

No. 24-6516

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IN THE SUPREME COURT OF THE UNITED STATES

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BROXSTONIE DEMICHAEL MITCHELL, 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 FIFTH CIRCUIT

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MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Petitioner contends (Pet. 10-27) 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. 2 (asking whether Section 922(g)(1) is unconstitutional “on its face”); Pet. App. 1 (describing petitioner’s challenge as “facial”). For the reasons set out in the government’s brief in opposition in French v. United States, No. 24-6623 (filed Apr. 11, 2025), that contention does not warrant this Court’s review. 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.

Petitioner's failure to preserve his facial challenge to Section 922(g)(1) provides an independent reason to deny the petition for a writ of certiorari. See Gov't C.A. Br. 9-11. Petitioner initially pleaded guilty to possessing a firearm as a felon, in violation of 18 U.S.C. 922(g)(1), and using a firearm during and in relation to a drug-trafficking crime, in violation of 18 U.S.C. 924(c). See C.A. ROA 45-50. Days before the sentencing hearing, petitioner filed a "sentencing memorandum" challenging Section 922(g)(1) in light of NYSRPA v. Bruen, 597 U.S. 1 (2022). See C.A. ROA 241-247, 502. The memorandum contained no argument or analysis, and this Court had decided Bruen before petitioner pleaded guilty and more than a year before he filed the memorandum. See id. at 502. The district court construed the filing as a motion to withdraw the guilty plea, which it denied after rejecting petitioner's Second Amendment claim. See id. at 247.

The plea agreement fell through because petitioner would not admit to the factual basis for the Section 924(c) offense. See C.A. ROA 60-66, 250-254. Without moving to dismiss the Section 922(g)(1) charge on the ground that the statute violated the Second Amendment, petitioner pleaded guilty to the Section 922(g)(1)

offense in exchange for the dismissal of the Section 924(c) charge. See id. at 178-182, 302, 306, 440-445.

Because petitioner did not preserve a Second Amendment challenge to Section 922(g)(1), this Court should deny the petition for a writ of certiorari. Throughout the time that Rahimi was pending and after it was decided, this Court consistently denied petitions raising Second Amendment challenges to Section 922(g)(1) when the petitioners 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). At the very least, the parties' dispute about preservation, see Pet. App. 2, makes this case a poor vehicle for addressing the question presented.

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

Respectfully submitted.

D. JOHN SAUER  
Solicitor General

APRIL 2025

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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.