

No. 24-7101

IN THE SUPREME COURT OF THE UNITED STATES

JOSHUA FREEMAN, 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. 14-15) 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. 14 (“facial conflict”); Pet. App. A2 (“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).

Petitioner separately contends (Pet. 7-13) that the fact that a firearm "crossed state lines at [some] time in the indefinite past," Pet. i, does not satisfy Section 922(g)'s jurisdictional element, which requires proof that the defendant possessed a firearm "in or affecting commerce," 18 U.S.C. 922(g). He also argues (Pet. 7-13) that, if Section 922(g) were construed to cover his conduct, it would exceed Congress's authority under the Commerce Clause. See U.S. Const. Art. I, § 8, Cl. 3.

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 read 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).

Regardless, petitioner did more than just possess a firearm that crossed state lines at some point in the past. He transported a loaded handgun in a truck, see PSR ¶ 11 -- conduct that falls within Congress's power to regulate the "channels" and "instrumentalities" of interstate commerce and "vehicles" "in interstate commerce." United States v. Lopez, 514 U.S. 549, 558 (1995).

Furthermore, petitioner did not preserve a Commerce Clause challenge to Section 922(g)(1) in the district court. See C.A. Doc. 62, at 3 (Oct. 18, 2024). Petitioner's claim is thus subject to plain-error review, see Fed. R. Crim. P. 52(b), a standard that he cannot satisfy given the wall of contrary precedent. See Henderson v. United States, 568 U.S. 266, 278 (2013) (explaining that "lower court decisions that are * * * not plainly wrong (at time of trial or at time of appeal) fall outside the * * * scope" of the plain error rule) (emphasis omitted). At a minimum, petitioner's failure to preserve a Commerce Clause claim makes this case a poor vehicle for reviewing that issue.

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

Respectfully submitted.

D. JOHN SAUER
Solicitor General

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* 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.