

No. 24-6772

IN THE SUPREME COURT OF THE UNITED STATES

RAFAEL DOMINGUEZ, 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. 4-6) 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. See Pet. I (“facially unconstitutional”); Pet. App. A1 (“facially unconstitutional”). 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), that contention does not warrant this Court’s review. See ibid. (denying certiorari). As the government explained in French, the claim that Section 922(g)(1) violates the Second Amendment on its

face 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). For example, Section 922(g)(1) is valid as applied to petitioner, who has previous convictions for crimes such as assault involving family violence, false imprisonment of a child, violating a protective order, making a terroristic threat, resisting arrest, vehicle burglary, firearm theft, and cocaine possession, and who was still under court supervision for a previous felony at the time of the conduct at issue in this case. See Gov't C.A. Br. 1, 31.

Petitioner separately argues (Pet. 6-9) that Section 922(g) exceeds Congress's authority under the Commerce Clause to the extent it applies to a defendant based on his possession of a firearm that previously traveled in interstate commerce. 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 possess a firearm that crossed state lines at some point in the past. He transported two loaded handguns in a truck, see Gov't C.A. Br. 2 -- conduct that falls within Congress's authority under the Commerce Clause to regulate "channels of interstate commerce," "instrumentalities of interstate commerce," and "vehicles" "in interstate commerce." United States v. Lopez, 514 U.S. 549, 558 (1995). Petitioner also possessed the handguns alongside methamphetamine. See Gov't C.A. Br. 3. This Court has held that the Commerce Clause empowers Congress to regulate the "production, possession, and distribution of controlled substances." Taylor v. United States, 579 U.S. 301, 307 (2016). Congress likewise may regulate the possession of a firearm in the course of those commercial activities. See Lopez, 514 U.S. at 558 (Congress may regulate "persons or things in interstate commerce").

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

Respectfully submitted.

D. JOHN SAUER
Solicitor General

MAY 2025

* A copy of the government's brief in opposition in French is being served on petitioner. The government waives any further response to the petition for a writ of certiorari unless this Court requests otherwise.