NO: 24-6487

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2024

KAREEM REAVES,

***Petitioner*,**

v.

UNITED STATES OF AMERICA,

***Respondent*.**

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

REPLY BRIEF FOR PETITIONER

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Whether a person who was previously convicted of a felony is categorically excluded from the protections of the Second Amendment is a question of immense importance to myriad federal prisoners, like Petitioner, who stand convicted under 18 U.S.C. § 922(g)(1). That provision criminalizes the possession of a firearm by a person convicted of "a crime punishable by imprisonment for a term exceeding one year." § 922(g)(1).

In its Memorandum, the United States acknowledges that the Eleventh Circuit rejected Petitioner's Second Amendment challenge to § 922(g)(1) because it determined it "was bound by" its controlling decision in *United States v. Dubois*, 94 F.4th 1284 (11th Cir. 2024). Mem. at 3. The United States further notes that in *Dubois v. United States*, ___ S. Ct ___, 2025 WL 76413 (Jan. 13, 2025) (No. 24-5744), the Court recently vacated and remanded the Eleventh Circuit's *Dubois* decision in light of *United States v. Rahimi*, 602 U.S. 680 (2024). *See id.* As the United States concedes, "vacatur and remand would thus be warranted" in Petitioner's case. *Id.*

Nonetheless, the United States argues that the Court should instead deny certiorari because Petitioner did not properly preserve the Second Amendment issue in the district court. *Id.* It asserts that the Court has "consistently denied petitions for writs of certiorari raising Second Amendment challenges to Section 922(g)(1) when the petitioners have failed to preserve their claims in the lower courts." *Id.* (citing *Trammell v. United States*, 2024 WL 4743152 (Nov. 12, 2024)

(No. 24-5723); *Chavez v. United States*, 145 S. Ct. 459 (2024) (No. 24-5639); *Dorsey v. United States*, 145 S. Ct. 457 (2024) (No. 24-5623)).

In each of the cases cited by the United States to support its argument, however, the circuit court expressly applied plain error review because the Second Amendment claim had not been raised in the district court, and then denied relief because the error was not plain. *See United States v. Trammell*, 2024 WL 3163403, *5 (6th Cir. June 25, 2024) (No. 23-5221) ("Trammell cannot show plain error in the district court's failure to sua sponte declare his felon-in-possession conviction unconstitutional" under the Second Amendment), *cert. denied,* ___ S. Ct. ___, 2024 WL 4743152 (U.S. Nov. 12, 2024) (No. 24-5723); *United States v. Chavez*, 2024 WL 3201731, *1 (5th Cir. June 27, 2024) (No. 24-10064) (rejecting unpreserved Second Amendment challenge as foreclosed by circuit precedent which "rejected another such challenge on the ground that any error was not plain"); *cert. denied*, 145 S. Ct. 459 (2024); *United States v. Dorsey*, 105 F. 4th 526 (3d Cir. 2024) (No. 23-2125) ("because Dorsey has not shown that any error here was plain, we will affirm"), *cert. denied*, 145 S. Ct. 457 (2024).

Here, in sharp contrast, the court of appeals never conducted plain error review when it considered Petitioner's Second Amendment claim. *See* Pet. App. A-1, *passim*. Indeed, it never mentioned that the claim was unpreserved. *See id*. Nor did it invoke the term "plain error" or the plain error standard. *See id*. Rather, the Eleventh Circuit considered Petitioner's Second Amendment claim on

the merits, and then denied that claim because it "was bound by" its decision in *Dubois* holding § 922(g)(1) did not violate the Second Amendment. *Id*. at 7.

While it is true that the Court does "not decide questions neither raised nor resolved below," *Glover v. United States*, 531 U.S. 198. 205 (2001); *Youakim v. Miller*, 425 U.S. 231, 234 (1976) (*per curiam*) (same), or issues that an appellate court deems waived because not raised in a lower court, *see, e.g., California v. Taylor*, 353 U.S. 553, 556 n.2 (1957), "[i]t suffices . . . that the court below passed on the issue presented," *Virginia Bankshares, Inc. v. Sandberg*, 501 U.S. 1083, 1099 n.8 (1991). *See also Lebron v. National Railroad Passenger Corp*., 513 U.S. 374, 379 (1995) ("even if this claim was not raised by petitioner below, we would ordinarily feel free to address it since it was addressed by the court below").

That is precisely what happened here. Petitioner raised his Second Amendment challenge in the court of appeals, and the Eleventh Circuit resolved the issue on its merits without considering the issue waived or invoking plain error review. And because the Eleventh Circuit resolved the Second Amendment issue on its merits, that issue is properly before the Court. *See Virginia Bankshares, Inc.*, 501 U.S. at 1099 n.8; *Lebron*, 513 U.S. at 379. Therefore, the Court should reject the arguments of the United States to the contrary.

In sum, Petitioner's Second Amendment challenge is properly before the Court. The Eleventh Circuit rejected that challenge because it "was bound by" its earlier decision in *Dubois*. This Court recently vacated and remanded the Eleventh

Circuit's decision in *Dubois* for reconsideration in light of *Rahimi*. Accordingly, this Court should follow the same course here. It should grant certiorari, vacate the decision below, and remand Petitioner's case to the Eleventh Circuit for reconsideration in light of *Rahimi*.

CONCLUSION

Based upon the foregoing argument and that in the Petition for Writ of Certiorari, the Court should grant a writ of certiorari to the Court of Appeals for the Eleventh Circuit, vacate the Eleventh Circuit's decision, and remand Petitioner's case to the court of appeals for further consideration in light of *United States v. Rahimi*, 602 U.S. 680 (2024).

Respectfully submitted,

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March 17, 2025