

No. 15-1027

In the Supreme Court of the United States

BILLY YORK WALKER, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether petitioner's civil rights have been restored under 18 U.S.C. 921(a)(20).

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1) is reported at 800 F.3d 720. The opinion of the district court (Pet. App. 37) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on September 1, 2015. A petition for rehearing was denied on November 12, 2015 (Pet. App. 53-54). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. It is a federal criminal offense for a person “who has been convicted in any court of[] a crime punishable by imprisonment for a term exceeding one year” to “possess in or affecting commerce[] any firearm or ammunition.” 18 U.S.C. 922(g)(1). The statutory definition of the term “crime punishable by imprison-

ment for a term exceeding one year,” however, provides that “[a]ny conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction for purposes of this chapter, unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.” 18 U.S.C. 921(a)(20).

Accordingly, as relevant here, a felon generally is not subject to criminal liability under Section 922(g)(1) if his “civil rights” have been “restored.” This Court has indicated that the relevant civil rights within the meaning of that provision are “the rights to vote, hold office, and serve on a jury.” *Logan v. United States*, 552 U.S. 23, 28 (2007); see *Caron v. United States*, 524 U.S. 308, 316 (1998). Those rights may be restored either through an “offender-specific action” or “by operation of law” for a general class of offenders. *Caron*, 524 U.S. at 311, 313. This Court has held, however, that if an offender never lost any of those civil rights on account of a conviction, he cannot have those rights “restored” within the meaning of Section 921(a)(20). *Logan*, 552 U.S. at 37.

The Court has also concluded that civil rights must be restored by the jurisdiction of conviction (*e.g.*, the federal government for a federal conviction), relying on a sentence in Section 921(a)(20) stating that “[w]hat constitutes a conviction * * * shall be determined in accordance with the law of the jurisdiction in which the proceedings were held.” *Beecham v. United States*, 511 U.S. 368, 369 (1994); see *id.* at 370-374. The Court has reserved the question, however, whether any path exists under current federal law to

restore a federal felon's civil rights. *Id.* at 373 n.* Although 18 U.S.C. 925(c) authorizes the Attorney General to grant relief from Section 922(g), Congress has not funded the implementation of that provision since 1992. See Pet. App. 20-21, 47-48 & n.6.

2. Petitioner was convicted of multiple felonies in federal court in 1987. Pet. App. 4. He was therefore prohibited from possessing a firearm under Section 922(g)(1). In 2010, petitioner obtained an order from a Tennessee state court declaring him "eligible to have all civil and citizenship rights restored, including, without limitation, the right to vote, the right to serve on a jury, and the right to hold an office trust." *Ibid.* Petitioner then attempted to purchase a firearm from a sporting-goods store. *Id.* at 5. He was unable to make the purchase, however, after a federal background investigation indicated that he was prohibited from possessing a firearm on account of his federal felony convictions. *Ibid.*

Petitioner filed suit against the United States in the United States District Court for the Western District of Tennessee, seeking a declaratory judgment that he was no longer prohibited from possessing a firearm under Section 922(g)(1) because his civil rights had been restored within the meaning of Section 921(a)(20). Pet. App. 55. The district court granted the government's motion for judgment on the pleadings. *Id.* at 37-50. The court concluded that petitioner's reliance on the order from the Tennessee state court conflicted with *Beecham's* requirement that "a federal felon must regain his civil rights, if possible, under federal law," not state law. *Id.* at 46.

3. The court of appeals affirmed. Pet. App. 1-21. The court first held that under *Beecham, supra*, the

order from the Tennessee state court restoring petitioner's rights was insufficient to meet the requirements of Section 921(a)(20) for his federal felonies. Pet. App. 5-6. The court therefore considered whether the three relevant civil rights had been restored to petitioner under federal law. The court "assumed for the purposes of this appeal that [petitioner's] right to serve on a federal jury ha[d] been restored under federal law," *id.* at 7-8, and it held that his right to hold public office had never been lost (and so could not be restored), *id.* at 8.

The court of appeals then held that, although petitioner had lost the right to vote in federal elections upon his felony convictions, petitioner had never lost that right, and thus federal law had not restored it, in the sense contemplated by Section 921(a)(20). Pet. App. 13; see *id.* at 8-13. The court explained that under the Constitution, "a person has the right to vote in elections for Congress so long as the state where that person resides permits him to vote in state legislative elections." *Id.* at 9 (citing U.S. Const. Art. I, § 2; Amend. XVII). For example, in this case, under Tennessee law, upon his conviction petitioner lost his right to vote in state elections, and therefore in congressional elections as well, and he regained the right to vote in state and congressional elections through the order from the Tennessee state court. *Ibid.* The court of appeals believed that because eligibility to vote in federal elections depends entirely on eligibility to vote in state elections, it is not the kind of loss and restoration of a civil right that falls within Section 921(a)(20). The court understood Section 921(a)(20) to be concerned exclusively with restorations "reflecting a determination by the convicting jurisdiction that

particular consequences of a conviction ought no longer to be imposed,” and it concluded that the constitutional provisions that inextricably link qualifications to vote in federal elections to qualifications to vote in state elections do not embody any judgment about the consequences of a criminal conviction. *Id.* at 11. “That [petitioner] regained the right to vote under federal law,” the court concluded, “reflects no judgment in federal law regarding his conviction in particular or the voting rights of felons in general,” and so does not fall within the compass of Section 921(a)(20). *Id.* at 12.

The court of appeals therefore proceeded on the assumption that petitioner had lost and regained only one federal civil right: the right to serve on a federal jury. See Pet. App. 13-16. The court determined that such a restoration is insufficient under Section 921(a)(20) because “the statute refers to having multiple ‘civil rights’ restored, not just one civil right.” *Id.* at 15. The court found that reading of the statute sensible because, in its view, “even when other civil rights cannot be restored because they were not lost, having just one civil right restored is not functionally equivalent to having multiple restored”; “[t]he restoration of a single civil right, as opposed to multiple civil rights, is insufficiently significant” as a marker of “forgiveness or rehabilitation.” *Ibid.*

Judge Clay dissented. Pet. App. 22-35. He concluded that both petitioner’s right to serve on a federal jury and petitioner’s right to vote in federal elections had been restored. See *id.* at 28-33. He also disagreed with the majority’s conclusion that restoration of the sole civil right lost would be insufficient under Section 921(a)(20). *Id.* at 34-35.

ARGUMENT

Petitioner's civil rights have not been restored within the meaning of Section 921(a)(20), because his right to serve on a federal jury has not been restored. Although the court of appeals reached the correct bottom-line conclusion, it rested its decision on the erroneous ground (not advanced by the United States) that the restoration of a felon's full complement of civil rights does not qualify as a restoration of civil rights under Section 921(a)(20) if his conviction deprived him of only one civil right. Nevertheless, petitioner would not be entitled to relief even if that holding were reversed; he has not identified any relevant circuit conflict; and the court of appeals' error likely lacks practical importance. Further review is therefore unwarranted.

1. Because petitioner has been convicted of federal felonies, he is prohibited from possessing a firearm, 18 U.S.C. 922(g)(1), unless his federal convictions are "conviction[s] * * * for which [he] has been pardoned or has had civil rights restored," 18 U.S.C. 921(a)(20). This Court held in *Beecham v. United States*, 511 U.S. 368 (1994), that to determine whether civil rights have been restored for a particular conviction, a court must look to "the law of the convicting jurisdiction." *Id.* at 371. Accordingly, in this case, the question is whether federal law has restored petitioner's "rights to vote, hold office, and serve on a jury." *Logan v. United States*, 552 U.S. 23, 28 (2007); see *Caron v. United States*, 524 U.S. 308, 316 (1998).

The answer to that question is no, because petitioner's right to serve on a jury has not been restored. Under 28 U.S.C. 1865(b)(5), an individual cannot serve on a federal jury if he "has been convicted in a State

or Federal court of record of a crime punishable by more than one year and his civil rights have not been restored.” The only court of appeals to decide the question has held that when a person has been convicted of a felony, Section 1865(b)(5) requires an “affirmative act recognized in law” restoring his civil rights before that individual can serve on a federal jury. *United States v. Hefner*, 842 F.2d 731, 732 (4th Cir.), cert. denied, 488 U.S. 868 (1988). And at least as applied to federal felonies, that makes sense: Given that the right to serve on a jury is itself one of the three key civil rights, it would not be sufficient that the other two rights were restored by operation of law. Rather, what is required is some affirmative declaration under the law that an individual’s civil rights have been restored.

That conclusion accords with the history of Section 1865. Section 1865 originally barred a person convicted of a felony from serving on a federal jury if “his civil rights ha[d] not been restored by pardon or amnesty.” 28 U.S.C. 1865(b)(5) (1976). In 1978, Congress deleted the qualifying phrase “by pardon or amnesty.” Jury System Improvements Act of 1978, Pub. L. No. 95-572, § 3(a), 92 Stat. 2453. The House Judiciary Committee report explained that “the presence in existing law of the qualifying words ‘pardon or amnesty’ * * * is clearly underinclusive as an enumeration of methods for restoring civil rights” in light of other means under state and federal law to restore civil rights or expunge criminal convictions. H.R. Rep. No. 1652, 95th Cong., 2d Sess. 10 (1978) (House Report). With respect to federal law, the report cited “the Youth Corrections Act (18 U.S.C. 5021) and the Comprehensive Drug Abuse Prevention and Control

Act of 1970 (21 U.S.C. 844(b))” as examples of such statutes. *Ibid.*

Those two statutes (each of which have since been repealed) illustrate the type of affirmative action that Congress had in mind. The Comprehensive Drug Abuse Prevention and Control Act provided a mechanism for deferred adjudication of certain first-time drug offenses following successful completion of probation. Pub. L. No. 91-513, § 404(b), 84 Stat. 1264 (21 U.S.C. 844(b) (1976)), repealed by the Sentencing Reform Act of 1984, Pub. L. No. 98-473, Tit. II, ch. II, § 219(a), 98 Stat. 2027 (Sentencing Reform Act). And the Federal Youth Corrections Act automatically “set aside” any conviction for which a young offender was unconditionally discharged. Ch. 1115, § 2, 64 Stat. 1089 (18 U.S.C. 5021 (1976)), repealed by the Sentencing Reform Act, § 218(a)(8), 98 Stat. 2017; see, *e.g.*, *United States v. McMains*, 540 F.2d 387, 388 (8th Cir. 1976). Similar mechanisms exist under current law. For example, 18 U.S.C. 3607(e) provides for expungement of certain drug-offense convictions committed by persons under the age of 21. But without such an affirmative act of restoration under federal law, an individual convicted of a felony in federal court may not serve on a federal jury.

In dissent, Judge Clay stated that the order from the Tennessee state court operated to restore petitioner’s civil rights within the meaning of Section 1865(b)(5) because that statute, unlike Section 921(a)(20), does not contain a “choice-of-law” sentence pointing to the jurisdiction of conviction (see p. 2, *supra*). See Pet. App. 29. But although the choice-of-law sentence in Section 921(a)(20) made it particularly clear that the jurisdiction of conviction must restore a

felon's civil rights, see *Beecham*, 511 U.S. at 371, Section 1865(b)(5) should be interpreted the same way. The basic principle of a restoration of civil rights, like a pardon or an expungement, is that the government has extended a measure of forgiveness to the felon. That strongly suggests that it is the government whose law the felon violated, not some other jurisdiction, that must restore the rights, because it is that government that has standing to forgive the felon. And that reading accords with the examples given in the House Judiciary Committee report, which referred to particular federal statutory schemes as means of restoring civil rights for certain federal convictions. See House Report 10.

Accordingly, petitioner's right to serve on a federal jury has not been restored within the meaning of Section 921(a)(20). For that reason, he has not regained his full complement of the three key civil rights, and he therefore continues to be subject to criminal liability under Section 922(g)(1) for possession of a firearm.¹

2. The court of appeals assumed that petitioner's right to serve on a federal jury had been restored. Pet. App. 7-8. But it held that even under that assumption, he had not received a restoration of his civil rights within the meaning of Section 921(a)(20) because Section 921(a)(20) refers to "rights" (plural), so the restoration of only one right is insufficient, even if

¹ Petitioner is correct (Pet. 14 n.2) that the government did not specifically argue below that petitioner has not regained his right to serve on a jury under 28 U.S.C. 1865(b)(5). But the government did argue generally that although petitioner had been restored his civil rights under Tennessee law, he had not been restored his civil rights under federal law. See Gov't C.A. Br. 6-8.

that was the only right lost upon conviction. See *id.* at 3-4, 14-16.

That conclusion was incorrect (and, as noted, the United States did not advance that argument below). In the view of the United States, Section 921(a)(20) is satisfied when a person loses at least one of the three relevant civil rights on account of a conviction and then has restored his full complement of civil rights. Although Section 921(a)(20) says “rights” in the plural, the provision is most naturally read to refer to the three rights that the individual possesses after the event of restoration. See Pet. App. 35 (Clay, J., dissenting). For example, it would be natural to say that a prisoner has had his “privileges restored” for good behavior, even if his act of bad behavior resulted in the loss of only one of his multiple privileges.

That linguistic inference is confirmed by the statutory purpose of identifying individuals who have received a sufficient “token of forgiveness from the government,” *Logan*, 552 U.S. at 32. Given that purpose, it would have been anomalous for Congress to have drawn a distinction between a felon who lost and regained only one civil right and a felon who lost and regained two civil rights, because it is not clear that the latter restoration expresses any greater degree of forgiveness than the former. It is far more likely that Congress drew a distinction between a partial restoration of civil rights and a full restoration of civil rights, because that distinction does meaningfully identify those felons who have been extended a greater measure of forgiveness by the government. Accordingly,

the use of the plural is best read to capture that distinction.²

Nevertheless, although the court of appeals erred in its analysis, the question whether petitioner had his civil rights restored does not warrant this Court's review for two reasons. First, as discussed above, petitioner has not had his civil rights restored because his right to serve on a federal jury has not been restored, and he therefore could not prevail even if this Court rejected the reasoning of the court of appeals. That appears likely to be true for the vast majority of federal felons, because under Section 1865(b)(5), all felons lose their right to serve on a jury, and there exist only limited avenues for relief from that disability for federal felons. See pp. 7-8, *supra*. It is therefore not clear that the court of appeals' erroneous holding that the restoration of only one right cannot satisfy Section 921(a)(20) has substantial practical importance. At minimum, the question would be better presented in a case in which the felon has had his right to serve on a jury restored by an affirmative act.

Second, and relatedly, petitioner has not identified any relevant circuit conflict. And although the United

² The court of appeals majority also rested its decision on its conclusion that petitioner had never lost, and therefore never regained, his right to vote in federal elections within the meaning of Section 921(a)(20). See Pet. App. 8-13; see also pp. 4-5, *supra*. The dissent disagreed. See Pet. App. 30-33. Under the view of the United States that the restoration of even one civil right is sufficient when only one right was lost, that debate is irrelevant in this case. On either view, whether petitioner's civil rights have been restored turns entirely on whether his right to serve on a federal jury was restored. It is not clear that the disagreement between the majority and the dissent will have practical significance in other cases.

States disagrees with the court of appeals' conclusion that the restoration of only one right (when only one was lost) is insufficient to qualify as a restoration of civil rights under Section 921(a)(20), that conclusion does not conflict with any decision of this Court or another court of appeals.³

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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³ Petitioner has not raised a Second Amendment challenge to the application of Section 922(g)(1) in this context.