No. 25-5858

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

ROBERT PECK, JR.,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

Robert Peck, Jr.
Reg. No. 06383-509—Unit C
Federal Correctional Institution
P.O. Box 1000
Sandstone, MN 55072
Pro Se

QUESTIONS PRESENTED

- Does 18 U. S. C. §922(g)(1) violate the Second Amendment as applied to Petitioner, who was convicted of being a felon in possession of a firearm based on a Nebraska conviction for marijuana possession?

- Does the *Leon* good faith exception to the Fourth Amendment's exclusionary rule apply when law enforcement has not taken reasonable steps to educate itself on the law of the Fourth Amendment?

LIST OF PARTIES

All parties appear in the caption on the cover page of this Petition.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Constitutional Provisions

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

ROBERT PECK, JR.,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

Petitioner Robert Peck, Jr. respectfully seeks a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit.

OPINION BELOW

The opinion below is published at *United States v. Peck*, 131 F.4th 629 (8th Cir. 2024) and is reprinted in the Appendix to this Petition.

JURISDICTION

The Eighth Circuit Court of Appeals issued its decision on March 12, 2025 and issued its order denying Petitioner's motion for rehearing en banc as untimely on May 21, 2025. Hence, this Petition is timely. This Court has jurisdiction to review the decision of the Court of Appeals under 28 U. S. C. § 1254(1).

RELEVANT STATUTORY PROVISIONS

This Petition involves the Second Amendment to the Constitution of the United States. The Second Amendment provides:

> A well regulated Militia, being necessary to the security of the free state, the right of the people to keep and bear arms shall not be infringed.

U.S. Const. Amend. II.

This Petition also involves 18 U. S. C. §922(g)(1), which provides:

> It shall be unlawful for any person who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

18 U. S. C. §922(g)(1).

These provisions are reprinted in the Appendix to this Petition.

INTRODUCTION

A Grand Canyon-sized divide has opened among the Circuit Courts regarding Second Amendment challenges to 18 U. S. C. §922(g)(1), which prohibits all felons from possessing firearms. On one side, Circuit Courts hold that the United States may ban all felons—even elderly, fully-reformed, and unfailingly peaceful felons who enjoy outdoor activities, such as pheasant hunting—from ever possessing a firearm again. On the other, Circuit Courts require case-by-case determinations of whether a particular felon's gun rights may be denied consistently with the Second Amendment. This Court's intervention is needed to seam the divide.

Certiorari is warranted for the additional reason of reviewing a question regarding the *Leon* good faith exception to the Fourth Amendment's exclusionary rule: does the exception apply when law enforcement has not taken reasonable steps to apprise themselves of Fourth Amendment law? The question matters because law enforcement should not be permitted to willfully blind itself to the law—just as none of the rest of us can claim ignorance of the law as a defense. The exclusionary rule is the primary check against the government's intrusion into our privacy. Without it, there is no penalty for unreasonable searches and seizures and no incentive for the government to obey the Fourth Amendment.

STATEMENT OF FACTS

1. In July 2020, Officer Paul Milone received anonymous tips that Petitioner was selling drugs from an apartment in Omaha, Nebraska.

2. Milone decided to visit Petitioner's apartment complex to investigate the tips.

3. On July 16, 2020, Milone, Officer Jeff Vaughn, and Detective Edith Andersen went to Petitioner's apartment complex in plain clothes with a drug dog.

4. The property manager allowed them to enter the building and confirmed that Petitioner lived there.

5. An assistant manager directed the officers and the drug dog to the third floor, where Petitioner's apartment was located.

6. There were eight apartments on Petitioner's floor, and the hallway was approximately ten-to-twelve feet wide.

7. According to the officers, the drug dog went down the hallway sniffing along the bottom of the door seams of multiple apartments and alerted and indicated to the odor of drugs coming from Petitioner's apartment.

8. Using this information, the officers obtained a warrant to search Petitioner's apartment.

9. During the ensuing search they found marijuana, steroids, firearms, drug paraphernalia and a bump stock device.

10. In August 2020, a grand jury returned an indictment charging Petitioner with possession with intent to distribute less than 50 kilograms of marijuana in violation of 21 U. S. C. §§841(a)(1) and 841(b)(1); possession of a firearm of by a felon in violation of 18 U. S. C. §§922(g)(1) and 924(a)(2); and possession of a firearm in furtherance of a drug trafficking scheme in violation of 18 U. S. C. §924(c)(1)(A).

11. The §922(g)(1) count was predicated on a prior Nebraska conviction for more than a pound of marijuana.

12. Petitioner filed a suppression motion in April 2021, alleging that the officers intruded on Petitioner's curtilage by having the drug dog sniff under his apartment door.

13. Petitioner also moved to dismiss the §922(g)(1) count, arguing that the statute violated the Second Amendment as applied to him.

14. The district court denied the motions. It held the drug dog's sniffing of the area around Petitioner's apartment door was not Petitioner's curtilage and that,

regardless, suppression of the evidence seized from both warrants was inappropriate under the good-faith exception to the exclusionary rule.

15. The district court also concluded that, despite the fact that this conviction for possession of marijuana was nonviolent, applying §922(g)(1) to Petitioner's later possession of a firearm did not violate the Second Amendment.

16. The Eighth Circuit affirmed. As to the suppression issue, the Eighth Circuit held that it need not address of the constitutionality of the drug dog's sniff because the *Leon* good-faith exception applies. The Eighth Circuit rejected Petitioner's argument that the *Leon* good-faith exception should be unavailable to officers, such as the officers who performed the search of Petitioner's apartment, who profess ignorance about the law of the Fourth Amendment. Specifically, the Eighth Circuit held that "poor training is irrelevant to the good-faith exception's applicability."

17. As for Petitioner's as-applied Second Amendment challenge to §922(g)(1), the Eighth Circuit followed its earlier holding in *United States v. Jackson*, 110 F.4th 1120 (8th Cir. 2024), in which the Eighth Circuit held that "history supports the authority of Congress to prohibit possession of firearms by person who have demonstrated disrespect for legal norms of society" and concluded that "there is no need for felony-by-felony litigation regarding the constitutionality of §922(g)(1)." *Id.* at 1125-27.

18. Petitioner seeks review of the Eighth Circuit's decision.

REASONS FOR GRANTING THE PETITION

Petitioner respectfully requests that the Court accept review of the question presented because: (1) Petitioner's as-applied Second Amendment challenge to 18 U. S. C. §922(g)(1) has generated conflicting authority among lower courts; (2) Petitioner's *Leon* good-faith question is important, with a weighty impact upon the administration of criminal justice; and (3) this case presents an apt vehicle to resolve both questions.

I. Petitioner's as-applied challenge to 18 U. S. C. §922(g)(1) has created a divide in the lower courts.

Petitioner's as-applied challenge to 18 U. S. C. §922(g)(1) has created a divide in the lower courts. The Fourth, Eighth, Ninth, Tenth and Eleventh Circuits hold that the Second Amendment permits the government to categorically ban all felons from possessing firearms. Meanwhile, the Third, Fifth and Sixth Circuits hold that the Second Amendment does not permit the government to ban all felons from possessing firearms, but rather permits certain felons—*e.g.,* non-violent felons—to successfully challenge §922(g)(1) under the Second Amendment as applied to them. Compare *United States v. Price*, 111 F.4th 392 (4th Cir. 2024) (en banc); *United States v. Jackson*, 110 F.4th 1120 (8th Cir. 2024); *United States v. Duarte*, 333 F.4th 411 (9th Cir. 2025); *Vincent v. Bondi*, 127 F.4th 1263 (10th Cir. 2025); and *United States v. Hester*, 2024 U.S. App. LEXIS 22725, 202446 WL 4100901 (11th Cir. Sept. 6, 2024) (per curiam) with *Range v. AG United States*, 124 F.4th 218 (3d Cir. 2024); *United States v. Diaz*, 116 F.4th 458 (5th Cir. 2024); and *United States v. Williams*, 113 F.4th 637 (6th Cir. 2024).

This Circuit divide is a textbook justification for this Court's intervention.

II. Petitioner's *Leon* good-faith question is important, with a weighty impact upon the administration of criminal justice

Petitioner's *Leon* good-faith question is important, with a weighty impact upon the administration of criminal justice.

A. Relevant legal background.

The Fourth Amendment to the United States Constitution prohibits the government from committing unreasonable searches and seizures. U.S. Const. Amend. IV. Evidence derived in violation of the Fourth Amendment's prohibitions is subject to exclusion unless an exception to the exclusionary rule applies. *Mapp v. Ohio*, 367 U.S. 643, 655, 81 S. Ct. 1684, 6 L. Ed. 1081 (1961). The policy rationale for the exclusionary rule is to deter police misconduct. *Hudson v. Michigan*, 547 U.S. 586, 591, 126 S. Ct. 2159, 165 L. Ed. 2d 56 (2006). There are recognized exceptions to the exclusionary rule. *Murray v. United States*, 487 U.S. 533, 537, 108 S. Ct. 2529, 101 L. Ed. 2d 472 (1988). The exception at issue in this petition is the good-faith exception to the exclusionary rule introduced in *United States v. Leon*, 468 U.S. 897, 104 S. Ct. 3405, 82 L. Ed. 2d 677 (1984).

Under the good-faith exception to the warrant requirement, "the exclusionary rule does not apply when the police conduct a search in objectively reasonably reliance on a warrant later held invalid." *Id.* at 922. Evidence is only suppressed if:

> The affiant misled the issuing judge with a knowing or reckless false statement; (2) the issuing judge wholly abandoned his judicial role; (3) the supporting affidavit was so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable; or (4) the warrant was so

facially deficient that the executing officer could not reasonably presume its validity.

Id. at 922.

B. **The question of whether law enforcement's ignorance of the law should trigger the *Leon* good faith exception to the exclusionary rule is an important question with a weighty impact upon the administration of criminal justice.**

Petitioner argued that the *Leon* exception should not apply because the officers testified at the suppression hearing that they knew nothing about the holding in *Florida v. Jardines*, 569 U.S. 1, 133 S. Ct. 3405, 82 L. Ed. 677 (1984), at the time of their first visit to Petitioner's apartment where they executed a dog sniff at Petitioner's apartment door. In *Jardines*, this Court held that bringing a drug dog onto someone's front porch to sniff into their home intruded on the homeowner's curtilage. *Jardines* has obvious application to a dog sniff conducted at someone's apartment door, such as Petitioner's.

Law enforcement avoided the *Jardines* issue by claiming they were not aware of *Jardines*, which had been the law of the land for eight years at the time of the dog sniff. They thus did not disclose their *Jardines* violation to the judge reviewing the warrant application and did not consider their *Jardines* violation when they executed the search warrant.

Ignorance of the law has never been an excuse for the People. Whether it is an excuse for law enforcement is an important question with a weighty impact on the administration of criminal justice because it is difficult to imagine any privacy

protection that could not easily be avoided under the *Leon* good faith exception by claiming ignorance of the protection.

We do not want law enforcement to use the good faith exception in such a manner. Constitutional rights have no text-based exceptions. That is precisely what makes them rights in the first instance. If the Fourth Amendment can be violated so easily, then so can the First Amendment, the Second Amendment and all other amendments. If rights can be avoided via ignorance, then we do not actually have any rights. Instead, the rights are in reality privileges that can be enforced or not at the whim of whether a law enforcement officer admits knowledge of the right. This is a circumstance that would put us on the path to tyranny.

The Framers were careful to explicitly enumerate our rights in plain language. They did this to uphold individual liberties and to preserve justice. Even if law enforcement's ignorance of the law is made with the best of intentions, the principle will inevitably be abused for bad purposes. If it can be done to Petitioner, it can be done anywhere.

By granting review, the Court would defend the Fourth Amendment against a dangerous loophole to the Fourth Amendment.

III. This case presents an apt vehicle to resolve the question.

This case presents an apt vehicle to resolve the question. All of the issues in this Petition were properly preserved at the trial court level and argued on appeal.

CONCLUSION

The Court should grant this Petition.

Respectfully submitted,

Dated: June 9, 2025

Robert Peck, Jr.
Reg. No. 06383-509—Unit C
Federal Correctional Institution
P.O. Box 1000
Sandstone, MN 55072