

IN THE SUPREME COURT OF THE UNITED STATES

LESTER LANDRUM, 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

D. JOHN SAUER
Solicitor General
Counsel of Record

A. TYSEN DUVA
Assistant Attorney General

ANDREW W. LAING
Attorney

Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

QUESTIONS PRESENTED

1. Whether 18 U.S.C. 922(g)(1), the federal statute that prohibits a person from possessing a firearm in interstate or foreign commerce if he has been convicted of "a crime punishable by imprisonment for a term exceeding one year," violates the Second Amendment on its face or as applied to petitioner.

2. Whether 18 U.S.C. 922(g)(1) exceeds Congress's authority under the Commerce Clause.

IN THE SUPREME COURT OF THE UNITED STATES

No. 25-7530

LESTER LANDRUM, 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

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-6a) is reported at 168 F.4th 771. The order of the district court is available at 2024 WL 4806486.

JURISDICTION

The judgment of the court of appeals was entered on March 5, 2026. The petition for a writ of certiorari was filed on June 2, 2026. 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 Southern District of Mississippi, petitioner was convicted of possessing a firearm as a felon, in violation of 18 U.S.C. 922(g)(1). Pet. App. 2a. He was sentenced to 74 months of imprisonment, to be followed by three years of supervised release. Id. at 2b-3b. The court of appeals affirmed. Id. at 6a.

1. In October 2023, law-enforcement agents twice successfully arranged to have a confidential informant buy crack cocaine from petitioner. Presentence Investigation Report (PSR) ¶¶ 11-16. Agents searched petitioner's house pursuant to a search warrant and found cocaine, marijuana, a money counter, scales, gang paraphernalia, and a revolver. PSR ¶ 17. Petitioner was arrested, and he acknowledged during an interview with law-enforcement agents that the cocaine and revolver belonged to him. PSR ¶¶ 18. Petitioner had three previous felony convictions: one for selling cocaine, one for selling marijuana, and one for driving under the influence. PSR ¶¶ 37-44. At the time of his arrest, petitioner was serving a term of probation in connection with his driving-under-the-influence conviction. Pet. App. 2a; PSR ¶ 44.

2. A grand jury indicted petitioner on one count of possessing cocaine with the intent to distribute it, in violation of 21 U.S.C. 841, and one count of possessing a firearm as a felon, in violation of 18 U.S.C. 922(g)(1). Indictment 1. Petitioner moved to dismiss the Section 922(g)(1) count, contending that the

statute violates the Second Amendment on its face and as applied to petitioner and that the statute exceeds Congress's Commerce Clause authority. 2024 WL 4806486, at *1. The district court denied petitioner's motion, noting that petitioner's facial Second Amendment claim and Commerce Clause claim were foreclosed by binding circuit precedent, and rejecting petitioner's as-applied Second Amendment claim given his drug-distribution convictions. Id. at *1-*2. Petitioner then pleaded guilty pursuant to a plea agreement that preserved his ability to challenge the district court's decision on direct appeal. Plea Agreement 1, 3.

3. The Fifth Circuit affirmed. Pet. App. 1a-6a. The court rejected petitioner's facial and as-applied Second Amendment claims, as well as his Commerce Clause claim, based on circuit precedent. Id. at 2a & n.1 (citing United States v. Diaz, 116 F.4th 458 (5th Cir. 2024), cert. denied, 145 S. Ct. 2822 (2025); United States v. Kimble, 142 F.4th 308 (5th Cir. 2025), cert. denied, No. 25-5747 (Jan. 20, 2026); United States v. Giglio, 126 F.4th 1039 (5th Cir. 2025); United States v. Alcantar, 733 F.3d 143 (5th Cir. 2013)).

ARGUMENT

Petitioner renews his contentions (Pet. 6-17) that Section 922(g)(1) violates the Second Amendment both on its face and as applied to him and that it exceeds Congress's authority under the Commerce Clause. The court of appeals correctly rejected those contentions, and its decision does not conflict with any decision

of this Court or any other court of appeals. The petition for a writ of certiorari should be denied.

1. Petitioner first contends (Pet. 7-9) that Section 922(g)(1) violates the Second Amendment on its face. 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)(1) plainly has at least some valid applications. This Court has repeatedly recognized the validity of “longstanding prohibitions on the possession of firearms by felons,” Wolford v. Lopez, 146 S. Ct. 2032, 2042 (2026) (quoting District of Columbia v. Heller, 554 U.S. 570, 626 (2008)), and has described such prohibitions as “presumptively lawful,” Rahimi, 602 U.S. at 699 (quoting Heller, 554 U.S. at 627 n.26). For example, as explained below, Section 922(g)(1) is constitutional as applied to petitioner, who was on probation when he possessed the firearm and who has previous convictions for drug distribution. See pp. 10-11, infra. Even petitioner appears to accept (Pet. 9), moreover, that Section 922(g)(1) would be valid as applied to felons whose convictions “involved a physical threat to others.”

The courts of appeals have unanimously held that Section 922(g)(1) complies with the Second Amendment in at least some applications. See United States v. Fort, 176 F.4th 1, 8 (1st Cir. 2026); Zherka v. Bondi, 140 F.4th 68, 73-96 (2d Cir. 2025); United States v. Moore, 111 F.4th 266, 272-273 (3d Cir. 2024), cert. denied, 145 S. Ct. 2489 (2025); United States v. Hunt, 123 F.4th 697, 705-708 (4th Cir. 2024), cert. denied, 145 S. Ct. 2756 (2025); United States v. Diaz, 116 F.4th 458, 472 (5th Cir. 2024), cert. denied, 145 S. Ct. 2822 (2025); United States v. Williams, 113 F.4th 637, 657 (6th Cir. 2024); United States v. Watson, 171 F.4th 1012, 1013 (7th Cir. 2026); United States v. Jackson, 110 F.4th 1120, 1125-1129 (8th Cir. 2024), cert. denied, 145 S. Ct. 2708 (2025); United States v. Duarte, 137 F.4th 743, 755-762 (9th Cir. 2025) (en banc), cert. denied, No. 25-425 (Jan. 20, 2026); Vincent v. Bondi, 127 F.4th 1263, 1266 (10th Cir. 2025), cert. denied, 146 S. Ct. 1768 (2026); United States v. Dubois, 139 F.4th 887, 890-894 (11th Cir. 2025); United States v. Richardson, No. 24-3151, 2026 WL 2451537, at *1 (D.C. Cir. Aug. 21, 2026). Given the absence of a circuit conflict, petitioner's facial challenge does not warrant further review.

2. Petitioner next contends (Pet. 9-11) that Section 922(g)(1) violates the Second Amendment as applied to him. That claim, too, does not warrant certiorari in this case.

a. Courts of appeals have disagreed about how to evaluate as-applied challenges to Section 922(g)(1). Six courts -- the

Second, Fourth, Eighth, Ninth, Tenth, and Eleventh Circuits -- have held that the statute is not susceptible to case-by-case as-applied challenges. See Zherka, 140 F.4th at 73-96 (2d Cir.); Hunt, 123 F.4th at 704-708 (4th Cir.); Jackson, 110 F.4th at 1125-1129 (8th Cir.); Duarte, 137 F.4th at 747-748 (9th Cir.); Vincent, 127 F.4th at 1266 (10th Cir.); Dubois, 139 F.4th at 890-894 (11th Cir.). Four courts -- the First, Sixth, Seventh, and D.C. Circuits -- have left open the possibility of as-applied challenges but have not actually held Section 922(g)(1) invalid in any application. See Fort, 176 F.4th at 7-8 (1st Cir.); Williams, 113 F.4th at 657 (6th Cir.); Watson, 171 F.4th at 1013 (7th Cir.); Richardson, 2026 WL 2451537, at *6 (D.C. Cir.).

The Third Circuit, meanwhile, has found Section 922(g)(1) unconstitutional in one narrow case. In Range v. Attorney General, 124 F.4th 218 (2024), the en banc Third Circuit held that the statute violates the Second Amendment as applied to a civil plaintiff with a nearly 30-year-old state misdemeanor conviction for understating his income on a food-stamp application. See 18 U.S.C. 921(a)(20)(B) (providing that Section 922(g)(1) extends to state offenses that are classified as misdemeanors if the offenses are punishable by more than two years of imprisonment). The Third Circuit described its decision as "narrow," emphasizing that the plaintiff had been "convicted of food-stamp fraud," that he had "completed his sentence," that his conviction was "[m]ore than two decades" old, that the "record contain[ed] no evidence that [he]

pose[d] a physical danger to others,” and that he had filed a civil suit seeking “protection from prosecution under § 922(g)(1) for any future possession of a firearm.” Range, 124 F.4th at 232.

The Fifth Circuit, too, has upheld as-applied challenges to Section 922(g)(1). But unlike the Third Circuit’s decision in Range, which considered all the relevant circumstances, many of the Fifth Circuit’s decisions have taken “a felony-by-felony approach by assessing, as a categorical matter, whether there was a sufficient historical analogue for any of the particular [predicate] offenses of which [the defendant] had been convicted.” United States v. Hembree, 165 F.4th 909, 912 (2026), petition for cert. pending, No. 25-1219 (filed Apr. 24, 2026). Applying that approach, the Fifth Circuit has invalidated Section 922(g)(1) as applied to certain predicate felonies. See, e.g., id. at 918 (simple possession of drugs); United States v. Doucet, No. 24-30656, 2025 WL 3515404, at *5-*6 (5th Cir. Dec. 8, 2025) (attempted cultivation of marijuana).

b. For three reasons, that circuit conflict does not warrant certiorari at this juncture.

First, the en banc Third Circuit is currently considering two cases concerning the appropriate framework for analyzing as-applied Second Amendment challenges to Section 922(g)(1). See Williams v. Attorney General, No. 24-1091 (argued Feb. 11, 2026); United States v. Bost, No. 24-1719 (argued Feb. 11, 2026). The Fifth Circuit has likewise granted rehearing en banc to reconsider

its approach to evaluating such challenges. See C.A. Doc. 108, United States v. Cordova, No. 24-50564 (Sept. 14, 2026). Those cases could affect, or even largely resolve, the circuit conflict discussed above.

Second, a federal statute, 18 U.S.C. 925(c), provides that a person who is disqualified from possessing firearms (including a felon disqualified under Section 922(g)(1)) may apply to the Attorney General for relief from disabilities. The Attorney General may grant such relief if the applicant shows that “the circumstances regarding the disability, and the applicant’s record and reputation, are such that the applicant will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest.” Ibid. A person whose application is denied may seek judicial review in federal district court. Ibid.

Before 2025, that statutory authority had been delegated to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). See United States v. Bean, 537 U.S. 71, 74 (2002). Since 1992, however, appropriations statutes have included provisos barring ATF from using appropriated funds to act on Section 925(c) applications. See id. at 74-75. In combination, the delegation and the appropriations bar effectively suspended the Section 925(c) relief-from-disabilities program.

Recognizing that the appropriations bar applies only to ATF, the Attorney General revitalized the Section 925(c) process in

2025 by issuing an interim final rule withdrawing the delegation of authority to ATF to administer Section 925(c). See 90 Fed. Reg. 13,080 (Mar. 20, 2025). Consistent with the interim rule, the Attorney General granted relief to multiple individuals. See 91 Fed. Reg. 55,362 (Aug. 27, 2026); 91 Fed. Reg. 32,094 (May 29, 2026); 91 Fed. Reg. 8532 (Feb. 23, 2026); 90 Fed. Reg. 17,835 (Apr. 29, 2025). Meanwhile, the Attorney General issued a notice of proposed rulemaking to establish “criteria to guide determinations for granting relief.” 90 Fed. Reg. 34,394, 34,394 (July 22, 2025).

That rulemaking process recently culminated in the issuance of a final rule. See 91 Fed. Reg. 54,054 (Aug. 20, 2026). Under the final rule, the Attorney General may consider a variety of factors in evaluating an application for relief, including “the applicant’s criminal history,” the “seriousness of the conduct involved,” the “applicant’s conduct while serving any criminal sentence,” the “time elapsed since the applicant’s completion of any criminal sentence and the applicant’s conduct during that time,” and “[w]hether the applicant’s individual circumstances demonstrate that a failure to grant relief would infringe the applicant’s rights under the Second Amendment.” Id. at 54,090–54,091. The rule also specifies that certain felons -- such as those convicted of certain violent felonies -- are “presumptively” unable to satisfy the criteria for relief and that their applications “will therefore be denied, absent extraordinary circumstances.” Id. at 54,091.

By providing a mechanism through which convicted felons can regain their ability to possess firearms, Section 925(c) and the final rule address any constitutional concerns about the breadth and duration of the restriction imposed by Section 922(g)(1). The Section 925(c) process also is more workable than a court-administered regime of as-applied challenges. See Bean, 537 U.S. at 77 (“Whether an applicant is ‘likely to act in a manner dangerous to public safety’ presupposes an inquiry into that applicant’s background -- a function best performed by the Executive, which, unlike courts, is institutionally equipped for conducting a neutral, wide-ranging investigation.”). The issuance of the final rule underscores the prospect that the pending en banc cases in the Third Circuit and the pending en banc petition in the Fifth Circuit could largely resolve the circuit conflict.

Third, in all events, this case does not implicate the circuit conflict (and would be a poor vehicle for resolving it) because Section 922(g)(1) is plainly valid as applied to petitioner. Petitioner possessed a firearm while serving a term of probation. Pet. App. 2a. Every court of appeals to consider the question, including the Third and Fifth Circuits, has accepted Section 922(g)(1)’s validity as applied to convicted felons who are still on probation or another form of supervision. See United States v. Quailes, 126 F.4th 215, 221-224 (3d Cir.), cert. denied, 146 S. Ct. 127 (2025); Pet. App. 2a & n.1 (5th Cir.); 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); Richardson, 2026 WL 2451537, at *6 (D.C. Cir.); see also Range, 124 F.4th at 232 (emphasizing that the challenger had “completed his sentence”).

In addition, petitioner has two previous felony convictions for drug distribution. PSR ¶¶ 17, 37-44. Given that criminal history, petitioner did not prevail even in the Fifth Circuit, the circuit that has most frequently upheld as-applied challenges to Section 922(g)(1). See Pet. App. 2a & n.1. Nor could petitioner show that he would prevail on an as-applied challenge in any other circuit, including the Third Circuit. See, e.g., 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, among other things, drug distribution); United States v. Hoover, 179 F.4th 454, 467-468 (6th Cir. 2026) (rejecting an as-applied challenge brought by a defendant with “several prior drug-trafficking convictions, which [the Sixth Circuit] ha[s] called a ‘prime example’ of a crime that poses a significant threat to the community”) (citation omitted).

3. Finally, petitioner contends (Pet. 13-17) that if Section 922(g)(1) is construed to apply where the relevant firearm “traveled * * * in interstate commerce” before it was possessed by the defendant, it would exceed Congress’s authority under the Commerce Clause, U.S. Const. Art. I, § 8, Cl. 3. That contention also merits no further review.

This Court has held that “proof that the possessed firearm previously traveled in interstate commerce is sufficient to satisfy the [jurisdictional element]” of a similarly worded predecessor felon-in-possession statute. Scarborough v. United States, 431 U.S. 563, 564 (1977); see United States v. Bass, 404 U.S. 336, 350 (1971) (“[T]he Government meets its burden here if it demonstrates that the firearm received has previously traveled in interstate commerce.”). The courts of appeals have uniformly upheld that reading against constitutional challenges. See, e.g., United States v. Singletary, 268 F.3d 196, 205 (3d Cir. 2001) (collecting cases), cert. denied, 535 U.S. 976 (2002).

This Court has also repeatedly denied certiorari on that question. See, e.g., York v. United States, 146 S. Ct. 144 (2025) (No. 24-7244); Mason v. United States, 146 S. Ct. 140 (2025) (No. 24-7286); Freeman v. United States, 146 S. Ct. 129 (2025) (No. 24-7101); Martinez v. United States, 146 S. Ct. 127 (2025) (No. 24-7104); Dean v. United States, 145 S. Ct. 2859 (2025) (No. 24-7217); Riddick v. United States, 145 S. Ct. 2859 (2025) (No. 24-7182); Dominguez v. United States, 145 S. Ct. 2857 (2025) (No. 24-6772); Collette v. United States, 145 S. Ct. 2853 (2025) (No. 24-6497); Hemphill v. United States, 145 S. Ct. 2855 (2025) (No. 24-6731). The same result is warranted here.

In any event, this case would be a poor vehicle for considering petitioner’s contention because petitioner did more than just possess a firearm that crossed state lines at some point

in the past. The agents who searched petitioner's house found not only a firearm, but also cocaine, marijuana, a money counter, and scales -- indicating that petitioner possessed the firearm in connection with drug dealing. PSR ¶ 17. That conduct falls well within Congress's power to regulate activities that "substantially affect interstate commerce." United States v. Lopez, 514 U.S. 549, 559 (1995); see Taylor v. United States, 579 U.S. 301, 307 (2016) (holding that a defendant "who affects or attempts to affect even the intrastate sale of marijuana grown within the State affects or attempts to affect commerce over which the United States has jurisdiction").

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

D. JOHN SAUER
Solicitor General

A. TYSEN DUVA
Assistant Attorney General

ANDREW W. LAING
Attorney

SEPTEMBER 2026