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IN THE SUPREME COURT OF THE STATE OF OREGON

STATE OF OREGON, Plaintiff-Respondent, Respondent on Review, v. RUDY NINO PARRAS, Defendant-Appellant, Petitioner on Review.	Crook County Circuit Court Case No. 19CR11103 CA A174543 SC N011750

BRIEF ON THE MERITS OF *AMICUS CURIAE* METROPOLITAN PUBLIC DEFENDER, INC.

On Review of the Opinion of the Court of Appeals
On an appeal from a judgment of the Circuit Court for Crook County
Daina A. Vitolins, Judge

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BRIEF ON THE MERITS OF *AMICUS CURIAE*
METROPOLITAN PUBLIC DEFENDER, INC.

***

INTRODUCTION

Amicus Curiae Metropolitan Public Defender, Inc. (MPD) is the largest single provider of trial-level public defense services in the state of Oregon. MPD represents clients in criminal cases ranging from misdemeanors to capital murder, in juvenile cases from delinquency to dependency, in mental health cases from civil commitments to mental health courts, and in specialty courts like Multnomah County's START Court program. MPD's grant-funded Community Law Division provides civil representation, including eviction defense, expungement, felony reductions, and other barrier-reduction representation. MPD has offices in Multnomah and Washington County, but it also represents clients throughout the state.

In this case, *Amicus* asks this Court to reverse the Court of Appeals' determination that application of ORS 166.270(1) to defendants based on non-violent felony convictions does not infringe on Petitioner-Defendant's rights to bear arms under both the state and federal Constitutions. *See State v. Parras*, 326 Or App 246, 531 P3d 711 (2023) (decision below). *Amicus* highlights three core issues that call for this Court to reverse the Court of Appeals' decision in *Parras*.

First, the State of Oregon prosecutes our clients for freedoms that our state Constitution presumptively protects. MPD represents clients convicted of

nonviolent felonies, who are not presently a danger, and who have convictions for which there is no historical precedent to deprive them of the right to bear arms. Indeed, the current scope of certain nonviolent felony offenses—specifically identity theft and unauthorized use of a vehicle—encompasses conduct that does not demonstrate that the defendant is inherently dishonest, let alone a danger. What's more, as public defenders we are acutely aware of the reality of how these kinds of charges disproportionately impact and ensnare particularly vulnerable clients, namely those who are experiencing houselessness.

Second, along with the inequitable impact on members of our community who are houseless, the felon-in-possession of a firearm statute has disproportionately been enforced against Oregonians of color. Specifically, police have long targeted Oregonians of color, especially when police make pretextual stops. Prosecutors then disproportionately file felon-in-possession cases against Oregonians of color. The outcome is that once again the current (and unconstitutional) firearm dispossession scheme inequitably impacts another historically disempowered and vulnerable group.

Third, and consequently, *Amicus* requests that this Court correct *Parras's* unworkable standard and then clarify the scope of our clients' constitutional rights. *Parras* assumed an unworkable vehicle for defendants bringing as-applied challenges. Because *Parras* did not announce a standard for the constitutional

application of ORS 166.270, *Amicus* requests that the Court clarify the statute's lawful scope to allow us to fully vindicate our client's constitutional rights.

For these reasons, this Court should REVERSE the Court of Appeals.

ARGUMENT

I. The State prosecutes our clients for freedoms that the Oregon and federal constitutions presumptively protect.

The State prosecutes our clients for exercising rights that the Oregon and United States Constitutions presumptively protect. *See Bruen v. N.Y. State Rifle & Pistol Ass'n*, 597 US 1 (2022). In *State v. Christian*, this Court reviewed the constitutional underpinnings of Article I, Section 27 of the Oregon Constitution and the Second Amendment to the United States Constitution. 354 Or 22, 33–34, 307 P3d 429 (2013). The Court in *Christian* concluded that, though the provision was not absolute, the text and its history create a core constraint on the Legislature's regulatory craft. *Id.* Because historically "in England and colonial America, the regulation of arms was generally directed at public safety concerns," today's "legislative enactments restricting arms must satisfy the purpose of promoting public safety." *Id.* at 33 (summarizing the historical analysis in *State v. Hirsch/Friend*, 338 Or 622, 679, 114 P3d 1104 (2005)).

Oregon's felon-in-possession of a firearm statute's purview outpaces that permissible purpose. The reality of Oregon law on the scope of some nonviolent felonies—alongside the reality of who in particular is prosecuted for these kinds of

offenses—is something that public defenders confront on a daily basis in our role in the criminal-legal system. What's more, seeing who is prosecuted at the intersection of nonviolent felony offenses and the felon-in-possession of a firearm statute, as well as how those individuals are prosecuted, underscores the lack of logic and historical precedent to our current firearms dispossession scheme.

A. MPD regularly represents clients convicted of nonviolent felonies who are not a danger, and who have convictions for which there is no historical precedent to deprive them of the right to bear arms.

Consider A. He is a 60-year-old man who lives in a trailer in a rural community in eastern Multnomah County. A joined the military as a young man. A's service allowed him to build his skills as a professional. But in the process, A lived through things in the military that no person should experience. And so, A left his service with a PTSD diagnosis. A struggled on and off with substance use disorder for ten years. Nevertheless, he held down a city job for almost a decade.

Tragically, the death of A's best friend from the military plunged A back into the throes of substance use. Twelve years ago, A was convicted of three drug possession felonies. Thanks to the support of his probation officer, A turned his life around once more. A now leads substance use recovery groups at his church and mentors fellow veterans who come home from prison and jail.

A's past felony record does not suggest he is a danger to himself or others. Instead, A's current healthy lifestyle shows that he could exercise his constitutional rights without causing any risks to the community. Yet the plain terms of Oregon's

felon-in-possession statute criminalize A for bearing the same arms he used to defend our nation.

Or look to B. B is a 35-year-old Native mother who lives in shelters in downtown Portland. B's mother's abusive relationships and B's own school absences pushed B into foster care. Though B struggled with her family setting, foster care proved far worse. During her time in foster care, she experienced sexual and physical trauma and was also completely cut off from her family. It also separated B from her favorite activity—treaty-protected hunting east of the Cascades, which had helped her feel close to her people and their land.

This sense of separation from her roots and her identity continued as B grew in the foster care system. This isolation led B to turn to drugs. Additionally, B's dependency on substances led her to abusive men, and those abusive men led B to even greater instability. B was convicted of felony drug possession several times over several years. Recently, B was a backseat passenger in a stolen car that her boyfriend was driving. B did not know the car was stolen. Portland Police pulled B's boyfriend over. The boyfriend ditched B, ditched his gun in the front seat, and took off on foot. The police did not catch up to him. The police arrested B instead and charged her with felon-in-possession. She pleaded guilty to make things easier in her child custody case.

ORS 166.270(1) keeps B from her tribe's annual gatherings. Though treaty-reserved hunting rights tend to trump state criminal laws, *Herrera v. Wyoming*, 587

US 329 (2019), B may have to wait until she's prosecuted to raise an affirmative defense. By then, B may have lost her shelter bed. She may have lost whatever progress she made to get her life back on track before another interruption by the criminal system.

Nothing about A or B's past or present suggests that criminalizing their constitutional rights advances public safety. In other words, their past convictions fail to portend future risk. They are not alone—MPD represents countless clients every year who are charged and ultimately convicted of a felony offense under Oregon law with similar stories that show a person who at worst has made poor choices but is not a future danger. But ORS 166.270's text does not contemplate individualized consideration of the links between an individual's felonious past and their ability to safely bear arms in the present. Nor does the statute find restrict itself to any historical roots that might justify conviction-based disenfranchisement. The statute thus allows the State to prosecute our clients for freedoms that our state and federal Constitutions protect. A review of the kinds of scope of certain nonviolent felonies in Oregon confirms that Oregon's felon-in-possession of a firearm law reaches conduct far beyond the restrictions the Founders intended on the right to bear arms.

B. Many Oregon felony predicates have nothing to do with future risks to public safety—especially common property crimes.

Many Oregon felonies have nothing to do with future risks to public safety. The United States Supreme Court has recognized that felonies today are a far cry from Founding-Era felonies. That is, "[t]he felony category" at the Founding was "a good deal narrower [then] than now." *Lange v. California*, 594 US 295, 311 (2021). Felony charges often do not reflect the gravity of Founding-Era felony offenses.

Oregon law broadly defines common property, non-violent felonies like identify theft and unauthorized use of a vehicle ("UUV"), thereby depriving many citizens of the right to bear arms who are not dangerous and for whom there is no historical analogue justifying dispossession. Instead, the conduct that is made criminal under the broad interpretation of these statutes is often a proxy for poverty and houselessness. Despite policymakers progress in fighting the houselessness crisis, more Oregonians than ever lack shelter. *See* Lillian Mongeau Hughes, *Homelessness is increasing faster than Portland-area counties are moving people into housing*, the Oregonian Online, Nov. 17, 2024. The realities of how these crimes can and are prosecuted should weigh heavily in favor of circumscribing the felon-in-possession statute.

Identity theft is a clear example of a non-violent felony that is defined so broadly under Oregon law that it captures conduct that provides no indication that

a person is a danger. Identify theft conjures up images of a person trying to impersonate another, typically for financial gain (and detriment to the subject of the theft). The classic example, of course, is the use of another person's identification to forge a check or fraudulently use another person's credit card.[1] Over the past 15 years, however, Oregon courts have interpreted the crime of identity theft to encompass a much wider swath of conduct.

In 2011, the Court of Appeals held in *State v. Martin* that "mere possession of [another person's identification] card is not by itself probative of an intent to use the card to deceive or defraud." 243 Or App 528, 534, 260 P3d 197 (2011). As public defenders, we rejoiced—so often we had seen our clients prosecuted for possessing another person's identification card, or a piece of mail, with no other real evidence that the client intended to use that identification to deceive or defraud. *Martin* demanded something more, thereby sparing many of our clients from the dangers of having to risk a possible felony conviction and imprisonment by taking a "mere possession" case all the way to trial. *Id.*

Subsequently, however, the courts have steadily retreated from this high watermark (for the defense, at least) in identity theft cases. In *State v. Hodges*, 269 Or App 568, 345 P3d 516 (2015), the Court of Appeals signaled that possession of

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[1] Both examples of "identity theft" are crimes in their own right under Oregon law, underscoring the overbreadth of the identity theft statute. *See* ORS 165.007 (Forgery in the second degree); ORS 165.055 (Fraudulent use of a credit card).

more than one piece of stolen identification was sufficient evidence to support an identity theft conviction, depending on the "quantity and quality of identity-related documents in [the] defendant's possession." *Id.* at 574. There was additional circumstantial evidence of intent to defraud or deceive, but the central thrust of the court's distinction of *Martin* was the number and nature of documents. *Id.* In *State v. Lewis*, 287 Or App 68, 400 P3d 977 (2017), the court carved into *Martin* even further. There, the court held that the possession of some kinds of identifying documents taken from another person's jacket—a credit card and a Walmart gift card—while giving other documents from the jacket to another person was sufficient to show a "joint endeavor" to deceive or defraud. *Id.* at 73.

The Court of Appeals synthesized these developments in *State v. Cotan*, 317 Or App 586, 506 P3d 1184 (2022). In that case, the defendant was found by police officers moving items from an RV with a broken ignition to a U-Haul truck with a bypassed ignition and a broken window—clear indicators that the vehicles were stolen. *Id.* at 587. Upon the defendant's arrest, the police found that the defendant had a Social Security card, state identification card, and a Bi-Mart card belonging to another person, as well as a driver's license and Visa debit card belonging to a second person. *Id.* Although the defendant explained that he had found those items in the trash, *id.*, the other circumstantial evidence was enough to support a conviction for identity theft. *Id.* at 589.

Where the caselaw has landed, is that possession of multiple pieces of another person's identification—along with some relationship to another indicator of theft, like stolen property or a stolen car—is enough to find someone guilty of identity theft, or at least to justify the initiation of prosecution. *See State v. Shatalov*, 326 Or App 671 (2023) (holding there was sufficient evidence of identity theft in case of a defendant found with a debit card in one person's name and mail for a credit card offer in another person's name, even though there was insufficient evidence that the defendant had an intent to commit theft to support a burglary in the second degree conviction). As public defenders, we have a front-row seat to how this ensnares our houseless clients every day without any real evidence that our clients intended to use the identification documents to deceive or defraud. Houseless communities are frequently collaborative but also chaotic. Property changes hands quickly and often in these communities. As noted in *Cotan*, there is also a common practice of picking through trash to try to find something valuable that can be traded or sold. All to say, it is no wonder that houseless individuals frequently find themselves in the possession of identification documents and surrounded by other stolen property, even when the individual has no intent to steal something themselves.

The unauthorized use of a vehicle and possession of a stolen vehicle statutes similarly broadly allow for prosecution by association in a way that tends to disproportionately impact the houseless community rather than targeting actual car

thieves. The prosecution of car theft faces the same difficulties as identity theft. Like other metropolitan cities, there is a rampant number of vehicle thefts in Multnomah County. The theft itself is often unwitnessed and unrecorded, making it especially difficult to identify the perpetrator. And the stolen property itself typically changes hands quickly and multiple times, so whoever has possession of the property at the time of the police encounter was usually not the initial thief. To deal with this issue, the Oregon legislature defined the crime more broadly to include use or possession of a vehicle that the possessor recklessly ignores is likely to be stolen, thereby allowing prosecution of the use or possession of a stolen car far downstream from the theft itself. *See* ORS 164.135; *see also* ORS 819.300. One consequence, however, is that our clients convicted of these offenses are often at best indifferent to the theft of property (compared to the actual perpetrator's knowledge of stolen status), thus undermining the proposition that a UUV or PSV conviction shows a dishonest character that would therefore disqualify our client from their right to bear arms.

The issues that underlie the ways our houseless clients are disproportionately charged with crimes like ID Theft and UUV are complex and far beyond the role of this Court to try to solve. That said, our experience has shown us that these clients are often prosecuted for conduct that shows no direct or clear evidence that our client intended to deceive, defraud, or steal from anyone, let alone that our client is a danger. These offenses often ensnare clients who are struggling to

survive on a daily basis (such as by sleeping in cars), who are vulnerable, and who are often being taken advantage of by peers. Considering the practical realities of how these laws play out, the Court should limit the scope of the felon-in-possession of a firearm statute to ensure that the law is not depriving our clients of their constitutional right to bear arms based on conduct that has nothing to do with their ability to responsibly possess a firearm.

II. Along with the inequitable impact on members of our community who are houseless, the enforcement of the felon-in-possession of a firearm statute disproportionately targets Oregonians of color.

A. Police have long targeted Oregonians of color, especially when police make pretextual stops.

Portland Police have long targeted Oregonians of color. In our clients' experiences, many felon-in-possession charges grow out of pretextual stops. During those stops, the police justify broader intrusions based on an incidental traffic violation. *See Whren v. United States*, 517 US 806, 812–13 (1996). Of course, the Fourth Amendment of the United States Constitution does not allow defendants' objections to "intentionally discriminatory application of laws" to racial groups. *Id.* at 813. That said, the United States Court of Appeals for the Ninth Circuit has long recognized in the Fourth Amendment context that the "burden of aggressive and intrusive police action falls disproportionately on African–American, and sometimes Latino, males." *See, e.g. Washington v. Lambert*, 98 F3d 1181, 1187 (9th Cir 1996). That court ruled that here in Portland,

"relations between police and the African-American community" have been recognized as "pertinent to [the court's] analysis" of a given search and seizure. *United States v. Washington*, 490 F3d 765, 768 (9th Cir 2007).

That racial history plays out on Portland's streets. In 2012, the United States Department of Justice sued the City of Portland for civil rights violations in federal court. *See* Compl., *United States v. City of Portland*, No. 3:12-cv-02265-SI, Dec. 17, 2012. Filing that lawsuit rested on far-reaching factual findings. *See* Assistant Attorney General Thomas Perez & United States Attorney Amanda Marshal, *Letter re: Investigation of Portland Police Bureau* (Sept. 12, 2012). Those findings focused attention on how the Portland Police Bureau disproportionately stopped and arrested Black Portlanders. *Id.* And once stopped, Black Portlanders have found themselves more frequently arrested than white neighbors. Data from 2013-2020 revealed that Portland police arrested Black people at a per capita rate 4.3 times higher than white people, a figure that made Portland "the fifth worst in the country" when it came to such disparities. *See* Jonathan Levinson, *Portland has 5th worst arrest disparities in the nation, according to compiled data*, Or. Pub. Broad., Feb. 7, 2021. The upshot of these statistics is that people of color in Portland, especially Black Portlanders, will find themselves stopped and even arrested at far higher rates than their White neighbors. And given the "officer safety concerns" that accompany arrests in vehicles, those people will often be searched for weapons. Consequently, this increased likelihood of police contact

makes it far more likely that people of color will be found with firearms and charged with a criminal offense without the police observing any conduct that would suggest the person had the firearm for any reason beyond self-defense.

B. Prosecutors disproportionately file felon-in-possession cases against Oregonians of color, thereby exacerbating inequities in our criminal-legal system.

In addition to the statistics showing disproportionate seizures, prosecutors disproportionately file cases against Oregonians of color. From 2017 to present, Oregon has filed cases against 14,004 Oregonians under ORS 166.270.[2] Of that figure, Oregon filed cases against 1,455 Black individuals and 436 Native individuals. To be sure, white people still make up the balance of prosecutions. That said, the proportion of filings against people of color far exceed their statewide representation when broken down by racial and ethnic category. Black defendants represent just over 10% of those accused of felon-in-possession, but Black people make up just 2.4% of our state's population. And though the number of Native defendants and people more broadly are small taken as a whole, Native people are 50% overrepresented in filing figures compared to their statewide representation. Put differently, a random felon-in-possession defendant is over four times more likely to be Black than a random person picked off Oregon's streets.

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[2] The Oregon Criminal Justice Commission provided these statistics in response to a public records request. Statewide race/ethnicity figures come from the United States Census Bureau's July 1, 2023 statewide population estimates.

These differences mirror broader disparities in our prison system. *See Oregon State Profile*, Prison Policy Initiative, https://www.prisonpolicy.org/profiles/OR.html. Worse, these inequities reinforce underlying disparities that persist outside the criminal-legal system between white, Black, and Native Oregonians. Coalition of Communities of Color, *Addressing The Racial Wealth Gap* (2022). Indeed, members of our community may face heightened barriers to housing, employment, and other resources based on the simple fact of arrest—and even acquittal. *See* Reducing Barriers to HUD-Assisted Housing, 89 Fed Reg 25332 (proposed Apr. 10, 2024) (to be codified at 24 CFR Pts 5, 245, 882, 960, 966, and 982) (proposed expansion of federal public housing admissions criteria to reduce racial disparities in housing access); *see also* Benjamin D. Geffen, *The Collateral Consequences of Acquittal: Employment Discrimination on the Basis of Arrests Without Convictions*, 20 U Pa JL & Soc Change 81 (2017) (reviewing risks of arrest, rather than conviction, for job applicants). And these disparities may not reflect racial representation of gun ownership among those convicted of felonies. After all, white Americans are far more likely than their neighbors of color to own firearms. *See* Kim Parker et al, *The demographics of gun ownership* (June 22, 2017).

In short, Black Oregonians have faced heightened and unequal exposure to prosecution for being a felon in possession of a firearm here in Oregon, compounding and reinforcing long-standing inequalities in our state and criminal system more broadly. As with the disproportionate representation of the houseless

community when it comes to certain nonviolent felonies, this disparate treatment of a historically disenfranchised group when it comes to the protection of a core constitutional right should give this Court significant pause when assessing the scope of ORS 166.270(1). A clear solution is to limit the statute's permissible scope to individuals who the State can show have felony convictions that demonstrate a clear and present danger to other members of the community. And as noted below, this presentation should be made through the vehicle of a pretrial hearing.

III. This Court should correct *Parras's* unworkable standard, and then clarify the scope of our clients' constitutional rights.

A. *Parras* assumed an unworkable vehicle for as-applied challenges.

Parras is unworkable because the court assumed an inapt vehicle for as-applied challenges—a mid-trial motion for judgment of acquittal. *See Parras*, 326 Or App at 249. That assumption reflects Oregon's rejection of as-applied challenges brought in a pre-trial demurrer, *State v. Cervantes*, 232 Or App 567, 223 P3d 425 (2009), or a post-trial motion in arrest of judgment, *State v. Worthington*, 251 Or App 110, 117, 282 P3d 24 (2012). Admittedly, the law is "surprisingly unclear" about when defendants can bring as-applied challenges, and what facts the court may rely on in evaluating such a challenge. *State v. Howard*, 325 Or App 696, 698, 529 P3d 247, *rev den*, 371 Or 333, 535 P3d 1289 (2023).

Both state and federal constitutional analysis requires that the trial court evaluate the individual circumstances of a defendant making an as-applied challenge to firearm bans. Under Article I, Section 27, the trial court asks whether a given "legislative enactment[] restricting arms . . . satisf[ies] the purpose of promoting public safety." *Christian*, 354 Or at 33. Under the Second Amendment, the trial court makes a "dangerousness determination" that is "fact-specific, depending on the unique circumstances of the individual defendant." *United States v. Williams*, 113 F4th 637, 660 (6th Cir 2024). Each standard demands that both government and defendant make an evidentiary record. That record may be entirely irrelevant and prejudicial to the factfinder's guilt determination in a given case. In a felon-in-possession case, the defendant's introduction of mitigating information about how he's rehabilitated himself since his predicate felony conviction confuses the jury and may create an improper basis for their verdict. The same concerns bar aggravating evidence to show that the defendant's past makes him presently dangerous. That cannot stand.

Instead, this Court should fashion a vehicle that allows defendants to raise a pre-trial challenge to the felon-in-possession statute as-applied to their conduct. This Court has crafted a similar remedy before. In *State v. Sutherland*, a Measure 11 defendant, the state, and the trial court all agreed that the bail statute was unconstitutional as-applied to the defendant. 329 Or 359, 362, 987 P2d 501 (1999). However, the bail statute conferred no right to a hearing where he could raise, and

the state could contest, an as-applied challenge to imposition of excessive bail. *Id.* at 366. This Court then held that Article I, Section 16 itself "presupposes a right to a hearing at which the trial court may consider the individual circumstances of a particular defendant." *Id.* at 366-67.

There, as here, our state Constitution's protects all defendants' rights to raise individualized challenges when the state wishes to deprive them of their fundamental freedoms. Practicality demands a hearing prior to the deprivation.[3] Statutory law does not create such a juncture. Therefore, our state Constitution confers the right to a hearing on the application of ORS 166.270(1) matter before it is impractical.

B. Because *Parras* did not announce a standard for the constitutional application of ORS 166.270(1), this Court should clarify the statute's lawful scope.

This Court should clarify the scope of ORS 166.270(1) because the *Parras* opinion stopped short of identifying the statute's lawful scope. That creates problems for our clients. In *Parras*, the court ruled that the felon-in-possession

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[3] Along with the practical evidentiary reasons to have a pretrial hearing on this issue, there is also the practical reality of our current public defense crisis to consider. A pretrial hearing on the constitutionality of the felon-in-possession of a firearm statute as applied to the defendant creates an early pathway to resolution in a case. In these kinds of cases, oftentimes one of the only issues (and sticking points in negotiations) is the constitutional challenge to the statute. Allowing the defense a chance to test this issue before trial will not only lead to more dismissals but also to more negotiated resolutions if the defendant fails at the hearing. Both outcomes would create more capacity for our indigent defense bar to take additional cases.

statute could stand as-applied to Mr. Parras's predicates of manufacture and possession of methamphetamine. 326 Or App at 258. More broadly, *Parras* rejected Defendant-Petitioner's proposed standard that would distinguish violent and non-violent felony predicates for as-applied challenges. *Id.* But the opinion declined "to resolve the full scope of what offenses may have disqualified someone" from their constitutional rights to bear arms. *Id.* at 258 n8.

This Court should clarify what *Parras* left undefined. The federal Courts of Appeal have not yet settled on a shared standard for as-applied Second Amendment challenges to the federal felon-in-possession statute. *See United States v. Alvarado*, 95 F4th 1047, 1051-53 (6th Cir 2024) (collecting cases from across the federal courts). Some of those conclusions resonate with this Court's reasoning in *Christian.* Take, for example, the Sixth Circuit's analysis in *Williams*. 113 F4th at 663. Similarly to *Christian*'s Article I, Section 27 analysis, the court in *Williams* held that the Second Amendment allows "legislatures [to] disarm groups of people, like felons, whom the legislature believes to be dangerous—so long as each member of that disarmed group has an opportunity to make an individualized showing that he himself is not actually dangerous." *Compare id.* with *Christian*, 354 Or at 33 ("legislative enactments restricting arms must satisfy the purpose of promoting public safety."). In *Williams*, the panel held:

> A person convicted of a crime is "dangerous," and can thus be disarmed, if he has committed (1) a crime "against the body of another human being," including (but not limited to) murder, rape, assault, and robbery, or (2) a crime

> that inherently poses a significant threat of danger, including (but not limited to) drug trafficking and burglary. An individual in either of those categories will have a very difficult time, to say the least, of showing he is not dangerous. A more difficult category involves crimes that pose no threat of physical danger, like mail fraud, tax fraud, or making false statements.

Williams, 113 F4th at 663. The opinion never reached cases involving the latter, "more difficult," category because the defendant's pleaded past convictions fit squarely into the first category. The logic in *Williams* under the federal Constitution resonates with this Court's reasoning in *Christian* about our state Constitution.

Whatever standard this Court adopts, the lack of a standard creates problems for our clients. In *District of Columbia v. Heller*, the United States Supreme Court held that "the enshrinement of constitutional rights necessarily takes certain policy choices off the table," specifically "the absolute prohibition of handguns held and used for self-defense in the home." 554 US 570, 636 (2008). But the Court of Appeals's decision in *Parras* leaves it unclear what predicate felonies disenfranchise those Oregonians from bearing arms "for the core lawful purpose of self-defense." *Id.* at 630. Under this decision, people like A and B and thousands of others throughout Oregon are forced to risk criminalization when they may well be exercising their constitutional rights. As public defenders, we know the stress that this lack of clarity places on our clients, on ourselves as advocates, and on the system itself as we try to zealously but also efficiently resolve our cases. This

Court should take this opportunity to clarify the contours of our clients' constitutional right to bear arms.

CONCLUSION

For the foregoing reasons, as well as those raised by Petitioner-Defendant's counsel in briefing and at argument, *Amicus Curiae* Metropolitan Public Defender, Inc. respectfully requests that this Court REVERSE the decision of the Court of Appeals.

Respectfully submitted,

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