No. 26-19

IN THE

Supreme Court of the United States

ALLISON NGUYEN,

Petitioner,

v.

LOUISIANA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL OF LOUISIANA, FIFTH CIRCUIT

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether a defendant has a constitutional right to a jury trial for misdemeanor-grade domestic abuse punishable by a maximum of six months imprisonment where a collateral consequence of such a conviction is the temporally limited loss of the right to possess a firearm.

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INTRODUCTION

This Court's precedents dictate that a criminal offense punishable by no more than six months imprisonment is "presumptively petty" such that a defendant is not constitutionally entitled to a jury trial unless he or she is able to satisfy a heavy burden of showing that other statutory penalties, viewed in conjunction with the maximum authorized period of incarceration, are so severe as to reflect a legislative determination that the offense in question is "serious" rather than "petty." The Petitioner claims that although her conviction for Domestic Abuse Battery (La. R.S. 14:35.3) carries a maximum sentence of six months imprisonment in the parish jail, she should nevertheless be entitled to a jury trial because such conviction prohibits her from possessing a firearm under La. R.S. 14:95.10. The Petitioner is mistaken.

The State first submits that this case is a poor vehicle to consider this question, as it is undisputed that the Petitioner also has a prior felony conviction for Aggravated Battery (La. R.S. 14:34) stemming from a separate incident, which independently bars her from possessing a firearm under La. R.S. 14:95.1 (and, while federal law is not pertinent to the inquiry before this Court, 18 U.S.C. § 922(g)(1)). As such, relief from this Court would change nothing for the Petitioner on this point. In any event, this Court's recent ruling in *United States v. Rahimi*, 602 U.S. 680 (2024) counsels that the Petitioner's argument is misplaced. *Rahimi* dictates that an individual may be divested of his or her right to possess a firearm in a civil protective order proceeding, and if a civil protective order proceeding is sufficient to do so, the

greater constitutional protections of a criminal bench trial are inexorably sufficient.

STATEMENT OF THE CASE

The matter before this Court stems from Petitioner Allison Nguyen at Planet Fitness striking her boyfriend in the head with a cell phone, causing a laceration on his forehead and necessitating medical attention. As summarized by the Louisiana Fifth Circuit Court of Appeal on direct review, this battery was captured on surveillance footage and the Petitioner shortly thereafter confessed to the battery on police body worn camera.[1] For these actions, the Petitioner on December 19, 2024 was charged by bill of information with misdemeanor-grade Domestic Abuse Battery (La. R.S. 14:35.3). Pet. App. 80a. The Petitioner pled not guilty. Pet. App. 71a. On May 13, 2025, Defense Counsel filed a one-page (plus an order) motion for jury trial, and on May 14, 2025, the Louisiana District Court denied the motion for jury trial. Pet. App. 78a; Pet. App. 47a. Defense Counsel sought supervisory review as to the jury trial denial, and on June 13, 2025, the Louisiana Fifth Circuit Court of Appeal denied writs. Pet. App. 43a.

This matter proceeded to a bench trial on June 18, 2025, with the Louisiana District Court finding the

1. The Petitioner would claim self-defense at trial despite the video evidence to the contrary, asserting that the victim had supposedly threatened her immediately before she battered him. The record below bears that the Petitioner did not tell police of this supposed threat, albeit that she did claim mutual abusive behavior in their relationship. The State does not concede to the Petitioner's rendition of facts.

Petitioner guilty as charged. Pet. App. 67a. On June 25, 2025, the Louisiana District Court denied Defense Counsel's motion for new trial and sentenced the Petitioner to six months imprisonment in the parish jail, and the Louisiana District Court set an appeal bond (on which the Petitioner at present remains at liberty). Pet. App. 64a.

The Petitioner sought supervisory review of her conviction and sentence with the Louisiana Fifth Circuit Court of Appeal (i.e., the "misdemeanor equivalent" of direct review through appeal in a felony case as per Louisiana law). The State on August 7, 2025 filed a motion to order supplementation relative to certain information, and on August 11, 2025, the Louisiana Fifth Circuit Court of Appeal granted the State's motion and ordered the Clerk of Court to supplement the record with all trial exhibits. Meanwhile, on August 7, 2025, the State filed an opposition with the Louisiana Fifth Circuit Court of Appeal (with certain exhibits relative to pre-trial and post-trial filings appended thereto). On August 15, 2025, Defense Counsel filed a "rebuttal" with the Louisiana Fifth Circuit Court of Appeal. On November 12, 2025, the Louisiana Fifth Circuit Court of Appeal affirmed the Petitioner's conviction and vacated her sentence for technical reasons unrelated to Defense Counsel's arguments now before this Court. Pet. App. 3a. The matter proceeded back before the Louisiana District Court on November 19, 2025, and is pending resentencing.

The Petitioner then sought supervisory review with the Louisiana Supreme Court. The State filed an opposition with the Louisiana Supreme Court, with the State's Louisiana Fifth Circuit Court of Appeal opposition appended given Defense Counsel's failure to attach all

pertinent documentation in the Louisiana Supreme Court and so as to ensure that the Louisiana Supreme Court had accurate information. On May 12, 2026, the Louisiana Supreme Court denied supervisory review. Pet. App. 1a.

The Petitioner now seeks certiorari with this Court, and this Court has requested a response from the State of Louisiana. The State of Louisiana's response now follows.

REASONS FOR DENYING THE PETITION

In the seminal case of *Baldwin v. New York,* 399 U.S. 66 (1970), this Court, clarifying the rule in *Duncan v. Louisiana*, 391 U.S. 145 (1968), set the dividing line between "serious" offenses which mandate a jury trial and "petty" offenses which do not at six months imprisonment. The Petitioner was convicted of misdemeanor-grade Domestic Abuse Battery (La. R.S. 14:35.3), which carries a maximum sentence of six months imprisonment and which under Louisiana law is triable by a bench trial in compliance with this Court's ruling in *Baldwin*. Despite the Petitioner's crime being punishable by a maximum sentence within the threshold in *Baldwin*, the Petitioner nevertheless asserts entitlement to a jury trial. This Court should decline to undertake the Petitioner's suggested re-write of *Baldwin*.

In *Blanton v. City of North Las Vegas*, 489 U.S. 538 (1989) and *United States v. Nachtigal*, 507 U.S. 1 (1993), this Court clarified the rule in *Baldwin* such that the most important consideration in determining whether an offense is "petty" or "serious" for jury trial purposes is the potential term of imprisonment, that offenses for which the maximum term of imprisonment is six months

or less are presumptively petty, and that a defendant can overcome this presumption and become entitled to a jury trial only if the additional penalties, viewed together with the maximum term of imprisonment, are so severe that the legislature clearly determined that the offense is "serious." The Petitioner complains that a misdemeanor-grade conviction for Domestic Abuse Battery causes her to lose her right to possess a firearm under La. R.S. 14:95.10 (which carries a ten-year "cleansing period") and under federal law in 18 U.S.C. § 922(g)(9) (which provides for a lifetime prohibition but which does not stem in Louisiana law). The Petitioner cannot overcome the presumption that her crime of conviction is "petty," and this Court should deny certiorari.

I. This case presents a poor vehicle to decide the underlying issue given that the Petitioner was already prohibited from possessing firearms

The Petitioner complains that her conviction for misdemeanor-grade Domestic Abuse Battery (La. R.S. 14:35.3) has caused her, without a jury trial, to lose her right to possess a firearm. However, the Petitioner overlooks the fact that before she was convicted of this misdemeanor offense, she had already on October 10, 2023 pled guilty in Division E of the Twenty-Fourth Judicial District Court for the State of Louisiana to the crime of Aggravated Battery, defined in La. R.S. 14:34 as "a battery committed with a dangerous weapon" and punishable thereunder by a fine of up to five thousand dollars, imprisonment with or without hard labor for up to ten years, or both, which (had she elected to proceed to trial) entitled her to a jury trial under this Court's

precedents and under Louisiana law.[2] Aggravated Battery is delineated in Louisiana law as a crime of violence as per La. R.S. 14:2(B)(5) and is thus a "predicate" offense for La. R.S. 14:95.1: Louisiana's law which prohibits certain felons, including those convicted of "a crime of violence as defined in R.S. 14:2(B) which is a felony," from possessing firearms subject to a ten-year cleansing period (the same ten-year cleansing period provided for in La. R.S. 14:95.10, which governs among other things certain misdemeanor-grade convicted domestic abusers). Furthermore, and while for reasons discussed *infra* federal law is not relevant to the inquiry before this Court, federal law as per 18 U.S.C. § 922(g)(1) dictates (with no cleansing period) that "[i]t 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." Aggravated Battery also clearly qualifies as a predicate crime as per 18 U.S.C. § 922(g)(1).

As such, the Petitioner would remain, by virtue of her conviction by guilty plea for Aggravated Battery, prohibited from possessing a firearm regardless of what happens with her conviction for misdemeanor-grade Domestic Abuse Battery. Given that any relief granted to the Petitioner by this Court would thus be wholly

2. *See* La. Const. art. I § 17(A); La. C.Cr.P. art. 782. Furthermore, La. C.Cr.P. art. 933(3) defines "felony" as "an offense that may be punished by death or by imprisonment at hard labor." Aggravated Battery is of course a felony under Louisiana law.

academic, this case presents a poor vehicle to decide the question presented. For this reason, this Court should decline to review this case and should deny certiorari.[3]

II. Loss of firearms rights does not elevate a "petty" offense into a "serious" offense under *Blanton* and its progeny

In the alternative, the Petitioner cannot overcome the presumption as per *Blanton* and its progeny that misdemeanor-grade Domestic Abuse Battery under La. R.S. 14:35.3 is a "petty" offense. While the Petitioner muses that the State considers misdemeanor-grade domestic violence "serious" enough to accept grant funding to prosecute it but "petty" for the purpose of mode of trial, the Petitioner obviously overlooks that words can have more than one meaning, and the terms "serious" and "petty" in this context are terms of art from this Court relative to mode of trial.[4] This Court in *Blanton*

3. The State notes that the Petitioner's prior felony conviction on October 10, 2023 by plea of guilty for Aggravated Battery is referenced in the November 12, 2025 ruling of the Louisiana Fifth Circuit Court of Appeal below.

4. Indeed, in *State v. Woolverton*, 371 P.3d 941, 943 (Kan. Ct. App. 2016), the Kansas Court of Appeal noted that "we don't use the term 'serious' as we might use it in conversation" and "[t]he terms 'serious offense' and 'petty offense' are terms of art, used in specific ways in decisions of the United States Supreme Court interpreting the Sixth Amendment" and "[w]e know that these phrases are terms of art from several United States Supreme Court opinions[…]." The Petitioner's references to Dictionary.com or to the "whim of the prosecution" relative to the meaning of "serious" are irrelevant; this Court's definition of "serious" versus "petty" is what matters.

summarized the legal standard of entitlement to a jury trial under the Sixth Amendment and the Fourteenth Amendment such that:

> Although we did not hold in *Baldwin* that an offense carrying a maximum prison term of six months or less automatically qualifies as a "petty" offense, and decline to do so today, we do find it appropriate to presume for purposes of the Sixth Amendment that society views such an offense as "petty." A defendant is entitled to a jury trial in such circumstances only if he can demonstrate that any additional statutory penalties, viewed in conjunction with the maximum authorized period of incarceration, are so severe that they clearly reflect a legislative determination that the offense in question is a "serious" one. This standard, albeit somewhat imprecise, should ensure the availability of a jury trial in the rare situation where a legislature packs an offense it deems "serious" with onerous penalties that nonetheless "do not puncture the 6–month incarceration line." […]

Blanton, 489 U.S. at 543 (footnote omitted).[5]

This Court in *Blanton* further observed in applying this framework that "[p]rimary emphasis…must be placed

5. This Court further cautioned against the judicial branch substituting its own judgment for that of the legislative branch as to whether a crime is "petty" or "serious." *Blanton*, 489 U.S. at 541-542.

on the maximum authorized period of incarceration" because other penalties (including terms and conditions of probation) "cannot approximate in severity the loss of liberty that a prison term entails" and as such "because incarceration is an 'intrinsically different" form of punishment… it is the most powerful indication whether an offense is 'serious.'" *Blanton*, 489 U.S. at 542 (citation omitted). In *United States v. Nachtigal*, 507 U.S. 1 (1993), this Court reiterated the legal framework such that an offense with an incarceration ceiling of six months or less is presumptively petty and a defendant bears the burden of overcoming this presumption by showing that additional statutory penalties are sufficiently severe to elevate an otherwise "petty" offense to a "serious" offense for the purpose of entitlement to a jury trial. Indeed, in *Nachtigal*, this Court found that a potential five thousand dollar fine and a potential probationary term of up to five years with a host of potential conditions of probation did not elevate a "petty" offense of DUI with a maximum six month term of imprisonment into a "serious" offense mandating a jury trial.[6] This Court in *Nachtigal* with particular reference to the probationary term and conditions thereof aptly noted that "the liberty infringement caused by a term of probation is far less intrusive than incarceration" and "[t]he discretionary probation conditions do not alter this conclusion; while they obviously entail a greater infringement on liberty

6. Indeed, this further illustrates the fallacy of the Petitioner's argument in seeking to use the common parlance definition of "serious" rather than the term of art definition from this Court's jurisprudence. Given the risk to public safety posed by a drunk driver, few would balk at calling even a first offense DUI "serious" under common parlance, and yet it is "petty" per this Court's binding jurisprudence.

than probation without attendant conditions, they do not approximate the severe loss of liberty caused by imprisonment for more than six months." *Nachtigal*, 507 U.S. at 5. Similarly, the loss of the right to possess a firearm upon conviction for misdemeanor-grade Domestic Abuse Battery "do[es] not approximate the severe loss of liberty caused by imprisonment for more than six months."

A. Existing jurisprudence supports the classification of misdemeanor-grade Domestic Abuse Battery as "petty"

The Louisiana Fifth Circuit Court of Appeal below in pretrial supervisory review posture upheld Louisiana law as written in determining that the Petitioner was not entitled to a jury trial, and on direct review following conviction the Louisiana Fifth Circuit Court of Appeal declined to reconsider its prior ruling.[7] Pet. App. 43a; Pet. App. 3a. The Louisiana Supreme Court would subsequently deny supervisory review. Pet. App. 1a. Existing jurisprudence supports this determination, and this Court's intervention is not warranted.

In *United States v. Chavez*, 204 F.3d 1305 (11th Cir. 2000), the Eleventh Circuit considered this very issue under the framework in *Blanton* and its progeny. The defendant in *Chavez* argued that because a conviction of the charged

7. On pretrial supervisory review, the Louisiana Fifth Circuit Court of Appeal observed that "although the offense with which Relator is charged is a serious offense, it is not punishable by more than six months imprisonment, she is not entitled to a trial by jury." As noted above, "serious" when used in common parlance need not mean the same thing as "serious" relative to the term of art defined by this Court.

crime would "deprive him of his Second Amendment right to bear arms" under 18 U.S.C. § 922(g)(9), he should be entitled to a jury trial. In rejecting his argument, the Eleventh Circuit held that "the prohibition of firearm possession by persons convicted of a misdemeanor crime of domestic violence is not so serious as to entitle them to a jury trial for a presumptively petty offense." *Chavez*, 204 F.3d at 1314.

Other Courts have come to similar conclusions as the Eleventh Circuit. In *United States v. Snow*, 2011 WL 5025535 (D. Or. 2011), the Magistrate Judge discussed the strength of the presumption in *Blanton*, noting this Court's caution that overcoming the presumption would be rare and reiterating this Court's observation in *Blanton* and its progeny that the most important factor (and the factor that is generally dispositive) is the potential term of imprisonment and whether it exceeds six months, with the Magistrate Judge discussing ancillary jurisprudence and noting that restitution orders and fines running into the tens of thousands of dollars are insufficient to overcome the presumption of pettiness. The Magistrate Judge in *Snow* further expounded that while a firearms prohibition indeed restrains an otherwise existent constitutional right, "probation can entail a myriad of restraints on an individual's liberties and constitutional rights," and this Court has found potential lengthy terms of probation with potential extensive probationary conditions to be insufficient to require a jury trial for an otherwise "petty" offense. Indeed, the Magistrate Judge in *Snow* concurred with the Eleventh Circuit's ruling in *Chavez*, noting that the Eleventh Circuit was at the time (and to the State's understanding still is) the only United States Circuit Court to address this issue squarely. Other

Courts have come to similar conclusions. *See State ex rel. McDougall v. Strohson*, 945 P.2d 1251 (Ariz. 1997); *United States v. Jardee*, 2010 WL 565242 (D. N.D. 2010); *State v. Woolverton*, 371 P.3d 941, 943 (Kan. Ct. App. 2016); *Medhin v. United States*, 308 A.3d 1242 (D.C. 2024).

The State does not suggest that the jurisprudence is unanimous, and the State acknowledges contrary jurisprudence. *See contra Andersen v. Eighth Judicial District Court*, 448 P.3d 1120 (Nev. 2019), in which the Nevada Supreme Court found that a permanent state law firearms prohibition for a conviction entitled a misdemeanor domestic violence defendant to a jury trial. The State notes that the District of Colombia Court of Appeals declined to follow the Nevada Supreme Court on this issue in part because while the prohibition at issue in Nevada was permanent, the prohibition at issue in the District of Colombia lasted only five years. *See Medhin v. United States*, 308 A.3d 1242 (D.C. 2024).[8] This of course is similar to La. R.S. 14:95.10, the provision of Louisiana law prohibiting persons convicted of misdemeanor-grade Domestic Abuse Battery from possessing firearms, but subject to a ten-year cleansing period. Indeed, the

8. *See also United States v. Smith*, 151 F.Supp.2d 1316 (N.D. Okla. 2001). In *Smith*, the United States Magistrate Judge acknowledged the (for that judge non-binding) holding of the Eleventh Circuit in *Chavez* and came to a different conclusion. Respectfully, the State submits that *Chavez* and other jurisprudence supporting the State's position is better reasoned. The State further submits that *Smith* involved a federal prosecution rooted in federal law for which consideration of 18 U.S.C. § 922(g)(9) and its lifetime prohibition was proper, whereas this case involves a state prosecution rooted in state law for which 18 U.S.C. § 922(g)(9) has no place, as discussed in more detail *infra*.

Nevada Supreme Court in *Andersen* noted earlier having come to an opposite conclusion, previously finding federal law in 18 U.S.C. § 922(g)(9) imposing a prohibition to be irrelevant but electing to change course when the Nevada Legislature itself passed a Nevada state law prohibiting affected misdemeanants from possessing a firearm for life. *Contrast Amezcua v. Eighth Judicial District Court*, 319 P.3d 602 (Nev. 2014)). Louisiana law, unlike present Nevada law, does not impose a lifetime prohibition on those convicted of misdemeanor-grade Domestic Abuse Battery from possessing firearms.

B. The federal lifetime prohibition in 18 U.S.C. § 922(g)(9) is irrelevant

The State first suggests that even if the federal lifetime prohibition in 18 U.S.C. § 922(g)(9) were pertinent here rather than La. R.S. 14:95.10 with its ten-year cleansing period, misdemeanor-grade Domestic Abuse Battery would nevertheless remain a "petty" offense and would not trigger the right to a jury trial under *Blanton* and its progeny given that divestiture of the right to possess a firearm still cannot fairly be compared to imprisonment in severity. Indeed, the Eleventh Circuit essentially found as much in *Chavez* (among other above discussed federal jurisprudence). But this Court's inquiry is simpler, as the federal lifetime prohibition in 18 U.S.C. § 922(g)(9) has no pertinence for the instant case. The consideration of whether firearms divestiture overcomes the *Blanton* presumption of pettiness for misdemeanor-grade Domestic Abuse Battery is properly limited instead to La. R.S. 14:95.10, with its ten-year cleansing period (that, as discussed above, is not unlike lengthy potential terms of probation with extensive potential probationary

conditions that nevertheless do not elevate a "petty" offense into a "serious" offense).

In reliance upon the rule in *Blanton* and its progeny,[9] state jurisprudence has found that whether an offense is "petty" or "serious" relates to the penalties arising for that offense under that state's law, without regard for federal law (or the law of other states), as laws of other jurisdictions certainly cannot and do not speak to whether a given state legislature determined an offense "petty" or "serious." Indeed, and as noted above, even the Nevada Supreme Court found as much until such a time as the Nevada Legislature codified its own Nevada state law lifetime firearms prohibition for certain convicted misdemeanants. *See Andersen v. Eighth Judicial District Court*, 448 P.3d 1120 (Nev. 2019) (Discussing the prior precedent of *Amezcua v. Eighth Judicial District Court*, 319 P.3d 602 (Nev. 2014)). Other Courts have come to similar conclusions as to the inapplicability of federal law in applying the framework of *Blanton* and its progeny to state criminal offenses. *See also State ex rel. McDougall v. Strohson*, 945 P.2d 1251 (Ariz. 1997); *State v. Woolverton*, 371 P.3d 941, 943 (Kan. Ct. App. 2016); *Medhin v. United States*, 308 A.3d 1242 (D.C. 2024).

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9. In *Blanton*, this Court observed that it would decline to survey laws of other states because (as to the Nevada law at issue), "[t]he question is not whether other States consider drunken driving a 'serious' offense, but whether Nevada does." *Blanton*, 489 U.S. at 545, n.11. In *Nachtigal*, this Court reiterated that "the statutory penalties in other States are irrelevant to the question whether a particular legislature deemed a particular offense 'serious.'" *Nachtigal*, 507 U.S. at 4.

Should the Petitioner seek to challenge the federal lifetime prohibition in 18 U.S.C. § 922(g)(9) (either facially or as applied to her) once the ten-year cleansing period in Louisiana law elapses for her, she would be free to do so in a proper proceeding in a proper forum. But a federal law passed by Congress over which the Louisiana Legislature has zero say does not inform whether the Louisiana Legislature has made misdemeanor-grade Domestic Abuse Battery a "serious" offense or a "petty" offense. Consideration of the "additional penalties" applicable to a conviction for misdemeanor-grade Domestic Abuse Battery under *Blanton* and its progeny should be limited to the penalties in pertinent Louisiana law (i.e. La. R.S. 14:95.10 with its ten-year cleansing period), and federal law (including 18 U.S.C. § 922(g)(9)) is simply not pertinent.[10]

10. In finding deportation (which stems in federal law) to be a sufficient "penalty" to elevate an otherwise "petty" offense to a "serious" offense for jury trial purposes, some Courts have considered the applicability of federal deportation law to non-federal criminal offenses. *See Bado v. United States*, 186 A.3d 1243 (D.C. 2018); *People v. Suazo*, 118 N.E.3d 168 (N.Y. 2018). The State respectfully does not concede that these cases are correctly decided and indeed these cases have numerous problems (some such problems pointed out aptly by the dissenting judges therein). However, even if correctly decided they are distinguishable. First, deportation is uniquely the prerogative of the federal government (unlike other sanctions). Second, as these cases suggest, deportation is arguably comparable to imprisonment in ways that other penalties simply are not. Considering how this Court has described imprisonment as fundamentally different in kind from other penalties and considering the unique similarity deportation has to imprisonment, even if *Bado* and *Suazo* are correctly decided, deportation may be the proverbial exception that proves the rule. Indeed, loss of firearms rights cannot be meaningfully compared to being expelled from the United States of America (or to imprisonment).

C. This Court's recent precedent of *Rahimi* further counsels that loss of firearms rights does not overcome the presumption of pettiness

While a straightforward application of the *Blanton* framework compels that misdemeanor-grade Domestic Abuse Battery under Louisiana law remains "petty" for jury trial purposes, this Court's recent precedent of *United States v. Rahimi*, 602 U.S. 680 (2024) further counsels that loss of firearms rights does not overcome the presumption of pettiness. In *Rahimi*, this Court applied the relatively novel Second Amendment framework in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022) to a situation regarding firearm rights divesture in the civil protective order context. *Rahimi* certainly illuminated this Court's Second Amendment framework set forth in *Bruen* and gave more concrete guidance to Courts in applying the Second Amendment *Bruen* framework. However, the import of *Rahimi* resonates beyond its immediate Second Amendment context and here informs the Sixth Amendment and Fourteenth Amendment *Blanton* framework.

In *Rahimi*, this Court considered the constitutionality of 18 U.S.C. § 922(g)(8), which prohibits persons subject to certain protective orders, including those issued in a civil context,[11] from possessing firearms. In applying the *Bruen* framework, this Court considered our Nation's legal

11. While this is self-evident, the Fifth Circuit ruling below in *Rahimi* reversed by this Court discussed the civil nature of the protective order proceedings. *See United States v. Rahimi*, 61 F.4th 443 (5th Cir. 2023). In reversing that Fifth Circuit ruling, this Court was certainly aware of and certainly considered the civil nature of those proceedings.

tradition of divesting dangerous individuals of their right to possess firearms and found that 18 U.S.C. § 922(g)(8) as before this Court survived Second Amendment scrutiny. Alongside illuminating this Court's Second Amendment *Bruen* framework, the holding of *Rahimi* also illuminates the Sixth Amendment and Fourteenth Amendment *Blanton* framework in this context. As upheld in *Rahimi*, 18 U.S.C. § 922(g)(8) allows an individual to be divested of his or her right to possess firearms based on a protective order, including one issued in a civil proceeding (with no jury). A civil proceeding relative to the issuance of a protective order, while having certain due process requirements as evidenced in 18 U.S.C. § 922(g)(8),[12] obviously does not have the same demanding due process requirements native to a criminal bench trial (including the right to counsel and the right to be presumed innocent until guilt is proven beyond a reasonable doubt).

This Court in *Rahimi* found that an individual may be divested of his or her right to possess firearms based upon a civil proceeding (with no jury) that, while providing certain protections, does not provide the same stringent protections as those in a criminal bench trial. If one's right to possess firearms may be forfeited even without a criminal trial at all, certainly this divestiture cannot logically be considered a sufficiently severe penalty to overcome the presumption in *Blanton* and its progeny that this offense is "petty" and to entitle a defendant to a

12. 18 U.S.C. § 922(g)(8) requires for the prohibition therein to apply that there have been "a hearing of which such person received actual notice, and at which such person had an opportunity to participate" and that (as before this Court in *Rahimi*) there be a finding of a credible threat (with this Court in *Rahimi* not addressing an alternative sub-provision in 18 U.S.C. § 922(g)(8)).

jury trial notwithstanding the penalty not exceeding six months imprisonment. Finding to the contrary would be logically inconsistent with *Rahimi*, and it cannot be said in one breath that a civil protective order proceeding (with no jury) is sufficient to divest one of his or her firearms rights but in another breath that a criminal bench trial providing indisputably greater protections somehow is not sufficient.[13] While, as discussed above, the fundamentally different nature of imprisonment compared to other penalties compels that the Petitioner cannot overcome the presumption of pettiness here relative to her conviction for misdemeanor-grade Domestic Abuse Battery, this Court's recent precedent of *Rahimi* puts yet another nail in that coffin.

D. The Petitioner's other "collateral consequences" are irrelevant

Out of an abundance of caution, the State notes that the Petitioner references other collateral consequences of her conviction, including her presumptive ineligibility for certain occupations such as law enforcement and military service and her ineligibility under Louisiana law to obtain an expungement. These are red herrings. There is no constitutional right to serve in law enforcement or in the military (and both of those honorable professions do well to keep domestic abusers out of their ranks). There

13. This Court in *Rahimi*, in coming to its holding, noted that protective orders are limited in duration. While limited in duration, that duration could potentially extend for some time, and in any event the State reiterates that La. R.S. 14:95.10 has a ten-year cleansing period and will not "forever" bar the Petitioner from possessing firearms.

is likewise no constitutional right to an expungement.[14] These musings are irrelevant to this Court's inquiry and merit no further response.[15]

14. *See for example In re G.P.B.,* 91 A.3d 648, 649 (N.J. Super. Ct. App. Div. 2014) (observing that "expungement of criminal records is available only if authorized by legislation" and "[t]here is no constitutional or common law right to the expungement of records relating to a criminal conviction"); *Glavin v. Pennsylvania,* 2024 WL 4338660 (E.D. Pa. 2024), p. 2 (observing that "the right to expunge state records is not a federal constitutional right").

15. As to the Petitioner's complaint about having to participate in community service and domestic abuse prevention programming, analogous requirements were found to not elevate a "petty" offense into a "serious" offense in *Blanton* and its progeny. Furthermore, to whatever extent that the Petitioner's arguments rely upon the Louisiana Constitution providing "greater" protections than the United States Constitution, such an inquiry obviously has no place under this Court's analysis, which is bound to the United States Constitution.

CONCLUSION

For the foregoing reasons and for any other reasons apparent to this Court, the State of Louisiana respectfully submits that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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