

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

JOSE ROSADO,

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. Rosado, in light of *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022)?

RELATED PROCEEDINGS

U.S. District Court:

On September 18, 2023, judgment was entered against Petitioner Jose Rosado in *United States v. Rosado*, No. 1:23-cr-00019-RMR-1, Dkt. 48 (D. Colo. Sept. 18, 2023). App. A1-A7.

U.S. Court of Appeals:

On May 9, 2024, the Tenth Circuit affirmed Mr. Rosado's conviction in an unpublished decision, *United States v. Rosado*, No. 23-1294, 2024 WL 2073589 (10th Cir. 2024). App. A8-A11.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, Jose Rosado, 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 9, 2024.

OPINION BELOW

The Tenth Circuit's unreported opinion in Mr. Rosado's case is available at 2024 WL 2073589 (10th Cir. 2024), and is in the Appendix at A8.

JURISDICTION

The United States District Court for the District of Colorado 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 entered judgment on May 9, 2024. App. A8. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY 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

The petitioner, Mr. Jose Rosado, pleaded guilty in the District of Colorado to one count of possession of ammunition as a felon under 18 U.S.C. § 922(g)(1) (hereinafter “Section 922(g)(1)”). Mr. Rosado was sentenced to 130 months’ imprisonment. On appeal, he argued that Section 922(g)(1) was unconstitutional, both facially and as applied to him, under the Second Amendment, in light of *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1 (2022). Mr. Rosado acknowledged in his appeal that his claims were subject to plain error review, and that he could not currently demonstrate plainness because 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)). The Tenth Circuit affirmed, and this petition follows.

REASONS FOR GRANTING THE WRIT

When Mr. Rosado 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., *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. 21-4121, 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. Rosado’s appeal, Mr. Rosado 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. Rosado 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 *Rabimi* and that circuit's pending decision in *Vincent v. Garland*.

Respectfully submitted,

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August 7, 2024