IN THE
SUPREME COURT OF THE UNITED STATES

No. 25A123

STEVEN DUARTE, AKA SHORTY,

Applicant,

v.

UNITED STATES OF AMERICA,

Respondent.

APPLICATION TO THE HON. ELENA KAGAN
FOR A FURTHER 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 a second extension of time of 30 days, to and including October 6, 2025, for the filing of a petition for a writ of certiorari. Unless a second extension is granted, the deadline for filing the petition will be September 6, 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 (First Mot. for Extension, Exhibit 1). This Court has jurisdiction under 28 U.S.C. §1254(1).

2. On July 25, 2025, undersigned counsel for Applicant, Erin E. Murphy, applied 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.

3. On July 30, 2025, Justice Kagan granted that application.

4. In support of the first application for an extension, counsel explained that this case involves 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.

5. That prohibition applies even to non-violent offenders such as the Applicant here, Steven Duarte, who served his sentence and reentered society years ago, after which he was stopped by law enforcement as a passenger in a car that drove 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. Duarte was arrested, and later was indicted for violating 18 U.S.C. §922(g)(1). (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.

6. 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 *New York State Rifle & Pistol Association v. Bruen*, 597 U.S. 1 (2022), clarifying the

appropriate 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*.

7. 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.

8. 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).

9. 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.

10. 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.").

11. 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.

12. As noted in the previous extension application, 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.

13. While counsel has been working diligently in preparing this petition, Ms. Murphy was not involved in the proceedings below and also has substantial briefing obligations between now and the current due date of September 6, 2025, including: a merits-stage amicus brief *in National Republican Senatorial Committee*

v. FEC, No. 24-621 (U.S.), due August 28, 2025; a response to a petition for rehearing en banc in *Rhode v. Bonta*, No. 24-542 (9th Cir.), also due August 28, 2025; and a reply brief on cross-appeal in *Ninth Inning Inc. v. National Football League, Inc.*, Nos. 24-5493 & 24-5691 (9th Cir.), due September 2, 2025. More time is required, commensurate with counsel's other responsibilities, to adequately research and brief the important issues posed by this matter.

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

Respectfully submitted,

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