No. 24-6693

IN THE SUPREME COURT OF THE UNITED STATES

SEAN WAYNE THOMPSON, 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. 4-10) 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. For the reasons set out in the government's brief in opposition in French v. United States, No. 24-6623, 2025 WL 1426709 (May 19, 2025), the contention that Section 922(g)(1) is facially unconstitutional 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).

Similarly, 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. Although there is some disagreement among the courts of appeals regarding 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 similarly narrow disagreements 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).

For two independent reasons, this case would also be a poor vehicle to determine whether Section 922(g)(1) is susceptible to individualized as-applied challenges. First, Section 922(g)(1) does not raise any constitutional concerns as applied to petitioner. Petitioner has been convicted on two counts of aggravated sexual assault of a child and two counts of indecency

with a child. See Pet. App. A2. And "when the 13-year-old victim told [petitioner] that she was going to tell her mother about the sexual assaults, [petitioner] threatened to kill himself to prevent her from talking." Ibid. Given petitioner's criminal history, he cannot show that he would prevail 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 "rapes" or "assaults").

Second, petitioner did not preserve an as-applied challenge in the court of appeals. See Pet. App. A5 (petitioner "forfeited his as-applied argument" by failing to meaningfully 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). This Court should follow the same course here.

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

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

Respectfully submitted.

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