

In The  
**Supreme Court of the United States**

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RICHARD ENOS, JEFF BASTASINI, LOUIE  
MERCADO, WALTER GROVES, MANUEL MONTEIRO,  
EDWARD ERIKSON and VERNON NEWMAN,

*Petitioners,*

v.

LORETTA E. LYNCH, as United States Attorney  
General, JAMES COMEY, as Director of the Federal  
Bureau of Investigations and the UNITED STATES,

*Respondents.*

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**On Petition Writ of Certiorari To the  
United States Court of Appeals  
For the Ninth Circuit**

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**PETITIONERS' REPLY MEMORANDUM**

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## **QUESTIONS PRESENTED**

Whether the United States Government should be required to accept procedures adopted by the states for restoration of the “right to keep and bear arms” for those convicted of misdemeanor crimes of domestic violence, without reference to whether “other civil rights” have been revoked and restored?

Alternatively (in those states with such a policy), whether the “right to keep and bear arms” qualifies as a “civil right” that can be “revoked and thus restored” for state law misdemeanor convictions, for the purpose of restoring firearm rights under federal law?

Whether a misdemeanor defendants’ plea bargain waivers must include a knowing and intelligent abandonment of the “right to keep and bear arms” before the government can permanently revoke that fundamental right as a collateral consequence of conviction?

## **PARTIES TO THE PROCEEDINGS**

Petitioners RICHARD ENOS, JEFF BASTASINI, LOUIE MERCADO, WALTER GROVES, MANUEL MONTEIRO, EDWARD ERIKSON and VERNON NEWMAN initiated proceedings by filing a complaint in the United States District Court for the Eastern District of California.

Respondent LORETTA E. LYNCH is the current United States Attorney General, substituted by operation law for Eric Holder. Respondent JAMES COMEY, is the current Director of the Federal Bureau of Investigations, substituted in by operation of law for Robert Mueller, III. The UNITED STATES was added by stipulation and is a necessary party under 18 U.S.C. § 925A.

## **CORPORATE DISCLOSURE**

[Rule 29.6]

The Madison Society is not a party, but has provided significant funding for this suit. It is a not-for-profit Nevada Corporation with its registered place of business in Carson City, Nevada. The Madison Society has chapters throughout California. The society is a membership organization whose purpose is preserving and protecting the legal and constitutional right to keep and bear arms for its members and all responsible law-abiding citizens. The Madison Society is not a publicly traded corporation and no parent or publicly owned corporation owns 10% or more of any stock in The Madison Society.

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## PETITIONERS' REPLY

The United States in its opposition merely repeats the judicially manufactured mantra that rights not taken away can never be restored. It fails to address the central contention that Petitioners had at least one civil right (to keep and bear arms) taken away by their misdemeanor convictions for domestic violence and that the same state law restored that right by operation of law (after ten years); and for at least one petitioner, by judicial finding. [See: Brief in Opp., p. 2, fn. 1] CA Penal Code § 12021 [29800-29875].<sup>1</sup>

Furthermore the status of all petitioners is that they have been returned to the ranks of law-abiding citizens through adversarial proceedings in which the government had an opportunity to oppose that change in status. It is immaterial that California Penal Code § 1203.4 does not by its own terms restore firearm rights if there are other state statutes that accomplish that policy objective.

The federal government wants this Court to let pass an executive branch interpretation (actually a change of interpretation) of a federal law that ignores the clear policy objective of two legislative bodies (The United States Congress and the California Legislature) to provide some path to the restoration of Second Amendment rights after misdemeanor convictions for domestic violence.

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<sup>1</sup> California renumbered its Weapon Control laws while this was case pending. Original statutes are cited, the renumbered statutes are bracketed.

The government's brief fails to address in any serious way the lack of notice, to those accused of misdemeanor crimes, that a fundamental right (to keep and bear arms) would be forfeit as part of a plea agreement that included a waiver of trial by jury. How could they receive said notice when their cases were adjudicated before Congress passed the LAUTENBERG AMENDMENT?

This is a continuation of the government's twisted logic that turns statutory interpretation into word games. The government's position mirrors that other tautology from Alice's Adventures in Wonderland:

The executioner's argument was, that you couldn't cut off a head unless there was a body to cut it off from: that he had never had to do such a thing before, and he wasn't going to begin at his time of life.

The King's argument was that anything that had a head could be beheaded, and that you weren't to talk nonsense.

The Queen's argument was that, if something wasn't done about it in less than no time, she'd have everybody executed, all round.

Alice's Adventures in Wonderland (8.67-69)  
By Lewis Carroll

Supreme Court Rule 15.6 only authorizes a reply brief “addressed to new points raised in the brief in opposition” so this will conclude any formal reply brief addressing the government's opposition.



Petitioners raise two final points.

On June 2, 2015 Congressman Ken Buck (R-CO) introduced an amendment to the Fiscal Year 2016 Commerce, Justice, Science and Related Agencies Appropriations Act (H.R. 2578) that would cure the lack of funding for the Bureau of Alcohol, Tobacco, Firearms and Explosives to administer a program for restoration of Second Amendment rights. This lack of funding and its impact on gun rights was addressed by this Court in *U.S. v. Bean*, 537 U.S. 71 (2002). The amendment was adopted by voice vote.<sup>2</sup>

Petitioners bring this development to the Court's attention but contend that if this amendment becomes law, it is merely an alternative means of restoring their rights under federal law.

The questions presented by this case are still ripe for review. The state procedures contemplated by the LAUTENBERG AMENDMENT for misdemeanor crimes of domestic violence will permit states to continue managing their homegrown rehabilitation procedures for minor crimes and it preserves the balance of power embodied in the Tenth Amendment. See also: *Caron v. United States*, 524 U.S. 308 (1998).

Finally, Petitioners point out that earlier this term (as this memo was being filed) this Court denied a writ

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<sup>2</sup> Press Release from the office of United States Congressman Ken Buck (R-CO), June 2, 2015. Contact Katherine Rosario, 202-226-8414. <https://buck.house.gov/media-center/press-releases/buck-fights-restore-second-amendment-rights>

of certiorari (with dissent by Justice Thomas, joined by Justice Scalia) to the same circuit that made the same mistake of judicial interest balancing at issue here. *Jackson v. City and County of San Francisco*, 2015 U.S. LEXIS 3722.

The Ninth Circuit panel in *Jackson* – and in this case – relied in part on the earlier case of *United States v. Chovan*, 735 F.3d 1127 (9<sup>th</sup> Cir. 2013), *cert. denied* 2014 U.S. LEXIS 6380 (U.S., Oct. 6, 2014). *Chovan* had also employed the discredited interest balancing test rejected by this Court in *District of Columbia v. Heller*, 554 U.S. 570, 634-636 (2008).

Petitioners' contend that certiorari in this case is warranted because there is also an ambiguity interpreting the restoration of rights provisions of a federal statute among the other jurisdictions that have taken up the issue. [ Brief of Petitioners, pg. 9-11.]

## CONCLUSION

Petitioners respectfully pray that this Court will grant their petition for certiorari.

Respectfully Submitted,

/s/ Donald Kilmer

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