No. 24-6497

IN THE SUPREME COURT OF THE UNITED STATES

JEROSWASKI WAYNE COLLETTE, PETITIONER

v.

UNITED STATES OF AMERICA

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

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Petitioner contends (Pet. 2-25) that 18 U.S.C. 922(g)(1), the federal statute that prohibits a person from possessing a firearm if he has been convicted of "a crime punishable by imprisonment for a term exceeding one year," ibid., violates the Second Amendment on its face and as applied to him and exceeds Congress's authority under the Commerce Clause. None of those contentions warrants this Court's review.

First, for the reasons set out in the government's brief in French v. United States, No. 24-6623, 2025 WL 1426709 (May 19, 2025), the contention that Section 922(g)(1) violates the Second Amendment on its face does not warrant this Court's review. See

ibid. (denying certiorari). As the government explained in French, that contention plainly lacks merit, and every court of appeals to consider the issue since United States v. Rahimi, 602 U.S. 680 (2024), has determined that the statute has at least some valid applications. See Br. in Opp. at 3-6, French, supra (No. 24-6623).

Second, for the reasons set out in the government's brief in opposition in Jackson v. United States, No. 24-6517, 2025 WL 1426707 (May 19, 2025), the contention that Section 922(g)(1) violates the Second Amendment as applied to petitioner does not warrant this Court's review. See ibid. (denying certiorari). Although there is some disagreement among the courts of appeals about whether Section 922(g)(1) is susceptible to individualized as-applied challenges, that disagreement is shallow. See Br. in Opp. at 12-15, Jackson, supra (No. 24-6517). This Court has previously denied plenary review when faced with a similarly narrow disagreement among the circuits about the availability of as-applied challenges to Section 922(g)(1). See id. at 15. And any disagreement among the circuits may evaporate given the Department of Justice's recent re-establishment of the administrative process under 18 U.S.C. 925(c) for granting relief from federal firearms disabilities. See Br. in Opp. at 15-16, Jackson, supra (No. 24-6517).

This case would also be a poor vehicle to determine whether Section 922(g)(1) is amenable to individualized as-applied

challenges. Section 922(g)(1) does not raise any constitutional concerns as applied to petitioner. Petitioner's criminal record includes "convictions for battery of a correctional officer, cocaine possession, theft, cyberstalking, possession of more than five pounds of marijuana, and possession of a firearm by a felon." Pet. App. 2a. And in the episode that prompted petitioner's arrest, petitioner "argued with a worker" at a wrecking company, "retrieved a gun from his car, waved it, pointed it at the worker, said he would destroy the property if he wanted, and imitated the sound of gunfire," causing the worker to "fea[r] for her life." Ibid. Given petitioner's criminal history and conduct, he cannot show that he would have prevailed on an as-applied challenge in any circuit. See, e.g., United States v. Williams, 113 F.4th 637, 660 (6th Cir. 2024) (recognizing the constitutionality of applying Section 922(g)(1) to persons with previous convictions for "assaults").

In addition, petitioner did not preserve an as-applied challenge in the court of appeals. See Pet. App. 5a (petitioner "forfeited the as-applied challenge" by failing to brief it). Throughout the time that Rahimi was pending and after it was decided, this Court consistently denied petitions raising Second Amendment challenges to Section 922(g)(1) when the petitioners failed to preserve their claims in the lower courts. See, e.g., Trammell v. United States, 145 S. Ct. 561 (2024) (No. 24-5723); Chavez v. United States, 145 S. Ct. 459 (2024) (No. 24-5639);

Dorsey v. United States, 145 S. Ct. 457 (2024) (No. 24-5623). The Court should follow the same course here.

Third, petitioner's Commerce Clause challenge does not warrant further review. Petitioner argues (Pet. 21) that the Commerce Clause does not authorize Congress to regulate his possession of a firearm based on the fact that it "had been manufactured in Austria and Connecticut and had traveled [in] interstate commerce to get to Texas." But interpreting a similarly worded predecessor felon-in-possession statute, this Court determined that "proof that the possessed firearm previously traveled in interstate commerce is sufficient to satisfy the [jurisdictional element]." 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 interpreted Section 922(g) the same way and have consistently 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).

Petitioner, in any event, did more than just possess a firearm that crossed state and national lines. He used a firearm to threaten a worker at a wrecking company while trying to "retrieve personal items from his car, which had been repossessed." Pet. App. 2a. That conduct falls well within Congress's authority under

the Commerce Clause. See, e.g., United States v. Lopez, 514 U.S. 549, 558 (1995) (Congress may "protect" "persons or things in interstate commerce"); Perez v. United States, 402 U.S. 146, 148 (1971) (Congress may protect commercial transactions from the "use" or "threat" of violence).

The petition for a writ of certiorari should be denied.*

Respectfully submitted.

D. JOHN SAUER
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MAY 2025

* Copies of the government's briefs in opposition in French, Jackson, and [case] are being served on petitioner. The government waives any further response to the petition for a writ of certiorari unless this Court requests otherwise.