

DISTRICT OF COLUMBIA  
COURT OF APPEALS

---

No. 23-CF-0514

---



Clerk of the Court  
Received 09/09/2025 07:26 AM  
Filed 09/09/2025 07:26 AM

TYREE BENSON,

Appellant,

v.

UNITED STATES OF AMERICA,

Appellee.

**APPELLEE’S UNOPPOSED MOTION TO VACATE  
CONVICTION FOR POSSESSION OF A LARGE-CAPACITY  
AMMUNITION FEEDER DEVICE**

Pursuant to D.C. Code § 17-306, appellee, the United States of America, by and through its attorney, the United States Attorney for the District of Columbia, hereby moves to vacate appellant Tyree Benson’s conviction under D.C. Code § 7-2506.01 for possession of a large-capacity magazine feeder device. It is the United States’s position that § 7-2506.01 is unconstitutional. As a result, the United States is not prosecuting violations of § 7-2506.01, and believes that, in the interests of justice, Benson’s conviction should be vacated. Pursuant to D.C. App. R. 27(b)(4), the undersigned avers that appellant’s counsel, Sicilia Englert, Esq., does not oppose this motion.

In support of this motion, appellee submits as follows:

1. On November 17, 2022, Tyree Benson was charged by indictment with carrying a pistol without a license outside his home or place of business (CPWL) (D.C. Code § 22-4504(a)(1)); possession of a large-capacity ammunition feeding device (PLCFD) (D.C. Code § 7-2506.01(b)); possession of an unregistered firearm (UF) (D.C. Code § 7-2502.01(a)); and unlawful possession of ammunition (UA) (D.C. Code § 7-2506.01(a)(3)).
2. After a bench trial on stipulated facts before the Honorable Lynn Leibovitz, Benson was convicted on all charges on April 11, 2023. Benson noted a direct appeal from his convictions in the above-captioned case. A panel of this Court heard oral argument on December 12, 2024, and the case is now under advisement.
3. On appeal, Benson challenged the validity of D.C. Code § 7-2506.01 on Second Amendment grounds, among other issues. Although the United States initially defended that provision against constitutional attack, the United States has changed its position as to the validity of this statute under the Second

Amendment, as outlined in the D.C. App. R. 28(k) letter filed by the United States on July 24, 2025.

4. Given the United States's view that a complete ban on large-capacity ammunition feeder devices as defined in D.C. Code § 7-2506.01 cannot survive constitutional scrutiny, we respectfully move this Court to vacate appellant Benson's conviction pursuant to D.C. Code § 17-306 and to remand to the Superior Court so that the United States may move for dismissal of that count pursuant to Super. Ct. Crim. R. 48.
5. Vacatur of Benson's conviction for possession of a large-capacity ammunition feeder device is in the interests of justice because he has been found criminally liable based upon a statute that, as written, encroaches upon the interests protected by the Second Amendment. *See Magnus v. United States*, 11 A.3d 237, 246-47 (D.C. 2011) (issuance of extraordinary writ of coram nobis was appropriate because "[a] conviction for conduct that is not criminal, but is instead constitutionally-protected, is the ultimate miscarriage of justice.").

6. Vacatur of Benson’s conviction under D.C. Code § 7-2506.01 is also consistent with this Court’s settled practice of constitutional avoidance. *See generally, e.g., In re Bright Ideas Co.*, 284 A.3d 1037, 1049 (D.C. 2022) (“[C]onstitutional adjudication is a matter of great gravity and delicacy, so our practice is to avoid ruling on constitutional questions unless we have no other choice.”) (internal quotation marks omitted); *Olevsky v. District of Columbia*, 548 A.2d 78, 81 (D.C. 1988) (“The practice of avoiding constitutional issues if it is reasonably possible to do so is predicated on a fundamental rule of judicial restraint, which is perhaps more deeply rooted than any other doctrine of constitutional adjudication.”).
7. Furthermore, because the United States would not charge a defendant similarly situated to Benson under D.C. Code § 7-2506.01 if arrested today, vacatur of Benson’s conviction for possession of a large-capacity magazine feeder device would ensure fundamental fairness.
8. Vacatur of Benson’s conviction for possession of a large-capacity magazine feeder device would not impact the remaining issues

before this Court on appeal. The United States would respectfully request affirmance of Benson's remaining convictions for CPWL, UF, and UA, for the reasons articulated in our written pleadings and oral argument.

## CONCLUSION

WHEREFORE, appellee respectfully requests that this Court grant this Unopposed Motion to Vacate Benson's Conviction for Possession of a Large-Capacity Ammunition Feeder Device and remand that count to the Superior Court for further proceedings.

Respectfully submitted,

JEANINE FERRIS PIRRO  
Acting United States Attorney

/s/

---

CHRISELLEN R. KOLB  
D.C. Bar #426343  
Assistant United States Attorney  
601 D Street, N.W., Room 6-232  
Washington, D.C. 20579  
Chrisellen.R.Kolb@usdoj.gov  
(202) 252-6829

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have caused a copy of the foregoing to be served by electronic means, through the Court's EFS system, upon counsel for appellant, Sicilia Englert, Esq., at [Sicilia.englert@englertlawoffice.com](mailto:Sicilia.englert@englertlawoffice.com), and upon counsel for amicus curiae, Alice Wang, [awang@pdsdc.org](mailto:awang@pdsdc.org), Public Defender Service for the District of Columbia, and Caroline VanZile, Office of the Attorney General of the District of Columbia, [caroline.vanzile@dc.gov](mailto:caroline.vanzile@dc.gov), on this 9th day of September 2025.

/s/

---

CHRISELLEN R. KOLB  
Assistant United States Attorney