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.

Application under Supreme Court Rules 10, 11 and 22, and the All Writs Act, for Preliminary Injunction; and to Vacate Ninth Circuit's Indefinite Stay of the Appeal Pursuant to *Nken v. Holder*, 129 S. Ct 1749 (2009), & *United State v. Rahimi*, 144 S. Ct. 1889 (2024)[1]

On Application for an Injunction from the United States Court of Appeals for The Ninth Circuit, Case No: 23-55525

This Case Arises Under The Second Amendment

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In Pro Se

[1] This *Pro se* motion must be liberally construed. No technical forms of pleading or motions 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 598-603. 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? And,

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?

TABLE OF CONTENTS

TABLE OF AUTHORTIES

United States Constitution

United States Case Law

State Case Law

Laws of The United States

State Laws

Historical and Other Authorities

INTRODUCTION

TO: THE HONORABLE ELENA KAGAN, JUSTICE FOR THE NINTH CIRCUIT COURT OF APPEALS:

Mr. Walker respectfully applies to the Court to grant a preliminary injunction, and vacate the indefinite, unreasoned administrative stay order issued by the Ninth Circuit in this case. *See* Appendix A, at pp. 49-50 (Motion filed 9/9/2024 Case: 23-55525, **DktEntry 19**[Hereafter "Appx. A," with Corresponding Docket Page number]). Under equitable principles this Court can "mold each decree to the necessities of the particular case." *Porter v. Warner Holding Co.*, 328 U.S. 395, 398 (1946).

In this case, because Mr. Walker is a *Informa pauperis*, *pro se claimant*, the Ninth Circuit in an arbitrary act of partiality has administratively suspended his appeal indefinitely awaiting the outcome in an unrelated case without applying the four-factor test set forth in *Nken v Holder*, 129 S. Ct. 1749 (2009). *See* Appx A, pp. 49-50; *but see* Appendix A at p. 53 (Published Order Granting en banc review in *United States v Duarte*, 22-50048).

I Undisputed Factual Allegations.

1. Neither party to this case originally sought a stay of the appeal, and the respondent government elected not to address the merits of the constitutional issues raised. Appx. A at p. 51.

2. The Ninth Circuit, on January 8, 2024, took it upon its own inclination to place the appeal in indefinite abeyance, for no equitable reason, after this matter had been fully briefed. Appx A at p. 49.

3. Walker filed three motions requesting the Ninth Circuit to remove the abeyance orders and proceed to the merits of his Constitutional issues regardless of *Duarte*. Appx. pp. 8-15. *United States v Duarte* 101 F4th 657 (9th Cir. 2024), was decided in favor of Duarte, and en banc review was subsequently granted. Appx. A, at p. 53.

4. In this case a Ninth Circuit panel denied two of the requests and indefinitely continued the administrative suspension of the appeal by order dated July 24, 2024. Appx. A at p. 50. The third request to remove the invalid suspension of the appeal currently pending before that court was filed on 09/09/2024. Appx. A.

Administrative stays may have their use, "[b]ut a court's unreasoned decision to impose one for more than a month," rather than answer the appeal issue, is improper. *United State v Texas*, 144 S. Ct. 797, 805 (2024) (Opinion by Kagan J, dissenting from denial of application to vacate stay). Accordingly, the indefinite abeyance of the case is inappropriate. Appx A at pp. 8-15.

A. The parties to this case are:

The applicant, Steven Walker, is a member of the political community, a free citizen of the United States and State of California.

The respondents, government of the State of California and United States of America, their agents and officials, are collectively citizens of the United States of America, who swore an oath to support the Constitutional rights of Mr. Walker. U.S. Const. Art. VI, Cl. 3.

B. Allegations and Standing

The undisputed premise of this case is (1) the Constitution of the United States of America is a compact between (2) all of the People, including the people of government to (3) protect and secure their blessings of liberty and posterity, and (4) the people in government have breached their obligations under the terms of the agreement by enacting and enforcing laws and policies which (a) generally and specifically infringe upon and injure the fundamental right of Mr. Walker to keep and bear his choice of arms in the manner he deems appropriate for personal security, self-defense and safety, by way of (b) a non-delegated power, unmoored from the Constitution. Thereby voiding all laws and policies which infringe upon, limit, violate, or restrict the right of Mr. Walker to keep and bear weapons, including firearms. *See* Appendix B –Verified First Amended Complaint for Declaratory & Injunctive Relief, at pp. 1-24.

C. Article III Jurisdiction of This Court:

The undisputed facts of this case arise under the United States Constitution. As such this Court's supervisory power extends to this case by way of Rules 10, 11 and 22, under the authority of Article III. *Cf. Dickerson v United States*, 530 U.S. 428, 437-38 (2000) (This Court has supervisory power over the federal courts).

1. *Pro se* Pleadings.

Walker's *Pro Se* pleadings are to be liberally construed. *Erickson v Pardus*, 127 S. Ct. 2187, 2200 (2007). Courts must accept as true all factual allegations contained in the pleadings. *E.g. Bower v County of Inyo,* 489 U.S. 593, 598 (1989).[2] Thus, the exclusion from the right alone meets the critical threshold importance of standing, regardless of any objective or subjective disadvantage that may flow from it. *Warth v Seldin*, 442 U.S. 490, 498-503 & n. 13 (1974).

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[2] The district court judge did not accept as true the uncontested allegations in the complaint but instead argued Walker lacked standing regardless of whether he is law-abiding citizen, because *District of Columbia v Heller,* 554 U.S. 570, 626-27 (2008), "made clear," ***in dicta***, that felon "status" is excepted. *See* Appx A at pp. 67-74. First, Walker is not a felon, but a member of the political community who no longer poses a credible threat to society. Appx B, pp. 15-24. Second, *Heller made clear* the "exceptions" were not historically justified, nor expounded upon (554 U.S. at 635). Third, Justice Breyer, in his dissent clearly stated the prohibitions were "puzzle[ing]" because they were *unclear*, nor supported by any colonial analogues (*id.*, 554 U.S. at 720-721). Lastly, "[b]reath spent repeating dicta does not infuse it with life." *Metropolitan Stevedore Co. v. Rambo*, 515 U.S. 291, 300 (1995). Therefore, the observations of the lower courts "are neither authoritative nor persuasive." *Ibid.*

II. Issues Presented in This Motion:

1. Is An Indefinite Unreasoned Administrative Stay Appropriate Absent a Motion Requesting a Stay Pending Appeal from a Lower Court Judgment?

These same issues were presented to the Ninth Circuit. *See* Appx. A, pp. 8-47 ~~*and* Appx. B, at 1-54.~~ Some nine months after the reply brief was filed; Four-months after the decision in *United States v Duarte*, 22-50048 (*rehearing en banc granted*) *see* Appx. A, pp.53-65; Eight-months after Walker requested the appeals court to vacate the original stay order; and over three-months after the Court decided *United States v Rahimi*, 144 S. Ct. 1889 (2024), along with a remand of numerous cases back to the courts of appeal to re-evaluate and consider *Rahimi*—and the Ninth Circuit still refuses to vacate the unreasoned administrative stay in this case. Appx. A, p 50; *but see* Appx. A p. 57 (Opinion, by Vandyke J, dissenting from order granting *en banc* review in *United State v. Duarte*, 22-50048)(Our court will supplement and invigorate the cherrypicked language already *mis- and over-applied* from the Court's prior precedents. Like someone who eisegeses Scripture just to validate their pre-existing worldview, judges who are more interested in sidestepping than following the Court's Second Amendment precedent will latch onto phrases like "presumptively lawful" and "law-abiding citizen" while conveniently overlooking such bothersome details like the government's burden of

supplying relevantly similar historical analogues.); *also* Appx. A at pp. 68-69 & 71-73 (district judge uses cherry-picked dicta).

a) When it Comes to Second Amendment Challenges, is the Ninth Circuit an Impartial Decision maker?

The above proclamations by Judge Vandyke, along with the Ninth Circuit's refusal to vacate an illegitimate stay, clearly indicates Walker will not receive any type of unbiased review of his undisputed Second Amendment challenge within that Circuit, where the only people disputing his challenge are the judges within the Circuit. Appx. A pp. 49-50 & 67-74. "Not only is a biased decisionmaker constitutionally unacceptable but 'our system of law has always endeavored to prevent even the probability of unfairness.'" *Withrow v Larkin*, 421 U.S. 35, 47 (1975); *also see Rahimi*, 144 S. Ct. at 1909 (Gorsuch, J. Concurring)(Ninth Circuit's "50-0 record" of favoring government regulation over Second Amendment rights "stray[s] far from the Constitution's promise".)(Cleaned up.). Further, within the past year, the Ninth Circuit has granted *en banc* review in 3-favorable rulings against government regulation of the Second Amendment right, while denying review in those cases where the prevailing party was the government. *See USA v Perez-Garcia*, 22-50314 (review denied 9/4/2024); *U.S. v. Duarte*, 22-50048(review granted); *Teter v Lopez*

20-15948 (review granted Feb 22. 2024); *Duncan v Bonta*, 23-55805 (review granted October 10, 2023); *but see Marshal v Jerrico*, 446 U.S. 238, 242 (1980)(The neutrality requirement helps to guarantee that fundamental rights will not be taken on the basis of an erroneous or distorted conception of the facts or the law); *Commonwealth Coatings Corp. v. Continental Casualty Co.*, 393 U.S. 145, 150 (1968)(every tribunal must be unbiased but also must avoid even the appearance of bias).

In essence, any litigant appearing within the Ninth Circuit challenging Second Amendment deprivations does not receive either the appearance or reality of fairness. Because, in this circuit, "you could say that . . . 17/29ths of our bench is doing its best to avoid the (Supreme) Court's guidance and subvert its approach to the Second Amendment. That is patently obvious to anyone paying attention." *See* Appx. A at p. 56; *also see Perez-Garcia*, 22-50314 ORDER at pp. 20-22 & 66 (Vandyke J, dissenting)(9th Cir. 2024).

What Judge Vandyke is announcing, is that within the Ninth Circuit, there is no assurance that a litigant will present their Second Amendment claims to an arbiter who "is not predisposed to find against [them]." *Jerrico*, 446 U.S. at 242. Judge Vandyke also confirmed that the en banc panel in *Duarte* will surely rely on *Rahimi* as support "for *an inevitable and entirely predictable conclusion* that

Duarte has no Second Amendment rights." Appx. A at p. 58 [Emphasis added.] Staying Walker's case until Duarte is decided will obviously inspire the Ninth Circuit to rule in favor of the government, who has not carried their burden of proof, thus removing any "appearance" of justice. *Id.* 446 U.S. at 242-43. Judge Vandyke has clearly set forth at Appx. A at pp. 54-58 & 64-65, and *Perez-Garcia* at pp. 20-66, a "reasonable impression of partiality" which makes mostly all Ninth Circuit decisions a "predetermined script" which is "so predictably biased against" Second Amendment rights, that they are "suspect." *Cf. Schmitz v Zilveti*, 20 F.3d 1043, 1046-1049 (9th Cir. 1994) Generally, Second Amendment adjudications within the Ninth Circuit are tainted by a *"supermajority"* of biased decision makers which cannot be constitutionally redeemed by review in an unbiased tribunal. Appx. A p. 64; *E.g. Clements v. Airport Auth. Of Washoe County*, 69 F.3d 321, 333 (9th Cir. 1995).

b) Does The Indefinite Administrative Stay Violate Due Process when Issued Without Request, Notice, or Hearing?

Recently in *United States v Texas* 144 S. Ct. 797 (2024), You (at 805), Justice Sotomayor (at 802), and Justice Barrett (at 798-800), all agreed that an administrative stay *precedes* a ruling on a stay pending appeal of a lower court judgment. Here there was never any previous request asking for a stay of the lower court judgment

pending appeal. As such, there is not any equitable reason for the Ninth Circuit to place this case in abeyance indefinitely without applying the four-factor test required in *Nken v Holder*, 129 S. Ct. 1749 (2009); Appx. A pp. 49-50.

Justice Barrett explained in *Texas, supra*, 144 S. Ct. at 799:

> "When entered, an administrative stay is supposed to be a *short-lived* prelude to the main event: *a ruling on the motion for a stay pending appeal.* . . . An administrative stay should last no longer than necessary to make an intelligent decision on *the motion* for a stay pending appeal." [Emphasis added.]

The administrative stay issued in this case has been in play for over 8-months without proper notice, motion, or hearing.[3] Therefore, the real problem "lurking" in this case, is the Ninth Circuit has purposely avoided consideration of the *Nken* factors "for too long." *Texas*. at 799-800. It appears that a "temporary stay," is intended to pause the action for a *short period of time* until a court can consider *a*

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[3] Holding a case in abeyance is only permitted so a federal court "can stay the enforcement of a judgment pending outcome of an appeal." *Nken,* 129 S. Ct. at 1754. It appears the only judgment the Ninth Circuit is attempting to prolong is its own and it cannot provide for a fair review Appx. A at pp. 64-65. Thus, the requirement of neutrality in adjudicative proceedings which safeguards the two central concerns of procedural due process, is absent in this case. *Cf. Jerrico,* 446 U.S. at 242; *Tumey v Ohio,* 273 U.S. 510, 532 (1927).

motion for a stay of a lower court judgment pending appeal. For that reason, at a minimum, administrative relief should (1) maintain the *status quo* and (2) be time limited. As stated by Justice Sotomayor, "[i]n my view, even a single day of the status quo disruption . . . based on an unreasoned order is one day too many." *Texas,* 144 S. Ct. at 802-803. Accordingly, the current unreasoned stay of this case violates due process, because it does not provide for a fair process, is not short-lived and favors the government's unconstitutional actions. For those reasons and much more, the indeterminate stay is causing detrimental harm to Walker.

III. Ordering A Preliminary Injunction Barring Government from any further Enforcement of its Alleged Undisputed Unconstitutional Gun Control Tyranny, is Consistent with the Constitution.

1. Uncontested Factual Truths

Unlike *Duarte*, the facts *in this case* are undisputed. The government has elected not to dispute them. Appx. A at p. 51.

The people of the representative state and federal 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, to secure and defend their state of freedom. *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); *see also* U.S. Const. Art. VI, Cl. 2 & U.S. Const. Amend. II; *and* Appx. B at pp. 3-5, 8-10, 12-29, & 20-45.

Government is attempting to destroy the Second Amendment rights of all free citizens under the disingenuous and ineffectual pretext of controlling Gun violence.[4] Consequently, the outcome of *U.S. v. Duarte*, has no bearing upon this case, because the questions decided in *Duarte* only apply to Duarte, not Walker. Why? Because the Ninth Circuit cannot rely on the questions in *Duarte* to resolve the questions in this case. Article III of the Constitution vests courts with the power to decide only the "'*actual cas[e]*'" *before it,* "'*not abstractions.*'" *Rahimi*, 144 S. Ct. 1910 (Gorsuch, J concurring.) [Emphasis added.] And the facts of Walker's case, unlike Duarte's, do not pose the question whether the challenged statute in *Duarte* is lawfully applied to Walker, or is valid when applied to individuals who are under supervised release, or committed domestic violence.

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[4] 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.

Walker's questions are narrower: whether the state and federal governments have a legitimate power to invade upon a right where the Constitution undeniably prohibits any infringement of the right. Appx. B at pp. 1-11, 12-19, 20-45 & 46-54.

As such, any opinion in *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). Appropriately, the undisputed facts of this case cannot be stretched to meet the disputed facts of *Duarte* or *visa versa.* 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).[5]

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[5] 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.) A governmentally imposed condition on the freedom of speech for example, is no more permissible when enforced against a large "class" of persons than it is when enforced against a "particular" group. If Second Amendment claims are to receive "like treatment," then whether government has infringed on Walker's right to keep and bear arms, cannot depend on whether it has also trespassed upon Duarte's right. *Ibid.* As such, the abeyance orders here are inconsistent with constitutional requirements and unnecessarily disrupt the status quo.

2. Undisputable Facts of *Status Quo Ante*.

Thirty-four (34) years ago, 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 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.[6]

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[6] 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.

Walker's reserved rights to armed security, personal safety, and defense of his life, freedom, family, home, and homeland secured by the Constitution, is 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 administrative stay in 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; U.S. Const. Amend. X; *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*. Appx. B pp. 7-24. Basically, Walker's discharge "demonstrated a willingness to pay his debt to society and an ability to conform his conduct to social norms."*E.g. Bearden v Georgia*, 461 U.S. 660, 668-671 (1983); *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."] As such, upon the discharge

of his felony commitments, Walker once again 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) *and Luria v. United States*, 231 U.S. 9, 22 (1913); *see also Afroyim v Rusk*, 387 U.S. 253, 257-262 (1967)(The Constitution grants no express nor implied powers allowing government to strip a citizen of their rights).

The administrative stay in this case favors the Ninth Circuit's continued partiality towards government's unconstitutional violation of Walker's rights secured under the Second, Ninth, and Fourteenth Amendments. Either way, since Walker no longer poses a credible threat to society, the government, nor any court, has a legitimate authority to infringe upon his constitutional right to keep and bear (fire)arms. *Rahimi*, 144 S. Ct. at 1903.

A. The Four-factor Test, as Applied to the Undisputed Facts of this Case, Supports Preliminary Injunctive Relief.

The indefinite stay in this case fails to meet the requirements set forth in *Nken v. Holder,* 129 S. Ct. at 1754 (No court can make time stand still while it considers an appeal). There is no one-size-fits-all test that courts apply before entering an administrative stay,

which does not appear to be a problem when "appropriate for a measure that functions as a flexible, *short-term tool*." *Texas,, supra*, 144 S. Ct. at 799. However, the indefinite stay in this case is not being used as a flexible, short-term tool, because (1) no party requested a stay of the lower court judgment prior to January 8, 2024, and (2) the Ninth Circuit's unreasoned orders do not comply *with Nken*, 129 S. Ct. at 1761, which requires the four factor test be applied to the order staying this appeal indefinitely.

Here, the concern is that the indefinite stay of Walker's appeal has essentially put the appeal *dead in the water* until further notice from that court—without (1) either party filing a motion for a stay of the lower court's judgement, and (2) any equitable reason, other than Walker being a *pro se* litigant raising a colorable Second Amendment challenge. *See* Appx. A at pp. 49-51, 54-58, 64-65, 67-71; *Cf. Nken, supra*, 129 S.Ct. at 1754 (it "has always been held, ... a federal court can stay the enforcement of a judgment pending the outcome of an appeal."). The Ninth Circuit's issuance of the indefinite stay creates unfairness because it has pre-determined this case based on personal or political bias about the scope of the Second Amendment. Appx. A at pp. 54-58 & 64-65. Yet, the Amendment's scope is clear. The right *shall not be* infringed. U.S. Const. Amend. II.

The Court recently in *Rahimi* and *Bruen,* has provided the lower courts with the guidance necessary for a reasoned evaluation of Second Amendment challenges regardless of *Duarte. See Rahimi,* 144 S. Ct. 1897 (text & history are the guidelines, but text controls). Moreover, reliance on any type of virtuous/law-abiding/responsible citizen rhetoric is inconsistent with the Constitution. *Id* 144 S. Ct 1903 ("Responsible" is a vague term). Basically, status-based restrictions are baseless.[7]

The fact that the issuance of a stay is left to the court's discretion "does not mean that no legal standard governs that discretion .... `[A] motion to [a court's] discretion is a motion, not to its inclination, but to its judgment; and its judgment is to be guided by sound legal principles.'" *Martin v. Franklin Capital Corp.,* 546 U.S. 132, 139 (2005). Again, no motion was filed with the lower courts in

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[7] In *Rahimi,* the Government contended that the Court has already held the Second Amendment protects only "responsible, law-abiding" citizens. Brief for United States 6, 11–12. "*The plain text of the Second Amendment quashes this argument.*" The Amendment recognizes "the right of the *people* to keep and bear Arms." When the Constitution refers to "the people," the term "unambiguously refers to all members of the political community." *Heller,* 554 U. S., at 580; see also *id.,* at 581 (beginning its analysis with the strong "presumption that the Second Amendment right belongs to all Americans"). Any claim, by a court or anyone else that the Court already held the Second Amendment protects only "law-abiding, responsible (virtuous) citizens" *is specious at best.* The only conceivably relevant language is the passing reference in *Heller* to laws banning felons and others from possessing firearms. *See* 554 U. S., at 626–627, and n. 26. "***That discussion is dicta***." *Rahimi, supra,* 144 S. Ct. 1944 & n 7 (Thomas, J, Dissenting).

this case until September 2024—by Walker. Appx. A. The legal principles of issuing an indefinite stay, however, have been distilled into the "consideration" of four factors. *Nken,* 129 S. Ct. at 1761; *also see Cf. Baird v. Bonta*, 81 F.4th 1036, 1044-1048 (9th Cir. 2023) (Applying four factor test to conclude district court abused its discretion in denying a preliminary injunction in Second Amendment case and requesting lower court to issue a decision *expeditiously*).

1) Likelihood of Success on the Merits, and Irreparable injury Support granting preliminary injunctive relief.

The appropriate legal standard to analyze a stay or injunctive relief requires a court to determine whether a movant has established that (1) he is likely to succeed on the merits of his claim, (2) he is likely to suffer irreparable harm absent the preliminary injunction, (3) the balance of equities tips in his favor, and (4) a preliminary injunction is in the public interest. When, like here, the non-movant is the government, the last two factors "merge." *Baird v Bonta*, 81 F.4th 1036, 1040 (9th Cir. 2023). Under *Nken*, 129 S. Ct. at 1761, the Court "*must* consider" all four factors prior to issuing any order indefinitely staying a case. A pursuit the Ninth Circuit refused to do.

Here, the first factor is not met for the continuance of the administrative stay because prior to the issuance of the stay order neither party moved the Ninth Circuit for a stay of the lower court

judgment. Appx. A at p. 49. Further, if the Ninth Circuit is going to keep the stay in place, then it must be construed as a stay of the lower court judgment pending appeal, rather than a stay pending the outcome in *Duarte*, an unrelated case. *Nken*, 129 S. Ct. at 1758. Also, the Ninth Circuit issued the stay only after this matter was fully briefed, where the government elected not to dispute the issues raised on appeal. *See* Appx A at pp. 49-51. Consequently, under principles of party presentation where the government elected not to carry its burden of proof, the undisputed factual allegations in all Walker's pleadings are to be accepted as true. Appx. B pp. 1-54; *e.g. Bower,* 489 U.S. 598. Furthermore, the Ninth Circuit cannot "try to help the government carry its burden". *Baird, supra*, 81 F.4th at 1041. Courts rely on the parties to frame the issues for decision and assign to courts the role of neutral arbiter of matters the parties present. *Greenlaw v U.S.* 554 U.S. 237. 243-44 (2008). A court cannot be neutral when partisan for the government 100% of the time especially where pre-existing Second Amendment rights are at stake.[8] Either way, the

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[8] In Second Amendment cases, it appears most judges in the Ninth Circuit have a 50-0 practice of "improperly aiding the government in meeting its burden of justification" to satisfy a predetermined outcome. *See Perez-Garcia, Supra,* 22-50314, Order at pp. 20-22 & 66 (Vandyke, J. Dissenting); *also see Tumey*, 273 U.S. at 532-533 (due process violated where balance is not held nice, clear and true); *and Code of Conduct for United States Judges,* Canon 3(A)(1)(A judge should be faithful to, and maintain professional competence in, the law and should not be swayed by partisan interests, public clamor, or fear of criticism).

indefinite administrative stay in this case results in irreparable harm to Walker no matter how brief the violation.

Additionally, Walker's likelihood of success tips the public interest sharply in his favor. *Baird*, 81 F.4th at 1042-43.[9] Moreover, a recurring and difficult issue arises in the context of determining exceptions to textually guaranteed individual rights. 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 where *the constitutional baseline is protection of the textually enumerated right.*" *Rahimi, supra*, 144 S. Ct. 1912 & n. 1 (Kavanaugh J, Concurring) [Emphasis added.] Yet, where the text does not expressly create an exception and there is no exception 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

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[9] The decision in *Rahimi,* holding that a "temporary" suspension of the Second Amendment right is constitutional where a court determined Rahimi posed a credible threat to society supports Walker's likelihood of success, because it is undeniably demonstrated that he no longer poses a credible threat. *Id.* 144 S. Ct. 1901-02; Appx B, pp. 2-22; *Ante* at pp. 10-15. And the government has elected to not dispute this highly relevant fact. Appx. A at p. 51.

unwritten exceptions to rigorous textual requirements irrespective of any wide-ranging circumstances).

2) The Constitutional Presumption Favors Granting Injunctive Relief on the Merits

As noted, the likelihood of success is a particularly important consideration in the preliminary injunction analysis of a constitutional claim and is therefore equally important when an unreasoned administrative stay order is issued. "[B]ecause a finding that [Walker] is likely to succeed on the merits of such a claim sharply tilts in [his] favor both the irreparable harm factor, and the merged public interest and balance of harms factors." *Baird, supra* 81 F.4th at 1044. Consequently, an Appellant who can show that a statute likely violates the Constitution will also usually show "that both the public interest and the balance of the equities favor a preliminary injunction." *Ibid.*

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 *and* (b) "the regulation is consistent with this Nation's historical tradition of

firearm regulation." Only if their power is valid and the regulation is consistent 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. Appx. 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). Thus, the likelihood of success tilts dramatically in Walker's favor because the government has elected not to rebut the Constitutional superior presumption. Nor can it, where its 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.

Basically, the first comparison is, does the government have the constitutional power to trespass and where in the Constitution does that enumerated power derive? The next comparison, *only if* the government proves its constitutional source of power is, does the historical analogue and/or the current regulation *remotely* "interfere" with the right to keep and bear arms. If either do, then they "infringe" upon the right and are therefore inconsistent with the text. *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).

Appropriately, Walker has shown through text, history and precedent a likelihood of success 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 Heller, supra,* 554 U.S. at 599, 607, 612-613, 616-618, & 634 (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).

Since the government has elected not to carry its burden, the statutory restrictions in question are unconstitutional as applied to Walker, because the constitutional "baseline" is protection of the *textually* enumerated right. *Rahimi,* 144 S. Ct. 1912 n.1 (Kavanaugh J, Concur). Accordingly, "[w]hen an *alleged* deprivation of a constitutional right is involved, ... most courts hold that no further showing of irreparable injury is necessary." *Baird, supra,* 81 F.4th at 1042. Hence, injunctive relief is warranted.

3) Public Interest and Balance of Equities Warrant Injunctive Relief in Walker's Favor.

Walker's likelihood of success on the merits of his constitutional claim also tips the merged third and fourth factors decisively in his favor. Because "it is always in the public interest to prevent the violation of a party's constitutional rights." Accordingly, plaintiffs who can "establish a likelihood that [a] policy violates the U.S. Constitution ... have also established that both the public

interest and the balance of the equities favor a preliminary injunction." *Baird*, 81 F4th at 1042.

(a) "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;* and the government or the courts 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.

Basically, 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 & X.

The Court's decisions in *Bruen, Heller* and now *Rahimi*, do not detract from this premise but missed the mark to address it because the question from whence the government's source of power derived was never presented. Thus, the Court did not have Article III influence to decide it. *See Rahimi,* 144 S. Ct. 1910 (Gorsuch, J, Concurring). So, it was believed that the regulations under review were "presumptively" lawful. *Heller*, 554 U.S. 626-27 @ n. 26; *and INS v. Chadra*, 462 U.S. 919, 944 (1983) [Courts presume "challenged statute is valid".] Nevertheless, government cannot exercise powers which are prohibited by "express provisions of our written Constitution." *Reid*, 354 U.S. at 6-7. Therefore, 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 unwritten *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, 342 (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).[10]

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

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10 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).

constraints." *Haaland*, 599 U.S. at 276 & n. 3.[11] 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, 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. *Martin v Hunter's Lessee*, 14 U.S. 304, 326 (1816). 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.][12]

Consequently, courts cannot create exceptions to constitutional rules where they have no power to do so. Under the Constitution, they are only allowed *to apply* the principles which have already been

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11 "The powers of the legislature are defined and limited; and that those limits may not be mistaken, or forgotten, *the constitution is written.*" *Marbury v Madison*, 5 U.S. 137, 176-177 (1803)[Emphasis added.].

12 "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.

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). 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.] [13]

(i) *Heller's* Historical Principles of The Second Amendment Support Granting Injunctive Relief in this case.

Justice Kavanaugh stated that "*Heller* rested on constitutional text and history," and laid the foundation for *McDonald* and then *Bruen*. *Rahimi,* 144 S. Ct. 1923 (Kavanaugh J, Concurring) Well, let's have a look at *the Second Amendment's* enumerated text under an historical consideration of its purpose as set forth by the *Heller* Court to glean an understanding of "shall not be infringed."

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[13] Also, since the *necessary* purpose of the Amendment is the "security" of freedom, then the individual has a right to keep and bear modern weapons used by people in security forces (*i.e.* law enforcement and military). Thus, the "nuanced" approach applies more to favoring these types of weapons for self-defense purposes, than limiting them. *Bruen,* 597 U.S. at 27-28 & 44 @ n.11(Court must favor principle that is more consistent with text and command); *West Virginia Board of Education v Barnette* 319 U.S. 624, 638 (1943) (Constitution and Amendments as written establish the legal principles that are to be applied by the courts).

Heller stated 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 that 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 factual 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.]

Primarily, the very enumeration of the right "*takes out of the hands of government*—even the Third Branch of Government—*the power to decide. . . .*" *Bruen,* 597 U.S. at 23, *citing Heller.* [Emphasis

added]. 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 Court must "favor *the one that is more consistent with* the Second Amendment's command." *Bruen*, 597 U.S. at 44 n. 11.[14] *Heller's* "whatsoever" dictum clearly fell prey to the "unprincipled approach" of "freewheeling judicial policymaking." *Cf. Dobbs, supra*, 597 U.S. at 240. Clearly, the historical origins of the Amendment disagree with *Heller's* unfounded assumption that legislatures have power to ignore the Amendment's unqualified prohibition, and create presumptive exceptions when, much like the abortion issues addressed in *Dobbs*, the Amendment "does not" grant the power to infringe. *E.g.* 597 U.S. at 340

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[14] Basically, abstract historical analogues must be interpretated to favor prohibiting any infringement upon the right, not limiting it. *Heller's* statement that the right secured by the Second Amendment "is not unlimited" is therefore unconstitutionally vague where it is not a right to keep and carry "any weapon *whatsoever* in any manner *whatsoever* and for *whatever* purpose." *Id.* 554 U.S. at 626. Whatsoever does that mean. Nonetheless it is *ambiguous obiter dicta*. Because the question in *Heller* was not whether government had the power to limit the right *whatsoever*. 554 U.S. at 573-576. Also, the historical understanding of the Amendment for over a hundred years after its adoption, does not support *Heller's* "whatsoever" *dictum*. And "[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). Basically, *Heller's* dictum re-wrote the Second Amendment and created ambiguousness and confusion of a clear constitutional prohibition.

(Kavanaugh, J., Concurring)("The Constitution does not grant the nine unelected Members of this Court the unilateral authority to rewrite the Constitution based on our own moral or policy views...") No court therefore possesses "the authority either . . . to declare a constitutional prohibition of [an enumerated right]." *Id.* 597 U.S. at 342. Consequently, at the time of ratification 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. 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) [Conc. Opn. by GOLDBERG J.]. [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)

Specifically, the ratification and post-ratification era attitude underlying the 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.] Moreover, *wherever* "the right of the people to keep and bear arms is, under any colour or pretext *whatsoever*, prohibited, liberty, if not already annihilated, is on the brink of destruction." *Ibid.*

The *Heller* Court 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 that the unwritten examples had clearly not been expounded upon nor historically justified. *Heller*, 554 U.S. at 635 & 720-721; *see also Kirtsaeng v. John Wiley & Sons, Inc.*, 133 S. Ct. 1351, 1368 (2013)(where statement is hedged with "presumably.' The statement is pure dictum. . . . And it is *an unnecessary* dictum..."). According to the *Heller* court, 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.] 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. Appx. 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. Sup. Crt, Rule 10.

It is therefore clear that the Second Amendment's unmistakable prohibition offers a "fixed standard" which does not delegate to government a valid power to encroach upon *the right*; and for those who claim it does must show that the authority is somehow *contained* "in the constitutional text." *Cf. Dobbs, Supra*, 597 U.S. at 235; *Bruen*, 597 U.S. at 35-36. 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, then where does government obtain power over the right? Obviously, it *shall not be* from the Constitution. U.S. Const. Art. VI, Cl. 2.[15] Nor,

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[15] 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). Maybe courts should stick to the basic principle that "an individual found *by a court* to pose a credible threat to the physical safety of another may be *temporarily* disarmed" for the duration of the order of restraint "consistent with the Second Amendment." *Cf. Rahimi*, 144 S. Ct. 1903.

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").[16] Accordingly, all weapons control laws which penalize people for asserting or

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16 No where in the text does it imply that the *right of the people to* keep and bear weapons can be limited. The text undoubtedly removes government power to infringe. And, under certain circumstances the government may criminally and civilly punish an unjustified harmful *misuse* of weapons or an aggressively armed interference with another's rights. *Rahimi,* 144 S. Ct. 1897-1903. Yet what the government *shall not* do is trespass upon *the right to* keep and bear itself. Thus, any type of weapons "ban," "restriction," or "limitation" on the right to keep and bear is as an infringement and contrary to the Second Amendment's absolute prohibition and general purpose.

exercising their essential right to obtain and carry their choice of weapons, in the manner they deem appropriate, being necessary to secure their blessings of liberty, are void. *See e.g. Shapiro v Thompson,* 394 US 618, 631 (1969); *United States* v. *Jackson,* 390 U.S. 570, 581 (1968). [17]

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 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.[18] Additionally, the constitutional compact requires all citizens, even government agents, and officials, to respect the

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[17] 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)

[18] "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.

rights of others, and does not permit *anyone* to unlawfully infringe upon or interfere with them. Doing so constitutes a violation of our obligations provided under the Constitution warranting an appropriate penalty for the breach. 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.]

Overall, Constitutional text and principles do not grant government a freewheeling power to permanently infringe upon or limit a pre-existing right, and any abstract history or lack thereof alluding to such absurdity is "dubious to rely on" and a "telling indication of a 'severe constitutional problem' with the asserted power." *Heller,* 554 U.S. at 603*; Trump,* 601 U.S. at 113-114.

In sum, all four factors favor issuing an order to permanently enjoin the State of California and United States government, their officers, agents and officials from enforcement of laws, regulations or polices which infringe upon Walker's individual secured right to keep and bear firearms/weapons for lawful and personal reasons of security, self-defense and safety.

IV. CONCLUSION

In the interests of equity and justice, the Ninth Circuit's unreasoned orders staying the appeal indefinitely must be vacated and injunctive relief granted.

Dated: October 5, 2024.

By Steven Walker
STEVEN WALKER
Applicant in Pro se

No. _____

In The Supreme Court of The United States

STEVEN WALKER,
Petitioner,

v.

ROBB BONTA & MERRICK GARLAND
And, Does 1-100,
Respondents.

CERTIFICATE OF SERVICE

I, Steven Walker, hereby certify that all parties listed below and are required to be served, have been served with copies of the **Application under Supreme Court Rules 10, 11 and 22, and the All-Writs Act, for Preliminary Injunction; and to Vacate Ninth Circuit's Indefinite Stay of the Appeal Pursuant to *Nken v. Holder*, 129 S. Ct 1749 (2009), & *United State v. Rahimi*, 144 S. Ct. 1889 (2024)** by way of first-class mail, postage prepaid, this 7th day of October, 2024.

Glen F. Dorgan,
United States Attorney
Office of the U.S. Attorney
880 Front Street, Room 6293
San Diego, CA. 92101

By Steven Walker
STEVEN WALKER

Additional material from this filing is available in the Clerk's Office.