

No. 24-6897

IN THE SUPREME COURT OF THE UNITED STATES

JOSHUA MICHAEL FAUST, PETITIONER

v.

UNITED STATES OF AMERICA

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

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Petitioner contends (Pet. 6-20) 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 (filed Apr. 11, 2025), the contention that Section 922(g)(1) is facially unconstitutional does not warrant this Court’s review. 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.

Similarly, for the reasons set out in the government's brief in opposition in Jackson v. United States, No. 24-6517 (filed Apr. 11, 2025), the contention that Section 922(g)(1) violates the Second Amendment as applied to petitioner does not warrant this Court's review. 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 because Section 922(g)(1) does not raise any constitutional concerns as applied to petitioner. Petitioner's "lengthy criminal record includes over fifteen convictions, including four assaults (two with a dangerous weapon), disorderly conduct, and violation of a protective order." Pet. App. 24 n.2.

Petitioner also has a "history of noncompliance while incarcerated and while subject to probation." Ibid. The court of appeals accordingly determined that "[e]ven if [petitioner] could bring an as-applied challenge, he would not succeed" because his criminal history demonstrates that he "poses a credible threat to the physical safety of others." Ibid. (brackets, citation, and quotation marks omitted).

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

Respectfully submitted.

D. JOHN SAUER
Solicitor General

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* Copies of the government's brief 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.