No. _____

In the
Supreme Court of the United States

CHRISTIAN FERRARI,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Whether prohibited status of a buyer is an element of a gun-dealing offense under 18 U.S.C. § 922(d).

PARTIES, RELATED PROCEEDINGS, AND RULE 29.6 STATEMENT

The parties to the proceeding below were Petitioner Christian Ferrari and the United States. There are no non-governmental corporate parties requiring a disclosure statement under Supreme Court Rule 29.6.

All proceedings directly related to the case, per Rule 14.1(b)(iii), are as follows:

- *United States v. Ferrari,* No. 23-CR-01091-BAS-1, U.S. District Court for the Southern District of California, Judgment issued September 19, 2024.
- *United States v. Ferrari,* No. 24-6007, U.S. Court of Appeals for the Ninth Circuit, Opinion issued March 23, 2026.

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PETITION FOR A WRIT OF CERTIORARI

INTRODUCTION

In 2024, Mr. Ferrari was convicted under 18 U.S.C. § 922(a)(1)(A) of dealing in firearms without a license. At sentencing, the district court applied an enhancement under U.S.S.G. § 2K2.1(b)(5), when the buyer was an undercover agent with no intention of using or disposing of the firearms unlawfully. To qualify for that enhancement, a firearms dealing defendant must "kn[o]w or ha[ve] reason to believe" that they are selling to someone "(I) whose possession or receipt of the firearm would be unlawful or (II) who intended to use or dispose of the firearm unlawfully." U.S.S.G. § 2K2.1(b)(5), app. n.13 (2021). Congress used practically identical language for the offense provided in 18 U.S.C. § 922(d). The circuits have split on what this language requires.

The Ninth Circuit's opinion in *United States v. Ferrari*, 170 F.4th 1225 (9th Cir. 2026), broadens a circuit split on an important question of federal law: Is prohibited status of the buyer an element of a gun-dealing offense under § 922(d)? The Ninth Circuit, and others have answered, "No." *Id.* at 1236. In the Ninth Circuit's view, the "plain text" or "plain meaning" of Comment 13 required only a belief—not that the belief be true. *Ferrari*, 170 F.4th at 1231–33. And while the Ninth Circuit did not deny that § 922(d) had equivalent language, it simply thought that the language targeted belief and belief alone. *Id.* at 1236. Thus, it interpreted both the statute and guideline not to require that the buyer actually have the prohibited characteristic. *Id.* at 1236, 1238.

The Tenth Circuit and others that have addressed the issue—whether in model jury instructions or published cases—have answered "yes." In *United States v. Francis*, the Tenth Circuit concluded that Comment 13 must "derive[] from" § 922(d), which criminalizes selling guns "knowing or having reasonable cause to believe that" the buyer is a prohibited possessor. 891 F.3d 888, 896 & n.9 (10th Cir. 2018). The Tenth Circuit had already interpreted § 922(d) not only to require that the seller believe the recipient to be a prohibited possessor. *Id.* The seller must believe it, and it must also be true. *Id.* The Tenth Circuit therefore interpreted Comment 13 in the same way. *Id.*

The result of the split is that for sentencing purposes a buyer *does not* have to be a prohibited person in the Sixth, Seventh, Ninth and Eleventh Circuits. But for conviction purposes a buyer *does* have to be a prohibited person in the Third, Fifth,

Seventh, and Eleventh Circuits. This split must be resolved because the same language, whether in the Guidelines or § 922(d) itself, requires uniformity among the circuits.

And the interpretation of the Ninth Circuit is wrong. The plain meaning of the "reasonable cause to believe" clause, in context of the full sentence, demonstrates that the provision has both subjective and objective elements.

The Court should therefore grant certiorari and hold that § 922(d) requires that the buyer have prohibited status.

OPINION BELOW

The Ninth Circuit affirmed Mr. Ferrari's sentence in a published decision. *See* Pet. App. A. Mr. Ferrari subsequently filed a petition for rehearing and rehearing en banc, which was denied. *See* Pet. App. B.

JURISDICTION

The Ninth Circuit issued the decision below on March 23, 2026. Pet. App, A. Mr. Ferrari's petition for rehearing and rehearing en banc was denied on June 22, 2026. Pet. App. B. On September 18, 2026, Justice Kagan extended the time to file this petition until October 21, 2026. *Ferrari v. United States*, 26A371. The Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

18 U.S.C. § 922(d) provides in relevant part:

> It shall be unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person, including as a juvenile--

... (1) is under indictment for, or has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year.

In 2021, U.S.S.G. § 2K2.1(b)(5) provided:

If the defendant engaged in the trafficking of firearms, increase by 4 levels.

And Note 13 to U.S.S.G. § 2K2.1 provided in relevant part:

> Subsection (b)(5) applies, regardless of whether anything of value was exchanged, if the defendant—
> (i) transported, transferred, or otherwise disposed of two or more firearms . . . ; and
> (ii) knew or had reason to believe that such conduct would result in the transport, transfer, or disposal of a firearm to an individual—
> (I) whose possession or receipt of the firearm would be unlawful; or
> (II) who intended to use or dispose of the firearm unlawfully.

STATEMENT OF THE CASE

Prior to his arrest, Mr. Ferrari was serving in the Marines and had never been in legal trouble before. His convictions for selling firearms without a license, in violation of 18 U.S.C. § 922(a)(1)(A), stem from four controlled buys with undercover agents of the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF"). Each time, two to three undercover agents met Mr. Ferrari in a parking lot to exchange money and guns. During one transaction, an undercover agent mentioned that he had "a couple different people we . . . unload to." He said that one of his buyers would take the guns upstate to protect Northern California marijuana grows. The other buyer would take them south to Mexico.

After Mr. Ferrari's guilty plea, the probation officer recommended applying a 4-level enhancement under U.S.S.G. § 2K2.1(b)(5) (2021), for "trafficking of firearms." The guideline defined "trafficking" as transferring two or more guns to another, when the transferor "knew or had reason to believe" that the recipient's "possession or receipt of the firearm would be unlawful" or that the recipient "intended to use or dispose of the firearm unlawfully." U.S.S.G § 2K2.1(b)(5), app. n.13 (2021). Per the probation officer, the enhancement applied because Mr. Ferrari had reason to believe that the guns sold to the undercover agents would be put to unlawful use. Over objection, the district court applied the enhancement.

Mr. Ferrari appealed. He relied on how circuit courts across the country have interpreted the similarly worded statute of 18 U.S.C. § 922(d), to argue that it is not enough for defendants merely to *believe* they are selling to an unlawful possessor. They must believe it, and it must actually be true.

The Ninth Circuit affirmed in a published opinion. *See United States v. Ferrari*, 170 F.4th 1225 (9th Cir. 2026). The Ninth Circuit agreed "with the Sixth, Seventh, and Eleventh Circuits that the plain text of Application Note 13 does *not* require it to be true that the transferee was an unlawful possessor or intended to use the firearm unlawfully." *Id.* at 1234. The opinion expressly disagreed with the decisions from the Fourth, Fifth and Tenth Circuits that interpret § 2K2.1 and 18 U.S.C. § 922(d) to allow the enhancement or statute to apply only if "the transferee was actually an unlawful possessor." *Id.* at 1234-35 (quoting *United States v. Francis*, 891 F.3d 888, 896 (10th Cir. 2018)).

REASONS FOR GRANTING THE PETITION

I. The Circuit Courts are helplessly divided on whether § 922(d)'s "reasonable cause to believe" language requires the purchaser to be a prohibited person.

Section 922(d) makes it a crime to sell firearms or ammunition to "any person knowing or having reasonable cause to believe such person" is prohibited from possessing the firearm or ammunition. 18 U.S.C. § 922(d). Other firearms offenses contain similar "reasonable cause to believe" the transferee or buyer is a prohibited person requirements. *See* 18 U.S.C. § 922(b)(1). And the Guidelines provide an enhancement for someone who "knew or had reason to believe" that the firearm would be transferred to a prohibited person. U.S.S.G. § 2K2.1 n.13 (2021). But the Circuit Courts are struggling and divided about whether the "reason to believe" language in these provisions requires a sell or transfer to an actual prohibited person.

When interpreting § 2K2.1, the Sixth, Seventh, Ninth and Eleventh Circuits, have looked to the "ordinary meaning" or "plain text" to hold that the "reason to believe" language means the buyer or transferee "'need not actually be a prohibited person.'" *Ferrari*, 170 F.4th at 1232–33 (quoting *United States v. Prieto*, 85 F.4th 445, 449 (7th Cir. 2023); *see also United States v. Henry*, 819 F.3d 856, 870 (6th Cir. 2016); *United States v. Asante*, 782 F.3d 639, 644 (11th Cir. 2015)).

The Tenth Circuit, however, has reached the opposite conclusion. In *Francis*, the Tenth Circuit concluded that "the government must show by a preponderance that the transferee was actually an unlawful possessor." 891 F.3d at 896. To reach

this conclusion, the Tenth Circuit reasoned that the guideline provision appeared to "derive[] from"—or at least to be grammatically indistinguishable from—the § 922(d) offense. *Francis*, 891 F.3d at 896 & n.9.

The Tenth Circuit therefore turned to its model jury instructions laying out the elements of § 922(d). *Id.* Per the model instructions, it is not enough for the seller merely to believe that the buyer is a prohibited possessor. They must believe it, and it must actually be true. *Id.* In interpreting the application note, then, the Tenth Circuit declined to "depart[] from the way [the court] interpret[s] the similar wording in 18 U.S.C. § 922(d)(1)." *Francis*, 891 F.3d at 896 n.9.

The Fourth and Fifth Circuits agree with the Tenth Circuit on the elements of § 922(d). In *United States v. Parker*, 262 F.3d 415, 421 (4th Cir. 2001), the Fourth Circuit held that if a buyer loses their prohibited status (there, felon status) before the firearms transfer, the seller is not guilty under § 922(d). And the Fifth Circuit has held that for § 922(d) "it is the purchaser's status as a felon which makes the activity criminal." *United States v. Murray*, 988 F.2d 518, 522 (5th Cir. 1993).

Moreover, the Third, Fifth, Seventh, and Eleventh Circuits all have model jury instructions for § 922(d) like the Tenth's, explicitly requiring that the buyer be a prohibited possessor. *See* Committee on Model Criminal Jury Instructions, Third Circuit, § 6.18.922D (2024); Committee on Pattern Jury Instructions, Fifth Circuit, § 2.43C (2024); Committee on Federal Criminal Jury Instructions, Seventh Circuit, § 922(d) (2023); Judicial Counsel of the United States Eleventh Judicial Circuit,

§ 34.5 (2024).[1] Thus, courts are divided, even internally, about whether prohibited status is a requirement for enhancement or conviction.

II. Mr. Ferrari's case presents a good vehicle to decide this important question.

Although this case involves an interpretation of the Guidelines, several frequently prosecuted criminal statutes, §§ 922(a)(5), (b)(1) & (d), contain practically identical language. And courts "look to . . . the language of related or similar statutes to aid in interpretation." *Attia v. Google LLC*, 983 F.3d 420, 425 (9th Cir. 2020). In fact, the Court has observed that courts "normally presume that the same language in related statutes carries a consistent meaning." *United States v. Davis*, 588 U.S. 445, 458 (2019).

Indeed, in the case below, the Ninth Circuit specifically addressed decisions interpreting §§ 922(a)(5), (b)(1) & (d). *Ferrari*, 170 F.4th at 1235–36. Thus, Mr. Ferrari's case presents an opportunity to resolve not just the Guidelines issue, but more importantly, the elements of several federal firearms offenses.

Moreover, Mr. Ferrari squarely presented the question on appeal. And the Ninth Circuit resolved the issue for review in a published opinion.

III. The Ninth Circuit's interpretation is wrong.

The Ninth Circuit provided two reasons that a buyer or transferee does not have to be to a prohibited person, neither of which is persuasive.

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[1] Neither the Seventh nor the Eleventh Circuits have engaged with their inconsistent approaches between sentencing enhancement and defining the elements of a § 922(d) offense.

First, the Ninth Circuit isolated the phrase "knowing or having reason to believe" and held that phrase describes only a mental state, not a physical reality. *Ferrari*, 170 F.4th at 1233. That is true, but irrelevant. The question is not whether that isolated mens rea phrase describes a mens rea. Of course it does. The question is whether, in the context of the *whole sentence*, that mens rea phrase subjectivizes the other elements of the offense.

To appreciate that distinction, consider an analogy. Among other things, 21 U.S.C. § 841(a) makes it unlawful "intentionally to . . . distribute . . . a controlled substance." In isolation, the word "intentionally" captures a subjective frame of mind. It means "deliberately and purposefully" or acting with a "conscious objective." *United States v. Townsend*, 987 F.2d 927, 930 (2d Cir. 1993). Applying the Ninth Circuit's reasoning, then, a defendant should be able to commit an § 841(a) offense so long as he subjectively *intends* to distribute a controlled substance. The item he distributes need not actually *be* a controlled substance. If he accidentally distributes sugar instead of cocaine, for example, he would still be guilty.[2]

But that is not how courts interpret § 841 in the context of the entire provision. Instead, the defendant must intend to distribute a controlled substance, and the substance they distribute must actually be controlled. *See United States v. Uwaeme*, 975 F.2d 1016, 1020 (4th Cir. 1992).

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[2] Of course, a defendant could be charged with attempt in this scenario but not with the completed crime defined in this portion of the statute.

In the same way, courts agree that the phrase "knowing or having reason to believe" in § 922(d) defines a subjective mens rea. *See, e.g.*, Committee on Model Criminal Jury Instructions, Third Circuit, § 6.18.922D (2024); Committee on Pattern Jury Instructions, Fifth Circuit, § 2.43C (2024); Committee on Federal Criminal Jury Instructions, Seventh Circuit, § 922(d) (2023); Judicial Counsel of the United States Eleventh Judicial Circuit, § 34.5 (2024). But instead of stopping there, they consider the entire provision, and they conclude that the provision has both subjective and objective elements. *Id.*

Second, the Ninth Circuit dismissed these other circuits' conclusions out of hand because, according to the panel, these circuits adopted their reading without reasoning. *Ferrari*, 170 F.4th at 1236. But because we are dealing with the plain meaning of an English-language sentence, no further reasoning is needed to give the circuits' consensus persuasive force. Five separate instructions committees and three independent circuit court panels encountered the language of § 922(d). All understood it in the exact same way. That is very powerful evidence of what that sentence's plain meaning is.

Expanding the lens to other provisions strengthens this reasoning. Section 18 U.S.C. § 922(a)(5) also makes it unlawful to sell guns to any person "who the transferor knows or has reasonable cause to believe does not reside in . . . the state in which the transferor resides." 18 U.S.C. § 922(a)(5). In the decade after the statute's passage, three circuit courts grappled with the question presented here: Is it enough for the seller to reasonably *believe* that the buyer lives out of state? Or

must the buyer also *be* an out-of-state resident? Two of the three courts to address the question "interpret[ed] the statutory language to mean that the purchaser must in fact be a non-resident." *United States v. Kraase*, 484 F.2d 549, 551 (7th Cir. 1973); *accord United States v. Plyman*, 551 F.2d 965, 966–67 (5th Cir. 1977); *but see United States v. Colicchio*, 470 F.2d 977, 979 (4th Cir. 1972) (holding that mere reasonable belief is enough) (holding that mere reasonable belief is enough). On the majority view, "the 'reasonable cause to believe' clause serves merely to lighten the Government's burden of proving subjective intent." *Kraase*, 484 F.2d at 551.

The Ninth Circuit discounted *Kraase* because the Seventh Circuit's opinion turned in part on legislative history and federalism concerns, neither of which apply to § 922(d) or Comment 13. *Ferrari*, 170 F.4th at 1236–37. But that misses the point. Legislative history and federalism concerns persuaded the *Kraase* panel that Congress intended for the statute to target both subjective belief and objective reality. 484 F.2d at 551–52. To carry out that intent—to convey to the federal courts that the buyer must be an out-of-state resident and that seller must believe that to be true—Congress used language and grammar materially identical to that used in § 922(d). The obvious inference is that by using the same formulations in another provision of the same statute, Congress meant to convey the same idea.

All told, then, five courts of appeals have considered two statutes with language and grammatical structure materially indistinguishable from Comment

13's. All but the Fourth and Ninth Circuit[3] agreed that those statutes required both belief and reality. That strongly supports that the Ninth Circuit's circuit-splitting view of § 922(d)'s plain meaning is wrong and requires certiorari attention to secure uniformity.

CONCLUSION

For these reasons, the Court should grant the petition for a writ of certiorari.

Respectfully submitted,

Date: October 21, 2026

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[3] The Guidelines decisions from the Sixth, Seventh and Eleventh Circuits do not address §§ 922(a)(5) & (d).