

No. 24-7217

IN THE SUPREME COURT OF THE UNITED STATES

LADARIUS DEAN, 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

D. JOHN SAUER
Solicitor General
Counsel of Record
Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

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Petitioner contends (Pet. 8-14) 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. For the reasons set out in the government’s brief 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. 3-6, French, supra (No. 24-6623).

Moreover, petitioner did not preserve his Second Amendment claim in the district court. See Pet. App. 1a. (noting that petitioner raised that claim “for the first time on appeal”). His facial challenge would therefore be reviewable only for plain error. See Fed. R. Crim. P. 52(b). Throughout the time that Rahimi 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).

Petitioner separately contends (Pet. 15) that applying Section 922(g)(1) to a defendant where “the only proof of a nexus to interstate commerce is the fact that the firearm at some point crossed state lines in the past” exceeds Congress’s authority under the Commerce Clause, U.S. Const. Art. 1, § 8, Cl. 3. 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).

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 vehicle while driving erratically and fleeing police, see Presentence Investigation Report ¶¶ 6-11 -- 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, as petitioner acknowledges (Pet. 5), he did not raise his Commerce Clause challenge in district court. See Pet. App. 1a (discussing petitioner’s “new argument” under the Commerce Clause). Petitioner’s challenge is therefore subject to plain-error review. See Fed. R. Crim. P. 52(b). Petitioner cannot satisfy that standard given the wall of contrary precedent. Cf. 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.