

No. 24-6623

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IN THE SUPREME COURT OF THE UNITED STATES

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LAMORRIS ALLAN FRENCH, 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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BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether 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," violates the Second Amendment on its face.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-2) is reported at 121 F.4th 538. The opinion of the district court is reported at 701 F. Supp. 3d 480.

JURISDICTION

The judgment of the court of appeals was entered on November 20, 2024. The petition for a writ of certiorari was filed on February 18, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

## STATEMENT

Following a guilty plea in the United States District Court for the Western District of Louisiana, petitioner was convicted of possessing a firearm as a felon, in violation of 18 U.S.C. 922(g)(1). Pet. App. 1, 3. He was sentenced to 120 months of imprisonment, to be followed by three years of supervised release. Id. at 4-5. The court of appeals affirmed. Id. at 1-2.

1. In April 2022, police officers responded to a report of shots fired at a house in Shreveport, Louisiana. Presentence Investigation Report (PSR) ¶ 10. The officers found petitioner sitting on the front porch. Ibid. When the officers identified themselves, petitioner picked up a pistol and went into the house, pointing the pistol at the officers as he did so. PSR ¶¶ 10, 15. Officers arrested petitioner in an alley behind the house and found a loaded 9mm magazine in his pocket. PSR ¶¶ 11, 15. They then searched the house and found a 9mm pistol, which had been reported stolen, as well as 13 grams of crack cocaine, digital scales, and packaging material. PSR ¶¶ 16-17. At the time of his conviction, petitioner had previous felony convictions in Louisiana for attempted burglary of an inhabited dwelling, possessing a controlled substance, and two instances of possessing a controlled substance with intent to distribute. PSR ¶¶ 9, 37, 42-44.

2. A federal grand jury indicted petitioner for possessing a firearm as a felon, in violation of 18 U.S.C. 922(g)(1). See 701 F. Supp. 3d 480, 483-484. Petitioner initially pleaded guilty,

but later moved to withdraw his plea and to dismiss the indictment on the ground that Section 922(g)(1) violates the Second Amendment. See id. at 484. The district court denied petitioner's motions, holding that "Section 922(g)(1) passes constitutional muster." Id. at 488; see id. at 485-488. The court later sentenced petitioner to 120 months of imprisonment, to be followed by three years of supervised release. Pet. App. 4-5.

3. The court of appeals affirmed, rejecting petitioner's facial challenge to Section 922(g)(1). Pet. App. 1-2. The court relied on circuit precedent holding that Section 922(g)(1) does not violate the Second Amendment on its face. See id. at 2 (citing United States v. Diaz, 116 F.4th 458, 471-472 (5th Cir. 2024), petition for cert. pending, No. 24-6625 (filed Feb. 18, 2025)).

#### ARGUMENT

Petitioner renews his contention (Pet. 10-22) that Section 922(g)(1) violates the Second Amendment on its face. The court of appeals correctly rejected that contention, and its decision does not conflict with the decision of this Court or of any other court. This Court should deny the petition for a writ of certiorari.

1. A facial challenge to a federal statute is the "'most difficult challenge to mount successfully,' because it requires a defendant to 'establish that no set of circumstances exists under which the Act would be valid.'" United States v. Rahimi, 602 U.S. 680, 693 (2024) (citation omitted). If the challenged statute

complies with the Constitution in even “some of its applications,” the facial challenge fails. Ibid.

Section 922(g)(1) plainly has at least some valid applications. For instance, the government may apply Section 922(g)(1) to persons (such as illegal aliens) who are outside the scope of “the people” protected by the Second Amendment and who accordingly have no constitutional right to keep and bear arms. U.S. Const. Amend. II. Because the Amendment protects a right to possess arms for “traditionally lawful purposes, such as self-defense within the home,” District of Columbia v. Heller, 554 U.S. 570, 577 (2008), the government also may apply Section 922(g)(1) to persons who possess firearms for unlawful purposes such as facilitating drug trafficking. The government likewise may apply Section 922(g)(1) to felons who are still serving their sentences, including felons who are on supervised release, parole, or probation. See, e.g., United States v. Gay, 98 F.4th 843, 847 (2024). Similarly, the government may apply Section 922(g)(1) to, for example, “people who have been convicted of a drive-by-shooting, carjacking, [and] armed bank robbery,” United States v. Canada, 123 F.4th 159, 161 (4th Cir. 2024), or to a person with convictions for “aggravated assault and manslaughter,” United States v. Bullock, No. 23-60408, 2024 WL 4879467, at \*1 (5th Cir. Nov. 25, 2024).

Indeed, this Court has described laws prohibiting felons from possessing firearms as “presumptively lawful.” Rahimi, 602 U.S.

at 699 (quoting Heller, 554 U.S. at 627 n.26). Whether or not Section 922(g)(1) is amenable to as-applied challenges in unusual cases, it complies with the Second Amendment at least in “some,” if not all, “of its applications.” Rahimi, 602 U.S. at 693. The court of appeals thus correctly rejected petitioner’s facial challenge.

2. The question presented does not warrant this Court’s review. Every court of appeals to consider the question since NYSRPA v. Bruen, 597 U.S. 1 (2022), has held that Section 922(g)(1) complies with the Second Amendment in at least some applications. See United States v. Moore, 111 F.4th 266, 272-273 (3d Cir. 2024), petition for cert. pending, No. 24-968 (filed Mar. 11, 2025); United States v. Hunt, 123 F.4th 697, 705-708 (4th Cir. 2024); United States v. Diaz, 116 F.4th 458, 472 (5th Cir. 2024), petition for cert. pending, No. 24-6625 (filed Feb. 18, 2025); United States v. Williams, 113 F.4th 637, 657 (6th Cir. 2024); Gay, 98 F.4th at 846-847 (7th Cir.); United States v. Jackson, 110 F.4th 1120, 1125-1129 (8th Cir. 2024), petition for cert. pending, No. 24-6517 (filed Feb. 10, 2025); Vincent v. Bondi, 127 F.4th 1263, 1266 (10th Cir. 2025). This splitless question does not merit review.

Petitioner argues (Pet. 22-26) that the courts of appeals have disagreed about the availability of as-applied challenges to Section 922(g)(1), but this case would be a poor vehicle to address that disagreement because petitioner raises only a facial challenge. See Pet. 2 (asking whether Section 922(g)(1) is

“unconstitutional on its face”); Pet. App. 1 (noting that petitioner contends only that Section 922(g)(1) “is facially unconstitutional”). This Court has emphasized repeatedly in recent years that facial challenges are disfavored, and as-applied challenges remain the preferred path to resolve important constitutional questions. See Moody v. NetChoice, LLC, 603 U.S. 707, 723 (2024); Rahimi, 602 U.S. at 693; United States v. Hansen, 599 U.S. 762, 784-785 (2023). There is no sound basis to depart from that preference here.

#### CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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