

No. 25-5516

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IN THE SUPREME COURT OF THE UNITED STATES

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JOSHUA OMAR GARCIA, 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 TENTH CIRCUIT

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MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Petitioner contends (Pet. 4-11) that 18 U.S.C. 922(g)(1) violates the Second Amendment on its face and as applied to him. For the reasons set out in the government's brief opposing certiorari in French v. United States, 145 S. Ct. 2709 (2025), the contention that Section 922(g)(1) is facially unconstitutional does not warrant this Court's review. See ibid. (denying certiorari). 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. See Br. in Opp. at 3-6, French, supra (No. 24-6623).

Similarly, for the reasons set out in the government's brief opposing certiorari in Vincent v. Bondi, No. 24-1155 (Aug. 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 11-14, Vincent, supra (No. 24-1155). 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 13-14. And any disagreement among the circuits may evaporate given the Department of Justice's recent reestablishment of the administrative process under 18 U.S.C. 925(c) for granting relief from federal firearms disabilities. See Br. in Opp. at 8-11, Vincent, supra (No. 24-1155).

Moreover, as petitioner appears to recognize, this case would be a poor vehicle for review. He instead contends (Pet. 4) that the Court should grant certiorari in Vincent, "rule that § 922(g)(1) is unconstitutional on its face or in some applications," and then grant his petition and "afford [him] the benefit of its new Second Amendment ruling." But for the reasons given in the government's brief in Vincent, that case does not

warrant review. Regardless, even a decision in favor of the petitioner in Vincent would not necessarily help petitioner here. Unlike the civil plaintiff in that case, petitioner did not comply with the law while challenging Section 922(g)(1) in a civil action. Instead, he knowingly violated the law by possessing a firearm and then raised a Second Amendment defense after he was caught and criminally prosecuted.

Furthermore, Section 922(g)(1) does not raise any constitutional concerns as applied to petitioner. Petitioner was arrested in this case after stealing merchandise from a K-Mart, brandishing a firearm at employees who attempted to stop him, firing it into the ground, and firing the same gun at police trying to apprehend him two days later. Presentence Investigation Report (PSR) ¶¶ 11-12. Petitioner had also sustained multiple prior felony convictions for menacing after he assaulted prison employees and a police officer. PSR ¶¶ 41, 47. Given his criminal history, petitioner cannot show that he would prevail on an as-applied challenge in any circuit. See, e.g., United States v. Williams, 113 F.4th 637, 659 (6th Cir. 2024) (recognizing Section 922(g)(1)'s constitutionality as applied to those convicted of "assaults").

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

Respectfully submitted.

D. JOHN SAUER  
Solicitor General

NOVEMBER 2025

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\* Copies of the government's briefs in opposition in French and Vincent are being served on petitioner. The government waives any further response to the petition for a writ of certiorari unless this Court requests otherwise.