No. _____

IN THE

Supreme Court of the United States

BRIAN BROUSSARD,

PETITIONER,

V.

UNITED STATES,

RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI TO THE

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1) Whether 18 U.S.C. 922(g)(1) is unconstitutional and, as such, fails to provide probable cause for detaining an American Citizen.

2) To what extent can the knowledge of one officer be imputed to another officer to establish probable cause or reasonable suspicion for a warrantless search or seizure, even if the acting officer does not personally possess all the necessary information and the relaying officer has imperfect information- in other words, when, if ever, does imperfect information justify reliance upon the collective knowledge doctrine to justify a warrantless search and seizure.?

PARTIES TO THE PROCEEDING

The petitioner is Brian Broussard, defendant and defendant-appellant in the courts below. The respondent is the United States, the plaintiff and the plaintiff-appellee in the courts below.

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The United States Fifth Circuit Court of Appeals affirmed the district court's ruling concerning the petitioner's motion to suppress evidence that was reserved for challenge on appeal pursuant to a written plea agreement in United States v. Brian Broussard, 23-30126.

JURISDICTIONAL STATEMENT

. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case presents two critical constitutional issues that warrant this Court's review:

1. Fourth Amendment: Whether the collective knowledge doctrine, as applied by the lower courts, improperly erodes Fourth Amendment protections against unreasonable searches and seizures by allowing law enforcement to aggregate imperfect or incomplete information from multiple officers to manufacture probable cause where none existed individually at the time of the search or seizure.
2. Second and Fourth Amendments: Whether, in light of this Court's decision in New York State Rifle & Pistol Association, Inc. v. Bruen, 142 S. Ct. 2111 (2022), and subsequent lower court rulings, an individual's status as a convicted felon, without more, creates sufficient probable cause to justify detention based on suspected firearm possession, or whether such detentions violate both the

Fourth Amendment's prohibition against unreasonable seizures and the Second Amendment right to bear arms.

These issues intersect in the present case, where the petitioner was detained based on fragmented information shared between officers and his status as a convicted felon allegedly in possession of a firearm, without consideration of the nature of his prior conviction or any indication of current dangerousness. Resolution of these issues is crucial for clarifying the scope of Fourth Amendment protections in the context of evolving Second Amendment jurisprudence and ensuring that law enforcement practices align with constitutional guarantees.

STATEMENT OF THE CASE

The petitioner was arrest under dubious circumstances whereby the patrol officer acted upon orders from other law enforcement officers to pull over his vehicle notwithstanding the fact that he did not observe any traffic violations or crimes committed by the driver. The commanding officers believed the car was driven by the petitioner, a known felon they were investigating, whom they believed carried a weapon into a residence earlier that day. Through a comedy of errors, no one knew who was driving the car when it was ordered to be stopped nor could anyone ascertain whether any occupants possessed a gun. The petitioner filed a motion to suppress evidence, lost and plead guilty reserving his right to an appeal. He lost that challenge and this writ application now follows.

REASONS FOR GRANTING THE WRIT OF CERTIORARI

I. The Collective Knowledge Doctrine Should Exclude Imperfect Information When Used to Justify A Warrantless Search and Seizure

The collective knowledge doctrine, as it has been expanded by lower courts, threatens to erode Fourth Amendment protections against unreasonable searches and seizures. This Court should limit the application of the doctrine in cases where the information being imputed is imperfect or incomplete. Allowing warrantless searches and seizures based on the aggregated imperfect knowledge of multiple officers, without any single officer possessing probable cause, contradicts this Court's longstanding Fourth Amendment jurisprudence requiring specific, articulable facts to justify warrantless intrusions.

The collective knowledge doctrine originated in United States v. Hensley, 469 U.S. 221 (1985), where this Court held that officers could rely on information from other officers to justify a *Terry* stop. However, *Hensley* involved officers relying on a wanted flyer based on articulable facts supporting reasonable suspicion. It did not sanction the aggregation of imperfect or incomplete information across multiple officers to manufacture probable cause where none existed individually.

Subsequent lower court decisions have expanded this doctrine beyond its original scope, allowing the piecing together of fragments of information from multiple officers to justify warrantless searches and seizures. This expansion

threatens to circumvent the warrant requirement by allowing after-the-fact justifications for searches based on the collective knowledge of the police force, rather than requiring an individual officer to possess probable cause at the time of the search.

An expansive collective knowledge doctrine contradicts this Court's Fourth Amendment jurisprudence. In Terry v. Ohio, 392 U.S. 1 (1968), this Court emphasized that police must be able to point to "specific and articulable facts" to justify an investigative stop. The Court stated:

> "[I]n justifying the particular intrusion the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." Id. at 21.

Allowing reliance on imperfect collective knowledge undermines this requirement by permitting stops based on hunches and fragments of information rather than articulable facts known to the officer at the scene.

In United States v. Cortez, 449 U.S. 411 (1981), this Court held that the assessment of reasonable suspicion must be based on the totality of the circumstances known to the officer. The Court stated:

> "The process does not deal with hard certainties, but with probabilities. Long before the law of probabilities was articulated as such, practical people formulated certain common-sense conclusions about human

behavior; jurors as factfinders are permitted to do the same -- and so are law enforcement officers." Id. at 418.

Permitting reliance on unknown information possessed by other officers contradicts this totality of the circumstances test, as it allows officers to act on information not actually known to them at the time of the search or seizure.

An overly expansive collective knowledge doctrine allows for post-hoc justifications of searches based on information not actually known to the searching officer at the time, contradicting this principle.

In the present case, no single officer observed Mr. Broussard enter the Honda Accord or place any contraband inside. The stop and subsequent search were based on fragmented information from multiple officers, none of whom individually possessed probable cause. This aggregation of imperfect knowledge to justify a warrantless search runs afoul of the Fourth Amendment's requirement that warrantless searches be justified by probable cause known at the time of the search. The Fifth Circuit's reliance on the collective knowledge doctrine in this case demonstrates how the doctrine has been expanded beyond its original scope. It allows for the piecing together of hunches and incomplete information to manufacture probable cause where none existed at the time of the search.

To safeguard Fourth Amendment protections, this Court should clarify that the collective knowledge doctrine cannot be used to piece together imperfect information from multiple officers to manufacture probable cause where none existed at the time of the search. At minimum, the Court should require that the information

being imputed between officers be based on articulable facts supporting probable cause, not mere hunches or fragments of information.

This limitation would be consistent with this Court's decision in Whiteley v. Warden, 401 U.S. 560 (1971), where the Court held that an otherwise illegal arrest cannot be insulated from challenge by the decision of the instigating officer to rely on fellow officers to make the arrest. The Court stated:

> "[A]n otherwise illegal arrest cannot be insulated from challenge by the decision of the instigating officer to rely on fellow officers to make the arrest." Id. at 568.

Similarly, an otherwise illegal search should not be insulated from challenge by the aggregation of imperfect knowledge across multiple officers.

II. Whether the alleged offense concerning the possession of a firearm by a convicted felon creates probable cause for detaining an American Citizen when this offense has been called to question by recent federal court rulings.

The detention of Brian Broussard based solely on his status as a convicted felon allegedly in possession of a firearm is unconstitutional and fails to establish probable cause considering recent federal court rulings questioning the validity and scope of felon-in-possession laws. This Court should rule that such detentions violate the Fourth Amendment's prohibition against unreasonable seizures and the Second Amendment right to bear arms, as interpreted by this Court's landmark decision in New York State Rifle & Pistol Association, Inc. v. Bruen, 142 S. Ct. 2111 (2022).

The landscape of Second Amendment jurisprudence has shifted dramatically in recent years. In *Bruen*, this Court held that when evaluating Second Amendment claims, courts must assess whether "the regulation is consistent with this Nation's historical tradition of firearm regulation." Id. at 2126. This historical approach has led several federal courts to question the constitutionality of broad felon-in-possession prohibitions.

As the Hon. Brian Jackson noted in his December 19, 2023 ruling granting a Motion to Dismiss the Indictment in United States v. LeBlanc, "...*Bruen* threw open courthouse doors to Second Amendment challenges long since rejected, including even challenges to 18 U.S.C. § 922(g)(1)." 2023 WL 8756694 (M.D. La. 12/19/2023), at *1.

Following the decision in *Bruen*, the Fifth Circuit granted challenges to different subsections of 18 U.S.C. § 922(g). In United States v. Rahimi, 61 F.4th 443 (5th Cir. 2023), *cert granted*, -- U.S. --, 143 S.Ct. 2686, 216 L.Ed.2d 1255 (2023), the Fifth Circuit found 18 U.S.C. § 922(g)(8), which prohibits the possession of firearms by someone subject to a domestic violence restraining order, unconstitutional on its face. And in United States v. Daniels, 77 F.4th 337 (5th Cir. 2023), the Fifth Circuit found 18 U.S.C. § 922(g)(3), which prohibits the possession of firearms by someone who is an "unlawful user or addicted to any controlled substance", unconstitutional as applied. The Fifth Circuit has not yet ruled on the constitutionality *vel non* of 18 U.S.C. § 922(g)(1).[1] More recently, this Court reversed the Fifth Circuit's decision in

[1] The Fifth Circuit has rejected "plain error" challenges to 18 U.S.C. § 922(g)(1) by defendants seeking to withdraw their guilty pleas, noting that at the time of the guilty pleas there was no binding precedent holding the

Rahimi but as discussed more fully below, that decision is narrow in scope and is not dispositive of the issue at hand. United States v. Rahimi, 2024 U.S. Lexis 2714 (2024). Furthermore, while the Fifth Circuit will be resolving whether 18 U.S.C. § 922(g) is unconstitutional when it decides United States v. Collette, 22-51062, (5th Cir.), the United States Ninth Circuit Court of Appeals has ruled it unconstitutional in United States v. Duarte, 101 F.4th 657 (9th Cir. 2024). This position was echoed by the United States Third Circuit Court of Appeals in United States v. Range, 69 F.4th 96 (3rd Cir. 2023). The *Range* decision was recently vacated and remanded to assess the issue further in light of *Rahimi.* Garland v. Range, 2024 U.S. Lexis 2917 (2024).

Using the analytical framework prescribed in *Bruen,* Judge Carlton Reeves in United States v. Bullock, 2023 WL 4232309 (S.D. Miss. 2023) was the first district judge in this Circuit to hold 18 U.S.C. § 922(g)(1) unconstitutional as applied. Judge Jackson with his ruling in *LeBlanc* became the second. Judge Jackson's ruling in *LeBlanc* noted, "[t]he next *Bruen* challenge to § 922(g)(1) is right around the corner." 2023 WL 8756694 (M.D. La. 12/19/2023), FN 5.

These rulings suggest that the mere status of being a convicted felon may no longer be sufficient to justify a blanket prohibition on firearm possession, and by extension, may not create probable cause for detention based solely on that status.

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statute unconstitutional. *See, e.g., United States v. Jones*, 88 F.4th 571 (5th Cir. 2023), *United States v. Etchisonbrown*, 2023 WL 7381451 (5th Cir. 2023), and, most recently, *United States v. Davis*, 2024 WL 277724 (5th Cir. 2024) and *United States v. Cuevas*, 2024 WL 303255 (5th Cir. 2024). The Fifth Circuit also noted, in *United States v. Forbito*, 2023 WL 8274528 (5th Cir. 2023), at *8, that the Third and Eighth Circuits had reached divergent conclusions regarding the statute's constitutionality: *Range v. Lombardo*, 69 F.4th 96 (3rd Cir. 2023) found it unconstitutional as applied, while *United States v. Jackson*, 69 F.4th 495 (8th Cir. 2023) rejected as-applied challenges. It appears the Fifth Circuit is not intending to rule on the issue until the U.S. Supreme Court decides *Rahimi. See United States v. Collette*, No. 22-51062 (5th Cir.), Rec. Doc. No. 57.

As such, detention based solely on felon-in possession suspicion violates the Fourth Amendment.

The Fourth Amendment protects against unreasonable searches and seizures, requiring that law enforcement have probable cause before detaining an individual. Probable cause exists when the facts and circumstances within the officers' knowledge are sufficient to warrant a prudent person in believing that the suspect has committed, is committing, or is about to commit an offense. Beck v. Ohio, 379 U.S. 89 (1964).

In light of the recent federal court rulings questioning the constitutionality of felon-in-possession laws, the mere knowledge that an individual is a convicted felon and may be in possession of a firearm is insufficient to establish probable cause. This is particularly true when the underlying felony conviction is for a non-violent offense unrelated to firearms.

In Mr. Broussard's case, the detention was based solely on his status as a convicted felon allegedly in possession of a firearm. Without additional information about the nature of his prior conviction or any indication of current criminal activity, this detention violates the Fourth Amendment's requirement for probable cause.

Following *Bruen*, courts must consider whether a firearm regulation is consistent with the Nation's historical tradition of firearm regulation. The historical record does not support a blanket prohibition on firearm possession by all felons, regardless of the nature of their offense.

As noted by Justice Amy Coney Barrett in Kanter v. Barr, 919 F.3d 437, 451 (7th Cir. 2019) (Barrett, J., dissenting), "Founding-era legislatures did not strip felons of the right to bear arms simply because of their status as felons." Instead, the historical record suggests that firearm prohibitions were limited to those who had committed violent crimes or were otherwise considered dangerous.

Therefore, detaining an individual solely based on their status as a convicted felon in possession of a firearm, without consideration of the nature of their prior offense or any indication of current dangerousness, may violate their Second Amendment rights as interpreted in *Bruen*.

Allowing detentions based solely on an individual's status as a convicted felon in possession of a firearm can lead to over-policing and disproportionate impacts on marginalized communities. It can also perpetuate the cycle of recidivism by making it more difficult for individuals with past convictions to reintegrate into society.

Moreover, such detentions may not serve the public safety goals they purport to address. Non-violent felons who have served their sentences and are attempting to live law-abiding lives may be deterred from engaging in lawful self-defense or other constitutionally protected activities involving firearms.

CONCLUSION

The expansion of the collective knowledge doctrine and the reliance on broad felon-in-possession laws to justify warrantless searches and seizures represent a

dangerous erosion of Fourth Amendment protections and a potential violation of Second Amendment rights as newly interpreted by this Court.

First, the collective knowledge doctrine has been improperly expanded beyond its original scope, allowing law enforcement to piece together fragments of imperfect information to manufacture probable cause where none existed at the time of the search. This practice contradicts this Court's longstanding requirement for specific, articulable facts to justify warrantless intrusions, as established in Terry v. Ohio and reinforced in subsequent decisions.

Second, in light of this Court's decision in Bruen and subsequent lower court rulings, the mere status of being a convicted felon can no longer serve as a blanket justification for firearm prohibitions or as probable cause for detention. The historical record does not support such broad disarmament, particularly for non-violent offenders, and recent judicial decisions have rightly called into question the constitutionality of sweeping felon-in-possession laws.

The intersection of these two issues in Mr. Broussard's case exemplifies the urgent need for this Court's intervention. His detention, based on fragmented information and his status as a convicted felon, represents a clear violation of both Fourth and Second Amendment principles.

Respectfully Submitted,

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Dated: October 7, 2024

CERTIFICATE OF SERVICE

Undersigned counsel certifies that on this date, the 7 day of October, 2024, pursuant to Supreme Court Rules 29.3 and 29.4, the accompanying motion for leave to proceed *in forma pauperis* and petition for a writ of *certiorari* were served on each party to the above proceeding, or that party's counsel, and on every other person required to be served, by depositing an envelope containing these documents in the United States mail properly addressed to each of them and with first-class postage prepaid.

The names and addresses of those served are as follows:

AUSA Daniel J. Vermaelen, 800 Lafayette St Ste 2200 Lafayette LA 70501, &
Brian Broussard, BOP#45082-509, Beaumont FCI, 5830 Knauth Rd Beaumont TX 77705

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APPENDICES

APPENDIX A: *United States v. Brian Broussard, 5th Circuit denial.*

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