No. 21-5464

IN THE
SUPREME COURT OF THE UNITED STATES

STEVEN E. WALKER,
Petitioner

vs.

UNITED STATES OF AMERICA, and All Agents,
Elected Officials, and Actors Thereof; and
THE STATE OF CALIFORNIA, and All Agents,
Elected Officials, and Actors Thereof,
Respondents.

On Petition for Writ of Certiorari to the
United States Court of Appeals
For the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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In Pro Se

QUESTIONS PRESENTED

In *District of Columbia v. Heller*, this Court acknowledged that the Second Amendment protects a pre-existing fundamental right to armed self-defense which is exercised individually and belongs to every American. *Id.* 128 S.Ct. U.S. 2783, 2791 & 2799 (2008). This Court also mentioned government could administer regulations which exclude any individual, they presume as unsatisfactory, from exercising this fundamental right. *Id.* @ 2817 & n 26. The Second Amendment however explicitly commands that the *right* of the People to keep and bear arms, shall not be infringed. Would the Supremacy Clause apply to the Second Amendment? If it does, then wouldn't the Second Amendment's command be supreme law; and any law which infringes upon this essential right be repugnant to the Constitution and void where, by implication, that prohibition contravenes the exercise of this irrefutable right?

The following may be important questions of constitutional law which have not been, but should be, settled by this Court:

1) Does the operative clause's command that the right of the People to keep and bear arms, shall not be infringed, permit government to infringe, invade, overstep, or prohibit the right to any of the People, under any reason or pretense whatsoever, from keeping and bearing firearms for self-defense?

2) Whether, under Article VI, Clause 2, of the United States Constitution, the Second Amendment to the Constitution is supreme law; and whether any law infringing upon the right of any of the People who are free and law-abiding to keep and bear firearms for their self-defense is repugnant to the Constitution, and void?

PARTIES TO THE PROCEEDING

Petitioner is Steven Walker, a free law-abiding, responsible citizen who is acting in *Pro se.*

Respondents are the United States of America, and all agents, actors and elected officials thereof; and the State of California, and all agents, actors and elected officials thereof.

RELATED CASES

This Case arises from the following lower court proceedings:

Steven Walker vs. United States of America, et al., No 20-55654 (9th Cir) (Memorandum affirming district court summary dismissal, issued May 25, 2021).

Steven Walker vs. United States of America, The State of California, And all actors, agents and elected officials thereof. No. 20-cv-31-DMS (AGS) (Order granting plaintiff's motion to proceed *in forma pauperis* and summarily dismissing complaint without prejudice for failure to state a claim upon which relief can be granted pursuant to 28 U.S.C. §1915(e)(2)(B)(ii), issued March 4, 2020.)

There are no other proceedings in the state or federal trial or appellate courts, or in this Court, directly related to this case within the meaning of this Court's Rule 14.1(b)(iii).

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Historically: (1) society has recognized that People have the right to preserve their own species. This is the right to repeal invasion and to resist enemy activity; (2) society has recognized the right of People to protect themselves against their internal enemies and to preserve their own life through the right of personal self-defense; and (3) society has recognized the right of People to revolt against the oppression of their political leaders. These rights, "the sword of the *Magna Carta*, has been preserved throughout the Anglo-American history of the last five hundred years. When society is able to guarantee to *each* member that they will have no fear of oppression, aggression, or bodily harm, then no longer will these rights be of any real legal meaning. When the reason ceases the rule should cease. Has the modern society met this responsibility?" It would seem that as long as there is danger to individual life, then that society has not eliminated the right of self-defense. "As long as these rights live, then also should coexist the right to bear arms, this is exoteric. Can we deny the right of self-defense and remove the ability therefor?" *See* Stuart R. Hays, *The Right to Bear Arms, A Study in Judicial Misinterpretation*, 2 Wm & Mary L. Rev. 381, 405 (1960).

The text, history, purpose and command of the Second Amendment does not support, nor authorize, the government to establish laws, rules, or policies which infringe upon, prohibit, or deny *any* American Citizen the right, or ability to keep and bear arms for self-defense, regardless of their previous conditions of servitude, or prior conviction of a crime. The Amendment is complete when stating that the *right* of *the People* to keep and bear arms "shall not be infringed." U.S. Const. Amend. II. This language does not include any exceptions or limitations upon the

People, only upon the government. There are no hidden or technical meanings granting government power to establish categories of People who may or may not be worthy of exercising the right. "Shall not be infringed" means what it says and says what it means. There is no middle ground. It is unambiguously clear that the right to keep and bear arms for all Americans cannot be, must not be, and may not be violated, overstepped, invaded, limited or prohibited.

Under *Heller's* rationale, a responsible law-abiding citizen's individual interests in possessing a firearm for self-defense *is elevated above* all other interests, including the governments.[1] Yet, what are the principles which determine who a law-abiding and responsible citizen is—and how long must that person abide by and be obedient to the law as required by constitutional requirements—in order to satisfy the government's arbitrary position on Second Amendment protections? Is it a lifetime of law-abiding behavior, or a select number of years? Also, where in the Constitution are there time or duration yardsticks defining when or for how long a citizen loses or regains their rights which are constitutionally protected? Does the Constitution even allow for rights to be denied or disparaged? It is clear that the language of the Second Amendment does not categorize who or what type of "People" are not allowed to keep and bear arms? It does however restrict the government from doing so. *Heller* held that the individual right to possess arms for self-defense belongs to all Americans.[2] Thus, "every" American enjoys this inalienable right.

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[1] The term "law-abiding" means "abiding by or obedient to the law." *See* https://www.merriam-webster.com/disctionary/law-abiding.

[2] Declaring that the right belongs to *all* Americans, this Court meant "every" American. As the term "all" means "every member" or the "whole amount" of. *See e.g.* https://www.merriam-webster.com/dictionary/all.

Furthermore, this Court has yet to resolve what the plain and unambiguous command "shall not be infringed" actually means and ensures. Until this matter is resolved government will continue to seek ways to impose tyrannical and oppressive laws upon the Second Amendment, and the rights of the People under any pretense, they quixotically assume necessary. The time has come to resolve these highly important controversial questions. *Certiorari* should be granted.

OPINIONS BELOW

The court of appeals order affirming the district court's summary dismissal is not reported in the Federal Reporter but is reproduced in Appendix A. The District Court's order summarily dismissing the complaint, and granting *in forma pauperis* status, is not reported in the Federal Supplement but is reproduced in Appendix B.

JURISDICTION

The date on which the United States Court of Appeals for the Ninth Circuit decided my case was May 25, 2021. No Petition for Rehearing was filed in this case. This Petition is timely under this Court's Rule 13 and therefore, this Court has jurisdiction under 28 U.S.C. §1254(1) and Article III of the United States Constitution.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article VI, of the United States Constitution; The First, Second, Fourth, Ninth Thirteenth and Fourteenth Amendments to the United States Constitution, relevant portions of the California Constitution, California Penal Code, and the United States Codes.

STATEMENT OF THE CASE

A. Factual Background

California and the United States governments, have created and are enforcing laws which categorically prohibit people, who they assume to be unworthy of the Second Amendment right, from keeping, bearing, and procuring arms for their self-defense. *See* Calif. Penal Code §29800; *also see* 18 U.S.C. §922. Basically, these types of laws make it a crime for a free, law-abiding citizen to defend themselves, and these prohibitions are permanent to all unless very limited exemptions are satisfied. *See* Calif. Penal Code §29855 [exemption for law enforcement only].[3] Yet, California also allows its citizens to stand their ground and defend themselves, family, home, and community. *See* Calif. Penal Code §198.5. More to the point, in California "*[a]ll people* are by nature free and independent and have inalienable rights. Among these are . . . *defending life and liberty, . . . protecting property, and pursuing and obtaining safety. . . .*" *See* Calif. Const. Art I, §1. [Emphasis added in Italics]. But, California restricts the ability to do so, for anyone with a historical conviction. *See* Calif. Penal Code §§29800 *et seq*. However, these inalienable rights are fundamental rights protected under the Second, Ninth and Fourteenth Amendments, which includes the fundamental right to keep and bear arms. Yet, the current firearm prohibition laws imposed upon citizens who have an *obsolete* felony or misdemeanor conviction—but who are free, independent, and leading a law-abiding responsible life—eternally deny and disparage them from exercising their inalienable and

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[3] The law provides for exemptions for convicted law enforcement but not for convicted Citizens. However, the Second Amendment protects all People, not just law enforcement.

fundamental rights to defend life and liberty, protect property, or pursue and obtain safety. *See cf.* U.S. Const. Amend. IX. ["The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people"]. This is also true under the Federal restrictions. 18 U.S.C. §922. California and the United States governments have therefore essentially destroyed the Second Amendment rights of all free citizens under the disastrous pretext of controlling violent crime (Gun violence).

Nonetheless, between the years 2015 and 2019 there were over 27 million violent crimes committed in the United States, averaging roughly 5.5 million crimes per year. In addition, approximately 13% of those 27 million crimes involved a weapon, not necessarily a firearm. *See* "*Criminal Victimization, 2018.*" By Rachel E. Morgan and Barbara A. Oudekerk, U.S. Department of Justice, September 2019 @ p. 4, https://www.bjs.gov/content/pub/pdf/cv18.pdf. What these facts reveal is that gun control laws created 27 million victims of crime, where as many as 400,000 or more people use guns every year for self-defense or to save a life. *See* Gary Kleck, Marc Gertz, *Armed Resistance to Crime: The Prevalence and Nature of Self-Defense with a Gun*, 86 J. Crim. L. & Criminology 150, 180 (1995-1996).[4] As such, firearm prohibitions do nothing to stop violent crime. Just the opposite, they help to arm the criminal minded while effectively eliminating the ability of free-minded citizens to

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[4] "Prohibitionist measures . . . are aimed at disarming criminals and non-criminals alike. They would therefore discourage and presumably decrease the frequency of defensive gun use among crime victims because even minimally effective gun bans would disarm at least some non-criminals. The same would be true of laws which ban gun carrying. In sum, measures that effectively reduce gun availability among the non-criminal majority also would reduce defensive gun use that otherwise would have saved lives, prevented injuries, thwarted rape attempts, driven off burglars, and helped victims retain their property." *Ibid.*

protect themselves from the non-caring criminal element. *See e.g. Miller et al., v. Bonta*, Case No. 19-cv-1537 BEN(LB) DECISION at pp. 2-3, 8-9, 13-15, 20-22, 30-33, 43-80, & 88-92 (U.S. Dist.Crt. S.D. Cal. 2021)[hereafter "*Miller v. Bonta*"]. These prohibitions, however, do not find any sustenance in the text, history, purpose or command of the Second Amendment, nor the Fourteenth Amendment.

The Second Amendment, being an Amendment *to the* Constitution is, in fact, supreme law, under Article VI, Clause 2, of the United States Constitution, when it comes to individual protections of the right to keep and bear arms. Therefore, any law which infringes, invades, limits or prohibits these protections to any Citizen is contrary to this supreme constitutional law, and void.

In 1990, thirty-one (31) years ago, Petitioner was convicted, sentenced, and punished for committing a *non-injury* attempted murder, with use of a firearm (the handgun discharged in the air, pointing away from the victim). Petitioner served his punishment, reformed himself, was released upon parole in 2012, and was discharged from his conviction/punishment in 2015, because, among other things, he *no longer* posed an unreasonable risk of danger to the community.[5] *See* Appx C, @ pp. 2-4. Having been discharged, Petitioner is no longer disqualified from voting and has voted in elections since 2015. *See* Calif. Const. Art II, §2(b). Petitioner is qualified for jury service, and has been called to serve jury duty twice. Petitioner has remained clean and sober for over 31 years, and has steady employment. As a "public

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[5] *See* California Penal Code § 3000, subd. (b)(1) [discharge provision]; *e.g. In re Dannenberg*, 23 Cal. Rptr. 3d 417, 428-431 (2005)[Inmate is to be released from prison where it is determined that they no longer pose an unreasonable risk of danger to public safety.]

employee" for the State of California he is required to swear an oath to support and defend the Constitutions of the United States and State of California. *See* Calif. Const. Art XX, §3. Petitioner is a first responder to all types of roadway incidents; is trained in First Aid, Hazardous Material containment and identification; and on occasion works hand-in-hand with law enforcement. Petitioner has a college degree in paralegal studies. He also has educational certification in Emergency Management from FEMA. Petitioner rents a home; helps take care of his elderly mother; owns property; can acquire property; and can run for public office. Petitioner however is arbitrarily barred from the fundamental right to protect himself, his family, home and community because the ability to do so is prohibited, based on arbitrary government assumptions. Petitioner also contributes to the economy; pays taxes, and is involved in the community. Petitioner has not committed any type of misdemeanor, nor felony offense, since April 27, 1990. These facts conclusively set forth that Petitioner is *no longer* a dangerous felon.[6] Petitioner enjoys every single civic and constitutional right which existed prior to his conviction, except for the one which "shall not be infringed." *See* U.S. Const. 2nd Amend; Appx C, pp. 2-5. Thus, much like the Black Codes of the 1800's which banned *freed* Blacks from keeping and bearing firearms, the current felon dispossession codes have left Petitioner, who is a *freeman*, "without the means of self-defense." *E.g. McDonald, Supra,* 130 S. Ct. @ 3043 & 3075-3084 [Conc. Opn. **by** THOMAS,,J.]

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[6] Accordingly, "*ex-felons*" are part of the "People" protected by the Second Amendment, due to the fact that they are members of the national community. *See* Part I-A, *infra*, @ pp 18-28 Therefore, those like Petitioner who are free, law-abiding and responsible Americans "shall not be" deprived of the right to keep and bear firearms for self-defense, due to an obsolete conviction. Accordingly, the herein facts, taken as true, are enough to establish a plausible claim for relief. *See* Fed. R. Civ. P. Rule 8; *see also*, Part II-A, *infra*, @ pp. 30-37.

It can be credibly concluded that Petitioner is a free law-abiding and responsible citizen.[7] Accordingly, based on these indisputable facts and on the history and text of the Second Amendment, as well as this Court's basis in *Heller*, a reasonable person would agree that Petitioner cannot be disqualified from the protections and rights afforded under the Second Amendment.

B. Procedural History

Petitioner brought suit to challenge the continued arbitrary prohibition upon his constitutionally protected right to armed self-defense under the Second Amendment. He stated that he is no longer a felon but a free law-abiding citizen and under the plain meaning of the Second Amendment, and this Court's reasoning in *Heller*, he is no longer precluded from exercising his individual, pre-existing fundamental right to armed self-defense. Appx. C, pp. 1-10. Both the district court and Ninth Circuit "inconceivabl[y]" held that Petitioner's claims were foreclosed by the Ninth Circuit's flawed decision in *Vongxay*, and this Court's *dictum* in *Heller*. *See* Appx. A @ p. 2; *and* Appx B @ pp. 3-4; *but see Heller, Supra*, 128 S.Ct. @ 2816 n. 25.

Unlike this case, *Vongxay* concerned a challenge stemming from a new conviction of *a dangerous felon* in possession of a firearm under 18 U.S.C. §922(g). The facts reveal that Vongxay was not a law-abiding, responsible citizen, but a gang member who participated in violent gang activity, where he was repeatedly engaged

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[7] Yet, petitioner was not allowed to prove his claims where the lower courts summarily dismissed them. Appendix A & B. Also, *United States v. Vongxay*, 594 F.3d 1111 (9th Cir.2010), as applied to him is flawed where it was based upon the *assumption* that all felons are "incapable" of virtuous citizenry. *Id.* 594 F.3d @ 1118. However, laws which establish "irrefutable assumptions," or "irrebuttable presumptions" violate the Due Process Clauses of the Fifth and Fourteenth Amendments. *See e.g. Vlandis v. Kline*, 412 U.S. 441, 446-447 (1973).

in "constant shootings...armed with guns" and caused other "disturbances." *Id.* 594 F.3d @ 1113-1115. Thus, the defendant in *Vongxay* was not protected by the Second Amendment because (1) he continued to act in a severely dangerous, lawless manner, and (2) he continued to use firearms for unlawful confrontations. *Cf. Heller, Supra,* 128 S. Ct. @ 2799 [Second Amendment does not protect the use of firearms for any sort of confrontation]. The court in *Vongxay* also recognized that this type of felon was "categorically different" from individuals who have a fundamental right to keep and bear arms, which "limits the protected class to law-abiding, responsible citizens." *Id.* 594 F.3d @ 1115 & n.1; *and see* Part II-*infra.* As set forth above, Petitioner is categorically different from the defendant in *Vongxay,* because he is a free law-abiding, responsible citizen, and has been for a number of years. Appx. C, pp. 1-4. And yet, the government continues to flout the Second Amendment, and this Court's basis in *Heller,* by creating and enforcing laws which do nothing more than erode the very constitutional amendment they are bound by oath and affirmation to support. *See* U.S. Const. Article VI, cl. 3[8] Accordingly, government officials have no constitutional power to infringe upon the rights of any of the people.

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[8] U.S. Const. Article VI, cl. 3 states: "The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, *shall be bound* by Oath or Affirmation, *to support* this Constitution..." [Emphasis added in Italics]. It is clear that this is a constitutional command which cannot be transgressed. Therefore, enacting and enforcing laws, rules or policies which contravene, flout or derogate rights protected by the Constitution can be construed as violating the aforementioned oath and affirmation. *See e.g. Marbury v. Madison,* 5 U.S. 137, 179 (1803). ["This oath certainly applies in an especial manner, to their conduct in their official character. How immoral to impose it on them, if they were to be used as the instruments, and the knowing instruments, for violating what they swear to support"]. Violating a constitutional command to create or enforce a regulatory prohibition, does not make that prohibition presumptively lawful, nor its enforcement valid.

REASONS FOR GRANTING THE PETITION

This Court has made it clear in both *Heller* and *McDonald*, that the "central component" of the Second Amendment protects the right of *the individual* to armed self-defense. This right is not a second class right but a fundamental right for *all* law-abiding, responsible citizens.[9] This right is also not subject to government experimentation or desecration, which does nothing more than allow that right to be watered down and subjected to the notions, artifices or assumptions of policy-makers.

Prohibitions on firearm ownership and possession impermissibly curtail fundamental, individual self-defense rights, by arbitrarily assuming that a person who previously committed a crime, who is free, cannot pass governmental muster as a law-abiding citizen. The Second Amendment however does not allow government to classify the type or kind of People who they presume might be unfit or not permitted to keep and bear arms. Further, there is not any hidden or technical meanings within the text or history of the Amendment granting government an unseen power to experimentally infringe upon the right of the People, or to restrict the type of arms they can or cannot keep and bear. Instead, the Second Amendment

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[9] Petitioner understands the need to protect society from those who wish it harm, and agrees that those individuals who continue in crime or who are under restraint of liberty may be dangerous and have not demonstrated law-abiding, responsible behavior. Yet, Second Amendment rights are not earned or doled out at the whims and wishes of government officials. The Second Amendment codified a "pre-existing" right. *Heller*, 128 S. Ct. @ 2797. Therefore, being that it is not dependent upon the Constitution for its existence, then it "shall not be" contingent upon government for its authorization. *See* U.S. Const. Amend II; *also see e.g. Reid v. Covert*, 354 U.S. 1, 5-6 (1957.)

is crystal clear in pronouncing that the "right of the People to keep and bear arms, shall not be infringed." U.S. Const. Amend. II. [Emphasis added in Underline]

Certiorari should be granted. No longer should a free, law-abiding, responsible citizen, regardless of a checkered-past or static-conviction, who is not immediately engaged in criminal or dangerous activity or under restraint of liberty for punishment of crime, be subjected to any form of government infringement of their natural, pre-existing, inalienable right to armed self-defense.

I. This Court Should Resolve The Question Of Whether The Operative Clause's Command, "The Right Of The People To Keep And Bear Arms, Shall Not Be Infringed," Permits Government To Infringe, Invade, Overstep, Limit, Restrict, Or Prohibit The Right To Any Of The People, For Any Reason Or Pretense Whatsoever, From Keeping And Bearing Firearms For Self-Defense

The text and history of the Second Amendment make clear that it confers no power upon either the State or Federal government[10] to restrict the individual right of armed self-defense to a chosen few—who they deem as unworthy of its protections.[11] Both *Heller* and *McDonald,* make clear that the Second Amendment right to armed self-defense is a pre-existing individual right, which belongs to all Americans. The Amendment does not allow for the enforcement of any restrictions, limitations, or prohibitions upon the People. Nonetheless, since 1934 to the present, government has embarked upon a road of constitutional evisceration—the uncalled-

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[10] Since the issues herein concern both the governments of the United States and State of California, they both will be referenced as "Government" or "government."

[11] This raises a critical question. Since these individuals might be disqualified from a right that is specifically enumerated in the Constitution, then the right to armed self-defense can be construed under the Ninth Amendment as "other rights" retained by the People which "shall not be" denied or disparaged. *See e.g. Griswold v. Connecticut,* 381 U.S. 479, 488-94 (1965)[Conc. Opn by GOLDBERG, J.]

for destruction of constitutionally protected rights; especially Second Amendment rights, via the ruse of a failed experiment, known as "gun control." *Ante* @ pp. 5-6; *Miller v. Bonta, supra*, 19-cv1537 BEN @ pp. 2-3, 8-9, 20-22, 30-33, 43-80 & 88-92.

A. "Shall Not Be Infringed" Means What It Says And Says What It Means.

It is unquestionable that the Constitution is the Supreme Law of this Country, and *all laws*, including state and federal laws, must be made in pursuance thereof. *See* Article VI, cl. 2. The Bill of Rights and the Amendments contained therein, are integral components *within* the Constitution. The very purpose of the Bill of Rights was to further the purpose of limiting government involvement in the daily affairs and lives of the individual. The Bill of Rights is not a list of suggestions or guidelines for social balancing. Instead, the Bill of Rights prevents the tyranny of the majority from taking away the rights of a minority and the Second Amendment protects "any law-abiding citizen's right to choose to be armed to defend himself, his family, and his home." *See Miller v. Bonta, supra*, @ pp. 90-92. Further, this Court in *West Virginia State Board of Education, et al., v. Barnette, et al.* 319 U.S. 624, 638 (1943), clarified that:

> "The very purpose of a Bill of Rights was to *withdraw* certain subjects from the vicissitudes of political controversy, to place them *beyond the reach of* majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, *and other fundamental rights may not be* submitted to vote; they depend on the outcome of no elections." [Emphasis added. In Italics].

Fundamental Second Amendment rights therefore, "shall not be" subjected to the controversies or vagaries of politicians, they *must not be* subjected to a vote of any kind, and they *cannot be* subjected to elections or limitations. Instead, those

rights are to be placed *beyond the reach* of majorities and officials. Basically, under Article VI, cl. 2, the Second Amendment to the Constitution is supreme law, and all laws which concern the right of the People to keep and bear arms must be made in pursuance to its Purpose and Command. Therefore, under the Amendment's "limiting principles," *e.g.* 319 U.S. @ 639-640, this Court's *dictum* concerning "presumptively lawful" prohibitions, alluded to in *Heller*. 128 S. Ct. @ 2816-2817 & n. 26, are not constitutionally permissible.[12]

The Second Amendment states in pertinent part to this issue: ". . . ., *being necessary to* the security of a free State, the right of the People to keep and bear arms, *shall not be* infringed." *See* U.S. Const. Amend. II [Emphasis added in Italics.] It is unambiguously clear that this language is a direct command which *restricts* the powers of government from prohibiting the right *to any* of the "People." *Cf. Cruikshank, Supra,* 92 U.S. @ 549-50. This language does not merely limit government involvement, but completely prohibits it from encroaching upon the rights of the People to keep and bear arms, which is necessary to their security. *McDonald, Supra,* 130 S. Ct. @ 3048 (Self-defense is the "central component" of the right itself). There is not any exception built into this language, nor is there any exclusion which can be surmised from it, except for one—it excludes the government from invading upon the right of any Citizen. There is not any disqualification criteria

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[12] Basically, this Court's statement concerning presumptively lawful regulatory prohibitions, without conducting a full analysis of the Second Amendment is unclear. As such, it is *obiter dictum*. It was an "oh by the way" statement that holds no authoritative value, a mere passing reference that did not receive a full consideration by the Court. *E.g. U.S. v. Crawley*, 837 F.2d 291, 292-293 (7th Cir. 1988). Therefore, it is "inconceivable that [any court] would rest [an] interpretation of the basic meaning of any guarantee of the Bill of Rights upon such ... dictum in a case where the point was not at issue and was not argued." *Heller, Supra,* 128 S.Ct. @ 2816 n. 25.

mentioned concerning who the People are that do not have the right to keep and bear arms, where it endorses the right upon all of the People.

In construing this provision, it is clear that it "was written to be understood by the voters; its words and phrases were used in their normal and ordinary as distinguished from technical meaning; *where the intention is clear* there is no room for construction and no excuse for interpolation or addition." *United States v. Sprauge,* 282 U.S. 716, 731-732 (1931); *Heller,* 128 S. Ct. @ 2788. [Emphasis added in Italics]. Here, the intention is very clear: "the right of the People...*shall not be* infringed." U.S. Const. Amend. II [Emphasis added]. There are not any secret or technical meanings hidden within this language indicating that the right of some of the People may be infringed, when that person does not fit into a government established group or category. *Id.* 128 S. Ct. @2788. As a matter of reality, it specifically prohibits the government from establishing any type of infringements upon any of the People, of any kind, including the type of "arms" to be kept or born. There is nothing in this text which makes way for doubts as to whether prohibitions of the right are presumptively lawful or not. Due to the fact that it specifically excludes any prohibition of the right. Therefore, legislative created presumptions, prohibiting the right to any of the People, cannot transgress this constitutional restriction. As stated by this Court:

> "[W]here the conduct or fact, the existence of which is made the basis of the statutory presumption, itself falls within the scope of a provision of the Federal Constitution, a further question arises. It is apparent that a constitutional prohibition cannot be transgressed indirectly by the creation of a statutory presumption any more than it can be violated by direct enactment. *The power to create presumptions is not a means of escape from constitutional restrictions.*"

See e.g. Heiner v. Donnan, 285 U.S. 312, 329 (1932); *Baily v Alabama,* 219 U.S. 219, 239 (1911). [Emphasis added in Italics.] And, while it is this Court's job to faithfully apply the Constitution as written, *e.g. Marbury v. Madison,* 5 U.S. 137, 176-179 (1803), it is never this Court's job "to rewrite [Constitutional text] under the banner of speculation about what [the Framers] might have done had [they] faced a question that . . .[they] never faced." *E.g. Hanson v. Santander Consumer USA, Inc.* 137 S. Ct. 1718, 1725; *e.g. Magwood v. Patterson,* 561 U.S. 320, 334 (2010) ("We cannot replace the actual text with speculation as to Congress' intent"). [Bracketed words added.]

More to the point, a cardinal rule when construing Constitutional text, much like statutory text, is "'to give effect, if possible, to every clause and word of a statute' . . . . 'a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.'" This Court is therefore, "'reluctan[t] to treat statutory terms as surplusage'" in any setting. *Duncan v. Walker,* 533 U.S. 167, 174 (2001) [Citations omitted]; *Griswold, Supra,* 381 U.S. @ 491["In interpreting the Constitution, 'real effect should be given to all the words it uses.'"] (Conc. Opn. by GOLDBERG, J.).

This well-established rule applies when construing the language of the Second Amendment. The creation of laws like the National Firearms Act of 1934, the Federal Firearms Act of 1938, the Gun Control Act of 1968, 18 U.S.C. §922, California Penal Code section 29800, and the Uniform Firearms Act, all work to dismantle "the right of the people to keep and bear arms, shall not be infringed," purpose and command into surplusage and void rhetoric. U.S. Const. Amend. II; *also see* Appx. C @ pp. 5-10. Basically, the constitutional restriction on government becomes hollow, which makes the fundamental right meaningless. Laws of this

nature do not find any support in either the text or history of the Second Amendment, nor in any other clause of the Constitution. *Also see* U.S. Const. Amend. IX. The framers of the Constitution, and the Amendments therein, clearly intended that government's power to breach the individual's right to keep and bear arms, be itself restrained. This Court has "stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says..." *Connecticut Nat. Bank v. Germain*, 503 U.S. 249, 253-54 (1992) *see also Reid v. Covert, Supra*, 354 U.S. @ n.7 ["This Court has constantly reiterated that the language of the Constitution where clear and unambiguous must be given its plain evident meaning."]; *and Gibbons v. Ogden*, 22 U.S. (9 Wheat) 1, 188-189 (1824)["As men, whose intentions require no concealment, generally employ the words which most directly and aptly express the ideas they intend to convey, the enlightened patriots who framed our constitution, and the people who adopted it, must be understood to have employed words in their natural sense, and to have intended what they have said"]. This applies more so to the Second Amendment than to the statutes which would destroy the power of the Amendment.[13]

The plain meaning of "shall not be" is pretty clear. It means ***must not be***, ***cannot be***, and ***may not be***. There is no wiggle room where "statutory words are . . . to be used in their ordinary and usual sense, and with the meaning commonly attributed to them." *Caminatti v. United States*, 242 U.S. 470, 485-86 (1917). This

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[13] The Second Amendment's "right of the people to keep and bear arms shall not be infringed" language was clearly not intended to allow for extensive reasonable regulation. "Rather, it was intended *to prevent all laws and regulations* that would result in the people being deprived, abridged, restrained, narrowed, or restricted in the exercise of their fundamental right to keep and bear arms." *See* https://onsecondopinion.blogspot.com/2009/02/meaning-of-shall-not-be-infringed.html. [Emphasis added].

Court's sole function then is to enforce the Second Amendment "according to its terms" and not that of the governments. *Id.* @ 485; *and* Footnote 8, *ante*. This Court has explained many times, over many years that, "when the meaning of the statute's terms is plain, our job is at an end. The people are entitled to rely on the law as written, without fearing that courts might disregard its plain terms based on some extratextual consideration." *Bostock v. Clayton County Georgia*, 140 S.Ct. 1731, 1749 (2020).

This question should, therefore, be an easy one to answer. Government is not free to impose its own policy choices on American citizens where Constitutional rights are concerned. As *Heller* explains, the Second Amendment takes certain policy choices and removes them beyond the realm of permissible state action. *Id.* 128 S. Ct. @ 2822. The Second Amendment stands as a shield from government imposition of that policy. To give full life to the core right of self-defense, *every* law-abiding responsible individual citizen has a constitutionally protected right to keep and bear firearms commonly owned and kept for lawful purposes. In early America and today, the Second Amendment right of self-preservation permits a citizen to "'repel force by force' when 'the intervention of society in his behalf, may be too late to prevent that injury.'" Then, as now, the Second Amendment "may be considered as the true palladium of liberty." Fortunately, no legislature has the constitutional authority to dictate to any citizen that he or she "may not acquire a modern and popular gun for self-defense." *See Miller v. Bonta, supra,* @ pp. 92-93. [Citation Omitted from original].

In short, allowing legislative bodies to infringe upon the right of an individual or individuals who they speculate as unsavory but who do not pose as a grave and

immediate danger, permits government to disregard constitutional limitations. "The government could quickly swallow the right if it had broad power to designate any group as dangerous and thereby disqualify its members from having a gun." *See e.g. Kanter, supra,* 919 F.3d, @ 465 [dissenting opinion BARRETT J.] Historically, "[t]o deny arms to some men while allowing them to others was an intolerable denial of freedom." *See* Robert E. Shalhope, *The Ideological Origins of the Second Amendment,* 69 *J. Am. Hist.* 599, 602 (1982). In other words, the term "shall not be infringed" was intended to prevent "those in authority [from] systematically disarm[ing] the populace." *Id.* @ 610. That is exactly what gun prohibition laws do, they systematically disarm the populace while risking their safety. *Ante,* pp.5-6 & n 4.

As such, "Shall not be infringed," means what it says and says what it means. Accordingly, government has no power to infringe upon, or prohibit Petitioner from his pre-existing Second Amendment rights and protections to armed self-defense.

1. Government Cannot Permanently Prohibit Whomever They Want From Exercising Their Second Amendment Protections.

In *Heller*, this Court admitted it had conducted a limited analysis of the full scope of the Second Amendment. *Id.* 128 S. Ct. @ 2816 ["...we do not undertake an exhaustive historical analysis today of the full scope of the Second Amendment."] Yet, some type of review is needed in order to resolve the important questions raised by Petitioner. Like: Does the Second Amendment allow government to infringe upon the right of any of the People to keep and bear arms, or does the Amendment only protect those People the government deems worthy? Does the history and text of the Amendment allow government to disarm the People? Or, does it grant a very limited power to defer, temporarily, the right to only those who pose a serious and immediate danger to public safety? These questions need to be addressed.

This Court in *Heller*, stated that the Second Amendment is divided into two parts. *Id.* 128 S.Ct. @ 2789. Those two parts are its *Purpose* and its *Command*. Logic therefore, "demands that there be a link between the stated purpose and the command." *Ibid.* The Purpose of the Second Amendment is connective, yet separate. *Heller*, 128 S. Ct. @ 2890 [Operative and prefatory clauses]. Both the "operative clause," and the "prefatory clause" state the purpose of the Amendment. *Id* @ 2901-2904. In a nut shell, the operative and prefatory clauses establish that the purpose of the Second Amendment is to protect (1) the right to a well-regulated militia of armed People, and (2) the individual right of the People to keep and bear arms—both "being necessary to the security of a free State." U.S. Const. Amend. II. Therefore, the purpose of the Amendment is to fundamentally protect the People in order to secure a state of freedom through the means of armed defense. Both individual freedom and the freedom of this Country. As so eloquently stated by Judge Benitez: "The Second Amendment is about America's freedom: the freedom to protect oneself, family, home, and homeland." *See Miller v. Bonta supra*, @ pp. 91-92. Therefore, the Command of the Second Amendment is that the Purpose, "shall not be infringed." U.S. Const. Amend. II. The relationship between the Purpose and the Command, is that both are "necessary to the security of a free [People]." With this in mind, who are the "People" protected by the Second Amendment from government infringement? Are the People, all Citizens of the United States, or are they only a collective body of those who are approved by legislative formation?

In *Heller*, this Court vetoed the collectivists approach and stated that the Second Amendment confers upon the People an individual right, and "not 'collective' rights, or rights that may be exercised only through participation in some corporate

body." *Id.* @ 2790. This Court mentioned that the "term (the People) unambiguously refers to *all* members of the political community, not an unspecified subset." *Id.* @ 2791. It can therefore be presumed that all people who are legally registered to vote, pay taxes, are employed, own property, serve on juries, or participate in the political community fall within the protections of the Second Amendment. Yet, would that not then isolate the constitutional protection to only those who participate in a corporate (communal) body politic? A concept rejected in *Heller*. *Ibid.* Another aspect of the "People" mentioned in *Heller*, was that "'the people' protected by the Fourth Amendment, and by the First and Second Amendments . . . refers to a class of persons who are part of a national community or who have otherwise developed sufficient connection with this country to be considered part of that community." *Id.* @ 2791, *quoting United State v. Verdugo-Urguidez*, 494 U.S. 259, 265 (1990). This category broadens the scope of people covered by the Amendment to "[a]ll persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside." *See* U.S. Const. Amend. XIV, §1.

The Second Amendment therefore endows upon all Citizens of the United States, and in the State wherein they reside, the fundamental right to keep and bear arms. *See Heller*, 128 S. Ct. @ 2090-2091 ["...the Second Amendment right is exercised individually and belongs to all Americans".] Basically, "all" means that *every* American citizen, the whole national community, is protected by the Second Amendment from legislative contravention of their rights to keep and bear arms for self-defense. *See e.g.* https://www.merriam-webster.com/dictionary/all. Therefore, the

Second Amendment does not allow government to categorically pick and choose who the People are, that it protects, *i.e.* the "right" of the People, shall not be infringed.

2. Government Can Only Act In Accord With The Second Amendment

Government in this Country is a creature of the Constitution. It's "power and authority have no other source. It can only act in accordance with all the limitations imposed by the Constitution." *United State v. Verdugo-Urguidez, Supra,* 494 U.S. @ 270. Therefore, the rights and liberties which citizens of our country enjoy are not protected by custom and tradition alone, "they have been jealously preserved from the encroachments of Government by express provisions of our written Constitution." *Reid, Supra,* 354 U.S. @ 6-7. But, how far can the government encroach upon a constitutionally protected right that "shall not be infringed"? U.S. Const. Amend. II.

This Court in *Heller*, when employing the historical meaning of the individual right to keep and bears arms, recognized that the Second Amendment is "the true palladium of liberty .... *The right to self-defense is the first law of nature*: in most governments it has been the study of rulers to confine the right within the narrowest limits possible. Wherever standing armies are kept up, and the right of the people to keep and bear arms is, *under any colour or pretext whatsoever, prohibited,* liberty, if not already annihilated, is on the brink of destruction." *Id.* 128 S. ct. @ 2805. [Emphasis added in Italics.] What this evocative recitation expounds upon is that the Second Amendment, does not allow government to prohibit any citizen, under any form or reason whatsoever, from the right to keep and bear arms for self-defense. Basically, the "presumptively lawful prohibitions" stated in *Heller*, are not

lawful because they aid in the destruction of liberty by violating the Purpose and Command of the Second Amendment.

Heller, further recognized that "[*n]o clause* in the constitution could by any rule of construction be conceived to give to congress a power to disarm the people. Such a flagitious attempt could only be made under some general pretense by a state legislature. But if in any blind pursuit *of inordinate power*, either should attempt it, this amendment may be appealed to *as a restraint on both.*" *Id.* @ 2806. [Emphasis added]. Essentially, government has no constitutional power to disarm any of the people under any act whatsoever. Basically, any "presumptively lawful prohibition," which "disarms" the people, is unlawful because they were made "in blind pursuit of an inordinate" power, forbidden by the Second Amendment.

The most compelling case illustrating that government has no power to contravene the Second Amendment was approved in *Heller*, as "perfectly captur[ing]" the operative clause's meaning. In *Nunn v. State,* 1 Ga. 243, 251 (1846), the Georgia Supreme Court construed the Second Amendment as protecting the "*natural* right of self-defense" by holding that:

> "The right of the *whole* people, old and young, men, women and boys, and not militia only, to keep and bear *arms* of every description, and not *such* merely as are used by the militia, shall not be infringed, curtailed, or broken in upon, *in the smallest degree*; and all this for the important end to be attained . . . so vitally necessary to the security of a free State. Our opinion is, *that any law, State or Federal, is repugnant to the Constitution, and void, which contravenes this right, ... " Ibid.*

Id. 128 S. Ct. @ 2809.[Emphasis in Italics added and in the Original.] Therefore, since the history, text, purpose and command of the Second Amendment do not support a legislative prohibition of the right upon any of the people, then at what

point did the *Heller* court, *without* conducting an exhaustive full scope analysis of the Second Amendment, garner that "nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms...." *Id.* 128 S.Ct. @ 2817. Prohibiting the right of any of the People to possess firearms was never mentioned, let alone alluded to, within *Heller's* historical framework.

In *Kanter, v Barr*, Judge Barrett, in her dissent, after conducting an historical analysis of the Amendment, explained that this Court interpreted the word "people" as referring to "all Americans," that "the people" "refers to a class of persons who are part of a national community or who have otherwise developed sufficient connection with this country to be considered part of that community." She further clarified that "[n]*either felons nor the mentally ill are categorically excluded from our national community*. That does not mean that the government cannot prevent them from possessing guns. Instead, it means that *the question is* whether the government has the power to disable the exercise of a right that they otherwise possess, rather than whether they possess the right at all." *Id.* 919 F.3d @ 453 [Emphasis added].

In answer to Judge Barrett's question: (1) the Second Amendment does not allow government to disable the right, as the right "shall not be infringed." U.S. Const. Amend.II.; and (2) the government can prevent *criminals* from possessing guns, but only for the limited duration of their confinement or restraint of liberty, or where they clearly demonstrate *a continued* threat and immediate danger to society. As stated by this Court in *Wolff v. McDonnell*: "*Lawful imprisonment necessarily makes unavailable* many rights and privileges *of the ordinary citizen*, a 'retraction justified by the considerations underlying our penal system' (Citation omitted) But though his rights may be *diminished* by the needs and exigencies of the institutional

environment, a [person] *is not wholly stripped* of constitutional protections" when they are convicted of crime. *Id.* 418 U.S. 539, 556 (1974). [Emphasis added]. Consequently, constitutional protections cannot be prohibited, and may only be postponed for a limited duration. *E.g. McDonald, Supra* 130 S.Ct. @ 3077-3085 (Conc. Opn. by THOMAS, J.) Also, the Framers when drafting the Amendment, were presented with alternative proposals, some of which provided for disqualification of criminals. However "...*none of the relevant limiting language* made its way into the Second Amendment." *Kanter, supra,* 919 F.3d @ 454-456 [dissnt. Opn. by BARRETT, J]. The fact that an instrument drawn with such meticulous care "does not contain any such limiting phrase . . . is persuasive evidence that no qualification was intended." *See Reid. Supra,* 354 U.S. @ n. 7*; also Russello v. United States,* 464 U.S. 16, 23-24 (1983)[Where limiting language was not included in enactment it is presumed that the limitation was not intended]; *and cf. United State v. Johnson,* 529 U.S. 53, 58 (2000) [When Congress provides exceptions in a statute, it does not follow that courts have authority to create others. The proper inference is that Congress considered the issue of exceptions and, in the end, limited the statute to what is set forth]. Nor, is there a "'canon of donut holes,' in which Congress' failure to speak directly to a specific case that falls within a more general statutory rule creates a tacit exception. Instead, when Congress chooses not to include any exceptions to a broad rule, courts apply the broad rule." *Bostock, Supra,,* 140 S.Ct. @1747. Thus, criminals/felons are not barred from Second Amendment protections.

Basically, the Second Amendment's text, that the "right of the People to keep and bear arms, shall not be infringed," is clear-cut and unmistakable. Therefore, the maxim: "*A verbis legis non est recedendum"* must apply. "From the words of the law

there is not any departure." 5 Coke 118. Ours is a society of written laws. "Judges are not free to overlook plain [constitutional] commands on the strength of nothing more than suppositions about intentions or guesswork about expectations. "*Bostock*, *Supra*, 140 S.Ct. @ 1754. As such, the Second Amendment's general command that *the right of the People* shall not be infringed, cannot be *donut holed* to create an exception, where none exist, allowing government to abolish or prohibit the right to anyone they deem unpleasant. *Id.* 140 S.Ct. @ 1747

3. Permanent Prohibitions of Constitutional Rights And Protections Do Not Find Support In Any Other Constitutional Amendment.

"The best historical support for a legislative power to permanently dispossess all felons would be founding-era laws explicitly imposing—or explicitly authorizing the legislature to impose—such a ban. *But at least thus far, scholars have not been able to identify any such laws.*" *Kanter, supra*, 919 F.3d @ 654 [dissenting opn. by BARRETT, J].[Emphasis added]. History is consistent with common sense: it demonstrates that legislatures have the power to prohibit dangerous people from possessing guns "But that power extends *only to people who are dangerous.* Founding-era legislatures did not strip felons of the right to bear arms simply because of their status as felons." *Id.* 919 F.3d @ 451. [Emphasis added]. Therefore, where does a long-standing prohibition of constitutional rights and protections stem from? Obviously not from the Constitution.

The First Amendment. The First Amendment states that "Congress shall make no law abridging" the rights enumerated therein. When a person is convicted of a felony, they are not permanently stripped of all First Amendment rights and protections. In *Wolff v. McDonnell*, this Court stated those protections are not

wholly stripped, but diminished due to the imprisonment imposed upon them by their conviction. *Id.* 418 U.S. @ 556. And, a person who is convicted because their speech or advocacy "is directed to inciting or producing imminent lawless action and is likely to incite or produce such action," *e.g. Brandenburg v. Ohio*, 395 U.S. 444, 447-448 (1969) (*Per Curiam*), still retains their right to free speech and advocacy after their release from imprisonment. And, yet speech and advocacy, as well as religion, can produce the most dangerous forms of violence known, as well as incite millions of people to commit atrocities, and bring nations to war. *See* https://nationalinterest.org/blog/reboot/terrifying-how-adolf-hitlers-speeches-captivated-millions-germans-169813; *also see* http://eskify.com/10-devastating-holy-wars/. As such, had Adolph Hitler been an American citizen, he would still retain his First Amendment rights, had he been convicted for the crimes he committed.

The Fourth Amendment. The Fourth Amendment basically protects the individual from unreasonable and arbitrary searches and seizers by the government. Though prisoner's and parolees in limited circumstances retain this right, their conviction also does not permanently extinguish it. *E.g. Griffin v. Wisconsin*, 483 U.S. 868, 873-874 (1987); *Morrissey v. Brewer*, 408 U.S. 471, 480-482 (1972) [The liberty of a parolee enables him to do a wide range of things open to persons who have never been convicted of any crime. The parolee has been released from prison based on an evaluation that he shows reasonable promise of being able to return to society and function as a responsible, self-reliant person]. Therefore, the text and history of the Fourth Amendment does not allow government to permanently divest a previously convicted person of its protections after they are set free.

Basically, no other Amendment in the Constitution allows government to eternally prohibit, restrict, or disable any person from the fundamental constitutional rights or protections afforded.[14] As such, the Second Amendment, via impermissible government regulation, has been relegated to a "second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees." *Cf. McDonald, Supra,* 130 S Ct. @ 3044. But it is also clear that there is no constitutional authority supporting a permanent life-time ban on fundamental rights due to the status of being labeled a felon or due to an outdated conviction. "No clause in the constitution could by any rule of construction be conceived to give to congress a power to disarm the people...." *E.g. Heller, Supra,* 128 S.Ct. @ 2806 *also see Ex Parte Milligan,* 71 U.S. 2, 120-121 (1866).[15] Therefore, any law would be

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[14] The only Amendment which would remotely allow for any type of restriction on fundamental rights, might be the Thirteenth Amendment. However, this Amendment supports Petitioner's claims more than it defeats them. This Amendment only concerns "slavery or "involuntary servitude" as being acceptable for punishment of crime. Thus, involuntary servitude would mean imprisonment. Yet, its power stops when the individual is freed from that servitude. *Cf. McDonald, Supra,* 130 S.Ct. @ 3040-43.

[15] *Milligan's* opinion is relevant today. That Court clearly resounded the true intent of the Bill of Rights, and declared that the "securities for personal liberty thus embodied...were such as wisdom and experience had demonstrated to be necessary for the protection" of the People, including those accused of crime. "And so strong was the sense of the country of their importance, and so jealous were the people that these rights, highly prized, might be denied them by implication, that when the original Constitution was proposed for adoption, it encountered severe opposition; and, but for the belief that it would be so amended as to embrace them, it would never have been ratified." *Id.* @ 71 U.S. @ 120. In other words, if it were not for the Amendments to the Constitution, the Constitution would not have been approved. However, "[t]ime has proven the discernment of our ancestors; for even these provisions, expressed in such plain English words, that it would seem the ingenuity of man could not evade them, are now . . .sought to be avoided. Those great and good men foresaw . . . that the principles of constitutional liberty would be in peril, unless established by irrepealable law. The history of the world had taught them that what was done in the past might be attempted in the future. The Constitution of the United States is a law for rulers and people, equally . . .*and covers with the shield of its protection all classes of men, at all times, and under all circumstances.*" *Id.* @ 121. [Emphasis added].

unconstitutional that made it impossible for citizens to use firearms for "the core lawful purpose of self-defense" and any law which *permanently* disqualifies any citizen from possessing firearms—"would impermissibly conflict with the `core' self-defense right embodied in the Second Amendment." *E.g. Kanter, supra,* 919 F.3d @ 465 [dissent by BARRETT, J]. California Penal Code section 29800 and 18 U.S.C. §922 make it impossible for Petitioner to use firearms for self-defense, because they impermissibly disqualify him from the Second Amendment's central component of armed self-defense. Basically, those laws amount to a destruction of his Second Amendment rights. "If a regulation amounts to a destruction of the Second Amendment right, it is unconstitutional under any level of scrutiny." *See Miller v. Bonta, supra* @ pp. 17-18 & 21-22; *Young v. State,* 992 F.3d 765, 784 (9th Cir. 2021) (*en banc*); *and Ex Parte Milligan, supra,* 71 U.S. @ 125-126 [For this, and other equally weighty reasons, the Founders "secured the inheritance they had fought to maintain, by incorporating in a written constitution the safeguards which time had proved were essential to its preservation. Not one of these safeguards can the President, or Congress, or the Judiciary disturb, except the one concerning the writ of habeas corpus. . . . [] Knowing this, they limited the suspension to one great right, *and left the rest to remain forever inviolable*"].[Emphasis added].

II. This Court Should Resolve The Question Of Whether, Under Article VI, Clause 2, Of The United States Constitution, The Second Amendment To The Constitution Is Supreme Law And, Whether Any Law Contravening The Right Of Any Free Law-Abiding, Responsible Citizen To Keep And Bear Arms For Self-Defense Is Repugnant To The Constitution, And Void

Part I above plausibly sets forth that government cannot infringe upon the right of any of the People to keep and bear arms. The plain, unambiguous meaning of

"shall not be infringed" clearly places a limitation on government conduct and not on that of the People, regardless of previous conditions of servitude or conviction.

It has been established that the Second Amendment, like the First and Fourth Amendments, "codified a *pre-existing* right." *Heller, Supra,* 128 S.Ct. @ 2797-98. This Court found that the "very text of the Second Amendment implicitly recognizes the pre-existence of the right and declares ... that it 'shall not be infringed.'" *Ibid.* This pre-existing right basically "guarantees" to the individual that they have an un-infringeable power to "possess and carry arms in case of confrontation." *Ibid. Heller* further mentioned that the Second Amendment right is "not a right granted by the Constitution. Neither is it in any manner dependent upon that instrument for its existence...." *Ibid.* And, in *United States v. Cruikshank, Supra,* this Court acknowledged that "the second amendment declares that [the right] shall not be infringed. . . [t]his is one of the amendments that has *no other effect than to restrict the powers of the* . . . government..." *Id.* 92 U.S. @ 553. [Emphasis added in Italics].[16]

Since the pre-existing power to keep and bear arms for self-defense is not reliant upon the Constitution for its existence, and being that government is a creature solely derived from the Constitution and has no power to act outside its limitations, then the right protected is not dependent upon government for its authorization. *See* U.S. Const. 2nd Amend; *e.g. Reid v. Covert, Supra,* 354 U.S. @ 5-6.

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[16] In fact, Under Article VI, cl. 2, the police powers of government are limited by the Constitution and therefore, those powers cannot contravene the People's police powers under the Second Amendment to secure a free State, or to "protect" themselves, family, home, and community, "from vicious fellow citizens and corrupt authorities-both the banes of any republican society. . . to accomplish this the responsible citizen must be armed." *E.g.* Shalhope, *Ideological Origins of the Second Amendment, supra,* @ 603. This power may also be retained by the people under the 9th and 10th Amendments.

It is unambiguously clear that any type of government control is effectively *prohibited by the Second Amendment.* Specifically, the right cannot be, may not be, and shall not be infringed.

Accordingly...

> "The principles, therefore, so established, are deemed fundamental. And as the authority from which they proceed is supreme, and can seldom act, they are designed to be permanent. [] . . . The powers of the legislature are defined and limited; and that those limits may not be mistaken, or forgotten, the constitution is written. *To what purpose are powers limited, and to what purpose is that limitation committed to writing, if these limits may, at any time, be passed by those intended to be restrained?* [] It is a proposition too plain to be contested, that the constitution controls any legislative act repugnant to it....
>
> *"If, then, the courts are to regard the constitution, and the constitution is superior to any ordinary act of the legislature, the constitution, and not such ordinary act, must govern the case to which they both apply."*

Marbury, Supra, 5 U.S. @ 176-178. [Emphasis added in Italics]. Basically, this "pre-existing" right is placed "beyond the reach of majorities and officials" and *shall not be* the subject of their vicissitudes, controversies, votes, or elections. *E.g. West Virginia Bd. Of Ed, Supra,* 319 U.S. @ 638. Consequently, any laws overstepping this *supreme* constitutional limitation are impermissible, and void under Article VI, cl. 2, of the United States Constitution.

A. The Government's Interest In Protecting Society Cannot Be Elevated Above The Individual's Second Amendment Interest In Armed Self-Defense

Heller, further recognizes that the Second Amendment *like* the First, "is the very *product* of an interest balancing by the people. . . [a]nd whatever else it leaves to future evaluation, it *surely elevates above all other interests* the right of *law-abiding, responsible citizens* to use arms in defense of hearth and home." 128 S.Ct.

2821. [Emphasis added]. Likewise, the Second Amendment rights of *free* citizens are also elevated above all other interests, including government interests; as *all free* citizens are on an equal playing field as that of law-abiding, responsible citizens?[17] This concept is supported by *Heller's* and *McDonald's* historical analysis. *Id.* 128 S. Ct. @ 2805-2813. "The right to bear arms has always been the distinctive privilege of freemen." *Id.* @ 2812; *also see McDonald, Supra,* 130 S.Ct. @ 3040-3043, & 3075-3084 (Conc. Opn by THOMAS J.)

A Free Person. A person (1) having the legal and political rights of a citizen (2) enjoying civil and political liberty *free* citizens (3) enjoying political independence (4) enjoying personal freedom: and (5) not bound, confined, or detained by force (*i.e.* The prisoner is now *free.*) *See* https://www.merriam-webster.com/dictionary/free.

The indisputable facts herein, conceivably demonstrate that Petitioner is a "free citizen." He is no longer bound, confined or detained (imprisoned or restrained). He has regained his legal and political rights and political independence via voting and jury duty. He is a tax-payer. He has access to public and political institutions, works for state government, and enjoys personal freedom. As a public employee he is required to swear an oath to support and defend both the United States and California Constitutions. He has been clean and sober for 31 years. He also has abided by and been obedient to the law for the past 31 years. *See* Statement of the

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[17] This concept produces another question. Would a citizen in order to be law-abiding and responsible have to be "free"? Not necessarily. A prisoner, parolee, or probationer who is restrained of liberty but abiding by and obedient to the rules and laws set down by the system confining them is not Free, but nonetheless, by definition, law-abiding and responsible. *See* Footnote 1, *Ante.* However, a person, in order to retain or regain that Freedom, must abide by the rules and laws set forth and be responsible in their daily affairs. Therefore, the rights and interests of the individual who is "free" must be equal to those who are merely law-abiding and responsible.

Case, *supra,* @ Part A, pp. 6-9. Therefore, Petitioner also falls within the parameters of a law-abiding, responsible citizen. *See* Footnote 1 *ante.* Accordingly, under *the basis* of *Heller*, his right to keep and bear firearms for self-defense is "elevated above" all other interests. *Id.* 128 S.Ct. @ 2821. Therefore, absent clear and unequivocal evidence that Petitioner *will* pose a grave and immediate danger to the public, if armed, the government cannot in perpetuity, continue to terminate his Second Amendment rights (*i.e.* the right, shall not be infringed.). As such, "[r]ights guaranteed by the federal Constitution are not to be so lightly treated; they are superior to [any] supposed necessity." *E.g. Schlesinger v. Wisconsin*, 270 U.S. 230, 240 (1926). Accordingly, any presumptive prohibition of Petitioner's rights, as applied, are impermissible. *See ante*, Part I-A. @ pp. 14-15

1. Grave and Immediate Danger, or Imminent Lawlessness

Heller determined that the Second and First Amendments *are alike.* Specifically, they both confer an individual right, which is not unlimited, in that one does not protect the right of citizens to carry arms for *any sort* of confrontation; while the other does not to protect the right of citizens to speak for *any purpose. Id.* 128 S.Ct. @ 2799. Yet, those restrictions are only subject to time, place, and manner limitations, not eternal prohibitions. Therefore, Second Amendment standards, much like First Amendment standards, "must give the benefit of any doubt to protecting rather than stifling speech [and the right to keep and bear arms]". *Cf. Citizens United v Federal Elect. Comm.* 130 S.Ct. 876, 891 (2010); *and Cruikshank, supra,* 92 U.S. @ 549 [government's purpose is to protect the rights of the People].

Although government may have a legitimate interest, or even rational basis, for adopting regulations postponing the rights to free speech, and assembly, or even the

right to keep and bear arms, that interest under *Heller*, 128 S, Ct. 2821, *cannot be* elevated above the right of a free law-abiding responsible citizen to use arms in defense of hearth and home. Those rights "may not be infringed on such slender grounds. They are susceptible of restriction only to prevent *grave and immediate danger* to interests which the State *may lawfully protect.*" *E.g. West Virginia Bd. Of Ed., Supra*, 319 U.S. @ 639. [Emphasis added in Italics.][18] The grave and immediate danger standard however demonstrates that legislatures have the temporary power *to postpone* but not to permanently strip the right to possess and carry guns. "But that power extends *only* to people who are," in fact, a grave and immediate danger, *cf Kanter, supra*, 919 F.3d @ 451 [BARRETT, J. dissenting], or who continuously embark upon "imminent lawless action" and are likely to produce such action. *E.g. Brandenburg, Supra*, 395 U.S. @ 448.

Basically, California Penal Code §29800, as well as 18 U.S.C. §922, and any state or federal law of similar restrictions, are unconstitutional under the Second Amendment because they lump anyone convicted of a felony or misdemeanor into one category but do not distinguish between those People who are currently under a conviction and those People who are free—no longer under a conviction—thereby making the conviction obsolete. Nor, do they distinguish between those People who because of their conviction pose a serious and direct danger, and those People who because of their prior conviction no longer pose any significant danger. Neither do

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[18] Here the only interest the government may lawfully protect is *that of the People to keep and bear arms. Cf. West Virginia Bd. Of Ed., Supra*, 319 U.S. @ 637-639. Since the Second Amendment provides an explicit textual source of constitutional protection against this sort of intrusive governmental conduct, that Amendment and not notions of due process "must be the guide for analyzing these claims." *Graham v. Connor*, 490 U.S. 386, 395 (1989).

they distinguish between those People who because of their conviction continue in imminent lawlessness, and those People who rehabilitated from their previous conviction, are law-abiding and responsible. Instead, if left unchecked and not narrowed to the smallest limits possible, these laws will potentially be used to restrict any American under any government contrived pretext, or pretense whatsoever. "A statute which fails to draw this distinction impermissibly intrudes upon the freedoms guaranteed by the First [, Second,] and Fourteenth Amendments. It sweeps within its condemnation [conduct] which our Constitution has immunized from governmental control." *Brandendburg, Supra,* 395 U.S. @ 448. In other words, "the government does not get a free pass simply because [it] has established a `categorical ban.'" The government could quickly swallow the right if it had broad power to designate *any group as dangerous* and thereby disqualify its members from having a gun. *Kanter, supra,* 919 F.3d @ 465 [dissent by BARRETT, J.] [Emphasis added.].

Judge Barrett's forecast is not too far off the mark. The years 2020-2021, brought us Covid-19, where the People were subjected to tyrannical practices such as arbitrary government mandated lockdowns and facial covering mandates; the arbitrary closure of businesses, schools, and churches; six-foot distancing requirements; inequality riots; protests; an allegedly stolen Presidential election; the indoctrination of unproven vaccines; Critical Race Theory; the Hi-Tec Media censorship of selected political and advocacy platforms; and radical Defund the Police policies. All geared towards a socialist-Marxist agenda of majority control over the minority in order to destroy individual rights and freedoms protected by the

Constitution.[19] Therefore, the loss of Second Amendment rights, much like the loss of First Amendment freedoms, "for even minimal periods of time, unquestionably constitutes irreparable injury." *Cf. Elod v. Burns*, 427 U.S. 347. 373-74 (1976). Every minute that Petitioner is free, and leading a law-abiding responsible life, he is suffering an irreparable injury to his natural fundamental right of armed self-defense, due to a prior restraint imposed upon him, *which he has been discharged from*; based on a prior conviction, *which has become obsolete*; assumed from antiquated action, *which no longer exists.* Thus, much like the First Amendment, "[a]ny system of prior restraints of [the Second Amendment right to armed self-defense] comes to this Court bearing a heavy presumption against its constitutional validity." *New York Times v. United States,* 403 U.S. 713, 714 (1971)(*Per Curiam*).[20]

Research illustrates that an ex-offender is most likely to become an active, lawful participant in the community "if they are given the same rights and opportunities as other community members upon release." *See e.g.* Debra Bone, *The Heller Promise versus The Heller Reality: Will Statutes Prohibiting The Possession of*

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[19] Under this "new normal" what is to prevent the government from adopting the "Critical Race Theory" while defunding the police, and then outlawing all White, Asian, Hispanic or even certain Black males or females from their Second Amendment rights to self-defense because they are arbitrarily assumed by some baseless criteria as dangerous? Or prohibiting those who refuse to wear facial coverings, get the vaccines, speak out against the mandates, who peacefully protest, or re-open their business to feed their family in violation of "covid" or some other contrived government mandates?

[20] Petitioner's pre-existing, Second Amendment right does not magically disappear upon conviction. Instead, like his First Amendment rights, it is diminished but not wholly stripped during his incarceration. *See ante,* Part I-A-2, @ pp. 23-25. However, after he is set free government then bears the *heavy* burden of proving the necessity of continuing its diminished effect. *Miller v. Bonta, Supra,* @ pp. 25-27. The same applies for any type of government imposed "covid" mandates or restrictions on fundamental rights or liberty interests. The government must prove how that individual is a grave and immediate danger.

Firearms by Ex-felons be Upheld After Britt v. State?, 100 J. Crim. L & Criminology 1633, 1653-54 & nn. 136 & 137 (2010).[Hereafter "Bone".]

While there are obvious emotional and political reasons to prohibit firearm possession by convicted felons, any limitations on rights after the completion of their sentence "should be carefully evaluated." *E.g. Bone, supra*, 100 J. Crim. L & Criminology @ 1654. Certainly, the initial impulse would be to believe that convicted felons are more dangerous than ordinary citizens, regardless of the nonviolent nature of their first conviction; and it is entirely reasonable for the legislature, concerned for the safety of the public it represents, to want to keep firearms out of the hands of such a person. Yet, despite *Heller's* promises to the contrary, "the Supreme Court's determination that the right to bear arms is an individual right and its disapproval of the interest-balancing test for firearm regulations... beg the question of whether the state's interest in a slightly safer public is strong enough to trump the individual's right to bear arms." *Ibid.* Certainly, in situations like Petitioner's where there is no evidence of dangerousness and thus no obvious benefit to the state, it will be difficult for the government to show that the law, as applied, furthers any sort of legitimate state interest.

This is particularly true given *Heller's* "focus on the historical tie between the right to bear arms and the right to self-defense. If this historical analysis is taken as true, why would an ex-felon have less of a right to self-defense than a person with no felony convictions? Taken one step further, does a person who lives in a home with an ex-felon have less of a right to self-defense than does a person who does not live with an ex-felon?" Since *Heller* has determined that the language of the Second Amendment guarantees an individual right to use firearms for self-defense, *firearm*

regulations will need to be reformed to respect the rights of ex-offenders, especially in cases where there is no evidence that the ex-offender is particularly dangerous." *Ibid.*[21] Consequently, the government's burden to justify any restraint on Petitioner's Second Amendment rights must be substantially clear and unequivocally convincing. In other words, the conviction has become obsolete, it is outdated and can no longer be sufficient to overcome the Second Amendment's requirement of a pre-existing individual right to keep and bear arms, especially where the interest at stake is the person's, natural, fundamental right to self-defense. *McDonald, Supra,* 130 S.Ct. @ 3036-3038. This interest is deemed more substantial than speech. It's the first law of human survival. *Ante* @ p. 1. The interest is a matter of protecting and securing life, and liberty. It concerns individual safety and happiness by means of self-defense. Any destruction of the right to self-defense is *per se* unconstitutional. *Young, supra,* 992 F.3d @ 784; *also see Miller v. Bonta, supra* @ pp. 17-22, & 25-26.[22]

In sum, the text of the Second Amendment makes clear that it (1) "enshrines a 'right' and not a mere privilege or suggestion subject to legislative revision or

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[21] *Also see e.g.* 4 WILLIAM BLACKSTONE, COMMENTARIES, Ch.1, *Public Wrongs, Crime and Punishment* **12-16 (1825) [Where the offender is amendable to correction, society will not benefit from perpetual punishment or retaliation]. A perpetual prohibition on the natural right to armed self-defense is retaliation in both form and substance. It acts as an additional sentence-punishment via a *prior* conviction. Petitioner was "discharged" from his punishment however. *Ante* pp. 6-7. Accordingly, any form of penalty in excess of what he has already served may violate the 8th Amendment. *Cf. Roper v. Simmons*, 543 U.S. 551, 560-561 (2005).

[22] The topic of individual safety and self-defense is outside the purview of any legislative established prohibition. The Second Amendment "reflects a judgment by the American people that the benefits of its restrictions on the Government outweigh the costs. Our Constitution forecloses any attempt to revise that judgment simply on the basis that some [People may not be] worth it. The Constitution is not a document 'prescribing limits, and declaring that those limits may be passed at pleasure.'" *Cf. U.S. v. Stevens*, 130 S.Ct. 1577, 1585 (2010), *citing Marbury, Supra,* 5 U.S. @ 178. [Emphasis and Bracketed text added].

retraction"; (2) this right "belongs to 'the people' generally, not merely a select few"; and (3) by making the right to keep and bear arms, the "Framers made the policy choice to relieve 'the people' of any obligation to justify their exercise of that right." *See* Appendix D, pp. 4-5—*Amicus Curiae Brief of United States Senator Ted Cruz and 24 Other U.S. Senators*: Filed in U.S. Supreme Court, Case No.: 20-843 (July 20, 2021). Moreover, the right to keep and bear arms belongs to all people, who "undifferentiated," are free and law-abiding. *Id* @ p 13. In addition, those people who "might" fall beyond the general policy balance of the Constitution (*i.e.* dangerous criminals), would have to be distinguished from the People. *See* Appendix D, pp. 2-3 & 13-14. Thus, since normal people can become dangerous and commit crimes, and criminals can become normal people, then any temporary ban on the right to keep and bear arms might be tolerable where, like a "dangerous *and* unusual weapon," the dangerous criminal characteristics of the individual extend well "beyond those intrinsic to common" criminal wrongdoing. Predominantly, the demonstrated criminal nature of the person must be so "unusual and dangerous" that not only does their criminal history demonstrate continuous, immediate and grave danger, but also displays an extremely brutal and unusual demeanor to both victims and society. Appendix D, pp. 13-14 & n. 6; *and cf.* 4 BLACKSTONE COMMENTARIES, *supra*, @ 9-11 & 15. In short, any constraint on the right to keep and bear arms should not be based on whether the person was convicted of a crime, nor on the elements of the offense, but solely upon the dangerous and unusual criminal characteristics and nature of the person, and whether or not they are amendable to rehabilitation. *Id.* 4 BLACKSTONE, *supra*, @ 10-13; *also see Ante* Part II-A-1, @ pp. 30-37.

III. The Questions Presented Are Exceptionally Important

For most of our history the above questions did not present themselves and, yet, there is not any Second Amendment issue more compelling and pressing than whether the government can, in any way, shape, or manner, invade upon or prohibit the fundamental constitutionally protected right of a free human-being to keep and bear arms for their personal self-defense.[23] These issues are more convincing where the purpose and command of the Amendment is clear and unambiguous in declaring that this fundamental, natural right "shall not be infringed." What makes matters worse, is that the lower courts refuse to meaningfully engage in the textual and historical analysis required. Instead, they summarily dismiss, evade, or utilize an impermissible interest balancing approach to purposely overlook the vitally important constitutional questions on how far can government overreach in order to invade upon the protections of a constitutionally secured right that *shall not be*

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[23] If the Second Amendment right to self-defense does not protect Petitioner, "then the safety of all Americans is left to the mercy of [government] authorities who may be more concerned about disarming the people than about keeping them safe." *See Gaetano v. Massachusetts* 136 S.Ct. 1027, 1033 (2016)[Conc. Opn by ALITO & THOMAS, JJ.](Per Curiam): *Ante* pp. 5-6 & footnote 4. Moreover, if "firearms cannot be categorically prohibited just because they are dangerous," *Gaetano*, 136 S.Ct. @ 1031, then the People definitely cannot be categorically prohibited because they may be *assumed* dangerous. *See Ante* @ Footnotes 7 & 9. After all, the Second Amendment protects the "right of the People," not the right of the firearm. The type of firearm or arms are only protected when the People exercise the right to procure, keep and bear them for security reasons. Otherwise, a firearm is just another tool, like an axe, knife, box cutter, stun-gun, hammer, sword, or "any thing that a man wears for his defense, or takes into his hands, or useth in wrath to cast at or strike another.'" *Id.* 136 S.Ct. @ 1031. Accordingly, any government regulation prohibiting any type of arms to anyone previously convicted of crime, who are free and law-abiding, does not serve any rational, legitimate or compelling government interest. Where the government does prohibit that individual, then the government must make sure that person is safe and be willing and able to protect them. Otherwise, if government is unwilling or unable to do so, then those People must have the ability to defend themselves by any means necessary, without suffering criminal penalties. *Cf. Gaetano*, 136 S.Ct. @ 1033; also see *Ante* @ p. 1.

encroached upon. The Constitution is written, it cannot be changed except by proper amendment, and not by any judicial, legislative or executive fiat. *See* Appendix D, pp. 4-13. Accordingly, the Second Amendment is supreme law. Therefore, all laws are to be made to support its purpose and command. *See Ante* @ n. 8.

The Court should grant *certiorari* to resolve these fundamental constitutional questions of national importance, and restore the Second Amendment to its original role in securing the freedom our constitutional republic, by declaring that any law prohibiting *any free responsible, law-abiding* American citizen, regardless of a past transgression, from the right to keep and bear any type of arms necessary to defend individual and national security, shall not be permissible.

CONCLUSION

The petition for a writ of certiorari should be granted. Petitioner has established plausible and meritoriously arguable claims for relief. Consequently, the lower courts summary dismissal of this case was in error. Accordingly, those decisions should be reversed and this case remanded back to the district court.

Dated: August 20, 2021.

Respectfully Submitted.

By_____
STEVEN E. WALKER, *Petitioner in Pro se*