No. 25–5746

In the Supreme Court of the United States

KEVIN DWAYNE WOODS, JR.,

Petitioner,

vs.

STATE OF IOWA,

Respondent.

On Petition For A Writ Of Certiorari
To The United States Supreme Court

REPLY IN SUPPORT FOR PETITITON FOR A WRIT OF CERTIORARI

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PETITIONER'S REPLY TO RESPONDENT'S OPPOSITION BRIEF

A. This Court can review a controlling decision of the Iowa Supreme Court if its decision is contrary to the United States Constitution, even if it is a single-justice concurrence.

The State argues that this Court does not or cannot grant a petition for a writ of certiorari if the controlling opinion is a concurrence in the judgment. (Resp. Br. at 9). The Court has jurisdiction over all Iowa Supreme Court final judgments that affirm the validity of a statute that is repugnant to the United States Constitution. 28 U.S.C. § 1257(a). Justice Oxley's concurrence is considered the final judgment on Iowa Code § 724.8B because it represents the opinion with the narrowest rationale. *Marks v. United* States, 430 U.S. 188, 193 (1977); *see also State v. Iowa Dist. Ct.*, 801 N.W.2d 513, 522 (Iowa 2011). It does not "bind[] only the parties to this case," but carries the same effect that a unanimous opinion would. (Resp. Br. at 9). In fact, it has already been applied by the Iowa Court of Appeals. *See State v. Dunn*, __ N.W.2d __, No. 24–1620, 2026 WL 43254 (Iowa Ct. App. Jan. 7, 2026). Simply put, the controlling decision upholds the validity of a statute that violates the Second Amendment. This Court can and should hear this case.

B. Although the concurrence's rule is correct, its application of that rule was misplaced.

A majority of the Iowa Supreme Court agreed: to criminalize Mr. Woods for carrying a firearm, the Second Amendment requires proof of a nexus between the underlying unlawful conduct and the firearm. *State v. Woods*, 23 N.W.3d 258, 278 (Iowa 2025) (Oxley, J., concurring specially); *id.* at 290–91 (McDermott, J., dissenting, joined by Waterman, May, JJ.). The Court splintered on where the nexus requirement

appears within the *Bruen/Rahimi*[1] analysis. Justice Oxley analyzed the nexus between the firearm and the conduct at step one, question three—whether the regulated conduct falls within the scope of the Second Amendment. *Id.* at 280 (Oxley, J., concurring). Justices McDermott, Waterman, and May analyzed the nexus between the firearm and the conduct at step two—whether the regulation is consistent with the Nation's historical tradition of regulating firearms. *Id.* at 299 (May, J., dissenting). Although the Iowa Supreme Court was correct to analyze whether there was a connection between the firearm and unlawful conduct, placing this analysis at step one, question three misunderstands this Court's guidance in *Bruen* and *Rahimi*.

The Courts of Appeals are unanimous in treating the nexus requirement as a step two inquiry. Carrying firearms is protected by the Second Amendment. To disarm or otherwise punish someone for carrying a firearm, there must be a historical analogue for that action *based on* the connection between the individual's conduct and the firearm. In *United States v. Harris*, 144 F.4th 154 (3d Cir. 2025), the Third Circuit recognized "[d]rug users who are adult citizens are among 'the people' who fall within its scope. And § 922(g)(3) regulates "quintessential Second Amendment conduct: possessing a handgun." *Id.* at 157 (citation omitted). The connection between the unlawful conduct (drug use) and the possession of a firearm was analyzed at step two. *Id.* at 165-66 (remanding for analysis on step two as to whether there was a connection between defendant's drug use and possession of a firearm that posed a

[1] *N.Y. State Rifle & Pistol Assn. v. Bruen*, 597 U.S. 1 (2022); and *United States v. Rahimi*, 602 U.S. 680 (2024)

risk of danger to the public and that matched an appropriate historical analogue). The pattern holds true in *United States v. Connelly*, 117 F.4th 269 (5th Cir. 2024); *United States v. Daniels*, 124 F.4th 967 (5th Cir. 2025); *United States v. Williams*, 113 F.4th 662 (6th Cir. 2024); *United States v. VanOchten*, 150 F.4th 552 (6th Cir. 2025); *United States v. Cooper*, 127 F.4th 1092 (8th Cir. 2025); *United States v. Harrison*, 153 F.4th 998 (10th Cir. 2025); *Florida Commissioner of Agriculture v. Att'y Gen. of United States*, 148 F.4th 1307 (11th Cir. 2025). The Courts recognize the defendant's basic right to carry firearms at step one, and then look for a historical analogue that justifies disarmament or criminalization based on the connection between the firearm and unlawful activity in step two.

Considering nexus at step two flows naturally from the structure of the *Bruen/Rahimi* analysis. Step one asks whether the plain text of the Second Amendment covers the conduct at issue. *Bruen*, 597 U.S. at 17. Question three of step one specifically asks whether "the proposed course of conduct falls within the Second Amendment." *Id.* at 31–32. Both *Bruen* and *Rahimi* quickly dispatched this issue. The *Bruen* majority noted that it had "little difficulty" concluding that carrying a firearm in public encapsulated the course of conduct with which the Second Amendment was concerned. *Bruen*, 597 U.S. at 32. In *Rahimi*, "no one question[ed] that the law Mr. Rahimi challenge[d] addresse[d] individual conduct covered by the Second Amendment." 602 U.S. at 708 (Gorsuch, J., concurring). This Court simply did not discuss the purpose of carrying a firearm at step one in either *Bruen* or *Rahimi*.

Step one of the *Bruen/Rahimi* analysis requires the petitioner to carry only a prima facie burden of production to trigger the right. *See* J. Joel Alicea, Bruen *and the Founding-Era Conception of Rights*, 101 Notre Dame L. Rev., at 37–38 (forthcoming 2026). This slight burden is consistent with the originalist underpinnings for the text-and-history analysis in the first place. *Id.* at 19. "When the people ratified the Second Amendment, they surely understood an arms-bearing citizenry posed some risks. But just as surely they believed that the right protected by the Second Amendment was itself vital to the preservation of life and liberty." *Rahimi*, 602 U.S. at 709 (Gorsuch, J., concurring). Carrying a firearm *is* dangerous. Self-defense is often violent, even when executed in perfect compliance with the law. "But that is why *Bruen* only establishes a *presumption* based on Step One's textual analysis, a presumption that can be rebutted after Step Two's historical analysis recovers the more precise scope of the right." Alicea, *supra*, at 19. This form of inquiry dates back to the First Congress's debates on the applicability of the First Amendment to the Sedition Act. *Id.* at 19–21.

The Court supported its test in *Bruen* by comparing it to the First Amendment analysis. 597 U.S. at 24. The first step in a First Amendment challenge is for the challenger to show they were engaging in "speech." *Texas v. Johnson*, 491 U.S. 397, 405 (1989). As applied here, just as using one's voice qualifies as "speech," carrying a firearm outside the home qualifies as "keep[ing] and bear[ing] arms." *Bruen*, 597 U.S. at 24–25. The more complicated analysis is the second step, where the government must show that this particular speech can be restricted based on historical evidence.

United States v. Stevens, 559 U.S. 460, 468–71 (2010). Historical evidence has been used to show that First Amendment protections can end based on things like *what*, *when*, or *to whom* something was said. *Id.* Again, as applied here, historical evidence can show the ways carrying firearms can be regulated, such as the purpose for which they are being carried. The second step limits the breadth of the right by looking at historical evidence.

By analyzing nexus at step one, the concurrence put the burden on Mr. Woods to prove a negative – that he wasn't dangerous. This is backwards. It is not the job of a U.S. Citizen to prove their entitlement to the protections guaranteed by the Bill of Rights, including the Second Amendment. This Court has been clear: "[W]hen the Government regulates arms-bearing conduct, as when the Government regulates other constitutional rights, it bears the burden to 'justify its regulation." *Rahimi*, 602 U.S. at 691 (quoting *Bruen*, 597 U.S. at 14). Until the concurrence's error is corrected, Iowans will have only a second-class Second Amendment right.

C. The question in *Woods* is the necessary corollary of the question the Court will answer in *Hemani*.

This case is the most logical next step after this Court hears *United States v. Hemani*, No. 24-1234 (Mem. Op. granting Cert. Oct. 20, 2025). In *Hemani*, the Court will consider a Second Amendment challenge to 18 U.S.C. § 922(g)(3). No. 24-1234 (Pet. for Writ of Cert. June 2, 2025). Contrary to the State's assertion, the Court's decision in *Hemani* will impact this case. (Resp. Br. at 12).

Hemani revolves around the nexus requirement. In *Hemani*, the Fifth Circuit affirmed the dismissal of a prosecution under 18 U.S.C. § 922(g)(3), for possessing a

firearm while being a user of unlawful controlled substances. *United States v. Hemani*, No. 24-40137, 2025 WL 354982 (5th Cir. Jan. 31, 2025). Mr. Hemani was arrested following a search of his home that revealed a Glock 9mm pistol, 60 grams of marijuana, and 4.7 grams of cocaine. *Hemani*, No. 24-1234 (Pet. for Writ of Cert. at 5). The Government did not resist a motion to dismiss Mr. Hemani's case under controlling Fifth Circuit precedent in *Daniels*, 124 F.4th 967 , although it reserved the right to appeal contending that *Daniels* was wrongly decided. In *Daniels*, the Fifth Circuit followed its sister circuits in requiring a nexus between the firearm and dangerousness for § 922(g)(3) to be pass Second Amendment scrutiny. 124 F.4th at 976. As it applied specifically to § 922(g)(3), the Fifth Circuit held that the Government must "establish a connection between the defendant's active or regular drug use and violent or dangerous conduct" to constitutionally punish a defendant for possessing a firearm. *Id.* The government conceded it could not do so in Mr. Hemani's case – but in its petition for writ of certiorari, it argues that habitual drug users are dangerous in a manner comparable to habitual drunkards, such that any habitual drug user can be constitutionally disarmed.

Hemani and *Woods* ask the nexus question in different, but related ways. In *Hemani*, this Court must decide whether the purported nexus between drug use and dangerousness justifies suspending the Second Amendment. Mr. Hemani seeks an individualized determination of his dangerousness; the Government contends *all* habitual drug users can be disarmed. In *Woods*, this Court must decide if the purported connection between drug *possession* and dangerousness justifies

suspending the Second Amendment. Mr. Woods argued extensively by analogy to the § 922(g)(3) cases, because drug users by necessity possess drugs. In both Mr. Hemani and Mr. Woods' cases, the drugs and firearms were in close proximity to each other, but there was no additional record to support dangerousness arising from the concurrent possession of firearms and drugs. The difference between *Woods* and *Hemani*, however, is that *Woods* asks two additional questions: (1) who bears the burden to prove the nexus requirement? and (2) when is that burden met? These questions are ones that litigants will inevitably ask after this Court's decision in *Hemani*, and *Woods* presents the unique opportunity to answer them pursuant to this Court's decision in *Hemani*.

Further, *Woods* has an undisputed factual record. Mr. Woods conditionally pleaded guilty to the charge against him. *See* Iowa R. Crim. P. 2.8(2)(b)(9). Mr. Woods's plea states:

> I admit that on or about July 31, 2023, in Polk County, Iowa, I knowingly possessed marijuana, and I knowingly carried a firearm while in possession of the marijuana. Both of these items were contained within my vehicle.

In addition, Mr. Woods stipulated to the minutes of testimony.[2] The above sentence

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[2] "Minutes of testimony" is a term of art in Iowa. *See* Iowa R. Crim. P. 2.5(1)(*a*). The minutes of testimony is a list of the State's witnesses, their occupation, and a summary of what the State expects their testimony to be. Iowa R. Crim. P. 2.5(3). The minutes are required to support the charging document in the case. Iowa R. Crim. P. 2.5(1)(*a*). A common practice in Iowa is for prosecutors to attach and incorporate a police officer's narrative report from the scene as part of the minutes of testimony. That practice was followed here as the minutes of testimony largely consist of the arresting officer's report from Mr. Woods's arrest. If a criminal defendant stipulates to the minutes of testimony, then they are considered part of the factual basis for the plea. In this case, the minutes established several of the facts discussed by the Iowa Supreme Court – such as the fact that he was driving for work when he was pulled over for a commercial vehicle inspection, he was sober and cooperative during the search of his vehicle, the fact that the marijuana was legally purchased outside of Iowa, and the type of gun and ammunition seized from the vehicle.

and the few paragraphs in the minutes of testimony are the full extent of the factual record that the parties have already agreed to. The Iowa Supreme Court did not and could not engage in any fact finding in this case since the facts were already decided.

The cleanliness of the factual record is a core consideration on whether to grant or deny certiorari. *Stanley v. City of Sanford*, 606 U.S. 46, 72 (2025) (Thomas, J., concurring, joined by Barrett, J.) ("And, I doubt that we would have agreed to review the factbound application of uncontested Eleventh Circuit precedents."); *Murphy v. Collier*, 587 U.S. 901, 906 (2019) (Alito, J., dissenting from grant of application for stay, joined by Thomas, Gorsuch, JJ.) ("We do not generally grant review of such factbound questions); *Apodaca v. Raemisch*, 586 U.S. 931, 933–34 (2018) (Sotomayor, J., respecting denial of certiorari) ("[T]herefore the factual record before this Court—as well as the legal analysis provided by the lower courts—is not well suited to our considering the question now."); *Scenic America Inc. v. Dep't of Transp.*, 583 U.S. 936 (2017) (Gorsuch, J., respecting the denial of certiorari) ("At the same time, this particular case also comes with some rather less significant and considerably more factbound questions."). Here, this case represents a clean factual record to answer the same question asked in *Hemani*, in addition to the two questions *Hemani* will leave open.

CONCLUSION

The Iowa Supreme Court sided with the majority of Circuit Courts of Appeals adopting the nexus requirement, which is now being reviewed in *Hemani*. The Iowa Supreme Court, however, shifted the burden to the challenger. Who bears the burden

and the burden's standard are two questions *Hemani* will not answer. But *Woods*, given its posture, presents the best opportunity to do so. As this is an important and rapidly changing area of law, over which this Court must have the final say, the Court should grant certiorari in this case.

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