IN THE
SUPREME COURT OF THE UNITED STATES

No. _____

STEVEN DUARTE, AKA SHORTY,

Applicant,

v.

UNITED STATES OF AMERICA,

Respondent.

APPLICATION TO THE HON. ELENA KAGAN
FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE
A PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Pursuant to Supreme Court Rule 13(5), Steven Duarte ("Applicant") hereby moves for an extension of time of 30 days, to and including September 6, 2025, for the filing of a petition for a writ of certiorari. Unless an extension is granted, the deadline for filing the petition will be August 7, 2025.

In support of this request, Applicant states as follows:

1. The United States Court of Appeals for the Ninth Circuit rendered its decision, en banc, on May 9, 2025 (Exhibit 1). This Court has jurisdiction under 28 U.S.C. §1254(1).

2. At issue in this case is a categorical, lifetime prohibition on firearm possession by any individual with a prior felony conviction, regardless of the nature of the offense, the time that has passed since conviction, or evidence of rehabilitation. Under 18 U.S.C. §922(g)(1), it is a federal crime for any person "convicted in any court of a crime punishable by imprisonment for a term exceeding one year" to possess a

firearm. That prohibition applies even to non-violent offenders such as the Applicant here, Steven Duarte, who served his sentence and reentered society years ago. Following this Court's decision in *New York State Rifle & Pistol Association v. Bruen*, 597 U.S. 1 (2022), Duarte argued that §922(g)(1) is unconstitutional as applied to himself and other nonviolent felons like him. The Ninth Circuit, sitting en banc, rejected Duarte's claim, holding that §922(g)(1) remains constitutional as applied to all felons even after *Bruen*. That decision conflicts with the reasoning of other courts of appeals and raises a fundamental question about whether the government may impose permanent Second Amendment disabilities based solely on a person's criminal record, untethered from any individualized showing of dangerousness.

3. The facts relevant to this case are as follows. On March 20, 2020, Duarte was a passenger in a car stopped by law enforcement for driving through a stop sign. As the officers activated their car's lights and sirens, Duarte was observed throwing a pistol, without its magazine, out of the car's rear window. After asking the driver and Duarte to step out of the vehicle, officers searched the car and found a magazine loaded with six .380-caliber bullets stuffed between the center console and the front passenger seat. The magazine fit into the discarded pistol.

4. Duarte was arrested, and he was later indicted for violating 18 U.S.C. §922(g)(1), which prohibits firearm possession by any person convicted of a crime punishable by imprisonment for a term exceeding one year. (Duarte previously had been convicted of, and served his sentences for, drug-related and property offenses.) Duarte was convicted after a jury trial and sentenced to 51 months' imprisonment.

5. At the time of his trial, Ninth Circuit precedent foreclosed Second Amendment challenges to §922(g)(1), including as-applied challenges, so Duarte did not raise the issue. While his case was on appeal, however, this Court decided *Bruen*, clarifying the framework for Second Amendment claims. Duarte accordingly raised a Second Amendment challenge to his conviction for the first time on appeal, arguing that §922(g)(1) is unconstitutional as applied to him under *Bruen*.

6. A three-judge panel agreed with him. *United States v. Duarte*, 101 F.4th 657 (9th Cir. 2024). The panel first held that Duarte had demonstrated good cause for not raising the argument to the district court, because circuit precedent in *United States v. Vongxay*, 594 F.3d 1111 (9th Cir. 2010), foreclosed his argument at that time; the panel thus applied *de novo* review, rather than plain error review. *Duarte*, 101 F.4th at 663. The panel majority then concluded that *Vongxay* was irreconcilable with *Bruen*, and accordingly proceeded to evaluate Duarte's claim anew. *Id.* at 664-65. Applying *Bruen*'s framework, the panel majority held (1) that the conduct §922(g)(1) restricted as applied to Duarte (possessing a firearm after serving time for nonviolent offenses) is covered by the plain text of the Second Amendment and (2) that the government failed to meet its burden of showing that the application of §922(g)(1) was consistent with historical tradition. *Id.* at 665-91.

7. The Ninth Circuit voted to rehear the case en banc, "vacat[ing]" the "three-judge panel decision." *United States v. Duarte*, 108 F.4th 786, 786 (9th Cir. 2024). The en banc panel then affirmed Duarte's conviction. *United States v. Duarte*, 137 F.4th 743 (9th Cir. 2025) (en banc).

8. The en banc court held that §922(g)(1) is "not unconstitutional as applied to non-violent felons like Duarte," concluding that historical tradition permits a legislature to disarm those who have committed the most serious crimes, without an individualized determination of dangerousness. *Id.* at 749. To support its view of the permissibility of permanent disarmament, the majority cited Founding-era punishments such as death and estate forfeiture for felons, reasoning that if such severe penalties were historically permissible, "then the lesser restriction of permanent disarmament" must also fall within constitutional bounds. *Id.* at 756 (footnote omitted). It also noted that historical laws categorically disarmed certain groups deemed "vicious" or "dangerous," such as Catholics, and viewed this tradition as also independently supporting the application of §922(g)(1) to felons. *Id.* at 760.

9. Several judges concurred in the judgment. Judge Collins agreed that Duarte's as-applied challenge "fails on the merits under *de novo* review," but rejected the majority's view that either felon disarmament or categorical disarmament of certain groups alone suffices to uphold §922(g)(1); instead, he argued that these traditions must be "taken together" and considered in tandem to provide a sufficient historical analogue to support the statute's constitutionality. *Id.* at 772 (Collins, J., concurring in the judgment). Judge R. Nelson, joined by Judge Ikuta, also wrote separately. They agreed that Duarte's conviction should be affirmed, but only under plain error review. *Id.* at 762 (Nelson, J., concurring in the judgment) ("I would not reach the merits of Duarte's Second Amendment challenge under de novo review.").

10. Finally, Judge VanDyke wrote separately, concurring in the judgment in part and dissenting in part. *Id.* at 773-805 (VanDyke, J., in the judgment in part and dissenting in part). In Part I of his opinion, which was joined by Judges Ikuta and R. Nelson, he argued that plain error review applied and that the claim failed under that standard of review. *Id.* at 774-79. In Part II, in which he wrote only for himself, he warned that the majority's analysis eroded *Bruen*'s protections by relying on dubious historical practices to justify sweeping disarmament. *Id.* at 779-805. In Judge VanDyke's view, "legislatures can[not] disarm entire classes of individuals," and can disarm individuals consistent with the Second Amendment only upon "a specific showing of individual dangerousness or propensity to violence." *Id.* at 774.

11. Duarte's forthcoming petition for certiorari will ask this Court to resolve a question of surpassing importance that has divided the circuits: whether §922(g)(1) may constitutionally be applied to individuals with nonviolent felony convictions who have served their sentences and pose no danger to society. Unlike the Ninth Circuit here, the Third Circuit has held that the answer is no. *See Range v. Att'y Gen. United States*, 124 F.4th 218 (3d Cir. 2024) (en banc). The petition may also address whether criminal defendants may invoke new constitutional rights on appeal when circuit precedent foreclosed those claims at trial without being subjected to the strictures of plain error review. Although the three-judge panel reviewed Duarte's claim *de novo*, the en banc panel did not resolve the proper standard of review, and the separate opinions highlighted the growing disagreement among the circuits on this issue.

12. Undersigned counsel was not involved in the proceedings below and was only recently retained. Undersigned counsel also has substantial briefing and argument obligations between now and the current due date of August 7, 2025, including: oral argument in *Beckwith v. Frey*, No. 25-1160 (1st Cir.), scheduled for July 28, 2025; a brief for amicus curiae in *Arnold v. Kotek*, No. S071885 (Or.), due July 31, 2025; a motion for summary judgment in *National Shooting Sports Foundation v. Bonta*, No. 3:23-cv-945 (S.D. Cal.), due on August 1, 2025.

WHEREFORE, for the foregoing reasons, Applicant requests that an extension of time to and including September 6, 2025, be granted within which Applicant may file a petition for a writ of certiorari.

Respectfully submitted,

ERIN E. MURPHY
Counsel of Record
CLEMENT & MURPHY, PLLC
706 Duke Street
Alexandria, VA 22314
(202) 742-8900
erin.murphy@clementmurphy.com
Counsel for Applicant

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