

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

LANCE JAMES TALBOT,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Tenth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether 18 U.S.C. § 922(g)(1) is unconstitutional under the Second Amendment, both facially and as applied to Mr. Talbot, in light of *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022)?

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, Lance James Talbot, respectfully petitions for a writ of certiorari to review the order and judgment of the United States Court of Appeals for the Tenth Circuit entered on May 7, 2024.

OPINION BELOW

The unpublished decision of the United States Court of Appeals for the Tenth Circuit in *United States v. Talbot*, No. 23-8025, 2024 WL 2013910 (10th Cir. May 7, 2024) appears in the appendix at A1.

JURISDICTION

The United States District Court for the District of Wyoming had jurisdiction in this criminal case under 18 U.S.C. § 3231. The Tenth Circuit had jurisdiction pursuant to 28 U.S.C. § 1291 and 18 U.S.C. § 3742. The circuit entered judgment on May 7, 2024. (Appendix at A1.) This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

FEDERAL PROVISIONS INVOLVED

The Second Amendment of the United States Constitution, U.S. CONST. amend. II:

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

18 U.S.C. § 922(g)(1):

It shall be unlawful for any person . . . who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year . . . to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

STATEMENT OF THE CASE

Petitioner Lance Talbot was charged, *inter alia*, with unlawfully possessing ammunition after having previously been convicted of a felony offense, in violation of 18 U.S.C. § 922(g)(1). He moved to dismiss the single-count indictment under the Second Amendment, arguing that, in light of *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1 (2022), section 922(g)(1) was unconstitutional. After the district court denied his motion, he entered a conditional plea of guilty, pursuant to Fed. R. Crim. P. 11(a)(2), preserving his right to appeal that denial. He was sentenced to 57 months’ imprisonment. On appeal, he pressed his *Bruen* challenge, contending that section 922(g)(1) was unconstitutional both facially and as applied to him. By that time, however, he acknowledged that his claims were foreclosed by Tenth Circuit precedent, specifically *Vincent v. Garland*, 80 F.4th 1197 (10th Cir. 2023) (relying on *United States v. McCane*, 573 F.3d 1037 (10th Cir. 2009)), and he presented them for preservation only. The Tenth Circuit affirmed, and this petition follows.

REASONS FOR GRANTING THE WRIT

When Mr. Talbot appealed to the Tenth Circuit, that court’s precedent foreclosed his constitutional arguments with respect to section 922(g)(1). At that time, however, multiple petitions for certiorari addressing the constitutionality of section 922(g)(1)—including in *Vincent*—also were pending before the Supreme

Court. After this Court determined in *United States v. Rahimi*, 144 S. Ct. 1889 (2024) that section 922(g)(8), which prohibits firearm possession while subject to a domestic violence restraining order, was constitutional, this Court granted certiorari in those pending petitions challenging section 922(g)(1), vacated the judgments, and remanded “for further consideration in light of” *Rahimi*. See, e.g., *See Vincent v. Garland*, 80 F.4th 1197 (10th Cir. 2023), *cert. granted, judgment vacated*, No. 23-683, 2024 WL 3259668 (U.S. July 2, 2024); *Range v. Att’y Gen. United States of Am.*, 69 F.4th 96 (3d Cir. 2023), *cert. granted, judgment vacated sub nom. Garland v. Range*, No. 23-374, 2024 WL 3259661 (U.S. July 2, 2024); *United States v. Jackson*, 69 F.4th 495, 506 (8th Cir. 2023), *cert. granted, judgment vacated*, No. 23-6170, 2024 WL 3259675 (U.S. July 2, 2024).

In light of the Supreme Court’s grant, vacatur, and remand (“GVR”), the Tenth Circuit is currently reconsidering *Vincent*. See *Vincent v. Garland*, Tenth Cir. case no. 23-8025, Order of August 5, 2024 (setting supplemental briefing schedule on remand from this Court). Because the Tenth Circuit’s decision in *Vincent* will govern the outcome of Mr. Talbot’s appeal, Mr. Talbot respectfully requests that this Court grant, vacate, and remand his case as well for reconsideration in light of *Rahimi* and the new opinion to be issued in *Vincent*.

CONCLUSION

For the foregoing reasons, Mr. Talbot respectfully requests that this Court grant his petition for a writ of certiorari, vacate the underlying judgment, and remand for reconsideration by the Tenth Circuit in light of *Rahimi* and that circuit's pending decision in *Vincent v. Garland*.

Respectfully submitted,

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August 5, 2024