24-6046

No. 24A369



# In The Supreme Court of the United States

**Steven E. Walker,**

*Petitioner*

**vs.**

**Robb Bonta,** Attorney General of The State Of California; **Merrick Garland,** Attorney General Of The United States Of America; And **DOES 1-100,**

*Respondents.*

Petition For Writ of Certiorari under Article III, Supreme Court Rule 11 and *United State v. Rahimi*, 144 S. Ct. 1889 (2024)[1]

On Petition for a Writ of Certiorari Returnable to United States Court of Appeals for The Ninth Circuit.

**This Case Arises Under the Second Amendment to the Constitution of the United States**

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*In Pro Se*

[1] This *Pro se* Petition must be liberally construed. No technical forms of pleading are required. *Swierkiewicz v Sorema NA*, 534 U.S. 506, 508-514 & n. 1 (2002); *Estelle v Gamble*, 429 U.S. 97, 106 (1976).

## Questions Presented

1. In *District of Columbia v. Heller*, 554 U.S. 570, (2008), this Court rejected the government's belief that it has a plenary power over the individual's Second Amendment right to keep and bear arms. *Id* at 598-602. The Court further recognized the *prohibition* of government power over the right "is general" and that "[n]o clause in the constitution" could give to either the state or federal government "a power to disarm the people" as the Second Amendment is "a restraint" on both. *Id.* at 607.

Question: Does the unqualified constitutional prohibition established by the Second Amendment delegate to government a free-floating power to infringe upon the right of the people to keep and bear weapons for purposes of security, safety, and self-defense?

2. In *NY Pistol & Rifle Assc. v. Bruen*, 597 U.S. 1, 34 (2022), this Court held that the government must carry the burden of demonstrating whether the evidence supporting their gun control regulation is consistent with the principles underlying the Second Amendment, to overcome the presumption of protected conduct. Yet, there is not an established standard of proof.

Question: Does the constitutional burden of proof require the government to demonstrate by clear and convincing evidence that their weapons regulations, are consistent with the principles underlying the Second Amendment?

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The following Material Records are on file with the Clerk's Office, in Case No 24A369, which this Court must take Judicial Notice of Pursuant to Federal Rules of Evidence, Rule 201(c)(2), and which are incorporated herein by reference:

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### United States Constitution



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## Parties to the Proceeding

Petitioner/Applicant, Steven Walker is a member of the political community, acting in *pro se and In Forma Pauperis*. *See* IFP Motion in Case No. 24A369. (This motion is available in the Clerk's Office.)

Respondent, the government of the people of the United States of America, and State of California, whose agents, officials and representatives are collectively people of the United States who swore an oath to support and protect the Constitutional rights of Mr. Walker, members of this Court included.

## Proceedings Below/Related Cases

This case and the proceedings below arise under the United States Constitution:

*Steven Walker v. United States et al.*, 23-55525 United States Court of Appeals for the Ninth Circuit. *See* Appendix A, pp. 49-51 (This material is available in the Clerk's Office under Case No. 24A369 and Judicial Notice must be taken under Federal Rules of Evidence, Rule 201(c)(2).)

*Steven Walker v. United States et al.*, No. 20-cv-31-DMS (AGS), United States District Court, Southern District of California. See Appendix A, pp. 67-73, and Appendix B, First Amended Complaint in case No. 20-cv-31-DMS (AGS) (This material is available in the Clerk's Office under Case No. 24A369 and Judicial Notice must be taken under Federal Rules of Evidence, Rule 201(c)(2).)

## Petition For Writ of Certiorari

1. In this case, the Ninth Circuit has issued orders placing Petitioner's appeal in an indefinite abeyance for no equitable reason other than to await the outcome of an unrelated case. *See* Appendix A, pp. 49-50 (This material is available in the Clerk's Office under Case No. 24A369 and Judicial Notice must be taken under Federal Rules of Evidence, Rule 201(c)(2).) The Ninth Circuit's decision to delay Petitioner's case while it considers an unrelated case, after this appeal had been fully briefed by both parties and where the respondent government elected not to dispute the issues, violates

procedural due process. Under Article III, the Ninth Circuit has an "unflagging obligation" to hear and resolve questions properly before it. *FBI v. Fikre*, 144 S.Ct. 771, 777 (2024). It cannot make time stand still while it considers another case. *Cf. Nken v. Holder*, 129 S.Ct. 1749, 1754 (2009). Especially, where this case arises under the Constitution and involves a violation of enumerated rights. *Marbury v. Madison*, 5 U.S. 137, 179 (1803)(Judges are bound by the Constitution to "administer justice without respect to persons and do equal right to the poor and to the rich" and faithfully and impartially discharge all the duties incumbent on them) Such is not the case here. *See* Appendix A, pp. 5-48; *also see* Application for Injunctive Relief, Filed in Case No. 24A369, on October 11, 2024, docketed on October 18, 2024, and denied by Justice Kagan on October 19, 2024. (This material is available in the Clerk's Office under Case No. 24A369 and Judicial Notice must be taken under Federal Rules of Evidence, Rule 201(c)(2).)[See attached copy of the Docket and Order for Case 24A369][2]

2. The underlying premise and undisputed facts of this case arises under the Second Amendment to the United States Constitution. *See* Application in Case No. 24A369 at pp. 3, 6-15 & 25-40. (This material is available in the Clerk's Office under Case No. 24A369 and Judicial Notice must be taken under Federal Rules of Evidence, Rule 201(c)(2).) The petitioner is claiming that both State and Federal government agents, officials, and representatives have no constitutional delegated power to interfere with, infringe upon, or limit the necessary right of the People to keep and bear weapons. *See* Application at pp. 3, 6-15 & 25-40. (This material is available in the Clerk's Office under Case No. 24A369 and Judicial Notice must be taken under Federal Rules of Evidence, Rule 201(c)(2).)[3]

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[2] The denial of the Application was unreasoned, did not resolve the issues, and was an improper exercise of judicial power. *See* Order.

[3] This includes all weapons "necessary to" secure and defend a person's right to life, liberty and the pursuit of happiness. U.S. Const. Amend II; *Caetano v. Massachusetts*, 136 S.Ct. 1027, 1030 & n. 3 (2016)(*Per Curiam*).

## Article III Jurisdiction

The judicial power of the United States *shall be extended to all* cases arising under the constitution. *Marbury, Supra,* 5 U.S. at 178. [Emphasis added.] Since this case arises under the Second Amendment to United States Constitution, and Petitioner is claiming an injury under that provision, then this Court has an "unflagging obligation to hear and resolve questions properly" before it. *Fikre, Supra,* 144 S.Ct. at 777. Article III, in conjunction with 28 U.S.C. §2101(e) and Supreme court Rule 11, give this Court the jurisdiction to hear and resolve this matter in order to say what the law is. This case is properly brought before this Court, because the Ninth Circuit is a biased decisionmaker when it comes to Second Amendment cases. *See* Application at pp. 2-15, Appendix A, pp. 52-66 (This material is available in the Clerk's Office under Case No. 24A369 and Judicial must be taken under Federal Rules of Evidence, Rule 201(c)(2).) *Also see* accompanying Motion at pages 2-5.

## Constitutional and Statutory Provisions Involved

Article VI, Clause 2, of the Constitution of the United States enumerates that: "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

Article VI, Clause 3, enumerates that: "The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution." This also means supporting Constitutional enumerated and reserved rights.[4]

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[4] Essential to all written constitutions is that an act of legislature that is repugnant to the Constitution is void. *Marbury, Supra,* 5 U.S. at 176-179. And a court is obligated, without reservation, to declare it as such. *Ibid.*

The Second Amendment to the Constitution of the United States enumerates that: "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.*"

The Ninth Amendment to the Constitution of the United States enumerates that: The enumeration in the Constitution, of certain rights, *shall not be construed* to deny or disparage others retained by the people.[5]

18 U.S.C. Chapter 44 commencing at sections 921-934, titled the Federal Firearms Control Act. As this act is concerned, in its entirety, violates the Second Amendment and Ninth Amendments to the Constitution of the United States. In that, the entire act specifically and generally infringes upon and denies or disparages the right of the people to keep and bears arms.

California Penal Code Part 6, commencing with sections 16000-34400, titled the Control of Deadly Weapons Act. As this act is concerned, in its entirety, violates the Second Amendment and Ninth Amendments to the Constitution of the United States. In that, the entire act specifically and generally infringes upon and denies or disparages the right of the people to keep and bears arms.

## Statement of the Case

In this case the government has elected not to dispute the facts or claims. Appendix A at p. 51. (This material is available in the Clerk's Office under Case No. 24A369 and Judicial Notice must be taken under Federal Rules of Evidence, Rule 201(c)(2).) Yet, the Ninth Circuit will not exercise its power to resolve the undisputed issues but placed the appeal in indefinite abeyance for no equitable reason. *See* Application at pp. 1-15. (This material is available in the Clerk's Office under Case No. 24A369 and Judicial Notice must be taken under Federal Rules of Evidence, Rule 201(c)(2).)

It is also clear that the people of the representative state and federal

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[5] The Ninth Amendment also applies to the enumerated rights, as those rights are obviously retained.

government (hereafter government) have created and are enforcing illegitimate laws which deceptively trespass upon the Second Amendment rights of the People in general, including Walker. *See* Calif. Penal Code §§16000-34370 & 29800-29830; *also see* 18 U.S.C. §§921-931. These laws cannot be presumed valid where government is prohibited by the Constitution from enacting and enforcing them. U.S. Const. Art. VI, Cl. 2 & U.S. Const. Amend. II; *and* Appendix B at pp. 3-5, 8-10, 12-29, & 20-45. (This material is available in the Clerk's Office under Case No. 24A369 and Judicial Notice must be taken under Federal Rules of Evidence, Rule 201(c)(2).)

It is undeniably clear that Government is attempting to destroy the Second Amendment rights of all free citizens under the disingenuous and ineffectual pretext of controlling Gun violence.[6] And the federal courts are allowing them to use this unauthorized power with impunity. *See* Appendix A, pp. 52-66. (This material is available in the Clerk's Office under Case No. 24A369 and Judicial Notice must be taken under Federal Rules of Evidence, Rule 201(c)(2).)

Also, the Ninth Circuit cannot stay this case indefinitely while awaiting the outcome of an unrelated case which conveys unrelated questions. Article III of the Constitution vests courts with the power to decide only the "*actual cas[e]*" *before it, "not abstractions."* *United States v. Rahimi*, 144 S.Ct. 1889, 1910 (2024)(Gorsuch, J concurring.) [Emphasis added.] The questions in this case are narrow: Whether the state and federal governments have a legitimate power to

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6 Yet, this is a ruse because the people in government are the number one exporters of weapons for the purpose of promoting world-wide armed violence. *See* https://www.cnn .com/2022/07/11 /politics /biden-mass-shooting-survivors - gun-safety-legislation /index.html; *but see* https: //www.forbes.com/sites/ williamhartung/2022/03/18/were-1-the-us-government-is-the-worlds-largest-arms dealer/?sh = 4fec- 36215bb9; *also* https://www.cnn.com/2016/05/24/ politics/us-arms-sales-worldwide/ index.html; *also see* Fiscal Year 2022 U.S. Arms Transfers and Defense Trade-United States Department of State at https://www. state.gov/ fiscal-year-2022-u-s-arms-transfers-and-defense-trade/; *and* https:// en.wikipedia.org/ wiki/United_ States_ and_statesponsored_terrorism.

invade upon a right where the Constitution undeniably prohibits any infringement of the right. Appendix B at pp. 1-11, 12-19, 20-45 & 46-54. (This material is available in the Clerk's Office under Case No. 24A369 and Judicial Notice must be taken under Federal Rules of Evidence, Rule 201(c)(2).) The Ninth Circuit therefore has no legitimate reason other than bias, to hold the Petitioner's appeal in abeyance until *United States v Duarte* is decided by a biased majority of en banc judges. *See* Appendix A, pp. 50-66. (This material is available in the Clerk's Office under Case No. 24A369 and Judicial Notice must be taken under Federal Rules of Evidence, Rule 201(c)(2).)[7]

Rather, under Article III, a court must apply the Second Amendment by examining text, history and precedent. Unambiguous text like "shall not be infringed" and "the right of the people to keep and bear arms" says what it means and means what it says. *Rahimi, supra,* 144 S. Ct. 1911 (Kavanaugh J. Concurring).[8]

**1. Undisputable Facts of *Status Quo Ante*.**

Thirty-four (34) years ago, Petitioner Walker was convicted and punished for committing a one-time, non-injury felony. The weapon discharged a single shot into the air harming no one. Under the terms of the Constitution, he paid his debt to society and was discharged from all existing felony commitments because he *no longer* posed a credible threat of danger to the community. *See* California Penal Code § 3000, subd. (b)(1) [discharge provision]; *e.g. In re Dannenberg,* 23 Cal. Rptr. 3d 417, 428-431 (2005)[Inmate is to be released

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[7] The decision in *U.S. v Duarte* must "be taken in connection with the case in which those expressions are used," *Cohens* v. *Virginia,* 6 Wheat. 264, 399 (1821) and may not be "stretch[ed] . . . beyond their context." *Rahimi,* 144 S. Ct. 1910 (Gorsuch, J, concurring), *citing Brown* v. *Davenport,* 596 U. S. 118, 141 (2022).

[8] The Court has stressed that the Second Amendment is not a second-class right. *NY Pistol Assn.* v *Bruen,* 597 U.S. 1, 70 (2022). As such, it is "no 'poor relation to other constitutional rights.'" *Sheetz v County of Eldorado,* 601 U.S. 267, 283 (2024)(Gorsuch J. Conc.). Therefore, each case must be taken in the context with the facts of that case, not abstractions.

where it is determined that they no longer pose an unreasonable risk of danger to public safety]. These facts are incontrovertible. Being discharged, he is no longer disqualified from voting or serving on a jury. *See* Calif. Const. Art II, §2(b). He is employed as a Health & Safety Officer for State government and is a *free citizen*, who swore an oath to support and defend the Constitution of the United States. *See* Calif. Const. Art XX, §3; and Cal. Gov. Code §§18150-18158.[9]

Walker's reserved rights to armed security, personal safety, and defense of his life, freedom, family, home, and homeland secured by the Constitution, are continually being injured *daily* because his ability to exercise those rights is being chilled by government-imposed status-based presumptions and sanctions stemming from non-delegated authority, as well as the Ninth Circuit's stay of this case. He otherwise retains every single civic and constitutional right which existed prior to his conviction, even the right which "shall not be infringed." *See* U.S. Const. Art VI. Cl. 2; U.S. Const. Amend. II; U.S. Const. Amend. IX; *and* U.S. Const. Amend. XIV. In essence, Walker's discharge from the court decree and corresponding conviction resulted in a "paid debt" to society, which under the principles of the Constitution reset his footing as a native citizen to *status quo ante*. Appendix B, pp. 7-24; *Cf. U.S. v. Kincade*,379 F.3d 813, 872 (9th Cir. 2004) [Kozinski J, dissent.] ["Once Kincade completes his period of supervised release, he becomes an ordinary citizen just like everyone else. *Having paid his debt to society, he recovers his full* . . . rights, and police have no greater authority to invade his sphere than anyone else's."] Correspondingly, upon the discharge

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[9] At the time of his criminal conviction in 1990, Walker was determined by a court to pose a "credible threat" to society. However, once he discharged from that decree, the threat was no longer credible and therefore any government-imposed restrictions on his right to keep and bear firearms is no longer consistent with the principles underlying the Second Amendment. *Cf. Rahimi,* 144 S. Ct. 1901-1903 [*Temporary* disarmament for duration of court order is consistent with principles of Second Amendment]. Essentially, the facts which supported his criminal conviction in 1990 are no longer in existence in 2024 and have not been in existence since 1997. And the government elected not to dispute these highly relevant facts. Appendix A, p. 51.

of his felony commitments, Walker became a full free member of society, retaining "all the rights of a native citizen, and standing, in the view of the constitution, on the footing of a native. The constitution does not authorize [government] to enlarge or abridge those rights." *Cf. Osborn v. Bank of the United States*, 22 U.S. 738, 827 (1824); *Luria v. United States*, 231 U.S. 9, 22 (1913); *Afroyim v Rusk*, 387 U.S. 253, 257-262 (1967)(The Constitution grants no powers allowing government to strip a citizen of their rights). Since Walker no longer poses a credible threat to society, the government has no legitimate authority to infringe upon his constitutional right to keep and bear (fire)arms. *Rahimi*, 144 S. Ct. at 1903.

## Reasons for Granting the Writ

### I. The Constitution Prohibits Government the Power To Deny, Disparage or Infringe Upon Enumerated Rights

Awaiting the outcome of *USA v Duarte*, fails to meet the requirements set forth in *Nken, Supra,* 129 S.Ct. at 1754 (No court can make time stand still while it considers an appeal). Procedural due process is therefore being disregarded by the Ninth Circuit for personal biases towards the Second Amendment. *See* Appendix A, pp. 50-51 & 52-66.

The Ninth Circuit need not await the outcome of *Duarte*, to decide this case because this Court has provided it with the guidance necessary for a reasoned evaluation of Second Amendment challenges. *See Rahimi*, 144 S. Ct. 1897 (text & history are the guidelines, but text controls). Moreover, the lower courts' reliance on virtuous/law-abiding/responsible citizen rhetoric is not compatible with the Constitution. *Id* 144 S. Ct 1903 ("Responsible" is a vague term). *But see* Appendix A, pp. 67-73—where district court judge relies on unsupported dicta to *sua sponte* dismiss the first amended complaint for no apparent reason other than "status." *Id.* at pp. 68-69 & 72-73. [10] Thereby re-

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[10] To what extent does the Constitution allow the government to regulate speech or guns, for example? Either way, the analysis is the same—"does the constitutional provision, as originally understood, permit the challenged law

labeling a fundamental right to sheer conditioning. Nevertheless, where there is no exception expressed nor implied from the text, an exception to the textually enumerated right cannot be created out of thin air, regardless of any assumed historical understanding, because the basic principle is the "text of the Constitution always controls." *Id*, 144 S.Ct. 1912 & n. 2; *also compare Ross v. Blake*, 136 S.Ct. 1850, 1856-1857 (2016) (Court's cannot add unwritten exceptions to rigorous textual requirements).

### A. The Constitutional Prohibition Favors Walker, Not the Government.

In *NY Pistol & Rifle Assoc, v Bruen*, 597 U.S. 1 (2022), this Court held that "when the Second Amendment's plain text covers an individual's conduct, the Constitution *presumptively protects that conduct.*" To justify its regulation infringing upon that conduct, the government may not simply posit that the regulation promotes an important interest. Rather, the government *must demonstrate* (a) they have the *constitutional authority* to regulate[11]; *and* (b) whether "the regulation is consistent with this Nation's historical tradition of firearm regulation." Only if their power is valid and the regulation is consistent

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where *the constitutional baseline is protection of the textually enumerated right.*" *Rahimi, supra*, 144 S. Ct. 1912 & n. 1 (Kavanaugh J, Concurring) [Emphasis added.] The point is the Constitution does not allow government the authority to regulate or control rights. The Ninth Amendment strictly prohibits that type of unreasonable construction when it comes to enumerated and retained rights. *E.g. Martin v. Hunter's Lessee*, 14 U.S. 304, 326 (1816).

11 "Whenever, therefore, a question arises concerning the constitutionality of a particular power, the first question is whether the power be expressed in the Constitution. If it be, the question is decided. If it be not expressed, the next inquiry must be whether it is properly an incident to an express power and necessary to its execution. If it be, then it may be exercised by Congress. If not, Congress cannot exercise it." It is, therefore, necessary *to search the Constitution* to ascertain whether or not the power is conferred. *United States v Harris*, 106 U.S. 629, 636 (1883). Essentially, the Constitution is to be searched to find the power to regulate essential rights, not abstract historical analogues under the guise of analytical guesswork.

with this Nation's historical tradition may a court conclude that the individual's conduct falls outside the Second Amendment's "'unqualified command.'" *Bruen,* at 17. Moreover, *Bruen* emphasized that the "burden" to overcome the presumption of Constitutional protected conduct falls on the government to justify its infringement, and *only if* the government carries that burden, might they show that the proposed course of conduct is not protected. *Id.* 597 U.S. at 33-34; *also see Rahimi,* 144 S. Ct. 1897.

In this case, the government has elected not to carry its burden, and therefore, has elected not to overcome the presumption of protected conduct. Appendix A at p. 51. Consequently, where a party, here the government, "has made no attempt to address the issue" appellate courts "will not remedy the defect, especially where, as here, 'important questions of far-reaching significance' are involved." *Carducci v Regan,* 714 F.2d 171, 177 (D.C. Cir. 1983). Particularly, where the government's power to interfere is prohibited by the Constitution. U.S. Const. Art. VI & U.S. Const. Amends II & IX; *also see Rahimi,* 144 S. Ct. 1924 (Barrett J Conc.)("A regulation is constitutional *only if* the government affirmatively proves that it is 'consistent with the Second Amendment's *text and historical understanding*'" of the text.) Relying solely on historical analogues to the exclusion of text is impermissible.

The only determination by a court in this matter is (1) does the government have a valid constitutional delegated power to infringe, and (2) does the historical analogue and/or the current regulation *remotely* "interfere" with the right to keep and bear arms. If either "infringe" upon the right they are inconsistent with the text of the Amendment *Rahimi,* S. Ct. 1912 & n. 2 (Kavanaugh, J Concurring) ("The text of the Constitution always controls. So history contrary to clear text is not to be followed"). Thus, any law or principle which precludes, bans, restricts, or limits a person's right *to obtain and convey* weapons is an infringement of the right, period. There are no exceptions built into the text. The *right to keep and bear* weapons is absolute. It "shall not be infringed." U.S. Const. Amend. II. Basically, "[o]nly the written word is the law,

and all persons are entitled to its benefit." *Bostock v Clayton County*, 590 U.S. 644 , 653 (2020). Ultimately, those provisions of the law, which are broader than is warranted by the clause of the Constitution by which they are supposed to be authorized, *cannot be sustained. Harris, Supra*, 106 U.S. at 641.

Appropriately, Walker has shown through text, history and precedent a plausible likelihood that under the Second Amendment's "unqualified command" government is prohibited from exercising a power which encroaches upon his right to keep and bear arms-including firearms. *See District of Columbia v Heller*, 554 U.S. 571 at 599, 607, 612-613, 616-618, & 634 (2008) (*No clause in the Constitution grants to government any plausible power* to disarm the people, nor does the government have the power to invade or destroy the right to keep and bear arms)(cleaned up). Basically, the constitutional "baseline" is protection of the *textually* enumerated right. *Rahimi*, 144 S. Ct. 1912 n.1 (Kavanaugh J, Concur).

**(1) "Shall not be infringed," Textually and Historically Prohibits Government the Power to Encroach Upon, Limit, or Take away the right of the people, *to* keep and bear arms-weapons.**

*Bruen and Heller both* held that under the Second Amendment government has *no power* to choose whether a person can exercise the right to keep and bear arms. *Id.*, 597 U.S. at 23 & 554 U.S. at 634. That is because the Second Amendment's fixed command, since 1791, abolished government discretion to act in a way that encroaches upon, takes away, or limits *the right.* The government and the courts therefore cannot add unwritten limits which deviate from the Second Amendment's "rigorous textual requirements". *E.g. Ross, supra*, 136 S. Ct. at 1856-57 ("[t]he mandatory `shall' ... normally creates an obligation impervious to . . . discretion"); *see also*, Krapivkina, O.A. 2017. "*Semantics of the verb shall in legal discourse.*" *Jezikoslvlje*, 18(2), pp. 305-317 ("*Shall not* is used to express prohibition..." *id.* at p. 310). Consequently, "post-ratification adoption or acceptance of laws that are inconsistent with the

original meaning of the constitutional text obviously cannot overcome or alter that text." *Bruen*, 597 U.S. at 36 ("the text controls"). And, to the extent there are multiple plausible interpretations the courts "will favor *the one* that is more consistent with the Second Amendment's command." *Bruen*, 597 U.S. at 44 n. 11.

Principally, the textually enumerated right *shall not be* infringed. This is a "mandatory" command for the protection of the rights of the citizen that "must be followed or any acts done will be invalid." *French v. Edwards*, 80 U.S. 506, 511 (1872); *Bostock, supra*, 590 U.S. at 669-670 (when Congress chooses not to include any exceptions to a broad rule, courts apply the broad rule and speculation as to why exceptions were not included is particularly dangerous); *Leedom v Kyne*, 358 U.S. 184, 189 (1958) (A definite prohibition cannot be overridden with a view that it was intended to be ignored). Also, a court cannot "roam at large in the boundless fields of (historical) speculation" to seek out or create exceptions where the text does not provide for any. *Lake County v Rollins*, 130 U.S. 662, 670 (1889). Ultimately, under Article VI, courts are "not free to rewrite" the text where the "unambiguous" constitutional command is the right "shall not be" infringed. *Cf. McNeil v. United States*, 508 U.S. 106, 111-113 (1993); U.S. Const. Amends. II & IX. Also, no decree can confer power on any branch of government, "which is free from the restraints of the Constitution." *Reid v. Covert*, 354 U.S. 1, 16 (1957); *Rahimi*, 144 S. Ct. 1911 ("The text of the Constitution is the 'Law of the Land.' Art. VI.")(Kavanaugh J, Concurring): *and* U.S. Const. Amends. II, & IX.

Consequently, constitutional principles tip the scales of justice sharply in favor of prohibiting government the power to encroach upon the right, rather than allowing government the *whatsoever* authority to limit it. To be clear, neither the state nor federal governments have a "free-floating" power to interfere with fundamental constitutional rights. "A power unmoored from the Constitution would lack both justification and limits." Consequently, governments' authority to regulate the right of the people to keep and bear

firearms, "*must derive from* the Constitution, not the atmosphere." *Haaland v. Brackeen,* 599 U.S. 255, 273 (2023); *e.g. Home Building & Loan Assn. v. Blaisdell,* 290 U.S. 398, 452 (1934) (Southerland, J. Dissenting) (Constitutional restrictions upon the exercise of power are not flexible). More to the point, "[n]o powers can be exercised which *are prohibited* by the Constitution, or which are contrary to its spirit." *Dred Scott v Sandford,* 60 U.S. 393, 542 (1857)(McClean J., Dissenting). And the Second Amendment's command and spirit is an express prohibition on government "not to do certain things." *Dred Scott,* 60 U.S. at 614 (Curtis, J., Dissenting).[12]

The Second Amendment is very clear. There is nothing vague about *shall not be* infringed—*i.e. shall not be* violated; *shall not be* encroached upon; *shall not be* limited; *shall not be* trespassed upon; *shall not be* invaded; *shall not be* overstepped; *shall not be* disobeyed; *shall not be* disregarded.

It could not be otherwise. The Constitution stretches to government a restrained sphere of enumerated powers, not a series of regulatory blank checks. Thus, its authority to legislate with respect to arms "cannot override foundational constitutional constraints." *Haaland,* 599 U.S. at 276 & n. 3.[13] The Second Amendment's command is one of those written foundational restrictions which must be favored. *Bruen,* 597 U.S. at 44 n. 11; *Heller,* 554 U.S. at 576-77, *relying on United States v Sprague,* 282 U.S. 716, 731-32 (1931). Essentially,

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[12] Where the text and meaning are clear, judicial inquiry "is complete." *Cf. Rubin v, United States,* 449 U.S. 424, 430 (1981). Basically, the Amendment gives "to the humblest, the poorest, the most despised ... the same rights and the same protection ... as it gives to the most powerful, the most wealthy, or the most haughty...." *Cf. Students of Fair Admissions v. President and Fellows of Harvard College,* 143 S. Ct. 2141, 2159-60 (2023). Therefore, relying on ambiguous history and tradition to the exclusion of clear text in an effort to find imaginary exceptions is unworkable. *E.g. Rahimi* 144 S. Ct. 1927-28 (Jackson, J. concurring).

[13] "The powers of the legislature are defined and limited; and that those limits may not be mistaken, or forgotten, *the constitution is written.*" *Marbury, Supra,* 5 U.S. at 176-177.[Emphasis added.].

government "can claim no powers which are not granted to it by the constitution," and the powers granted, must be such as are expressly given, or given by necessary implication. *Hunter's Lessee, Supra,* 14 U.S. 326. Undoubtedly, *shall not be infringed* conveys a definite meaning which "*must be accepted,* and neither the courts nor the legislature have the right to add to it or take from it." *Lake County,* 130 U.S. at 670. [Emphasis added.][14] Basically, the enumerated Second Amendment right "*shall not be construed* to deny or disparage" the essential right of armed self-defense. U.S. Const. Amend. IX.[Emphasis added.]

**(2) Historical Principles of The Second Amendment Support Walker's Claims for Relief in this case.**

Justice Kavanaugh has stated that "*Heller* rested on constitutional text and history," and laid the foundation for *Bruen. Rahimi, Supra,* 144 S.Ct. at 1923 (Kavanaugh J, Concurring) When one examines *the Second Amendment's* enumerated text under an historical consideration of its purpose as set forth by the *Heller* Court, they clearly glean an understanding that "shall not be infringed" says what it means and means what it says.

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[14] "The first and most important rule in constitutional interpretation is to *heed the text*—that is, the actual words of the Constitution—and to interpret *that text* according to its ordinary meaning as originally understood. As a general matter, the text of the Constitution says what it means and means what it says. And unless and until it is amended, that text controls." *Rahimi, Supra,* 144 S. Ct. 1911 (Kavanaugh J., Concurring). Appropriately, government and the courts have no power to go "hunting after probable meanings not clearly embraced in that language." *Lake County,* 130 U.S. at 671. Consequently, under the Constitution, courts only have the power *to apply* the principles which have already been established by *the written* Constitution. Convincingly, where the courts have "long been 'reluctant' to recognize rights" which are not mentioned in the Constitution, then a similar lack of enthusiasm must be adopted for exceptions to enumerated rights *which are not mentioned at all. Cf. Dobbs v. Jackson Women's Health Organization,* 597 U.S. 215, 239 (2022).

*Heller* elaborated that the principles underlying the Constitution are that "*[a]ll* men, without distinction . . . have *the right* to keep and bear arms to defend their homes, families or themselves." "[T]he right to have full and equal benefit of all laws and proceedings concerning *personal liberty, personal security* . . . including the constitutional right to bear arms, *shall be* secured to and enjoyed by *all* the citizens." *Id.* 554 U.S. at 615-616. [Emphasis added.]

*Heller* also developed the underlying basis of shall not be infringed "*undoubtedly is,* that the people, . . . *shall have the right to keep and bear arms; and they need no permission or regulation of law for the purpose."* The historical understanding of the Amendment at the time of its ratification up to and including the adoption of the Fourteenth Amendment, *unambiguously* demonstrates that the *underlying purpose* of the Second Amendment "is to secure to the people the ability to oppose themselves in military force against the usurpations of government, as well as against enemies from without, that government *is forbidden by any law or proceeding to invade or destroy the right to keep and bear arms.*" *Heller,* 554 U.S. at 617-618.[Emphasis added.]

The very enumeration of the right "*takes out of the hands of government*—even the Third Branch of Government—*the power to decide* upon the right." *Bruen,* 597 U.S. at 23, *citing Heller.* [Emphasis added]. Also, "post-ratification adoption or acceptance of laws that are inconsistent with the original meaning of the constitutional text obviously cannot overcome or alter that text." *Bruen,* 597 U.S. at 36 ["the text controls"]. And, regardless of multiple plausible interpretations the Court must "favor *the one that is more consistent with* the Second Amendment's command." *Bruen,* 597 U.S. at 44 n. 11.[15] In 1791, it was recognized that government "was given *no power* to abridge the ancient right of individuals to keep and bear arms." *Heller,* 554 U.S. at 599.

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[15] Basically, "[i]f it is not necessary to decide more to dispose of a case, then it is necessary *not* to decide more." *Trump v Anderson,* 601 U.S. 100, 118 (2024) (Sotomayor, J., Concurring), *citing Dobbs v Jackson's Women's Health Org.,* 597 U.S. 215, 348 (2022)(Roberts, C.J., Concurring).

Alexander Hamilton also recognized that government *was not granted the power* to intrude upon fundamental personal rights. *See* The Federalist, No. 84 (Cooke ed. 1961), at 578-579. He educated that bills of rights might contain various exceptions....

> "to powers *which are not granted*; and on this very account, would afford *a colourable pretext to claim more than were granted.* For why declare that things shall not be done *which there is no power to do*? Why for instance, should it be said, that the liberty of the press *shall not be* restrained, *when no power is given by which restrictions may be imposed*? ***I will not contend that such a provision would confer a regulating power***; but it is evident that it would furnish, to men *disposed to usurp*, a plausible pretense for claiming that power." *Id.*, at 579

*See Griswold v Connecticut*, 381 U.S. 479, 489-490 & n. 4 (1965) [Goldberg J. Concurring]. [Emphasis added.] This founding era understanding supports the fact that under the Second Amendment's command and purpose government "shall not be" given any power, not even a plausible pretense of power, to usurp the right of the people *to* keep and bear arms

Now we turn to *Heller's ipse dixit,* which suggests that "...nothing in our opinion should be taken to cast doubt on longstanding prohibitions." 554 U.S. at 626. Yet, this suggestion is *dicta* and is unsupported by the historical principles the Court had previously elaborated upon. *Cf. Rahimi, Supra,* 144 S. Ct. 1944 & n 7 (Thomas, J, Dissenting). Further, it is unsupported by the Ninth Amendment.

Specifically, the ratification and post-ratification era attitude underlying the Second Amendment's purpose "*undoubtedly is*, that the people, . . . *shall have the right* to keep and bear arms; and they need *no permission or regulation of law* for the purpose " *Heller*, 554 U.S. at 617. That government "*is forbidden* by *any law or proceeding* to invade or destroy the right to keep and bear arms "

*Heller,* 554 U.S. at 618. [Emphasis added.] And, "*any law*, State or Federal, is repugnant to the Constitution, and void, *which contravenes this right* " *Id.* 554 U.S. at 613. [Emphasis added.] Government was given "*no power* to abridge the ancient right of individuals to keep and bear arms." *Heller*, 554 U.S. at 599. Plus, "[n]o clause in the constitution could by any rule of construction be conceived to give to congress" or a state legislature "*a power to* disarm the people." As the Amendment is " *a restraint on both.*" *Id.* 554 U.S. at 607. [Emphasis added.]

*Heller*, also mentioned a passing reference to unfounded "presumptive" long-standing prohibitions, which were used as examples. *Id.* 554 U.S. at n 26. Then explained the unwritten examples had clearly not been expounded upon nor historically justified. *Heller,* 554 U.S. at 635 & 720-721; *cf. Kirtsaeng v. John Wiley & Sons, Inc.*, 133 S. Ct. 1351, 1368 (2013)(where statement is hedged with "presumably." The statement is "*an unnecessary* dictum"). Accordingly, it is "inconceivable" that any court would rest an interpretation of the basic meaning of any guarantee of the Bill of Rights "*upon such dictum in a case where the point was not at issue and was not argued.*" *Heller*, 554 U.S. at n 25.[Emphasis added.] [16]

Since text and relevant historical understanding removes government authority to infringe upon the Second Amendment right, and the Amendment's text and purpose establishes an *unqualified* prohibition on government power,

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[16] Yet, that is precisely what the Ninth Circuit and lower courts are doing in every Second Amendment case brought before them. The lower courts have essentially relied upon unnecessary, unexplained dictum to twist and define the scope of Second Amendment rights. Appendix A at pp. 54-58, 64-65, 68-69 & 71-73. Fittingly, "[b]reath spent repeating dicta does not infuse it with life." Hence any observations of the lower courts which rely on *Heller's* dicta "are neither authoritative nor persuasive." *Metropolitan Stevedore Co., supra,* 515 U.S. at 300; *also see* U.S. Const. Art. VI. Thus, compelling reasons warrant intervention of this Court's supervisory powers to clear up the "misunderstandings" of the lower courts. *Rahimi, Supra,* 144 S.Ct. at 1926 (Jackson, J. Concurring); *also see* Supreme Court , Rule 10.

then where does government obtain power over the right? Obviously, it *shall not be* from the Constitution. U.S. Const. Art. VI, Cl. 2.[17] Nor, can government derive that power from statutory created presumptions. *Baily v Alabama,* 219 U.S. 219, 239 (1911); *Heiner v Donnan,* 285 U.S. 312, 329 (1932) (The power to create presumptions is not a means of escape from constitutional restrictions); U.S. Const. Article VI, Cl. 2.

The plain text of the Second Amendment *controls. Rahimi,* S. Ct. 1912 & n. 2 (Kavanaugh, J Concurring) ("The text of the Constitution always controls"). Therefore, the operative text plainly means that: the *right of the People to keep and bear arms, shall not be* "violated or acted upon in a way *that limits* someone's rights or freedom" to retain and convey weapons. *See* https://dictionary.cambridge.org/us/dictionary/english/infringe; *and Rahimi,* 144 S. Ct. 1911 (Kavanaugh J., Concurring)("As a general matter, the text of the Constitution says what it means and means what it says. And unless and until it is amended, that text controls").[18] Accordingly, all weapons control laws which infringe upon the right of the people are void.[19]

This does not mean that the government is weaponless to enforce the criminal law upon those who engage in unjustified lawless armed aggression. *Rahimi,* 144 S. Ct 1901-03. The principles underlying the Second Amendment are to protect a citizen's necessary reserved rights to liberty and autonomy via

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[17] Courts have disregarded the Second Amendment's plain text prohibiting government power to act, while ignoring the *unqualified command* of the People. *Leedom, supra,* 358 U.S. at 189 (A definite prohibition cannot be overridden with a view that it was intended to be ignored); *e.g. United State v Cruikshank,* 92 U.S. 542, 553 (1876) (The Second Amendment has no other effect than to restrict the powers of the government).

[18] No where in the text does it imply that the *right of the people to* keep and bear weapons can be limited.

[19] Courts should remain wary of any theory that would exchange the Second Amendment's boundary line—"the right of the people to keep and bear Arms, shall not be infringed" —for vague (and dubious) principles with contours that are arbitrarily defined. *Rahimi,* 144 S.Ct. 1946-47 (Thomas J dissent but agreeing with Majority)

an unassailable means of individual or collective armed security and defense. It is the people's check and balance against political tyranny, violence, insurrection, and criminal victimization, not a blank check for armed lawless and reckless behavior.[20] Yet, when restrained of liberty for crime a citizen's fundamental rights are *temporarily diminished* for the period of restraint, not stripped nor destroyed indefinitely. *Rahimi, supra,* 144 S. Ct. 1903; *Wolff v McDonnel,* 418 U.S. 539, 555-56 (1974); *and Kanter v Barr,* 919 F.3d 437, 461-62 (7th Cir. 2019) [Diss. by Barrett J.]

**Conclusion**

In the interests of equity and justice, the Ninth Circuit's unreasoned orders staying the appeal indefinitely must be vacated and this case remanded with instructions to grant relief.

Dated: November 1, 2024.

By Steven Walker

STEVEN WALKER

Applicant in Pro se


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[20] "The point is, persons who engage in unjustifiably dangerous armed conduct can be prosecuted *for that conduct,* rather than for status crimes." *See United States v Jones,* Case No. 3-23-CR-74-CWR-LGI (U.S. Dist. Crt. S.D. Miss Jan. 8, 2024); *Rahimi, Supra,* 144 S. Ct. 1896-1898 & 1902-1903. Plus, a *free citizen* has the right to dangerously "'repel force by force' when 'the intervention of society in his behalf, may be too late to prevent [an] injury.'" *Heller,* 554 U.S. at 594.