entire* record, including misdemeanors, to make a dangerousness assessment," whereas the Fifth Circuit limits the as-applied analysis to the conduct underlying a defendant's prior felony convictions (original emphasis)). That *Mitchell* held Section 922(g)(1) invalid as to a defendant with a Section 922(g)(3) conviction, moreover, reinforces that taking up and reviewing the question presented now, while simultaneously reviewing the validity of as-applied Second Amendment challenges to the latter statute in *Hemani*, makes good sense.

The lower courts continue to struggle in their efforts to come up with a consistent and predictable methodology for analyzing the constitutionality of Section 922(g)(1) under *Bruen*'s comparative-historical inquiry. *Mitchell* only serves as further proof that the circuits' deep confusion and entrenched disagreement on this important question will persist until this Court intervenes. The Court should grant Mr. Betancourt's petition.

Respectfully submitted,

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