

No. 25-5522

IN THE SUPREME COURT OF THE UNITED STATES

GARY CHARLES MOORE, 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

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Petitioner contends (Pet. 7-9) 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 acknowledges and the court of appeals recognized, petitioner failed to preserve a Second Amendment challenge to Section 922(g)(1) in the district court, and the court of appeals therefore reviewed his claim only for plain error. See Pet. 3-4; Pet. App. a2. 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). The same course is appropriate here.

Furthermore, Section 922(g)(1) does not raise any constitutional concerns as applied to petitioner. Petitioner possessed a firearm in this case while being arrested for five shootings, and he had sustained previous felony convictions for drug possession, drug possession with intent to distribute, and possessing a firearm as a felon. Presentence Investigation Report ¶¶ 14-16, 44-48. 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 "drug trafficking"); United States v. White, No. 23-3013, 2025 WL 384112, at *2 (3d Cir. Feb. 4, 2025) (rejecting an as-applied challenge brought by a felon with previous convictions for, inter alia, drug distribution and carrying a firearm without a license), cert. denied, 145 S. Ct. 2805 (2025); United States v. Morgan, 147 F.4th 522, 528 (5th Cir. 2025) (rejecting as-applied challenge by a felon with a prior state felony conviction for illegal use of weapons).

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 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.