No. 26-19

In the Supreme Court of the United States

ALLISON NGUYEN,

Petitioner,

v.

STATE OF LOUISIANA,

Respondent.

On Petition for a Writ of Certiorari to the Fifth Circuit Court of Appeal, State of Louisiana

REPLY BRIEF OF PETITIONER

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REPLY BRIEF OF PETITIONER

I. Misdemeanor Domestic Violence Charges Are Serious

Misdemeanor domestic violence charges are serious because of the loss of a person's right to bear arms. The practical effect of a misdemeanor conviction is that a person can never be in the United States military, cannot become a law enforcement officer or even a security guard.

The government clearly has the right to prohibit persons convicted of certain crimes from owning or possessing firearms. If a person is charged with a misdemeanor domestic charge he or she should have the right to be tried by jury.

> 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.

Blanton v. City of Las Vegas, 489 U.S. 538 (1989).

In addition to the stringent penalties for misdemeanor domestic violence a person convicted of misdemeanor domestic battery in Louisiana loses his right to own or possess a firearm for 10 years after the completion of their full sentence (La R.S. 14:95.10). Federal law (the Lautenberg Amendment) 18 U.S.C. § 922(g)(9) adds a lifetime ban to those convicted of misdemeanor domestic violence. The ten-year ban clearly

demonstrates that the Louisiana legislature believes misdemeanor domestic violence is a serious offense.

II. Confusion Among the States

In addition to the ruling in Nevada (*Anderson v. Eighth Judicial District Court*) where the Nevada Supreme Court concluded that domestic violence was a "serious" offense because it forfeited a citizen's gun rights without the right of a jury trial, various other states give the right of a jury trial in misdemeanor offenses.

Texas, California, Illinois and New York (for cases outside of New York City) already have broad misdemeanor jury trial rights. A decision granting Ms. Nguyen the right to a jury trial would not affect cases in those states because the right to a jury already exist for most of their misdemeanors cases. Texas Code of Criminal Procedure Art 1.12. California Constitution Art. 1 See. 16. Illinois Code of Criminal Procedure 75ILCS 5/103-6. New York Criminal Procedure § 340.40(2).

In North Carolina, Virginia, New Hampshire, Maryland, Utah and Alabama a citizen has a right to a trial de novo after a judge trial. North Carolina G.S. 15A-1431, Virginia Code 16.1-136, New Hampshire R.S. Ses. 599:1, Maryland § 12-401(9)(1). Utah Rule of Criminal Procedure 17 and the right to trial *de novo* 78A-&-118. Alabama Code § 12-12-71.

Should the court's ruling favor Ms. Nguyen it will only affect those states that never allow for jury trials in misdemeanor and misdemeanor domestic violence cases. The Federal Gun Control Act. 18 U.S.C. § 922 (g)(9) takes away a citizen's Second Amendment rights

forever. It is the epitome of a "serious" offense as described in *Blanton. Blanton v. City of Las Vegas*, 489 U.S. 538 (1989).

Eleven states grant the right to trial in domestic misdemeanors. In thirty-nine states the accused only gets a judge trial. In most misdemeanor domestic violence cases the victim either recants or is uncooperative. The victim and the accused often get back together. The victim in this case (the actual abuser) has attempted to get back with Ms. Nguyen. These are thorny issues that need to be resolved on a case-by-case basis. The accused needs a fair and impartial jury not a judge.

In the 39 states (including Louisiana) that do not have jury trials the accused generally has little to no chance. They are often told "You have no chance in front of this judge and it's just a misdemeanor," which coerces a guilty plea. Judges become privy to evidence jurors would not hear (hearsay, prior records, etc.) which further denigrates the fair trial process.

III. The Practical Effect of the Loss of Second Amendment Rights

The State argues as if Second Amendment rights are philosophical and have no concrete meaning. A citizen convicted of "misdemeanor" domestic violence will never be allowed to serve in the United States military or become a law enforcement officer. The charge can never be expunged.

The drastic consequence of not getting a fair trial by jury is going to disqualify thousands of citizens and eventually tens of thousands of citizens from military and law enforcement service. The "over-zealous" pros-

ecution, which is motivated by federal grant money, turns the criminal justice system into a "conviction mill." In most of these misdemeanor domestic violence cases the defendant and victims re-unite and the State has little chance of a conviction if the defendant is given a fair trial by jury.

The State cites Ms. Nguyen's only prior arrest and conviction for aggravated battery. The irony is that Ms. Nguyen has a deferred sentence and but for this "misdemeanor" would have already had the case set aside and expunged. *State v. Nguyen*, case no.22-04802 24th JDC, minute entry 10-10-2023. A jury would have acquitted Ms. Nguyen. Her abusive boyfriend, with a long criminal history, refused to participate in the trial.

The victim, with an extensive criminal history, was a no-show. The over-zealous prosecutor, as described in *Duncan*, was not the fair trial envisioned in the Constitution. *Duncan v. Louisiana*, 391 U.S. 145 (1968).

IV. The Duck Test

The State argues that these cases are "serious" but not serious when it comes to jury trial rights. "When I see a bird that walks like a duck and swims like a duck and quacks like a duck, I call that bird a duck," James Whitcomb Riley (1849-1916) poet. The "Duck Test" has been used by other notables such as Cardinal Richard Cushing, Richard Cunningham Patterson, Jr., United States ambassador to Guatemala, and Emil Mazey of the United States Auto Workers Union in 1946 to describe communists. The "Duck Test" is used to counter abstract arguments that something is not what it appears to be. Domestic violence criminal convictions are serious and deserve

a jury trial and should not just become part of a "conviction railroad."

V. The Creation of the Over-Zealous Prosecutor

In 2024, the United States Justice Department issued over $690 million in grant money for violence against women. U.S. Department of Justice, Press Release: *Justice Department Announces More Than $690 Million in Violence Against Women Act Funding*, September 12, 2024. The prosecution then becomes the "over-zealous prosecutor" to maintain the grant money. It becomes quantity over quality. As was stated in *Duncan*, "A jury trial protects against the 'over-zealous prosecutor' and against the compliant, biased or eccentric judge." *Duncan v. Louisiana*, 391 U.S. 145 (1968). The present case was tried without the victim who refused to come to court and has numerous prior convictions. The prosecution was clearly over-zealous as described in *Duncan*. The prosecution is motivated by federal grant money for the prosecution of domestic violence cases.

Duncan favored the right to jury trial over judge trials to protect the citizen from "over-zealous" prosecutor and the "compliant, bias judge." While that is elegant language, judges are often reluctant to find defendants not guilty because of their desire to be viewed as "tough on crime" by the public. A juror does not have that burden. During the pre-trial process a judge becomes privy to evidence that might not be admissible at trial. Judges are supposed to "put that out of their mind" when trying the case but that is impossible.

CONCLUSION

A conviction for misdemeanor domestic violence takes away a citizen's right to bear arms. It is serious. It is so serious that a person can never join the United States military nor become a law enforcement officer. They cannot get a hunting license.

The prosecutor's argument fails the "Duck Test." The prosecution aggressively prosecutes misdemeanor domestic violence cases and gets its share of the $690 million in grant money but argues misdemeanor domestic violence is not serious enough to have jury trials.

Their position is disingenuous and hypocritical.

Respectfully submitted,

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