

No. 24-7057

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IN THE SUPREME COURT OF THE UNITED STATES

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EARL B. PENN, PETITIONER

v.

UNITED STATES OF AMERICA

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

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MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Petitioner contends (Pet. 9-17) 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. See ibid. (denying certiorari). 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 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 susceptible to individualized as-applied challenges because Section 922(g)(1) does not raise any constitutional concerns as applied to petitioner. As the court of appeals explained, petitioner's "criminal record includes

several convictions, some of them violent.” Pet. App. 3a n.2; see, e.g., PSR ¶¶ 29-32 (burglary, arson, firearm offenses, and domestic assault). Accordingly, “[i]t is safe to say that [petitioner] ‘poses a credible threat to the physical safety of others,’” and that his as-applied challenge “would not succeed.” Pet. App. 3a n.2 (quoting Rahimi, 602 U.S. at 693) (brackets omitted).

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

Respectfully submitted.

D. JOHN SAUER  
Solicitor General

JUNE 2025

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\* 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.