No.

IN THE
SUPREME COURT OF THE UNITED STATES

DUSTIN OLIVER JONES,

*Petitioner*,

v.

UNITED STATES OF AMERICA,

*Respondent*.

APPENDIX

A. Amended memorandum decision of the Ninth Circuit Court of Appeals in *United States v. Jones*, CA No. 23-422, filed April 24, 2026.

B. Original memorandum decision of the Ninth Circuit Court of Appeal in *United States v. Jones*, CA No. 23-422, filed June 12, 2024.

# Appendix A

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

APR 24 2026

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

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| UNITED STATES OF AMERICA,<br><br>Plaintiff - Appellee,<br><br>v.<br><br>DUSTIN OLIVER JONES,<br><br>Defendant - Appellant. | No. 23-422<br><br>D.C. No.<br>1:21-cr-00004-TMB-MMS-1<br>District of Alaska,<br>Juneau<br><br>ORDER |

Before: BYBEE, FRIEDLAND, and MILLER, Circuit Judges.

The memorandum disposition filed on June 12, 2024 is amended, and the amended memorandum disposition is filed concurrently with this order. The petition for panel rehearing is DENIED.

**NOT FOR PUBLICATION**

FILED

APR 24 2026

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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| UNITED STATES OF AMERICA,<br><br>Plaintiff - Appellee,<br><br>v.<br><br>DUSTIN OLIVER JONES,<br><br>Defendant - Appellant. | No. 23-422<br><br>D.C. No.<br>1:21-cr-00004-TMB-MMS-1<br><br>AMENDED MEMORANDUM* |

Appeal from the United States District Court
for the District of Alaska
Timothy M. Burgess, District Judge, Presiding

Argued and Submitted May 20, 2024
Anchorage, Alaska

Before: BYBEE, FRIEDLAND, and MILLER, Circuit Judges.

Dustin Jones appeals his 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). We have jurisdiction pursuant to 28 U.S.C. § 1291 and affirm.

1. Jones first challenges the lawfulness of his convictions on the theory that

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certain evidence of drug and firearm possession should have been suppressed because it was obtained in violation of the Fourth Amendment. None of his Fourth Amendment arguments withstands scrutiny.

As a threshold matter, we conclude that Jones's boat was a vehicle, not a home, for Fourth Amendment purposes. In conducting this inquiry, we look to whether the boat was: (1) "readily mobile" such that "it could readily have been moved beyond the reach of the police"; (2) "subject to extensive regulation and inspection"; and (3) "the vehicle was so situated that an objective observer would conclude that it was being used not as a residence, but as a vehicle." *California v. Carney*, 471 U.S. 386, 393 (1985) (citation omitted). Although the boat was anchored, it was still readily mobile—the boat was located near open waterways, and an anchor could be raised in less time than it would take for officers to obtain a warrant. *See United States v. Albers*, 136 F.3d 670, 673 & n.3 (9th Cir. 1998) (explaining that a boat's being on "open waters on a large lake" and not "permanently moored" weighed in favor of it being a vehicle). It appears that the boat was not subject to inspection by the State when it was not in operation, *see* Alaska Stat. Ann. § 16.05.480, but because it was not permanently moored or connected to utilities, an objective observer would likely believe that Jones's boat was being used as a vehicle, not a residence, *see Albers*, 136 F.3d at 673 n.3; *Carney*, 471 U.S. at 394 n.3. Together, these considerations persuade us that Jones's vessel was a vehicle for Fourth Amendment purposes.[1]

Our court has not decided what standard must be met to justify entry of a large vehicle to execute an arrest warrant. But even assuming the standard is as high as that required to enter a home, that standard was met here. To enter a dwelling for the purpose of executing an arrest warrant, law enforcement must have "reason to believe the suspect is within." *Payton v. New York*, 445 U.S. 573, 603 (1980). We have concluded that the requirement of reasonable belief "embodies the same standard of reasonableness inherent in probable cause." *United States v. Gorman*, 314 F.3d 1105, 1111 (9th Cir. 2002). The officers met that standard in this case.

Probable cause requires only a "fair probability" considering the totality of the circumstances, "not certainty or even a preponderance of the evidence." *United States v. Gourde*, 440 F.3d 1065, 1069 (9th Cir. 2006) (en banc) (citation omitted). The facts known to the police when they boarded Jones's boat were enough to support a fair probability that Jones was on board. They knew that the vessel was registered to Jones. They had a tip from an identified source confirming that Jones

[1] Our decision in *United States v. Alfonso*, 759 F.2d 728 (9th Cir. 1985), is not to the contrary. *Alfonso*, which was decided before *Carney*, involved the search of an individual cabin on a cargo ship subject to search at the border. *Id.* at 732. Jones's vessel is more akin to the houseboat in *Albers*, both in size and in its ability to be used as a private vehicle. Even if "private living quarters" within a large ship "are at least analogous to a private dwelling," *id.* at 737–38, that does not guarantee those quarters the same privacy protections as a home, *see id.* at 738 (applying "the same level of reasonable suspicion" standard required to search the ship more broadly to the search of the living quarters).

had been aboard the craft in recent days. Surveillance had revealed that a man had also recently been receiving visitors on the boat. And when the police arrived, they found a jet ski tied up alongside the vessel and the bilge pump operating. The district court found the officers' testimony about the usual operation of bilge pumps to be credible and therefore found the running bilge pump to be a "significant fact" indicating that someone was aboard the boat, and this conclusion was not clearly erroneous. The possibility that Jones had left the boat or that someone other than Jones was aboard did not negate probable cause. *Cf. United States v. Diaz*, 491 F.3d 1074, 1076–78 (9th Cir. 2007). The officers' entry upon Jones's boat was therefore reasonable.

In addition, the knock-and-announce rule does not extend to vehicles, so the officers' failure to announce their purpose before boarding the boat did not render their entry unreasonable. *See United States v. Guzman-Padilla*, 573 F.3d 865, 889 (9th Cir. 2009).

The officers' protective sweep of the boat after they had detained Jones was also reasonable. Law enforcement personnel are permitted to conduct "a quick and limited search of premises, incident to an arrest and conducted to protect the safety of police officers or others." *Maryland v. Buie*, 494 U.S. 325, 327 (1990). "[T]he searching officer [must] possess[] a reasonable belief based on specific and articulable facts that the area to be swept harbors an individual posing a danger to those on the arrest scene." *Id.* at 337. The officers arresting Jones possessed this reasonable belief. Again, multiple men had been seen repeatedly visiting the boat. When the officers found Jones, he was attempting to conceal himself. These facts were enough to give rise to a "legitimate concern that other occupants may have been concealed within." *United States v. Wiga*, 662 F.2d 1325, 1333 (9th Cir. 1981).

The officers' protective sweep was also properly limited. The cabin search lasted only about "three and a half minutes." Nothing in the record indicates that the search was more than cursory. The firearms and evidence of drug use were apparently in plain view. One of the officers who conducted the sweep testified that he was careful not to move or open anything, and the district court found this testimony to be credible. In short, nothing the officers did while conducting a protective sweep of the vessel for other occupants ran afoul of the Fourth Amendment.

We therefore conclude that the district court did not err in admitting the evidence of drug and firearm possession, discovered on Jones's boat, at Jones's trial.

2. Jones also challenges the validity of his conviction for being a felon in possession of a firearm by arguing that 18 U.S.C. § 922(g)(1) violates the Second Amendment as applied to him. Although Jones forfeited this argument by failing to raise it before trial as required by Federal Rule of Criminal Procedure 12(b)(3), we "may consider the defense . . . if the party shows good cause." Fed. R. Crim.

P. 12(c)(3). Jones has shown good cause for failing to raise this Second Amendment challenge to his indictment prior to the district court's deadline for pretrial motions. Up to and until more than a year after that deadline, our precedent foreclosed Jones's argument. *Cf. United States v. Aguilera-Rios*, 769 F.3d 626, 631 (9th Cir. 2014). By the time that the Supreme Court decided *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022), opening a new avenue for challenging our precedent, the deadline had long expired. Because Jones "had no reason to challenge" the indictment on Second Amendment grounds until after *Bruen*, he has shown good cause for not raising the challenge in a pretrial motion due over a year before *Bruen*. *Aguilera-Rios*, 769 F.3d at 630.

We thus address the merits of Jones's constitutional challenge. As a threshold matter, the standard of review presents an open question. Typically, constitutional issues not originally raised at trial are reviewed for plain error. *United States v. Chi Mak*, 683 F.3d 1126, 1133 (9th Cir. 2012). But in *United States v. Duarte*, an en banc panel of this court, reviewing a Second Amendment challenge to § 922(g)(1) that was not raised before the district court, "assume[d] without deciding that de novo review" governed its review of the merits. 137 F.4th 743, 750 (9th Cir. 2025) (en banc) (quoting *United States v. Begay*, 33 F.4th 1081, 1089 (9th Cir. 2022) (en banc)), *cert. denied*, No. 25-425, 2026 WL 135692 (U.S. Jan. 20, 2026).

We follow *Duarte*'s lead. There, we stated that "under either standard, the outcome is the same—the district court did not err and § 922(g)(1) is constitutional as applied to non-violent felons." *Id.* Similarly, Jones cannot succeed under either standard of review. Jones claims that § 922(g)(1) is unconstitutional as applied to one "whose felony convictions were for driving under the influence." Because *Duarte* categorically establishes that § 922(g)(1) does not violate the Second Amendment by barring non-violent felons from possessing firearms, *id.*, Jones's challenge fails.

**AFFIRMED.**

# Appendix B

**NOT FOR PUBLICATION**

FILED

JUN 12 2024

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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for the District of Alaska
Timothy M. Burgess, District Judge, Presiding

Argued and Submitted May 20, 2024
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P. 12(c)(3). Jones, however, has not shown good cause for failing to raise this Second Amendment challenge to his indictment before trial.

Good cause can exist when binding precedent forecloses an argument before trial begins. *United States v. Aguilera-Rios*, 769 F.3d 626, 631 (9th Cir. 2014). Jones's argument—that under the Supreme Court's decision in *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022), the Second Amendment prohibits the federal government from punishing him for possessing a firearm—could have been raised prior to the start of his trial. *Bruen* was decided eighteen days before Jones's trial began. And although our decision in *United States v. Vongxay*, 594 F.3d 1111 (9th Cir. 2010), foreclosed Jones's argument before *Bruen*, his briefing on appeal demonstrates that he could have argued *Bruen*'s incompatibility with *Vongxay* to overcome that hurdle. Instead, he waited until this appeal to make the attempt. We therefore conclude that Jones lacked good cause for failing to raise the Second Amendment issue before trial. Accordingly, we affirm Jones's conviction for violating § 922(g)(1).

**AFFIRMED.**

# UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

## Information Regarding Judgment and Post-Judgment Proceedings

### Judgment

- This Court has filed and entered the attached judgment in your case. Fed. R. App. P. 36. Please note the filed date on the attached decision because all of the dates described below run from that date, not from the date you receive this notice.

### Mandate (Fed. R. App. P. 41; 9th Cir. R. 41-1 & -2)

- The mandate will issue 7 days after the expiration of the time for filing a petition for rehearing or 7 days from the denial of a petition for rehearing, unless the Court directs otherwise. To file a motion to stay the mandate, file it electronically via the appellate electronic filing system or, if you are a pro se litigant or an attorney with an exemption from the electronic filing requirement, file one original motion on paper.

### Petition for Panel Rehearing (Fed. R. App. P. 40; 9th Cir. R. 40-1) Petition for Rehearing En Banc (Fed. R. App. P. 35; 9th Cir. R. 35-1 to -3)

**(1) Purpose**

**A. Panel Rehearing:**

- A party should seek panel rehearing only if one or more of the following grounds exist:
  - ➢ A material point of fact or law was overlooked in the decision;
  - ➢ A change in the law occurred after the case was submitted which appears to have been overlooked by the panel; or
  - ➢ An apparent conflict with another decision of the Court was not addressed in the opinion.
- Do not file a petition for panel rehearing merely to reargue the case.

**B. Rehearing En Banc**

- A party should seek en banc rehearing only if one or more of the following grounds exist:
  - ➢ Consideration by the full Court is necessary to secure or maintain uniformity of the Court's decisions; or
  - ➢ The proceeding involves a question of exceptional importance; or

- The opinion directly conflicts with an existing opinion by another court of appeals or the Supreme Court and substantially affects a rule of national application in which there is an overriding need for national uniformity.

**(2) Deadlines for Filing:**

- A petition for rehearing must be filed within 14 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the United States or an agency or officer thereof is a party in a civil case, the time for filing a petition for rehearing is 45 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the mandate has issued, the petition for rehearing should be accompanied by a motion to recall the mandate.
- See Advisory Note to 9th Cir. R. 40-1 (petitions must be received on the due date).
- An order to publish a previously unpublished memorandum disposition extends the time to file a petition for rehearing to 14 days after the date of the order of publication or, in all civil cases in which the United States or an agency or officer thereof is a party, 45 days after the date of the order of publication. 9th Cir. R. 40-2.

**(3) Statement of Counsel**

- A petition should contain an introduction stating that, in counsel's judgment, one or more of the situations described in the "purpose" section above exist. The points to be raised must be stated clearly.

**(4) Form & Number of Copies (9th Cir. R. 40-1; Fed. R. App. P. 32(c)(2))**

- The petition shall not exceed 15 pages unless it complies with the alternative length limitations of 4,200 words or 390 lines of text.
- The petition must be accompanied by a copy of the panel's decision being challenged.
- An answer, when ordered by the Court, shall comply with the same length limitations as the petition.
- If a pro se litigant elects to file a form brief pursuant to Circuit Rule 28-1, a petition for panel rehearing or for rehearing en banc need not comply with Fed. R. App. P. 32.

- The petition or answer must be accompanied by a Certificate of Compliance found at Form 11, available on our website at www.ca9.uscourts.gov under *Forms*.
- Attorneys must file the petition electronically via the appellate electronic filing system. No paper copies are required unless the Court orders otherwise. If you are a pro se litigant or an attorney exempted from using the appellate ECF system, file one original petition on paper. No additional paper copies are required unless the Court orders otherwise.

**Bill of Costs (Fed. R. App. P. 39, 9th Cir. R. 39-1)**

- The Bill of Costs must be filed within 14 days after entry of judgment.
- See Form 10 for additional information, available on our website at www.ca9.uscourts.gov under *Forms*.

**Attorneys Fees**

- Ninth Circuit Rule 39-1 describes the content and due dates for attorneys fees applications.
- All relevant forms are available on our website at www.ca9.uscourts.gov under *Forms* or by telephoning (415) 355-8000.

**Petition for a Writ of Certiorari**

- The petition must be filed with the Supreme Court, not this Court. Please refer to the Rules of the United States Supreme Court at www.supremecourt.gov.

**Counsel Listing in Published Opinions**

- Please check counsel listing on the attached decision.
- If there are any errors in a published opinion, please send a letter **in writing within 10 days** to:
  - Thomson Reuters; 610 Opperman Drive; PO Box 64526; Eagan, MN 55123 (Attn: Maria Evangelista, maria.b.evangelista@tr.com);
  - **and** electronically file a copy of the letter via the appellate electronic filing system by using the Correspondence filing category, or if you are an attorney exempted from electronic filing, mail the Court one copy of the letter.

# UNITED STATES COURT OF APPEALS
# FOR THE NINTH CIRCUIT

## Form 10. Bill of Costs

*Instructions for this form: http://www.ca9.uscourts.gov/forms/form10instructions.pdf*

**9th Cir. Case Number(s)**

**Case Name**

The Clerk is requested to award costs to *(party name(s))*:

I swear under penalty of perjury that the copies for which costs are requested were actually and necessarily produced, and that the requested costs were actually expended.

**Signature** **Date**

*(use "*s/[typed name]*" to sign electronically-filed documents)*

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| DOCUMENTS / FEE PAID | No. of Copies | Pages per Copy | Cost per Page | TOTAL COST |
| Excerpts of Record* | | | $ | $ |
| Principal Brief(s) *(Opening Brief; Answering Brief; 1st, 2nd , and/or 3rd Brief on Cross-Appeal; Intervenor Brief)* | | | $ | $ |
| Reply Brief / Cross-Appeal Reply Brief | | | $ | $ |
| Supplemental Brief(s) | | | $ | $ |
| Petition for Review Docket Fee / Petition for Writ of Mandamus Docket Fee / Appeal from Bankruptcy Appellate Panel Docket Fee | | | | $ |
| | | | **TOTAL:** | $ |

***Example:** *Calculate 4 copies of 3 volumes of excerpts of record that total 500 pages [Vol. 1 (10 pgs.) + Vol. 2 (250 pgs.) + Vol. 3 (240 pgs.)] as:*
*No. of Copies: 4; Pages per Copy: 500; Cost per Page: $.10 (or actual cost IF less than $.10);*
*TOTAL: 4 x 500 x $.10 = $200.*

*Feedback or questions about this form? Email us at forms@ca9.uscourts.gov*