

IN THE  
**Supreme Court of the United States**

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ROBERT L. FOOKS,

*Petitioner,*

*v.*

MARYLAND,

*Respondent.*

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**ON PETITION FOR A WRIT OF CERTIORARI TO THE  
SUPREME COURT OF MARYLAND**

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**REPLY BRIEF FOR PETITIONER**

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## REPLY BRIEF FOR PETITIONER

This case squarely presents before this Court the question whether history and tradition dictate that felons, as a category, may be denied their Second Amendment right—and what and who meet the definition of “felony” and “felon,” respectively—or whether dangerousness is the more appropriate historically-based Second Amendment threshold, along with how dangerousness is determined and by whom. The Respondent, State of Maryland, concedes in its Brief in Opposition that the issues Mr. Fooks raises in his Petition are important issues: “The question whether felon-in-possession laws are consistent with the Nation’s historical tradition of firearm regulation is undoubtedly an important and pressing issue percolating through the lower courts.” (Respondent’s Brief in Opposition at p. 16). Determining whether state or federal felon-in-possession statutes may withstand facial or as-applied Second Amendment scrutiny requires a determination of what constitutes a felony and who qualifies as a felon. Mr. Fooks was convicted of criminal contempt of court—failure to abide a court order to pay child support—a common law offense in Maryland. He has no record of violent conduct, as the State readily admitted in the trial court. And although he is not a felon, through the lens of Maryland Code, Public Safety Article, § 5-133(b)(2), Mr. Fooks has, effectively, been deemed a felon by the Supreme Court of Maryland, but only for the purposes of the Second Amendment. Thus, the effect of the extant published opinion from the Supreme Court of Maryland—a state appellate court of last resort—is that a court may convert a crime that is not a felony into a felony, and a person who is not a felon into a felon for the purposes of the Second Amendment;

and, accordingly, that one's Second Amendment right may be barred without any regard for considerations of dangerousness. This case provides the ideal vehicle for examining the questions raised in Mr. Fooks' Petition for a Writ of Certiorari and for providing platform for a global resolution to these issues.

By leaning heavily into a concurrence by Justice Watts below, which was rejected by both the majority and dissent,<sup>1</sup> and which was not joined by any other justice on the Supreme Court of Maryland, the Respondent attempts to sully the appellate record in this case by claiming that a murky trial record implies an underlying theft, which should serve as a bar to entertaining Mr. Fooks' Second Amendment claims. To be sure, this case began with an allegation by the State that Mr. Fooks stole firearms from a relative. And Mr. Fooks steadfastly denied the theft allegation, maintaining that this was a family dispute over the removal and lawful disposition of the firearms from an elderly person for safety reasons, and that he had put himself "in a situation that is kind of a little awkward" trying to protect someone. But these competing theories were never litigated, as the State then abandoned the sole theft charge.

The record in this case that generates the Second Amendment issues is as clean and clear as it gets. The record shows that in his motion to dismiss on Second Amendment grounds Mr. Fooks argued that he was a

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1. As Mr. Fooks represented in his Petition for a Writ of Certiorari, both the majority and dissent in *Fooks* recognized that Justice Watts' efforts at engaging in fact-finding at the appellate level was a bridge too far. (Petition for a Writ of Certiorari at p. 10, fn. 2).

“law-abiding, responsible citizen” (Petition for a Writ of Certiorari at Appendix D, p. 211a-215a; ); and, in response, the State never argued that Mr. Fooks did not have a Second Amendment right because he *stole* the firearms, only that they were “someone else’s guns” (*i.e.*, that he did not *own* them), which was never disputed. (Petition for a Writ of Certiorari at Appendix E., p. 216a-222a; Appendix G., p. 227a-229a). Following the denial of his motion, Mr. Fooks entered a conditional guilty plea to two of thirteen counts of unlawfully possessing a firearm for the explicit purpose of seeking to vindicate his Second Amendment right on appeal. The plea agreement reflected that reversal on appeal on Second Amendment grounds would apply to all thirteen firearm possession counts and that the theft count would be dismissed and could not be revived on remand. Moreover, the plea agreement specifically provided that a reversal would relieve Mr. Fooks of the agreed upon restitution obligation. As defense counsel correctly represented at the plea hearing, the plea agreement “was a result of a lot of negotiation and both parties identifying, properly I think, identifying the issues important to them.” The theft claim was put to rest long ago at the trial level. The entire point of the plea agreement was to allow Mr. Fooks to pursue his Second Amendment challenge on appeal.

Both the Appellate Court of Maryland and the Supreme Court of Maryland rejected the Respondent’s subsequent attempts on appeal to raise the specter of theft in order to foreclose Mr. Fooks’ opportunity to obtain substantive rulings on the Second Amendment grounds litigated at the trial level. And both Courts have issued reported opinions directly addressing Mr. Fooks’ substantive Second Amendment claims. This

Court should likewise reject the Respondent's attempt to torpedo Mr. Fooks' opportunity to obtain relief on his Second Amendment claims, which are squarely before this Court. However, should this Court otherwise elect to grant a writ of certiorari in one of the several other cases pending on these and related issues—*i.e.*, Petition for Writ a of Certiorari, *Vincent v. Bondi*, No. 24-1155 (filed May 8, 2025),<sup>2</sup> or Petition for Writ of Certiorari, *Duarte v. United States*, No. 24-0425 (filed October 6, 2025)<sup>3</sup>—Mr. Fooks would respectfully request that this Court hold his Petition for a Writ of Certiorari in abeyance for further consideration pending the outcome of whatever vehicle the Court ultimately elects to pursue.

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2. Vincent's petition presents the question: "Whether the Second Amendment allows the federal government to permanently disarm Petitioner Melynda Vincent, who has one seventeen-year-old nonviolent felony conviction for trying to pass a bad check."

3. Duarte's petition presents the question: "Whether 18 U.S.C. §922(g)(1)'s categorical ban on the possession of firearms by felons is unconstitutional as applied to a defendant with non-violent predicate offenses underlying his conviction."

## CONCLUSION

In view of the Supreme Court of Maryland's failure to abide the *Bruen/Rahimi* analytical framework in application to Maryland Code, Public Safety Article, § 5-133(b)(2), in this case; in view of the split among federal cases regarding the application of criminal disarmament statutes that are based on prior criminal convictions; and for the reasons set forth in Mr. Fooks' opening Petition for a Writ of Certiorari and this Reply Brief for Petitioner, this case provides the ideal vehicle for needed clarification on the issues presented, and it is in the public interest that this Court grant the instant Petition.

Respectfully submitted,

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