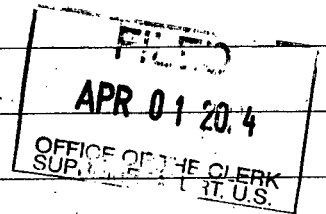


23-7433

ORIGINAL

IN THE  
SUPREME COURT OF THE UNITED STATES

Gary Allen Kachina, petitioner



VS.

United States of America, Respondent

on petition for a writ of certiorari to  
United States Court of Appeals  
For The Eighth Circuit

Gary Allen Kachina  
4439 Monroe St N.E.  
Columbia Heights, MN 55421

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## Questions Presented

I

IS 18 U.S.C. § 922(g)(1) UNCONSTITUTIONAL AS APPLIED TO A NON VIOLENT FELON?

II

IS 18 U.S.C. § 922(g)(1) UNCONSTITUTIONAL ON ITS FACE?

III

IS A ATTORNEY INEFFECTIVE ON ADVICE OF WHETHER TO PLEAD GUILTY OR TESTIFY AT TRIAL WHEN CONTEMPORANEOUS EVIDENCE WAS IN THE RECORD THAT PETITIONER DESIRED TO PLEAD GUILTY BUT WAS MISADVISED BY ATTORNEY THAT HE WOULD STILL RECEIVE ACCEPTANCE AND RESPONSIBILITY EVEN IF HE PROCEEDED TO GO TO TRIAL IN THIS CASE?

IV

CAN A APPELLATE COURT DENIE A DEFENDANT DIRECT REVIEW FOR A MOTION FOR A NEW TRIAL UNDER FED. R. CRIM. P. RULE 33?

III

## LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

IN THE  
Supreme Court of the United States

Petition For a writ of certiorari

petitioner respectfully Request that a  
writ of certiorari Issue To Review The  
Judgement Below.

The opinion of the United States District  
Court For The District of Minnesota appears at  
Appendix A To the petition And is Reported at: United  
States v. Gary Allen Kachina, U.S. Dist. Minn. 2023 WL  
3343824 The Judgement of the United States Court of  
Appeals For The Eighth Circuit is NOT Reported And  
Appears at Appendix B Rehearing denied at Appendix C.

JURISDICTION

The date on which the United States Court  
of Appeals For The Eighth Circuit decided my  
Case was December 29, 2023 NOT Reported  
A timely petition for rehearing was denied February 02, 2024

This Court's Jurisdiction is Invoked under  
28 U.S.C. § 1254 (1).

# Constitutional and Statutory provisions

United States Constitution :

Second Amendment, Right to Keep and bear Arms

## STATEMENT OF THE CASE

### procedural History:

on March 9<sup>th</sup>, 2015 petitioner was indicted in the United States District Court District of Minnesota

charging petitioner with Felon in possession of a Fire Arm

Armed Career Criminal, offense date February 5<sup>th</sup>, 2015

In violation of 18 U.S.C. § 922(g)(1) and 18 U.S.C. § 924(e).

petitioner proceeded to trial in January 2016

The Jury returned a guilty verdict on January 14<sup>th</sup>

2016. petitioner was sentenced as a armed career

criminal on October 21<sup>st</sup> 2016. The sentence was

Remanded by the Eighth Circuit. petitioner was

Re-sentenced on May 22<sup>nd</sup> 2018. petitioner filed

A Notice of Appeal to the new sentence on May 29<sup>th</sup> 2018



On April 16<sup>th</sup> 2020 The Eighth Circuit Affirmed

petitioners conviction, but Re-Manded The Sentence

Imposed With a order To correct The Number of years

petitioner was sentenced to probation, on May 29<sup>th</sup>

2020 petitioner was Re-sentenced again and petitioner

File A Notice of Appeal on June 15<sup>th</sup> 2020 which

was summararily affirmed by The Eighth circuit.

on April 22<sup>nd</sup> 2022 petitioner Filed a motion

To Vacate under 28 U.S.C. § 2255. The District

Court Denied petitioners Motion To Vacate under

28 U.S.C. § 2255 on May 10<sup>th</sup> 2023. And Also

denied petitioners Motion For A new Trial And to

Turn over New Evidence The same day.

petitioner Filed A Notice OF Appeal For The denial  
OF The Motion For A New Trial Under Fed. R. crim. p  
Rule 33, And Notice OF Appeal For The denial  
OF petitioner's Motion under 28 U.S.C. § 2255,  
petitioner Also Filed A Motion For a Certificate  
OF Appealability. The Appellate Court denied  
The application For a Certificate OF Appealability  
on December 29<sup>th</sup>, 2023 And dismissed The Appeal  
Without giving petitioner Direct Review on his  
Notice OF Appeal on the District courts denial OF  
petitioner's Motion For a New Trial Under Rule 33,  
petitioner then Filed a petition For rehearing  
And Rehearing en banc. Which was denied by

the Eighth circuit on February 2<sup>nd</sup> 2024.

## Reasons For Granting The writ

I

18 U.S.C. § 922 (g) Is unconstitutional as

Applied to petitioner. This is a Issue That

has caused division Among The circuit courts

And Supreme court Review is necessary To make

clear And Harmonize The Law. After The courts

Ruling In NYRPA V. Bruen, 142 S. Ct 2111 (2022).

Since The courts Ruling The circuits

Have been Split Regarding applying Bruen.

See united States U. Bullock, 2023 U.S. Dist. Lexis

112396 (S.D. Miss. 2023) Mr. Bullock is a violent

Felon who's charges were dismissed pursuant

to the Supreme court's ruling in Bruen.

Then there is the Eighth circuit's case in United

States v. Jackson, 69 F.4th 475 (2023). In which

Mr. Jackson's appeal was rejected by the Eighth

circuit, and was denied. Then there is the

third circuit's ruling in *Enbarc in Range v. AG*,

No: 21-2835 (3rd Cir. 2023). And as the court

is well aware there are several other confusing

rulings regarding this issue thrown out the

lower courts. petitioner is a non-violent

felon who the historical analysis in Bruen

should not have been stripped of there

Second Amendment Right TO possess a Fire

Arm. petitioners prior convictions Are For All

Non Violent Burglary that are so old. they

Should Not Band petitioner For LIFE OF being

able to own A Firearm TO protect Himself

And His Family.

Also petitioner would Like To make a FACT

Known TO The court That Has NOT been adressed

is that Historically Felon's were NOT band From

possessing Fire Arm's And IN FACT use TO be

provided A Gun or rifle A Horse and A saddle

When Released From Prison. A FACT Any court May

Take Judicial Notice OF.

## II

Is 18 U.S.C. § 922(g)(1) unconstitutional on a Facial Challenge?

For the reasons set forth in petitioners first

question, petitioner believes this is a question

that deserves consideration by this court,

as traditionally and historically all felons were

provided a gun a horse and a saddle when

released from prison. And for the reasoning in

United States v. Bullock, 2023 U.S. Dist. Lexis

112396 (S.D. Miss. 2023). This court should consider

striking down this statute as unconstitutional

and in violation of the Second Amendment.

### III

IS A ATTORNEY InEFFECTIVE on Advice OF  
Wheather TO plead guilty OR TESTIFY At trial  
When contemporaneous Evidence Was In The  
record that petitioner desired To plead guilty  
But was Misadvised by Attorney that he would  
still Recieve acceptance and Responsibility Even  
IF He proceeded To go To trial In This case?

The court should here this issue because

The circuit court's Ruling conflict's with its own

set precedent. Hyles v. united states, 754 F.3d 530,

535 (8<sup>th</sup> cir. 2014); Sanders v. united states, 341 F.3d

720, 723 (8<sup>th</sup> cir. 2003).

The court Ruling also creates a circuit split

And is in conflict with several other circuits mainly in

The sixth circuit. see Griffin v. united states, 330

F.3d 733, 738 (6<sup>th</sup> cir. 2003).

The Rulings From these cases state, so long as there is something in the record that indicates a defendant would have pled guilty upon proper advice, or presents some credible, non-conclusory evidence that he would have, then the attorney is ineffective and the case should be remanded, and reversed.

In petitioner's case there is contemporaneous evidence and the record is replete that petitioner would have pled guilty upon proper advice.

See Doc. # 17, 55, 97, 98, 102, 115 through out the entire case petitioner has tried to profer and co-operate for the government and plead guilty see (Doc. # 243). petitioner continuously has asked



the government to allow him to co-operate and  
plead guilty and to be placed into the Federal  
Witness protection program. During the 2255  
proceeding the district court denied petitioner a  
evidentiary hearing, where petitioner could have  
presented evidence that through out the entire  
case petitioner wanted to plead guilty and to  
co-operate. petitioner jail recorded phone calls  
have recordings of this between petitioner and his  
family discussing co-operating, pleading guilty and  
that petitioner did NOT trust this attorney's  
advice. petitioner could have questioned the attorney  
at a Evidentiary hearing to prove these facts,

The court has letter's petitioner wrote to the prosecutor in which petitioner was trying to co-operate and make a plea deal. These letters are in the record, because the attorney in this case refused petitioner's plea to make a deal and refused to set up a proffer. And did everything he could to trick and discourage petitioner from making a deal with the government.

In this case the district court ignored all of this evidence that petitioner wanted to plead guilty, denied petitioner a evidentiary hearing to present more evidence of these facts and just denied petitioner's petition with malice.

And the Eighth Circuit did the same as if  
defendants have no right to adequate  
representation and just denied the application  
for a certificate of appealability.

For these reasons petitioner prays that this  
court will hear this issue.

#### IV

Can an appellate court deny a defendant direct  
review for a motion for a new trial under Fed. R. Crim. P.  
Rule 33?

In this case petitioner brought a direct  
review claim for a motion for a new trial for  
newly discovered evidence under Fed. R. Crim. P.  
Rule 33. The appellate court just denied the

Appeal with no direct Review no Briefing And

No Response or Answer From the Government.

This type of claim Has never been Brought or

Answered by The Supreme court. Can a Federal

appellate court Just deny appeals with no

Review at all ?

Here petitioner Had a Right under the

Statute And Rules of the Court For direct

Review of this claim. Fed. R. app. p. Rule 4

And 28 U.S.C. § 1292 (B).

This is Not a discretionary Rule of

Statute And the appellate court in this case

Flat out denied petitioner his appeal as of

Right. And petitioner asks this court to  
Review this issue for the reasons set forth.

IF Appellate courts can just deny a defendant's

Right to appeal then it is total Anarchy

And there is no more we the people. No more  
checks and balances.

### Conclusion

For the reasons set forth in this petition petitioner  
prays this court will grant review of these  
claims.

Dated 4-2-2024

Respectfully Submitted  
Gary Allen Kachina  
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55421

# Appendix A