No.

IN THE
SUPREME COURT OF THE UNITED STATES

DUSTIN OLIVER JONES,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR A WRIT OF *CERTIORARI*

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I. QUESTIONS PRESENTED FOR REVIEW

Whether a misdemeanor warrant authorizes police to board and search a boat at anchor without concrete facts suggesting the subject of the warrant is on board.

Whether the Ninth Circuit's refusal to consider as-applied challenges to § 922(g)(1) violates this Court's binding precedent.

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II. PARTIES TO THE PROCEEDINGS

Petitioner here, Defendant-Appellant below, is Dustin Jones.

Respondent here, Plaintiff-Appellee below, is the United States of America.

III. OPINION BELOW

The Ninth Circuit, in a memorandum disposition, affirmed petitioner's convictions for possession with intent to distribute controlled substances, 21 U.S.C. § 841(a)(1), and being a felon in possession of a firearm, 18 U.S.C. § 922(g)(1). (Appendix B.) The disposition was amended upon denial of panel rehearing on April 24, 2026. (Appendix A.)

IV. JURISDICTION

The Ninth Circuit affirmed petitioner's convictions and sentence in an amended opinion on April 24, 2026. (App. A & B.) This Court has jurisdiction under 28 U.S.C. § 1254(1).

V. CONSTITUTIONAL AND STATUTORY PROVISIONS AT ISSUE

The Fourth Amendment, U.S. Const., states: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

The Second Amendment, U.S. Const., states: “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.”

18 U.S.C. § 922(g) provides, in relevant part: “It shall be unlawful for any person— (1) 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.”

VI. STATEMENT OF THE CASE

In March 2020, authorities discovered methamphetamine and heroin in a Dodge Durango shipped from Seattle, Washington, to Ketchikan, Alaska. The car’s recipient, Mitch Volpi, claimed that Petitioner Dustin Jones had shipped the car to him, and that Jones would return to Alaska. (5-ER-629.) The Coast Guard discovered a fishing boat registered in Alaska as being co-owned by Jones and another man. (5-ER-639.) In May 2020, Jones shipped another car to Alaska, which did not contain drugs. (5-ER-644.)

In November 2020, the mayor of Klawock told an Alaska State Trooper that Jones' boat was anchored in town. (2-ER-108.) Authorities confirmed Jones was a registered owner of the boat. (1-ER-23.) For two days, the trooper surveilled the boat and saw several "unknown males," none of whom he could "positively identify." (2-ER-108.)

After the inconclusive surveillance, two state troopers and two local police officers arranged to visit Jones' boat, ostensibly to serve misdemeanor warrants on Jones. (2-ER-67–68, 81; 5-ER-607, 662.) Due to a running bilge pump, and despite the fact that no one had seen Jones on or near the boat, officers boarded the boat. (2-ER-45, 70-1, 71.) They announced their presence, but not that they were serving an arrest warrant. (1-ER-12.) In the cabin, the officers discovered Jones, who they wrestled and ultimately tazed. (2-ER-49, 75.)

An officer then went to "clear[] the rest of the building or dwelling," descending stairs to find multiple firearms and some ammunition. (2-ER-98–100, 156.) An officer indicated he was going to "keep looking around." (CR 61-7-4:19.)

Jones told the officers he had just gotten into town. (CR 61-8-01-1:20, 1:37, 1:44.) A trooper got a search warrant for the boat and one of the officers discovered heroin and methamphetamine in a backpack belonging to Jones. (6-ER-676.) Jones moved to suppress the drugs, as well as the firearms and ammunitions the team had discovered during the "sweep." The trial court denied Jones' motion. (1-ER-9.)

On appeal, Jones also challenged the constitutionality of § 922(g)(1) as applied to him. After initially declining to consider the merits of the challenge, the Ninth Circuit issued an amended memorandum disposition, holding that circuit precedent barred Jones from making an as-applied challenge to § 922(g)(1). (App. A at 6–7.)

VII. PROCEEDINGS BELOW

Jones was indicted for conspiring to distribute methamphetamine, heroin, and cocaine, in violation of 21 U.S.C. §§ 846 and 841 (Count One); possessing with intent to distribute methamphetamine and heroin, in violation of 21 U.S.C. § 841 (Count Two); possessing firearms in furtherance of drug trafficking, in violation of 18 U.S.C. § 924(c) (Count Three); and possessing firearms as a felon, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a) (Count Four). (4-ER-588–94.)

After an evidentiary hearing, the magistrate denied Jones' motion to suppress, and the district court adopted the magistrate's recommendation. (1-ER-9.) The court reasoned that Jones' boat was not a home and was subject to the automobile exception to the Fourth Amendment. (1-ER-21.) The magistrate further determined that, if probable cause to believe Jones was on board was required, his co-ownership of the boat, the jet ski and skiff near the boat, and the bilge pump provided probable cause. (1-ER-23.) Lastly, the magistrate concluded that officers were justified in performing a protective sweep given the possibility that other people might be on board and the chance that a fishing boat might contain dangerous objects such as hooks. (1-ER-27.)

Jones' felon-in-possession charge was based on two driving under the influence convictions, one in 2009 and another in 2016. (PSR ¶¶ 47, 51.)

A nontestifying codefendant pleaded guilty to count one. (CR 180.) Another codefendant was charged in count five, which the government dismissed. (CR-31-32, 34.) A jury convicted Jones of possessing methamphetamine with intent to distribute and possession of firearms as a felon, but acquitted him of counts one and three. (1-ER-2; 4-ER-537–38, 547.)

The Ninth Circuit's initial memorandum decision in this case (App. B) concluded that the district court properly denied appellant's motion to suppress. Reaching the merits of Jones' Second Amendment challenge in an amended decision, it further refused appellant's claim that his felon-in-possession conviction was unconstitutional as improperly rooted in historical analogue. (App. A.)

This Court should grant certiorari to (1) correct the Ninth Circuit's expansion of the automobile exception, (2) reinforce that officers need a particularized suspicion to enter private premises on an arrest warrant, and (3) address the growing circuit split about the availability of as-applied Second Amendment challenges to § 922(g)(1).

VIII. REASON FOR GRANTING THE WRIT

A. Petitioner's fishing boat was not subject to the automobile exception, officers lacked probable cause or reasonable suspicion to suspect appellant was on the boat when they executed the misdemeanor arrest warrants, and the court below wrongly denied appellant's motion to suppress key evidence against him.

1. The boat was not subject to the automobile exception

The Fourth Amendment prohibits unreasonable searches. This Court initially validated warrantless searches of automobiles because cars, unlike houses, "can be quickly moved out of the locality or jurisdiction in which the warrant must be sought." *Carroll v. United States*, 267 U.S. 132, 153 (1925). Furthermore, "the expectation of privacy with respect to one's automobile is significantly less than that relating to one's home or office" because cars "are subjected to pervasive and continuing governmental regulation and controls, including periodic inspection and licensing requirements." *South Dakota v. Opperman*, 428 U.S. 364, 367, 368 (1976). *California v. Carney*, 471 U.S. 386 (1985), which involved the warrantless search of a motor home, added the final factor: whether the vehicle is situated such "that an objective observer would conclude it was being used not as a residence, but as a vehicle." *Id.* at 393.

The magistrate conceded that the second factor weighed in petitioner's favor; "the boat was not subject to inspection by the State when it was not in operation, see Alaska Stat. Ann. § 16.05.480 . . . ." (App. A at 2.)

Turning to the more contested factors, the trial and appellate courts concluded that the boat was readily mobile, as the local mayor had reported its arrival three days before officers went to arrest Jones. (1-ER-21, App. A at 2.) In *United States v. Hill*, 855 F.2d 664 (10th Cir. 1988), officers had searched a houseboat. The Tenth Circuit concluded that the houseboat was "obviously readily mobile," indeed, officers had "observed it traveling up and down the lake during much of the night." *Id.* at 668. Here, by contrast, no law enforcement officer observed the boat, which was anchored, moving. In fact, although officers eventually concluded that the bilge pump they noticed running on the boat was manual, the bilge pump would also run continuously if there was "a significant leak," which might immobilize the vessel. (2-ER-45.)

The boat's location also did not suggest it was being used as a vehicle, rather than a residence. *See Hill*, 855 F.2d at 668 ("We are persuaded that an objective observer would conclude that a moving boat navigating the waters of a large lake on a cold winter night was not being used as a residence."); *United*

States v. Ervin, 907 F.2d 1534, 1538 (5th Cir. 1990) ("Ervin's trailer falls squarely under Carney: (1) it was not parked in a place regularly used for residential purposes but in a motel parking lot; (2) Ervin and his wife were not occupying the trailer as a home; and (3) it was readily mobile."). Instead, the information available about the boat suggested it was being used as a residence. For one, rather than using the boat to go to and from shore, people were using skiffs that they would tie up to the boat. (2-ER-69–70; 2-ER-108.) Also, the boat's design, which officers described as "typical," included lower sleeping cabins. (2-ER-72.) Lastly, officers reported Jones "remained on the boat for the majority of his time that day." (2-ER-79.) *Cf. United States v. Gooch*, 6 F.3d 673 (9th Cir. 1993) (holding that a warrantless search of the interior of a tent on a public campground violated the Fourth Amendment); *United States v. Sandoval*, 200 F.3d 659, 661 (9th Cir. 2000) (same, even though tent was illegally pitched on Bureau of Land Management property). The *Carney* factors suggest the boat was acting as a residence, not a vehicle. The boat need not have been "dry docked" to be subject to Fourth Amendment protections. (1-ER-21.)

2. Officers lacked probable cause or even reasonable suspicion that Jones was present on the boat

If the boat was a dwelling, officers needed probable cause to enter. *Payton v. New York*, 445 U.S. 573 (1980) ("[A]n arrest warrant founded on probable cause implicitly carries with it the limited authority to enter a dwelling in which the suspect lives when there is reason to believe the suspect is within."); *United States v. Vasquez-Algarin*, 821 F.3d 467, 480 (2d Cir. 2016) ("[W]e join the Fifth, Sixth, Seventh and Ninth Circuits in holding that Payton's 'reason to believe' language amounts to a probable cause standard."). The Ninth Circuit assumed without deciding that the officers here needed probable cause even though it concluded that appellant's boat was not a dwelling, but a vehicle. (App. A at 4.) Although the court selected the correct standard, it improperly concluded that police here had sufficient information to establish probable cause. (App. A at 4.) Officers may have had probable cause to believe that someone was on the boat, but they lacked probable cause to believe Jones was on the boat when officers went to execute the misdemeanor warrant.

An unidentified witness told officers Jones and other people had been on the boat. (2-ER-68, 80.) The court had no opportunity to assess the reliability of the tip officers relied on. In *Vasquez-Algarin*, 821 F.3d 467, where the Third Circuit rejected a lower court's reasonable belief finding, an officer had "relied entirely on informant tips and the word of another detective," but did not "identify the number of informants, their reliability . . . , [or] the specific information they related . . . ." *Id.* at 480. The same is true here. A state trooper testified at the suppression hearing that "there was some type of drug intel [a sergeant] had received, along with Jones had an active warrant and he was on the vessel." (2-ER-40–41.) A different trooper offered similarly vague information: "we had had a witness state they had seen people being ferried from the shore to a boat" that was registered to Jones; "we had received tips that Dustin Jones and an associate had been on the boat and were ferrying people back and forth from the shore to his boat." (2-ER-68, 80.) There was precious little information that suggested Jones would be present at the time officers went to execute the search warrant, or that explained why officers relied on the tip.

This case contrasts starkly with other cases where courts have validated probable cause findings. For instance, in *United States v. Litteral*, 910 F.2d 547 (9th Cir. 1990), an informant who had been the suspect's codefendant "told the agents that if Litteral's car was there, he would be there. The agents spotted

Litteral's car before they entered the property. Thus, the police had a reasonable belief that Litteral would be present." *Id.* at 554; *United States v. Diaz*, 491 F.3d 1074, 1078 (9th Cir. 2007) ("Diaz himself had told government agents that he was usually home during the day. Agents also knew that Diaz worked at home as a mechanic. Agents had visited Diaz's home several times before, and he was absent only one of those times. All of this information suggests that Diaz, on an ordinary day, would be home during daylight hours, which is when the agents came to arrest him."); *United States v. Gay*, 240 F.3d 1222, 1225 (10th Cir. 2001) ("Soon after disclosing the location of Mr. Gay's current residence, the informant accompanied the officers to Pottinger Street, showed them the location of the house, pointed out the duplex, and told the officers Mr. Gay was presently in his home."); *United States v. Maley*, 1 F.4th 816, 821–22 (10th Cir. 2021) (finding probable cause where the suspect's car was in the driveway, the suspect was unemployed, the officers arrived at 9 a.m. on a Sunday, and the suspect's sons called a warning to someone when the police drove up).

No such indicia existed here. Indeed, officers testified that they believed Jones might not be on the boat. A trooper had seen an "unidentified male" driving a skiff away from the boat and officers "were concerned that it could have been Dustin Oliver Jones on that white skiff." (2-ER-116.) Although that unidentified male later turned out not to be Jones, the officers who boarded the boat did not yet know this. (2-ER-80.) Even the magistrate acknowledged that "Jones' concern regarding law enforcement's lack of direct knowledge that 'Mr. Jones was present on the boat, other than a three-day-old tip that they have been unable to confirm despite two days of surveillance' is well taken." (1-ER-23.) The fact that Jones co-owned the boat did not establish his presence. (1-ER-81.)

The other "significant fact" that lower courts thought established Jones' presence was the fact that a bilge pump was running as officers circled the boat. (App. A at 4.) The actual significance of this fact is challenging to gauge; officers gave conflicting testimony about how quickly and how many times they circled Jones' boat before boarding. (2-ER-57, 82.) There were no external markings that established whether the bilge pump was manual or automatic. (2-ER-45, 61.) The officers' hypothesis that the pump was manual was seemingly confirmed by the fact that it was still running after they arrested Jones. (2-ER-57.) However, even if the bilge pump was manual, that only suggested that someone was on the boat, not that Jones was. Jones was not the sole owner of the boat. (5-ER-639.) Other people had been seen coming to and going from the boat—in fact, no officer had seen Jones in connection with the boat at all. (2-ER-81, 116.)

Even if probable cause was not required, the officers needed reasonable suspicion to justify entry. *United States v. Hudson*, 405 F.3d 425, 435 (6th Cir. 2005) ("*Hensley* does not stand for the proposition that the police may execute a valid arrest warrant by any means simply because the warrant is valid. It is instructive that in *Hensley* the officers knew the suspect, searched for him in places he was known to frequent, and plainly recognized him and his car before initiating the seizure." (citing *United States v. Hensley*, 469 U.S. 221 (1985)).

Officers lacked probable cause or reasonable suspicion to believe that Jones would be present on the boat at the time they arrived. The Ninth Circuit improperly dismissed the fact that "someone other than Jones" may have been aboard relying on *Diaz*, which Petitioner distinguishes above. (App. A at 4.) This Court should grant certiorari to establish that probable cause is necessary to enter a vessel under these circumstances, and should find that there was no probable cause here. In the alternative, the Court should hold that officers lacked reasonable suspicion to believe Jones was present when testimony established a trooper thought Jones had already left the boat on a skiff.

B. Petitioner's conviction violates the Second Amendment to the United States Constitution

New York State Rifle and Pistol Association v. Bruen, 597 U.S. 1 (2022), established that "the Second and Fourteenth Amendments protect an individual's right to carry a handgun for self-defense outside the home." *Id.* at 10. Jones did not raise a Second Amendment challenge pretrial, but good cause excuses him from Federal Rule of Criminal Procedure 12(b)(3)(B) because a constitutional challenge was squarely foreclosed by Circuit precedent. *United States v. Guerrero*, 921 F.3d 895, 898 (9th Cir. 2014). (App. A at 5–6.)

1. The circuits are divided on whether to allow as-applied challenges to § 922(g)

The Third, Fifth, and Sixth Circuits have held that § 922(g)(1) is constitutional only as applied to people with prior felonies who are dangerous. Other circuits including the Ninth, have held that § 922(g)(1) is constitutional as applied to all felons. *Compare, e.g.*, *United States v. Cockerham*, 162 F. 4th 500, 504 (5th Cir. 2025) (holding that § 922(g)(1) is unconstitutional as applied to a defendant whose prior conviction was for failing to pay child support); *Range v. Atty. Gen.*, 124 F.4th 218, 232 (3rd Cir. 2024) (en banc) (same, where the prior conviction was for making a false statement to obtain food stamps); *United States v. Williams*, 113 F.4th 637, 657, 662–663 (6th Cir. 2024) with *United States v. Duarte*, 137 F.4th 743, 761–762 (9th Cir. 2025), *cert denied* No. 25-425 (Jan. 20, 2026) (categorically affirming the constitutionality of § 922(g)(1) as applied to nonviolent felons); *United States v. Jackson*, 110 F.4th 1120, 1125, 1129 (8th Cir. 2024), *cert. denied*, No. 24-6517 (May 19, 2025) (similar). This Court should grant certiorari to clarify that categorical bans on as-applied challenges that fail to account for historical context cannot survive *Bruen*.

The Circuits that allow as-applied challenges agree that *Bruen* and *Rahimi* abrogated prior precedent on the constitutionality of § 922(g)(1). *Range*, 124 F.4th at 225; *see also United States v. Diaz*, 116 F.4th 458, 465 (5th Cir. 2024); *Williams*, 113 F.4th at 647–648. They treat the statement in *District of Columbia v. Heller*, 554 U.S. 570, 626–27 & n.26 (2008) that felon-in-possession laws are "presumptively lawful" as non-binding dicta. *Williams*, 113 F.4th at 645–648; *Diaz*, 116 F.4th at 465–466; *Range*, 124 F.4th at 226–228. They further acknowledge that people with prior felony convictions are part of "the people" protected by the Second Amendment. *Williams*, 113 F.4th at 648–650; *Diaz*, 116 F.4th at 466; *Range*, 124 F.4th at 228. On this last point, the Ninth Circuit agrees, though other Circuits regard felons as outside "the people" covered by the Second Amendment. *Duarte*, 137 F.4th at 755; *United States v. Hunt*, 123 F.4th 697, 704 (4th Cir. 2024), *cert. denied*, 145 S. Ct. 2756 (2025) ("People who have been convicted of felonies are outside the group of 'law-abiding responsible citizen[s]' that the Second Amendment protects." (*quoting United States v. Moore*, 666 F.3d 313, 319 (4th Cir. 2012)).

However, the Second, Fourth, Eighth, Ninth, and Eleventh Circuits have held that § 922(g)(1) is constitutional as applied to all felons. *See Jackson*, 110 F.4th at 1125, 1129; *Hunt*, 123 F.4th at 700; *Vincent v. Bondi*, 127 F.4th 1263, 1265–66 (10th Cir. 2025), *cert. denied*, No. 24-1155 (March 2, 2026); *Duarte*, 137 F.4th at 761–762; *United States v. Dubois*, 139 F.4th 887, 894 (11th Cir. 2025); *Zherka v. Bondi*, 140 F.4th 68, 96 (2d Cir. 2025). This Court should grant the petition to resolve this circuit split.

2. This case is a good vehicle for resolving the circuit split

Section 922(g)(1) does not operate like any disarmament in effect at the time of the founding. Although seditious dissidents could be disarmed, historical evidence suggests the firearm ban was temporary. Joseph G.S. Greenlee, *The Historical Justification for Prohibiting Dangerous Persons From Possessing Arms*, 20 Wyo. L. Rev. 249, 263-264 (2020).

As for Jones' predicate felonies, both were driving under the influence convictions. (PSR ¶¶47, 51.) At the time of the founding, repeated public intoxication was punished by fines, corporal punishment, or confinement to the stocks or prison. *See, e.g.*, Angela Fernandez, *Record-Keeping and Other Troublemaking: Thomas Lechford and Law Reform in Colonial Massachusetts*, 23 Law & Hist. Rev. 235, 251 (Summer 2005). But intoxication was not understood as dangerous conduct that permitted the government to infringe on the right to bear arms. Unlike a case involving violent felonies, the instant petition provides an opportunity to consider the nuanced interplay between the challenged law, the predicate offense, and their historical counterparts. *Cf. Williams*, 113 F.4th at p. 662 (concluding that § 922(g)(1) was constitutional as applied to a defendant whose criminal history included aggravated robbery and attempted murder because the defendant was clearly dangerous).

The Ninth Circuit, along with numerous sister circuits, functionally subject Second Amendment challenges to rational basis review when the challenger has a felony conviction, no matter how minor the crime. This Court should grant review to clarify that constitutional challenges are entitled to a more robust review. This case is an excellent vehicle for the Court.

IX. CONCLUSION

This case presents two constitutional challenges that call for the Court's attention. The Court should grant certiorari to resolve the important Fourth and Second Amendment questions raised by Jones' case.

Respectfully submitted,

GAIL IVENS

DATED: July 22, 2026

s/ Gail Ivens

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