No. 26-5311

IN THE

Supreme Court of the United States

MICHAEL CELESTINE,
Petitioner,
v.

UNITED STATES OF AMERICA,
Respondent.

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

REPLY BRIEF FOR PETITIONER

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TABLE OF CONTENTS

TABLE OF AUTHORITIES 3

ARGUMENT 3

CONCLUSION 6

TABLE OF AUTHORITIES

Cases

Brown v. United States, 584 U.S. 928 (2018) 4, 5
Lawrence ex rel. Lawrence v. Chater, 516 U.S. 163 (1996) 4
Sykes v. United States, 584 U.S. 928 (2018) 4, 5
United States v. Seekins, 52 F.4th 988 (5th Cir. 2022) 5
United States v. Squire, No. 25-30324, 2026 WL 2089721 (5th Cir. July 20, 2026) (granting rehearing en banc) 4, 7

Statutes

18 U.S.C. § 922(g)(1) 5

ARGUMENT

This Court should hold Mr. Celestine's petition pending the Fifth Circuit's en banc resolution of *United States v. Squire,* which raises the precise issue presented in Mr. Celestine's petition. No. 25-30324, 2026 WL 2089721 (5th Cir. July 20, 2026) (granting rehearing en banc). Alternatively, this Court should grant Mr. Celestine's petition now, vacate, and remand to the Fifth Circuit in light of the court's en banc grant. The government recognizes that this Court has done so in past cases, noting that the Court "has previously exercised its GVR power to allow lower courts to reconsider their decisions in light of intervening en banc circuit precedent." Gov't Opp. at 3-4. The government also recognizes that the Court previously has held petitions while the court of appeals considered the question presented en banc—precisely the relief requested here. *Id.* at 4 (citing *Brown v. United States*, 584 U.S. 928 (2018) (No. 17-6344); *Sykes v. United States*, 584 U.S. 928 (2018) (No. 16-9604)). Nonetheless, the government opposes the same straightforward treatment of Mr. Celestine's petition.

Mr. Celestine's petition is similarly situated to those past cases in the relevant respects, and the government's arguments to the contrary lack merit. First, the government observes that Mr. Celestine never sought rehearing en banc from the Fifth Circuit. That distinction, however, has no bearing on the reason for a hold: That a GVR would be warranted if the en banc court decides the issue in petitioner's favor. *See Lawrence ex rel. Lawrence v. Chater*, 516 U.S. 163, 167 (1996) (per curiam) ("Where intervening developments, or recent developments that we have reason to

believe the court below did not fully consider, reveal a reasonable probability that the decision below rests upon a premise that the lower court would reject if given the opportunity for further consideration, and where it appears that such a redetermination may determine the ultimate outcome of the litigation, a GVR order is, we believe, potentially appropriate.").[1]

Second, the government observes, without explanation, that *Brown* and *Sykes* "involved a state-specific issue under the categorical approach where the regional circuit covering the relevant State—that is, the only court of appeals likely to confront the question—was considering the issue en banc." Gov't Op. at 4. That, too, is a distinction without a difference. Regardless of the underlying legal issue, if the en banc court decides the issue in petitioner's favor, a GVR would be warranted so that he can seek relief in the court below. It is accordingly appropriate to hold the petition while en banc proceedings are pending.

Third, the government contends that if the en banc court holds that "Section 922(g)(1) exceeds Congress's power under the Commerce Clause, the decision would . . . require intervention by this Court." Gov't Op. 4-5. But if the question presented inevitably warrants this Court's attention, that makes a hold all the more

[1] At the time of Mr. Celestine's appeal, this issue long had been foreclosed in the Fifth Circuit, and the court previously had denied rehearing on the same commerce clause question. *See United States v. Seekins*, 52 F.4th 988 (5th Cir. 2022). Mr. Celestine's appeal also preceded Justice Thomas's concurrence in *United States v. Hemani*, which no doubt influenced the Fifth Circuit's decision to reconsider its longstanding precedent. The fact that—prior to those developments—Mr. Celestine elected to proceed to this Court without first seeking en banc rehearing is not relevant to how this Court should treat his petition in light of the Fifth Circuit's en banc grant in *Squire*. Mr. Celestine dutifully preserved this foreclosed issue throughout the litigation of his case. The government's argument that he should unnecessarily be barred from relief now because his case happened to precede *Squire* by a matter of months is unconvincing.

appropriate. If this Court were to grant certiorari and resolve the question in favor of petitioner, the appropriate course would be to GVR. If it resolves the question in the government's favor, it can deny the petition at that time, with no harm to the government. Either way, it should not deny Mr. Celestine's petition now and deny him relief to which he might be entitled but for the happenstance of timing.

As explained in Mr. Celestine's petition, both justice and judicial economy counsel against outright denial of Mr. Celestine's petition. Instead, this Court should hold his petition for the time being, or grant, vacate, and remand as appropriate.

CONCLUSION

For the foregoing reasons and those stated in the petition, this Court should grant Mr. Celestine's petition for writ of certiorari. Alternatively, this Court should hold this petition pending possible consideration of these issues in other cases or grant the petition, vacate, and remand in light of the Fifth Circuit's en banc consideration of *United States v. Squire*.

Respectfully submitted,

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