No. 24-7182

IN THE SUPREME COURT OF THE UNITED STATES

ANTJOUN RIDDICK, PETITIONER

v.

UNITED STATES OF AMERICA

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

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Petitioner contends (Pet. 16-17) 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 as applied to him. 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), that contention 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 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).

This case would also be a poor vehicle to determine whether Section 922(g)(1) is susceptible to individualized as-applied challenges. Petitioner concedes (Pet. 16 & n.10) that he raised only a facial challenge to Section 922(g)(1) in the district court. His as-applied challenge would therefore be reviewable only for plain error. See Fed. R. Crim. P. 52(b). Throughout the time that United States v. Rahimi, 602 U.S. 680 (2024), was pending and after it was decided, this Court has consistently denied petitions for writs of certiorari raising Second Amendment challenges to Section 922(g)(1) when the petitioners have 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).

Moreover, Section 922(g)(1) does not raise any constitutional concerns as applied to petitioner. Petitioner has previous felony

convictions for murder, conspiring to distribute cocaine, assault, and firearms offenses. See Presentence Investigation Report ¶¶ 27, 29, 31. 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. Bullock, 123 F.4th 183, 185 (5th Cir. 2024) (rejecting an as-applied challenge brought by a felon with convictions for murder and aggravated assault).

Petitioner separately contends (Pet. 6) that, if Section 922(g) were construed to cover "the mere intrastate possession of an object that has crossed state lines at some point in the past," it would exceed Congress's authority under the Commerce Clause. See U.S. Const. Art. I, § 8, Cl. 3. As an initial matter, petitioner has not preserved a Commerce Clause challenge to Section 922(g)(1). While petitioner raised, and the court of appeals considered, a sufficiency-of-the-evidence challenge, he did not raise, and the court did not consider, a constitutional argument. See Pet. C.A. Br. 17-24 (raising sufficiency challenge); Pet. App. A2 (addressing sufficiency challenge). This Court's ordinary practice precludes certiorari when "the question presented was not pressed or passed upon below." United States v. Williams, 504 U.S. 36, 41 (1992) (citation omitted).

In any event, 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). 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 Jackson is being served on petitioner. The government waives any further response to the petition for a writ of certiorari unless this Court requests otherwise.