

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2026

SHAWN LEE BUTTS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

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SUBMITTED: June 17, 2026

QUESTION PRESENTED

Is 18 U.S.C. § 922(g)(1)'s categorical ban on the possession of firearms unconstitutional as applied to a non-violent defendant, who indisputably possessed firearms solely for hunting and sporting purposes?

PARTIES TO THE PROCEEDING

Pursuant to this Court's Rule 14.1(b)(i), Petitioner submits that there are no parties in this proceeding other than those named in the caption of this case.

Petitioner Shawn Butts was the defendant in the district court and is the appellant below. Respondent United States of America was the plaintiff in the district court and is the appellee below.

DIRECTLY RELATED CASES

This case arises from and is directly related to the following proceedings in the United States District Court for the District of Montana and the United States Court of Appeals for the Ninth Circuit:

United States of America v. Shawn Lee Butts, CR 22-33-M-DWM, United States District Court for the District of Montana. Judgment entered March 2, 2023.

United States of America v. Shawn Lee Butts, CA 23-313, United States Court of Appeals for the Ninth Circuit. Memorandum entered March 19, 2026.

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PETITION FOR WRIT OF CERTIORARI

Shawn Lee Butts (“Mr. Butts”) petitions for a Writ of Certiorari to grant certiorari and review his case or alternatively for this Court to grant, vacate, and remand for further proceedings in the Ninth Circuit to revisit its decision in *United States v. Duarte*, 108 F.4th 786 (2024) (en banc).

Following the district court’s rejection of a Second Amendment challenge, Mr. Butts was convicted of possessing firearms in violation of 18 U.S.C. § 922(g)(1). The indictment specified a false statement during firearms transaction, in violation of 18 U.S.C. § 922(a)(6), as the predicate felony disarming Mr. Butts. In that predicate case, Mr. Butts plead guilty, and on April 20, 2006, was sentenced to 30 months imprisonment, followed by three years of supervised release, which he successfully discharged on July 11, 2011.¹ In this case, Mr. Butts received a three-year probation sentence, which he successfully discharged on March 1, 2026.

The offense conduct is undisputed. The Bureau of Alcohol, Tobacco and Firearms (“ATF”) received a report of gunfire coming from Mr. Butts’ property in Kila, Montana. ATF confirmed he had a prior felony conviction. ATF located a

¹ In 2004, Mr. Butts was convicted in Montana state court of felony criminal endangerment and felony criminal mischief, both categorically non-violent offenses, and two misdemeanor counts of resisting arrest. He also was convicted of misdemeanor DUI in 2011.

metal target on his property with bullet holes. ATF contacted Montana Fish Wildlife and Parks and learned that Mr. Butts had purchased Montana hunting licenses every year from 2011 to 2021.

ATF obtained a search warrant. Mr. Butts told the executing agents there were three firearms on the property, two in a camper and one in his house; he also said the guns in the camper belonged to a friend, Dave Scherping, and the .22 rifle in his house was a childhood gift from his dad. He admitted firing the .22 rifle for target practice and gopher shooting.

ATF executed the warrant. The agents found a Ruger .44 magnum caliber revolver and a Remington .308 caliber rifle in the camper, along with ammunition for both firearms. They also found a Remington .22 rifle in Mr. Butts' house, along with .22 ammunition.

As part of his motion to dismiss, Mr. Butts filed pictures of the stump and target used for target practice, which is colloquially known as "plinking". He also filed his hunting and conservation licenses from 2011 to 2021.

Mr. Butts further submitted an affidavit from John Way, the Chairman of the Montana Board of Outfitters, the purpose of which "is to regulate and license guides and outfitters from the State of Montana." In his affidavit, Mr. Way informed that when he hunts, he always carries "a .45 caliber semi-automatic as my secondary

firearm, my primary weapon being my .308 hunting rifle.” He has seen many grizzly bears over the past 20 years. Twice, grizzlies charged him, once within six yards of him.

Mr. Way attested the .22 is used for training, shooting, and developing shooting skills. “[T]he .22 and .308 calibers are the two most popular calibers ever developed for sportsmen.” He further informed: “The .44 magnum caliber sidearm is a very popular [gun] in Montana for hunters to carry for self-defense . . . I consider it best practice for Montana hunters to carry a sidearm for self-defense.” “Standard practice for all my guides that work for me is to carry a sidearm for self-defense.”

Mr. Butts filed two more affidavits. David Scherping’s affidavit described his working relationship with Mr. Butts, confirmed that the seized .308 rifle and .44 magnum pistol belonged to him, and that he left them in Mr. Butts’ camping trailer following a hunting trip they had taken together in the fall of 2021. When he hunts, he “customarily carr[ies] that [.44] revolver for self-defense purposes in the event of an encounter with a predator.” In the fall of 2021, after hunting, he “left the rifle and the revolver in the interior of Mr. Butts’ camper trailer.”

Joe Gaffney was the investigator for the Federal Defenders of Montana. His declaration described his conversation with Mr. Butts’ father, Dan Butts. Dan Butts is 82 years old. Dan Butts originally bought the .22 rifle for Mr. Butts when Mr.

Butts was twelve years old. Dan Butts took possession of the .22 rifle when Mr. Butts was incarcerated. In April or May of 2022, Dan Butts “inadvertently left the rifle at Shawn’s residence.”

Dan Butts informed the presentence investigation report (“PSR”) writer that “when the neighbors saw him [Dan Butts] shooting target’s on the defendant’s property, they called law enforcement and said it was the defendant.” PSR ¶ 55 Mr. Butts reported to the PSR writer “that in addition to his father shooting on his property, he allowed friends on his property to shoot.” *Id.*

Mr. Butts corroborated his constructive possession of the three hunting firearms owned by his father (.22 rifle) and Mr. Scherping (.44 handgun and .308 rifle):

These firearms and ammunition that were found to be in constructive possession of myself, were used for hunting big game animals in a legal manner, and for the purpose of target practice for the reason of ethical hunting practices.

I was in constructive possession of these firearms and ammunition because I took a friend and coworker on a hunting trip. I was guiding my friend in an area that I know very well. My friend was trying to harvest an elk, as I am blessed to have a camper, we stayed in my camper trailer, upon returning home my friend left his firearms in my camp trailer. Regarding my father’s .22, he took possession of all of my property when I went to prison, including the .22. In 2013, I purchased my place in Kila, and my father would bring the .22 rifle with him, shooting targets and gophers on my property. I asked him to help me with a project, and he inadvertently left the .22 rifle at my residence.

PSR ¶ 25.

After the district court denied Mr. Butts' Second Amendment challenge, Mr. Butts pled guilty, reserving the right to pursue appeal. At sentencing, the court applied the "sporting exception" in U.S.S.G. § 2K2.1(b)(2), to which the government agreed, resulting in a 0-to-6 months Guidelines range.

The court acknowledged Mr. Butts' full compliance with pretrial release.

THE COURT: His pretrial release, as Mr. Rhodes indicated, was restricted, but he has abided completely, in every respect, by the conditions that were set by the Court, including the payment of contribution toward attorney's fees.

Mr. Butts was subject to stringent pretrial release conditions, including full abstention from alcohol and drug and alcohol testing. Mr. Butts was also prohibited from going to his home in Kila, where the firearms were found, without the express permission of his supervising pretrial services officer. Mr. Butts fully complied with all of the court's conditions, including that unusually restrictive condition.

The sentencing court discussed the sporting use of the firearms:

THE COURT: [T]here's no indication that the firearms that Mr. Butts had in his possession or was using were anything other than for sporting purposes, and I gather shooting gophers is considered sporting.

I would not categorize Mr. Butts using a .22 rifle to shoot gophers or target shoot on his own property would be a significant serious offense.

The court emphasized: “Mr. Butts has a respect for the law. And the presentence report and all the factors that are set forth in there, his personal history, reflect somebody who is likely a good citizen.” ER-36.

The court observed the public did not need to be protected from Mr. Butts:

THE COURT: There’s a need to protect the public from further crimes by Mr. Butts. I don’t think that’s an issue. His last substance abuse appears to be in 2011, and since that time he’s basically abstained from the use of alcohol and any controlled substances.

The district court imposed a sentence of three years probation, which included a two month period of home confinement, 300 hours of community service, and a \$1,000.00 fine. Without incident, Mr. Butts completed his term of probation on March 1, 2026.

The court of appeals summarily affirmed, because the Ninth Circuit’s opinion in *United States v. Duarte*, 137 F.4th 743 (9th Cir. 2025) (en banc), foreclosed Mr. Butts’ claim.

The Court should grant certiorari and hold that § 922(g)(1) is unconstitutional as applied to Mr. Butts, who indisputably possessed firearms for hunting and who complied with Montana hunting laws, without incident, while obtaining hunting licenses for a decade. At the very least, the Court should grant, vacate, and remand with instructions for the Ninth Circuit to conduct a proper Second Amendment analysis by reviewing whether historical tradition supports disarming Mr. Butts.

OPINION BELOW

The memorandum opinion of the United States Court of Appeals for the Ninth Circuit is unreported and included with this filing. Appendix A. The Ninth Circuit opinion in *Duarte*, which controlled this case, is attached as Appendix B.

JURISDICTION

The Court of Appeals issued its memorandum opinion, denying Mr. Butts's request for appellate relief on March 19 2026. Appendix A. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

LEGAL PROVISIONS INVOLVED

This case involves the Second Amendment to the United States Constitution and 18 U.S.C. § 922(g)(1). Appendices C-D.

Section 2K2.1 of the United States Sentencing Guidelines is attached as Appendix E.

STATEMENT OF THE CASE

A. Legal Background

The Second Amendment provides:

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

U.S. Const., Amend. II.

In *District of Columbia v. Heller*, 554 U.S. 570 (2008), this Court held the Second Amendment codified a pre-existing individual right to possess and carry weapons for lawful purposes. In interpreting the text of the Second Amendment and the citizens’ motivation for it, the Court explained, at the founding, “most undoubtedly thought it even more for self-defense and hunting.” *Id.* at 599 (underline added). While the Court acknowledged the right is not “unlimited”, it looked to historical restriction on firearms to inform the constitutionality of current law. *Id.* at 626-27, 631-34.

Following *Heller*, lower courts “coalesced around a ‘two-step’ framework for analyzing Second Amendment challenges that combines history with means-end scrutiny.” *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1, 17 (2022). To correct this error, the Court directed lower courts to apply a constitutional analysis rooted in “the Nation’s historical tradition of firearm regulation.” *Id.* at 24.

The Court rejected the “means-end scrutiny” approach to Second Amendment claims and directed courts to apply a “text-and-history standard” instead. *Id.* at 23, 39. This standard begins by asking whether “the Second Amendment’s plain text covers an individual’s conduct.” *Id.* at 17. If it does, then “the Constitution presumptively protects that conduct.” *Id.*

To rebut the presumption of unconstitutionality, *Bruen* held the government must demonstrate that a challenged regulation “is consistent with this Nation’s historical tradition of firearm regulation. Only if a firearm regulation is consistent with this Nation’s historical tradition may a court conclude that the individual’s conduct falls outside the Second Amendment’s unqualified command.” *Id.* at 17. This test requires courts to “consider whether historical precedent . . . evinces a comparable tradition of regulation.” *Id.* at 27. If “no such tradition” exists, then the statute being challenged is unconstitutional. *Id.*

This Court provided additional guidance on how to implement *Bruen*’s methodology in *United States v. Rahimi*, 602 U.S. 680 (2024), where it reiterated that “the appropriate analysis involves considering whether the challenged regulation is consistent with the principles that underpin our regulatory tradition” as evidenced by the government’s proffered historical analogues. *Id.* at 692. This Court explained that those analogues “need not be a ‘dead ringer’ or a ‘historical twin.’”

Id. The Court repeated *Bruen*’s directive that “[w]hy and how the [challenged] regulation burdens the right are central” to the Second Amendment inquiry. *Id.* In other words, the focus remains on whether the challenged law “impos[es] similar restrictions for similar reasons.” *Id.* Applying that framework, this Court held that § 922(g)(8)(C)(i) is constitutionally sound, as it is grounded in a historical tradition of temporarily disarming individuals who have been found to pose “a credible threat to the physical safety of another.” *Id.* at 702.

B. Factual Background

Mr. Butts was charged by complaint, arrested, and appeared on May 25, 2022. He was detained pending a detention hearing. Following a detention hearing on May 26, 2022, Mr. Butts was released. He remained released through his three-year probation sentence, fully complying with his all of the conditions of pretrial release and probation.

Mr. Butts was indicted on June 24, 2022, with one count of felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1). The indictment identified a false statement during firearms transaction, in violation of 18 U.S.C. § 922(a)(6), as the predicate felony disarming Mr. Butts.

Mr. Butts filed a motion to dismiss in district court. The district court held a hearing on the motion and denied his motion that same day in a written order.

Mr. Butts plead guilty pursuant to a plea agreement which reserved his right to pursue this appeal.

The district court sentenced Mr. Butts to three years' probation and a fine of \$1,000.00.

On appeal, the parties finished briefing on February 1, 2024, when Mr. Butts filed his reply brief.

On July 17, 2024, a three-judge panel in *United States v. Duarte*, 108 F.4th 786 (9th Cir. 2024), held that Duarte is part of “the people” the Second Amendment protects, that his desire to possess a firearm for self-defense is presumptively protected conduct, and—after an in-depth review of the historical record—that there is no deeply rooted tradition of forever stripping non-violent individuals of their right to keep and bear arms after they have served time for their felonies and re-entered society.

Reviewing en banc, the Ninth Circuit disagreed, relying on dictum in *Heller*. *Heller* caveated that “nothing in [its] opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons.” *Duarte*, 108 F.4th at 750 (App. B at 5) (emphasis omitted) (*quoting Heller*, 554 U.S. at 626-27). Relying on that single sentence, the Ninth Circuit reaffirmed its pre-*Bruen* precedent that “felons are categorically different from the individuals who have a fundamental

right to bear arms,” and that “922(g)(1) constitutionally prohibits the possession of firearms by felons,” even as to non-violent offenders like Duarte. *Id.*, (App. B at 5) (quoting *United States v. Vongxay*, 594 F.3d 1111, 1114 (9th Cir. 2010)). Never mind that *Heller* did “not undertake an exhaustive historical analysis” of the issue and described such laws as only “presumptively lawful,” see *Heller*, 554 U.S. at 626-27 & n.26, or that “*Bruen* ... worked a sea change in the analytical framework” for Second Amendment challenges. *Duarte*, 108 F.4th at 747 (App. B at 3). All that mattered to the majority was that *Heller* said (and *Rahimi* “repeated”) that felon in possession laws are “presumptively constitutional.” *Id.* at 752 (App. B at 6). *Heller*’s dicta was thus all the “historical tradition” the court deemed necessary to “support[] the categorical application of §922(g)(1) to felons like Duarte.” *Id.* (App. B at 6).

To the extent it followed *Bruen*, the majority deployed the very “legislative interest balancing” *Bruen* eschewed—by recasting that interest-balancing as a historical tradition. *Id.* at 799 (App. B at 34) (VanDyke, J., dissenting). The majority identified two supposedly deeply rooted “regulatory principles” that guided its decision. *Id.* at 755 (App. B at 8). First, “legislatures may disarm” anyone they believe to have “committed the most serious crimes.” *Id.* (App. B at 8). Second, “legislatures may categorically disarm” any class of persons “they deem dangerous,” even “without an individualized determination of dangerousness.” *Id.* (App. B at 8).

Judge Nelson, joined by Judge Ikuta, concurred only in the judgment. They agreed that Duarte’s conviction should be affirmed—but only because, in their view, the appropriate standard of review was plain error, not *de novo*, since Duarte had not raised his constitutional claim in the district court. *Id.* at 762 (App. B at 12) (Nelson, J., concurring).

Judge Collins also concurred only in the judgment. *Id.* (App. B at 12) (Collins, J., concurring). He lamented that the majority’s decision turned *Bruen* into “rational basis review”, *id.* at 766 (App. B at 22), under which “Second Amendment rights effectively exist only at the sufferance of the legislature.” *Id.* at 767 (App. B at 23). Nevertheless, he concluded that if the historical traditions to which the majority pointed were “taken together” and considered in tandem, then they would provide sufficient historical basis to support § 922(g). *Id.* at 772 (App. B at 27).

Finally, Judge VanDyke filed a separate opinion, concurring in part and dissenting in part. *Id.* at 773 (App. B at 18) (VanDyke, J., concurring in part and dissenting in part). He first reasoned that the en banc court should have applied plain error review, given Duarte’s failure to raise his Second Amendment claim in the district court. *Id.* at 774-780 (App. B at 19-22). On the merits, he rejected the majority’s broad endorsement of § 922(g)(1), criticizing its reliance on flawed historical analogues “using ‘cherrypicked language’ that is ‘mis-and over-applied

from the Court’s prior precedents’ to uphold any firearms regulation that comes before it,” which, he argued, grants legislatures excessive discretion to disarm individuals without requiring a showing of dangerousness. *Id.* at 782 (App. B at 24) (quoting *United States v. Duarte*, 108 F.4th 786, 788 (9th Cir. 2024) (Mem.) (VanDyke, J., dissenting from grant of rehearing en banc). Like Judge Collins, he lambasted the majority for skipping past even “the old interest-balancing regime” of intermediate scrutiny and applying a “rational basis” regime under which courts must defer to legislatures’ decisions to disarm disfavored groups. *Id.* at 799-801 (App. B at 34-35). But he disagreed with Judge Collins that § 922(g)(1) could be justified by combining disparate historical traditions in a manner that lacks any limits. *Id.* at 801-805 (App. B at 35-37).

In an unpublished disposition, without discussion of the facts, the Ninth Circuit affirmed the denial of Mr. Butts’ motion to dismiss, ruling his claim foreclosed by *Duarte*. App. A.

REASONS TO GRANT THE PETITION

The Ninth Circuit’s en banc opinion in *Duarte* refused to faithfully apply *Bruen*, deciding instead that dicta in *Heller* forecloses all Second Amendment challenges to 18 U.S.C. § 922(g)(1). If the Court does not grant certiorari to review

Mr. Butts’ case, it should grant, vacate, and remand with instructions for the Ninth Circuit to conduct a proper Second Amendment analysis.

Further review is especially warranted given the thus-far ignored facts of this case. Mr. Butts indisputably possessed the firearms for hunting. His possession was constructive. Two of the hunting firearms belonged to his friend and construction work partner, and the third firearm was a childhood gift from his father. Mr. Butts’ friend and father both attested they left the firearms on Mr. Butts’ property after sporting use. Mr. Butts cooperated with ATF, directing the agents to the location of the three firearms.

The firearms are all hunting firearms, regularly, and in this case, used for sporting purposes—for hunting and target practice. Commission-approved mitigation for hunting has been a part of the Guidelines since their inception. *See* U.S.S.G. § 2K2.1, Background (1987) (“Statistics show that sentences average two to three months lower if the firearm involved is a rifle or an unaltered shotgun. This may reflect the fact that these weapons tend to be more suitable than others for recreational activities. [...] Intended lawful use, as determined by the surrounding circumstances, is a mitigating factor.”)

For that reason, Mr. Butts received the “sporting exception” under the United States Sentencing Guidelines. Section 2K2.1 of the Guidelines provides:

(2) If the defendant, other than a defendant subject to subsection (a)(1), (a)(2), (a)(3), (a)(4), or (a)(5), possessed all ammunition and firearms solely for lawful sporting purposes or collection, and did not unlawfully discharge or otherwise unlawfully use such firearms or ammunition, decrease the offense level determined above to level 6.

U.S.S.G. § 2K2.1(b)(2).

The government did not challenge the application of the “sporting exception” guideline. As the district court summarized:

THE COURT: [T]here’s no indication that the firearms that Mr. Butts had in his possession or was using were anything other than for sporting purposes, and I gather shooting gophers is considered sporting.

I would not categorize Mr. Butts using a .22 rifle to shoot gophers or target shoot on his own property would be a significant serious offense.

In the language of the guideline, both the district court and the government agreed Mr. Butts possessed “all ammunition for lawful sporting purposes . . . and did not unlawfully discharge or otherwise unlawfully use such firearms or ammunition.” U.S.S.G. § 2K2.1(b)(2). The undisputed facts in the record support this legal conclusion. The firearms are quintessential hunting guns, and here, the affidavits establish that’s exactly how they were used—the rifles for game and plinking, and the handgun for self-defense against predators, especially grizzly bears, while hunting.

Mr. Butts' Indictment charged a non-violent predicate offense. After Mr. Butts was arrested, he was released the next day on sixteen conditions of pretrial release. He fully complied with those conditions from May 25, 2022 to March 2, 2023, when he was sentenced to three years probation, which he successfully served and terminated on March 1, 2026, fully complying with thirteen standard and seven special conditions of probation.

In other words, during 3 years, 9 months, and 5 days of release, Mr. Butts complied with every single condition of release in his northwestern Montana community. He continues to live at his residence in Kila, Montana, and work in construction.

Not surprisingly, at the sentencing hearing, before describing Mr. Butts as "likely a good citizen", the district court observed:

THE COURT: His pretrial release, as Mr. Rhodes indicated, was restricted, but he has abided completely, in every respect, by the conditions that were set by the Court, including the payment of contribution toward attorney's fees.

The district court also noted Mr. Butts' "respect for the law. And the presentence report and all the factors that are set forth in there, his personal history, reflect somebody who is likely a good citizen."

The court observed the public did not need to be protected from Mr. Butts:

THE COURT: There's a need to protect the public from further crimes by Mr. Butts. I don't think that's an issue. His last substance abuse appears to be in 2011, and since that time he's basically abstained from the use of alcohol and any controlled substances.

As the Ninth Circuit chronicled in *Duarte*, there is a split among the circuits as to whether § 922(g)(1) is categorically constitutional or whether its constitutionality can and should be adjudicated on a case-by-case, as-applied basis. *Duarte*, 137 F.4th at 747-748 (App. B at 2-3). Six Circuits have categorically denied as-applied challenges to 18 U.S.C. § 922(g)(1). *Zherka v. Bondi*, 140 F.4th 68, 92-93 (2d Cir. 2025); *United States v. Hunt*, 123 F.4th 697, 707-708 (4th Cir. 2024); *United States v. Jackson*, 110 F.4th 1120, 1129 (8th Cir. 2024); *Duarte* 137 F.4th at 748; *Vincent v. Bondi*, 127 F.4th 1263, 1265-66 (10th Cir. 2025), *United States v. Dubois*, 94 F.4th 1284, 1291 (11th Cir. 2024).

The Third Circuit and Fifth Circuit have affirmed as-applied challenges. *Range v. Att'y Gen.*, 124 F.4th 218, 232 (3d Cir. 2024); *United States v. Mitchell*, 160 F.4th 169, 194 (5th Cir. 2025). The First Circuit has not directly considered an as-applied challenge in the wake of *Bruen*, but it has asserted that such a challenge remains viable. *See United States v. Fort*, 176 F.4th 1, 7 (1st Cir. 2026).

The Sixth Circuit and the Seventh Circuit have considered an as-applied challenge and rejected it on the facts. *United States v. Williams*, 113 F.4th 637, 661 (6th Cir. 2024); *United States v. Watson*, 171 F.4th 1012, 1025 (7th Cir. 2026)

(denying claim and reserving “ruling on an as-applied challenge to §922(g)(1) under the Second Amendment by a felon whose predicate felony offense is not ‘dangerous.’”).

Finally, the D.C. Circuit has not directly ruled on the issue but confirmed its prior ruling in *Medina v. Whitaker*, 913 F.3d 152 (D.C. Cir. 2019), which upheld the facial validity of § 922(g)(1) but allowed that as-applied challenges are available where the defendant can “show that his predicate felonies were minor or regulatory.” *United States v. Johnson*, 158 F.4th 200, 203 (D.C. Cir. 2025) (quoting *Medina*, 913 F.3d at 160).

CONCLUSION

Mr. Butts respectfully requests this Court grant his petition for certiorari.

RESPECTFULLY SUBMITTED this 17th day of June, 2026.

SHAWN LEE BUTTS

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